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CREATION AND CHARACTERISTICS OF THE NEW FUNDAMENTAL LAW OF HUNGARY

On 18 April 2011, the Parliament of the Republic of Hungary adopted a new Fundamental Law of Hungary, that is, in principle, a new constitution of the country. Its creation was preceded by an interesting political development which started by the parliamentary elections in April 2010 won, by two-thirds, that is, constitutional, majority, by the two-coalition of the Young Democrats Association – the Hungarian Civic Association (FIDESZ-MPSZ) and the Christian Democratic People's Party (KDNP). The new right-wing, ideologically national-conservative and Christian parliamentary majority decided quite soon to start the process of preparation of a new Fundamental Law of the state. However, since such a process is time-demanding and the new political majority wanted to deal with some constitutional changes immediately, some significant changes in the Hungarian Constitution were made in the summer and autumn of 2010. The newly elected Parliament adopted 10 amendments of the Constitution in total by the end of the preceding year.

I. WHY A NEW CONSTITUTION IS NEEDED?

Independently of this process of „rapid" amendments of the constitution, the process of preparation of a new complex Fundamental Law of the state started at the beginning of autumn. However, why was the idea of adopting a new constitution created in 2010, although a majority renowned Hungarian constitutional lawyers did not consider its creation necessary? Neither did the inhabitants expect a new constitution, nor were they principally refusing it. Even during the extraordinarily sickly election campaign in the spring of 2010, this possibility was discussed only briefly. The winning coalition FIDESZ-KDNP could only lose the potentially certain votes by the excessive election activism and promises, or excessively bind itself in the future by any particular and, especially, publicly presented, plans. The coalition did not want this, of course, that is why it remained rather silent with respect to any particular issues, and promised, instead, an essential change of the nature of the state and its politics, however without stating any details.

The main cause of starting up the constitutional process must probably be looked for in the two-thirds majority[1]) which both theoretically and practically

[1]) This was also expressly admitted in the general explanatory memorandum on the articulated version of the Fundamental Law of Hungary published on March 14 2011. Magyarország Alaptörvörvénye. Tervezet. Általános indoklás. p 32. "In 2010, the new parliament got such a historical opportunity from voters, such an authorization from voters, which would be a mistake not to take advantage of."

allowed the winning parties to adopt a new Fundamental Law corresponding to their value and political priorities. The other cause needs to be looked for in the ideology of the winners and in their interpretation of events of the last year. Since last year, the new Prime Minister Viktor Orbán has been trying to interpret his victory in the elections in April as the beginning of a new period in the history of modern Hungary. It may also be the reason why he, shortly after the elections, stiltedly identified the voting in April as „a revolution in voting rooms". He has stated many times that after 50 years of various dictatorships and after the 20 years of chaotic transition to a new system, the period of building new statehood and of a real change of the nature of the state has finally started. However, it must not be forgotten that during the „20-year of the chaotic transition" to a democratic system, as mentioned above, the Hungarian right-wing party, which has won the elections again in a new form, came to power two times. Naturally, it also actively participated in the process of peaceful passage from dictatorship to democracy in the years of 1989/1990.

Especially, in the beginning of a discussion on a new constitution, it was really peculiar to see that an emphasis was being placed on the needs for adopting a new Fundamental Law of the state necessary to „start up" a new phase of the Hungarian statehood on one side and, at the same time, hear the assurance on the part of the government politicians that, in fact, no big changes would be made in the constitution. The reason for such assurance was probably the attacks on the part of the new parliamentary opposition which blamed the Prime Minister Orban for making preparations to build the presidential, or at least semi-presidential political system. These concerns proved to be unjustified. That is to say, the parliamentary majority does not oppose the present chancellor system. Since the coalition FIDESZ-KDNP did not originally want to radically change the part of the valid legislation which dealt with human and civil rights, the question arises: why is it necessary to change the constitution? To cover this contradiction, the preamble of the constitution and also the regulation of national and state symbols were discussed most in the first phase of an intensive discussion on a new constitution (that is, in autumn 2010).

II. HISTORY OF THE HUNGARIAN CONSTITUTIONAL SYSTEM

One important historical fact, however, really made it easier for the government majority to justify the need for adopting a new constitution. In 2010, the yet valid Hungarian Constitution had a bit strange and misleading name from the democratic perspective: Act No. XX of 1949.[2]) Its text was created in the breakthrough year of 1989 and it is, in principle, a completely new constitution. Since it was re-numbered at that time, it could be peacefully called the first transitional complex constitution in the region. From the original Communist constitution, only the structure was preserved, more or less, (for example, in this

[2]) In the Hungarian legal tradition, laws are always marked with Latin numbers.

constitution human and civil rights follow the power bodies of the state), and the declaration of Budapest being the capital city of the Republic of Hungary.

However, the main problem consisted in the fact that the text of the new constitution had been adopted by the former parliament, the deputies of which had had no real legitimacy confirmed by free elections which took place a bit later, in May 1990. Generally, it can be said that in Hungary, in 1989, a peaceful change into democracy and the subsequent relinquishing of power by the old elite, rather than a revolution, however soft and velvet, took place based on the external signs (a round table, the old parliament adopting a new democratic text of the Constitution, a change in the name of the state in October 1989, etc.). Such a peaceful change should be guaranteed by the new text of the constitution.[3]) The authors of the constitutional compromise of 1989 themselves viewed this new fundamental document of the state, also for the reasons stated above, as a transitional wording. On the other hand, it is necessary to state that the new wording of the Constitution of 1989 was quite successful and expressed, among other things, a relatively broad social and political consensus. Most political powers of that time agreed with it, more or less. Any reservations towards illegitimacy of the new text in terms of the new democratic period disappeared even formally after the constitutional text had been amended more times by the first freely elected parliament which, in fact, got familiar with it this way.

Despite, or thanks to, this, from 1990 up to now, it has been the Hungarian political folklore to introduce again and again the problem of adopting a completely new constitution. The biggest opportunity was given to the social-liberal coalition which had a respectable two-thirds majority (nearly 72% mandates) in the parliament in the period from 1994 to 1998. However, due to disagreements between the coalition partners with respect to some essential issues[4]), the new constitution was not finally adopted. Some projects of a new constitution of the state were being prepared even later – the last comprehensive within the state apparatus and political circles. However, in the environment of renowned constitutional lawyers, there still was the thought that the wording of 1989, completed with several constitutional amendments and expertly interpreted by the very activist Constitutional Court, was quite satisfactory and there was no need for adopting a new constitution.

There is one more paradox. The Act No. XX of 1949 can be considered, despite the Stalinist context of its creation, the first Hungarian written charter

[3]) For a detailed analysis of the constitutional wording of 1989, as amended, see: OROSZ, L. – JIRÁSKOVÁ, V.: *Ústavné právo porovnávacie. Základy ústavného práva Českej republiky, Maďarskej republiky a Poľskej republiky.*) Právnická fakulta UPJŠ, Košice, 2007. (9-283. p.) (Title in English: Comparative Constitutional Law. Fundamentals of the Constitutional Law of the Czech Republic, Hungarian Republic and Polish Republic) Faculty of Law of UPJŠ, Košice, 2007. (page 9-283).

[4]) The place of the social, economic and cultural rights in the text of the constitution was discussed a lot together with the question of bicameralism (two-chamber parliament) and direct election of the President.

constitution. Before 1945, the Hungarian political elite was very proud of its ancient „organic" constitutional traditions with beginnings in the Middle Ages. However, no complex written constitution was created in Hungary, maybe except for the period of the Soviet Republic of Hungary in the spring of 1919 which tried to adopt its new innovative constitution of the Soviet type, but it had no chance to enroot both due to the short existence of such regime and due to its estrangement from the then Hungarian legal traditions.

In the traditional Hungarian legal environment context there soon appeared an idea of the so-called organic or historical constitutional system, which consisted, similarly to the English constitutional history, of more documents which were created at a very different time. The theory of the historical constitution was developed mainly in the period under the reign of the Habsburgs in Hungary. The old Hungarian parliament as a representative of the privileged social classes tried to preserve at least the rest of their sovereignty and space for manoeuvring through such legal fiction.[5]) Since the fight between the king and the classes continued for centuries, there was enough time for such idea to enroot in the Hungarian public thinking. For example, Acts of an essential modernization significance of 1848 which were adopted under the influence of the then Hungarian liberal revolution and meant, in principle, the beginning of the modern constitutionalism in the country were also considered part of this historical constitution alongside the documents already stated. Also the regime of the regent admiral Miklós Horthy tried to consolidate the post-war Hungarian statehood and the legal order on this conservative basis after his victory over the Hungarian Bolshevik revolution in 1919.

III. PROCESS OF PREPARING A NEW CONSTITUTION

The process of preparing a new text of the Fundamental Law of the Hungary has taken place in a very interesting way since summer 2010. The Hungarian parliament created an ad hoc parliamentary commission for the conceptual preparation of the new constitution which, in the summer, asked various professional workplaces (for example, law faculties, research institutes etc.), but also the main churches, representatives of national and ethnical minorities, other similar organizations and institutions to express their opinion on what should be in the new constitution. However, the commission did not provide for any instructions in advance and did not prepare any preliminary concept of the proposal for a new constitution. Alongside this official commission composed of the deputies of all parliamentary parties, the Prime Minister Orbán created his own advisory committee for the preparation of a new constitution. This small

[5]) KIS, J.: Alkotmányozás – mi végre? II. *Élet és irodalom.* 1. apríl 2011. page 3.

committee consisted of the persons invited personally by the Prime Minister himself.[6]) The task of this commission was not completely clear.

However, a problem appeared at the turn of October and November 2010 when the parliamentary majority relatively unexpectedly amended the valid constitution in the parts which related to the powers of the Constitutional Court. It was a purposeful decision of the parliamentary majority motivated, in particular, by the decision of the court on unconstitutionality of the full-area 98-percentage taxation of, otherwise really morally unbearable huge, redundancy payments the application of which has increased a lot in the last years in the companies with the state and other public (e.g. local or regional government) participation. The government majority reacted to such fact by limiting competencies of the Constitutional Court in the budget and tax matters.

Maybe also due to such step, the issue of powers of the Constitutional Court became one of the central structural issues of the last Hungarian constitutional process. The amendment invoked outrage not only in the circle of constitutional lawyers but also at least in two opposition parties – the former governmental Hungarian Socialist Party (MSZP) and a new ecologically focused party with a special name „Politics Can Be Different" (LMP). Both parties started to boycott the process of preparing a new constitution.

The FIDESZ-KDNP coalition, which realized inappropriateness of the situation at the beginning of 2011, tried to return at least the deputies of the ecological group into the parliament. It was not successful because the green party imposed certain conditions. It concerned both the return of competencies of the Constitutional Court before October 2010 and the new constitution to be approved also in the referendum. The parliamentary majority did not agree with any of those conditions that is why the preparation of the new constitution continued fully according to the two governmental parties. The discussions in the parliament and its committees were participated by the opposition radical right-wing party Jobbik[7]) which, however, stood on the platform of renewal of the historical constitution before 1944. For this reason, it principally refused the adoption of a new charter constitution, but the deputies did not leave the parliamentary session and even submitted various amendments with respect to the wording of the new constitution up to the last moment.

[6]) It encompassed, for example, the former conservative Prime Minister Péter Boross, the present President of the Hungarian Academy of Sciences József Pálinkás, the former reform Communist minister Imre Pozsgay, who, however, then joined the so-called national committee, as well as the euro deputies György Schöpflin and József Szájer. The former is also the professor of politology at one prestigious London university, the letter is one of the most experienced lawyers of the FIDESZ party.

[7]) This successfully chosen name literally means "better" and "more right-wing". The official name of the party is the Movement for Better Hungary. This dynamic group has been operating in politics for several years but it got into the parliament as late as in 2010. In its campaign, it made use, in particular, of the dissatisfaction of citizens with the development of the politics, the Hungarian nationalism, anti-Roma mood and anti-semitism.

For the time being, the more or less politically and ideologically one-colour constitutional majority tried, through various forms, to extend the so-called social and intellectual basis of adopting a new constitution and so obtain broader legitimacy for it. This goal was pursued mainly by the creation of the National Consultancy Board. This Board also included one of the main constitutional experts of the FIDESZ party, its founding member and the Euro Deputy Jozsef Szájer, and the former socialist deputy and chairman of the parliament before the elections in 2010, Katalin Szili. Her participation was thus very important because she represented the so-called left wing of the Hungarian society in the constitutional process. However, it is necessary to remember that at present, Katalin Szili is no longer a deputy for MSZP which she left a few months ago and established the Social Union. This party was the only party which submitted its own proposal for the constitution in the parliament.[8])

The National Consultancy Board prepared a questionnaire consisting of 12 questions determined in advance which the citizens should answer, and sent it on behalf of the government to all adults of the Republic of Hungary. The questionnaire also contained the 13th question intended for the citizens to put down what they did not like and what they considered important to be included in the constitution. However, the questions were prepared, more or less, tendentiously. Approximately 900,000 citizens completed and returned the questionnaire. They mostly answered as the government wanted. The only question did not meet the preliminary expectations – the so-called problem of introducing the family election right. This idea, which is not only the Hungarian specifics, was presented by the deputy of the European Parliament, Jozsef Szajer. Originally, parents should have had the possibility to vote on behalf of their minor children. The original proposal did not deal with the essential issue as to what would happen if the parents could not agree. Maybe for this reason, the question asked in the national consultancy talked about the possibility to vote for mothers only. The conservative politicians and publicists justified the need for introducing such institute mainly by the demographic problems of the country, and the voting right should have played the role of a stimulating tool. The predominant majority of citizens did not, however, agree with such a bizarre idea and refused it in all its forms in the national consultancy.

The National Consultancy, which well suits the ideology of the „national cooperation“ and communication political practice of the FIDESZ, was to partially compensate the lack of the ratification referendum and so make, at the so-

[8]) This proposal contained a relatively extensive social and other second-generation rights. It also encouraged the creation of the second chamber of the Hungarian parliament in which should be composed of the representatives of the national and ethnical minorities, churches and various important social organizations and corporations.

called people's level, the whole constitutional process legitimate. Despite of tendentiousness of the questions, it was quite an interesting attempt.

An interesting process was the overall process of creation of the final version of this constitutional document. In December, the parliamentary commission submitted to the public a several-page concept of a new constitution. In this relatively short concept, the commission paid big attention to symbolic issues; however, it paid smaller attention to some other important problems. This fact was partially connected with the fact that at the end of last year, in the political circles, there was a Prime Minister's idea of the so-called core constitution, that is, a constitution which would be short, intelligible and would regulate only the most important issues of the functioning of the state and the rights of citizens. It should leave any other important aspects (for example, the voting reform, etc.) for later – these should have been regulated, in particular, in the so-called organic laws which should also be adopted by the two-thirds majority but of the present deputies only. However, this idea of a short Fundamental Law was not supported much, even in the environment of many right-wing-oriented conservative lawyers. However, the December concept also showed that no significant changes would probably take place in the power establishment of the state, except for the facts stated above.

IV. HISTORY AND THE CONSTITUTION. TERMINOLOGICAL PROBLEMS OF THE NEW TEXT

However, the new Fundamental Law reduced to sections was submitted to the public only on March 14, 2011, that is, approximately a month before the planned date of adoption of a new constitution. It is really a very short period for a real discussion. Certain surprise was invoked by the name of the document itself – the proposal of the Fundamental Law of Hungary – since until that time, it was nearly always spoken about a new constitution. Why did the parliamentary majority decide to change the name of the constitution to the Fundamental Law? The governmental coalition has not exactly explained it yet. Certain clues were provided by the general justification of the proposal submitted on 14 March to the parliament and the public. It reads as follows in the first paragraph: *"God bless the Hungarians." It is difficult to find a more dignified beginning of the Fundamental Law of Hungary than that provided by the first line of our national anthem. This Fundamental Law is included, as the first uniform, democratic and written Fundamental Law of the country, in the thousand-year history of the Hungarian historical constitution."*[9]) The Fundamental Law is thus only part of the historical constitution which developed throughout centuries.

The problematic point is not the referring itself to the historical constitution in the preamble. It will be, more or less, included in the introduction of the Fundamental Law together with the declaration of the fact that the Saint Crown

[9]) Magyarország Alaptörvénye. Tervezet. Általános indokolás. page 32.

constitutes the constitutional state continuity and unity of the nation. It is more complicated to interpret the sentence that the constitutional body does not recognize the suspension of validity of the historical constitution as a consequence of occupation by foreign powers. In particular in case where the following sentence is given consideration to according to which the preamble named officially the „National Avowal" also declares that it does not recognize the Communist constitution of 1949 which served as the basis for tyranny and that is why the preamble declares this constitution invalid. Problematic issue is the fact that it omits the fact of the „total amendment" of the old constitution of 1949 in 1989. The preparation of this amendment was participated in also by the protagonists of the present constitutional majority. The whole problem is even more bizarre that the final provisions of the new Fundamental Law refer in paragraph 2 to the fact that the Fundamental Law is adopted by the parliament under a) of paragraph 3 of Section 19 of Act No. XX of 1949, that is, exactly the constitution identified by the constitutional body in the following pages as invalid and tyrannous!

However, the main problem in the future is not the lack of logics and the legislative inconsistency, but mainly Article R of the first part of the new constitution which reads as follows in the section 3: *„The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal and the achievements of our historical constitution."* This apparent raw provision of the normative part of the Fundamental Law can have immense consequences in the future and can radically make the situation of the Constitutional Court more complicated. It is not a simple „archaizing whim" at all like one important Hungarian constitutional representative said at the end of the constitutional process, but something much more important and problematic. In the future, this section can mean the „rehabilitation of achievements of the historical constitution." Only rehabilitation is not a problem, a big technical problem is a potential coexistence of the values of two parallel constitutional systems (charter and organic systems). The notion „achievements of our historical constitution" is also not very clear.

This whim alongside the excessive constitutional „patriotism" or „nationalism" of the beginning of the Fundamental Law, the big endeavour to ideologize the approach of the constitutional bodies to society and law, and, finally, the dispute in respect of the future powers of the Constitutional Court caused maybe the most negative reactions abroad. The new constitution also contains parts which can be called innovative and worth thinking about. Negative criticism of the new constitution which, of course, has many mistakes follow, became a sort of fashion in the foreign press. However, this fact is not connected only with the interest in the Hungarian constitutional development but also with other political and economic factors. However, it is not possible to deny that the „symbolistic" and „archaising" mental mood of the constitutional majority, which is interpreted relatively with difficulty, supported this negative picture a lot.

In the preamble, also the issue of the Hungarian nation and nationalities living in the country was developing in an interesting way. This essential document speaking in the name of members of the Hungarian nation feeling responsibility for every Hungarian expresses in its first part what the Hungarians are proud of. Certainly: *„WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with a sense of responsibility for every Hungarian, hereby proclaim the following:...“* Then the document promises that the spiritual and mental unity of the nation, which was separated in last century, will be preserved. In this part, the preamble declares: *„The nationalities living with us form part of the Hungarian political community and are constituent parts of the State.“* The notion „Hungarian political community“ is in this form new in the Hungarian constitutional history. In this sense, there was a certain change compared to the text of the first articulated version of the Fundamental Law of March 14 . It considered the nationalities and national groups to be a part of the Hungarian nation, that is, in principle, it also formulated the concept of a political nation alongside the cultural-language concept of the Hungarian nation. The letter concept indirectly dominated also in the constitutional text of 1989. The ethnically perceived nation has a role there only in relation to the foreign Hungarians. It was changed at last minute and the originally politically and ethnically perceived concept of a „nation“ became more ethnicized although the conclusion of the document already speaks in the name of the citizens of Hungary. A gesture towards the nationalities is also the fact that the „National Avowal“ promises protection of their language and culture, which is also a change compared to the version of 14 March which promised similar protection only for the Hungarian culture, language and the natural and man-created values of the Carpathian Basin.

The following lines of the preamble name what everybody will strive for or what they consider the basic values – human dignity, individual freedom which, however, can fully develop only in cooperation with others, the family and the nation - which form the most important framework of co-habitation. The main values of coexistence and fundamental cohesiveness are fidelity, faith and love. Then, the document highlights work and spiritual products, declares solidarity with the poor and vulnerable. This solidarity is a general duty. The Hungarian constitutional body stems from the fact that the shared goal of a citizen and the state is accomplishment of the values, such as good life, safety, order, justice and freedom.

A disputable way is the way in which the Fundamental Law tries to deal with the complicated past of the 20th century and exactly define the period of the lack of freedom which, according to the constitutional body, started by the German occupation on 19 March 1944 and ended on 2 May 1990 when the first freely elected parliament met. For this reason, this day is considered the beginning of a new democracy and constitutional order. Inhuman crimes of the national-socialistic and Communist dictatorship towards the Hungarian nation and its

citizens are declared as not being subject to the statute of limitations.[10]) (Text: *"We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and communist dictatorships."*) The question is whether all creators of the new constitution, as in the case of „legalization" of proceeds of the historical constitution, realized the potential consequences of such „exact" and historically disputed interpretation. Where did, for example, the period from 1945 to 1949 disappear during which the parliament declared the Republic of Hungary by the Act No. I of 1946 and in which the first land reform took place? A similarly disputed issue is the fact why the preamble remembers just the historical constitution and the Saint Crown and does not remember at all the revolution and struggle for freedom in 1848/1849 although these are considered the beginning of the modern Hungarian constitutionalism. Also the remembrance of the gradual peaceful transfer from the dictatorship into democracy and of the so-called change in the system in 1989/1990 is missing there. From the particular historical events, the preamble literally remembers just that *"...that our today's freedom originated in the revolution of 1956."*

V. SHORT CHARACTERISTICS OF THE NORMATIVE PARTS OF THE NEW FUNDAMENTAL LAW

The first normative part of the Fundamental Law called *"Foundation"* declares, alongside the name of the country and its symbols, the republican form of the government, the principle of sovereignty of the people, the way of its implementation, as well as the principle of division of powers. The forint got into the constitution, too. The deputies formulated several basic objectives and endeavours of the Hungarian state. These are directed both inside and outside of the country. Hungary wants to protect its language together with the sign language which is also part of the national culture, wants to protect the institute of marriage and family, support birth rate. The economy is based on work, which forms the values, and on the freedom to do business. Every person is responsible for himself and is obliged to contribute to the performance of the state and social duties according to his abilities and possibilities. Hungary together with its citizens will try to preserve and protect natural sources, that is, the fertile land, forests, waters, biological diversity, to preserve the domestic species of animals and plants in the nature within it since their preservation is

[10]) In his complex critical analysis of the proposal for the Fundamental Law, the liberal philosopher Janos Kis correctly stated that it was a sensless provision. If the constitutional body thought of military crimes and crimes against humanity, they are not subject to the statute of limitations in accordance with the international documents. If he thought something else, he can get in conflict with the principle of prohibition of retroactivity. As if the parliamentary majority did not want to consider that in the complicated Hungary of the 20th century, military crimes and crimes against humanity were not committed only by the dictatorships stated but also by the far-right tactical units, squads, as well as the force sectors of the official Hungarian state. These crimes were not always directed only against the "Hungarian nation and its citizens" but sometimes also against citizens of other nations and ethnicities. See KIS, J: Alkotmányozás – mi végre? II. *Élet és irodalom*. 1. április 2011. page 3.

needed also for the future generations. In the interest of peace and safety, as well of the sustainable life of the mankind, the country will try to cooperate with all nations and states. In the interest of freedom, wealth and the accomplishment of safety, it participates in the creation of a European unity.

Viewing the unity of the Hungarian nation, Hungary assumes responsibility for destiny of the Hungarians living abroad. „Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, and shall facilitate the survival and development of their communities; it shall support their efforts to preserve their Hungarian identity, the assertion of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands, and shall promote their cooperation with each other and with Hungary."

This formulation is much more accurate and detailed than the original clause of the national responsibility in the text of 1989. The question is whether it is better or not.

The name of the part of the Fundamental Law which deals with the basic human rights and duties is eloquent: *"Freedom and Responsibility."* The constitutional body declares the traditional human and civic rights there. The main innovation is a certain move towards the conservative interpretation of the rights and towards the balance between the rights and duties. This fact was perceived by publicists and politicians nearly from all political and ideological camps. Some of them just state it, others criticise it.[11]) Most remembered pro-

[11]) One of the main representatives of the radical left wing and a critic of capitalism in the Republic of Hungary Miklos Gaspar Tamas even considers this element of the new constitution to be its most remarkable historical innovation. In his opinion, such a non-conservatively or non-liberally formulated provisions mean the most essential change in the understanding of human rights which so lose their unconditionality. See Tamás Gáspár Miklós: Az új alkotmány történelmi jelentősége. Népszabadság, 29 March 2011.www.nol.hu. Also the former conservative judge, the ideological conservatist Janos Zlinszky considers some formulations of the new constitution a compromise in the social area. In one of its publication, the moderate conservative weekly Heti Valasz dealt with the issue whether the government did not want to prepare, so to speak, safe ground for their socially restrictive measures the significant part of which will be more difficult to contest in the Constitutional Court based on the new constitutional act. Eloquent is also the name of this publication: „For the rights of duties". See Jogokért kötelezettségek. Heti Válasz, 21 April 2010.www.hetivalasz.hu. This article even compared the particular steps of the government in the social area with the trend of the new Fundamental Law. For example, already in 2011, the government reduced the period of providing unemployment benefits from 9 to 3 months. It also plans a certain „nationalization" of the social system. In the future, the state should pay nearly all benefits of the social kind, except for help in the crisis situations, instead of the self-administrations. Alongside this, according to the plans, it will not be possible in the future to refuse a job provided to the unemployed by the Labour Office, otherwise the unemployed will lose all, even the smallest, benefits. This planned measure relates, alongside the restrictive thinking, to the government's aim of returning the maximum number of the unemployed into the employment process and so thus re-integrate them into the active society. It is even considered that the benefits will go only to those who will demonstrably economize in his own garden. It should help revitalize the country.

visions in this context are the provisions which declare that parents are obliged to take care of their children, which means the obligation to ensure their education. However, even children are obliged to take care of their parents who are dependent on it. The new Fundamental Law also tries to „embed in concrete" the uniform state pension system which shall be based on shared solidarity. Alongside the main principle, it also allows that this role is participated in by the voluntarily created social institutions.

However, alongside this news, the Fundamental Law also changed the formulation of some important social provisions of the former constitution. The former wording read that everyone had the right to work and to the free choice of his job. This was completed by the sentence reading that according to his own abilities and possibilities, everyone is obliged to contribute to the development of the community. Hungary will try to create such conditions to enable all those who are able to work to perform work. Originally, the citizens of the Republic of Hungary had the right to social security, and when they grow old, fall ill, become disabled or an orphan or if they lose their job without fault on their part, they had the right to receive benefits necessary for their life. The new constitutional text just reads that Hungary tries to provide all its citizens with social safety. In the cases just stated, every Hungarian citizen has the right to the benefits set by the law. The Fundamental Law also encompasses several modern ecological provisions – for example, it is forbidden to bring waste in the countryside with the aim of placing it there; furthermore, Hungary will try to ensure the right to physical and mental health in a way that the agricultural economy function without genetically manipulated beings, the constitution also remembers healthy food, support of sports and regular strengthening of the body and such like.

Important changes have been made in the area of political rights. Until that time, the Hungary belong among the few states of Europe which required, alongside the citizenship, residence in the territory of the state for the implementation of the active and passive voting rights into the national parliament. This limitation was cancelled. It probably happened with regard to the voting right which will be provided to all citizens of the country in the near elections, that is, to those who permanently live abroad. However, since it is a politically sensitive question which is not completely decided yet, the constitution text also includes the sentence that the qualified organic law can condition the voting right and its completeness by the residence in Hungary, or by any other criteria in case of the passive voting right. Citizens of other member states of the European Union who live in Hungary have the active and passive voting rights in the municipal elections and in the elections into the European Parliament. At last minute, exactly on the day of adopting a new Fundamental Law, the parliament left out, at the proposal of the chairman of the fraction of the FIDESZ János Lázár, the limitation assumed by the new proposal from the original constitution according to which the mayor of a municipality or a town may only be a Hungarian citizen. From 1 January 2012, also citizens of the European

Union living in the country will be allowed to run for the office of mayor. It is, from the perspective of the understanding of the political community at least at its local level, a big and liberal change. In the end, on the contrary, the deputies left out the provision from the new constitution which was in the proposal of 14 March 2011 in accordance with which it was possible, under the law, to enable the assertion of the basic civic rights also to persons without the Hungarian citizenship.

The chapter of the new Fundamental Law on the state and its bodies did not change much the original organization of powers in the country. However, some partial changes still took place some of which were not inessential. In principle, the structure of the Hungarian parliamentarism in which a one-chamber parliament plays the dominant role was preserved. Since it is not completely clear yet how the nationalities living in Hungary (13 of them) will be represented in the parliament and how the issue of representation of citizens living and voting abroad will be dealt with, the Fundamental Law has not determined the exact number of deputies yet. It only stated with respect to the nationalities that it was necessary to ensure their participation in the parliament by the organic law. Representatives of the national and ethnical minorities were reserved in respect of this formulation since they would prefer if the new constitution spoke more unambiguously about their representation in the parliament.

The competencies of the parliament remained to be preserved; its creation powers were even a bit extended. By that time, only constitutional judges were elected by the two-thirds majority of the deputies; however, the chairman was elected by them. Now, also the chairman of such body will be elected by the parliament. The parliament also gained the right to elect the chairman of the Budget Council which then will be appointed for the office for 6 years by the president of the republic. The constitutional regulation of Budget Council is relatively new element in the Hungarian legal system. According to the Article 44. *„(1) the Budget Council shall be an organ supporting Parliament's legislative activities and examining feasibility of the State Budget. (2) The Budget Council shall make a statutory contribution to the preparation of the State Budget Act. (3) The adoption of the State Budget Act shall be subject to the prior consent of the Budget Council in order to meet the requirements set out in Article 36(4)-(5). (4) The members of the Budget Council shall include the President of the Budget Council, the Governor of the National Bank of Hungary and the President of the State Audit Office. The President of the Budget Council shall be appointed for six years by the President of the Republic. (5) The detailed rules for the operation of the Budget Council shall be defined by a cardinal Act. 38."*

The issue of the position and powers of the Budget Council invoked discussions among the professional public. The reason for the criticism was, in particular, the fact that the board, being the body which is to support the legislative activity of the parliament and examine the justification of the budget, gained one very important power. The board which is composed, alongside

the chairman elected by the parliament, of the president of the Hungarian National Bank and the chairman of the State Court of Auditors (it is, in fact, the Supreme Audit Office) is entitled to issue a preliminary consent with the adoption of the state budget in the interest of complying with the goal set by paragraphs 4 and 5 of Article 36 of the new Fundamental Law. These provisions read that it is not possible to adopt such a state budget in consequence of which the state debt exceeds a half of the gross domestic product (GDP). Since this proportion is worse, the parliament may, if the country does not achieve such desirable goal, to adopt only such budget which decreases such proportion, or disproportion. In this way, this professional body can limit sovereignty of the parliament.[12]) (It is true that its members are elected by the parliament but mostly for a longer period than the mandate of the legislative body.) It, for example, means that the present parliamentary majority which has already elected or will elect the officers stated above may, in principle, radically aggravate the position of the later government majorities and so substantially limit their economic policy while someone completely else – that is, the future government - will bear responsibility for it. The Fundamental Law does not exclude the direct form of exercising power, that is, the direct democracy. It deals with the regulation of such issue immediately after the presentation of the structure and position of the parliament. It slightly aggravated the conditions of initiating a nation-wide discussion since from now, it will be necessary to collect 200,000 signatures of the citizens entitled to vote for the announcement of referendum by the parliament.

The trend of extending the mandate of individual important officers who are elected by the parliament is characteristic for the whole new Fundamental Law. Already in 2010, by the amendment of the previous constitution, the parliament extended the mandate of the General Attorney to 9 years. The new Fundamental Law also extended the mandate of the chairman of the Supreme Court, now renamed to *Kúria (Curia),* to 9 years. The mandate of the chairman of the State Court of Auditors is for 12 years. The mandate of the chairman of the Hungarian National Bank, the ombudsman and his representatives remained to be for 6 years as it has been until now. These time changes are neither unconstitutional nor anti-democratic; the question is whether they are, so to speak, elegant or whether they serve only for short-term goals of the present constitutional majority. This is claimed by the Hungarian opposition which sees such politics as the endeavour to „embed in concrete“ their people in the decision-making positions for a period of two or three election cycles.

The position of the President of the Republic, the Government and the Prime Minister did not change much. The president is elected by the parliament for 5 years, can be re-elected once more, his competencies are relatively limited. The news is that the president gained the right to dissolve the parliament if it does not manage to adopt the state budget by 31 March of the budget year. It was

[12]) KIS, J.: Alkotmányozás – mi végre? III. *Élet és irodalom*. 8. apríl 2011. page 5.

originally considered, under the influence of the political and moral crisis in the spring of 2006, whether the president should not be given the right to dissolve the parliament also in case of a constitutional crisis; however, in the end, such relatively vague formulation was rejected by the experts of the constitutional majority. The position of the Government remained to be preserved. The Government is the highest body of the public administration and consists of the Prime Minister and ministers. However, the Prime Minister can, through his instruction, appoint one or more his representatives, that is, Deputy Prime Ministers. The system of constructive distrust remained to be preserved; the Hungarian, more or less, office system did not change either.

The biggest disputes, which even exceeded the borders of the Republic of Hungary, occurred during the preparation of the new Fundamental Law with respect to the Constitutional Court and its powers. Otherwise, the first essential changes took place already in the previous year when the parliamentary majority changed the system of candidature of new candidates. In the Hungary, the election of judges of the Constitutional Court was fully managed by the one-chamber parliament. No other state body plays any role here. The candidates were looked for by a special committee in which the parliamentary parties were represented independently of their political weight in the legislative body. However, since last year, the weight of the political parties has been reflected in the composition of the body – that is, the present constitutional majority has the majority also in this board. This solution was also assumed by the new Fundamental Law. The judges are then elected by the parliament by the two-thirds majority of votes. However, it is no longer for 9 years, as it has been until now, but for 12 years. Moreover, the number of judges will shortly be increased from 11 to 15. The Constitutional Court was so planned even originally (in 1989).

The dispute with respect to competencies was led in two directions. In November 2010, the Parliament decided that the Constitutional Court could decide, in the matter of compliance of the state budget and its implementation, or on central taxes, fees, levies, customs duties, as well as on all general conditions of the local taxes with the constitution (now with the Fundamental Law), only if it related to the right to life and human dignity, to the right to protection of personal data, to the religious freedom and freedom of thinking and conscience, as well to the rights relating to the state citizens. This enumeration clearly lacks the right to the protection of ownership. Otherwise, in such case, it can even cancel the contested standards or decisions. It can cancel such laws without limitation if the procedural laws regulating the adoption and promulgation of acts are not complied with.

In this respect the amendment of constitution of November 2010 permanently limited competencies of the Constitutional Court. However, this solution, which also was in the purposeful spirit at the end of last year, outraged most of the professional public together with many former conservatively oriented constitutional judges who had authority in the right-wing circles. Naturally, it is always possible to discuss competencies of similar constitutional bodies, in

particular if they have so widely conceived powers as in Hungary. The other disputable issue was the problem *actio popularis* and the timing of a check of the constitutional system. However, in such cases, it concerned less the political, and more expert, issues. The possibility to contest legal standards before the Constitutional Court without the initiator of such review having to prove its involvement in the respective case served, on one hand, as an effective means of protection of the constitutional system in the country, on the other hand, this possibility disproportionately burdened the Constitutional Court. In the end, such dilemma was decided on by the constitutional majority on 18 April 2011.

The limitation of powers of the Constitutional Court stated above and relatively intensively criticised remains to be temporarily preserved for the period for which the state debt exceeds a half of the GDP of the country. The most controversial and discussed change in the new Fundamental Law is Section 4 Article 37. Its text reads as follows: *„As long as state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence set out in Article 24(2)b-e), only review the Acts on the State Budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes for conformity with the Fundamental Law or annul the preceding Acts due to violation of the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and with the rights related to Hungarian citizenship. The Constitutional Court shall have the unrestricted right to annul the related Acts for non-compliance with the Fundamental Law's procedural requirements for the drafting and publication of such legislation."* This limitation is not so confusing from the perspective of competencies, but from the perspective of its timing in November 2010. The amendment of the constitution as a penalty for an unfavourable decision is not a very good gesture. Maybe, the constitutional majority has felt this and have amended or moderated its decision. A much different question is the very wide scale of economical and social competencies of the several post-transitional constitutional courts. This is a legitimate problem to be discussed in the future.

Otherwise, the Constitutional Court can examine compliance of the already adopted but not promulgated laws with the Fundamental Law, then it can review, on the initiation of the judges, compliance of the legal standard which it should apply in the respective case, it can review the standard applied in the respective case, as well as compliance of a decision of a general court with the Fundamental Law. Moreover, the Constitutional Court may review compliance of legal standards with the Fundamental Law if it is initiated by the government, by the fourth of the deputies of the parliament or by the ombudsman for the protection of basic rights. The Constitutional Court further examines compliance of international treaties and performs and exercises other tasks and powers provided to it by the Fundamental Law or the organic act. If the court finds a non-compliance, it has the possibility to cancel the entire legal standard or its individual provisions. Similarly, it has such possibility in case of interna-

tional treaties. However, it may apply the not yet specifically stated, later, in the form of the organic law, regulated, legal consequences.[13])

Relatively big discussions also accompanied the adoption of the provisions on courts and judges; in the last phase of the constitutional process, it was one of the main issues although it is necessary to mention that the most discussed issue – whether judges and prosecuting attorneys shall retire according to certain rules and at a certain time as others or later – did not, in principle, represent a constitutional or human problem, the more discussible issue is (at least in the Hungarian context) the cancelling of the judicial self-governments. The Fundamental Law remembers in one section that bodies of the judicial self-government participate in the administration of courts, but the State Judicial Board, being the main body of such self-administration which has played its role in the appointment of judges, does not play a role in the text. It is a more essential change. Judges must have the prescribed education and must be at least 30. They are appointed by the President of the Republic. The highest body of the general judiciary is, instead of the Supreme Court, Kúria in the spirit of pre-war traditions at the head of which is a chairman who is elected from the judges by the parliament and then appointed by the president for 9 years. An important provision is also anchored in the Article 28: . *„In applying laws, courts shall primarily interpret the text of any law in accordance with its goals and the Fundamental Law. The interpretation of the Fundamental Law and other laws shall be based on the assumption that they serve a moral and economical purpose corresponding to common sense and the public benefit."* The last sentence means very important new rule of interpretation. Maybe, it is a consequence of the last two decades in the economic history of Central European region.

After the publication of the first articulated version of the proposal for a new constitution, a relatively big surprise was caused by the fact that it did not count on the branchy structure of ombudsmen . Until this time existing system of 4 ombudsmen seemed to be acceptable for everyone, the citizens got used to it, this system even achieved recognition at home and abroad. However, in its original version, the Fundamental Law counted only on one ombudsman for

[13]) Certain competencies of the „new" Constitutional Court: The Constitutional Court shall:
a) examine adopted but not published Acts for conformity with the Fundamental Law,
b) review any piece of legislation applicable in a particular case for conformity with the Fundamental Law at the proposal of any judge,
c) review any piece of legislation applied in a particular case for conformity with the Fundamental Law further to a constitutional complaint,
d) review any court ruling for conformity with the Fundamental Law further to a constitutional complaint,
e) examine any piece of legislation for conformity with the Fundamental Law at the request of the Government, one-fourth of the Members of Parliament or the Commissioner for Fundamental f) examine any piece of legislation for conflict with any international agreement, and g) exercise further responsibilities and competences determined in the Fundamental Law and a cardinal Act.

protection of basic rights which should be elected for 6 years. The other ombudsmen should become his representatives while the protection of personal data should be transferred completely from the hands of the ombudsman elected by the parliament into the competency of the state officer later specified. Naturally, these changes as such do not mean anything unconstitutional since most countries disposes of one or maximum two ombudsmen, but in the Hungarian context, this change seems to be a clear compromise and a step back in the field of protection of basic rights. The optics of such step was thus relatively negative. Maybe due this, and also partially as a consequence of lobbying of ombudsmen, the majority of the parliament finally made one compromise. Alongside the ombudsman for protection of basic rights, the parliament will also directly elect his representative for the protection of rights of those living in Hungary and for the protection of interests of the future generations. However, a deputy may ask only the ombudsman for basic rights a question according to the new wording, that is, in principle, a certain „boss“ of the ombudsmen.

The issue of local governments did not belong among the most discussed problems during the constitutional process. The most serious change in the area of local governments is the fact that from now on, its bodies will be elected every 5 years and not as it used to be until now, that is, every 4 years. Like this, it will be possible to achieve that the national and municipal elections (they take place in Hungary together with the district elections) do not take place within one year. An interesting change, which has already been referred to above, is that the new Fundamental Law does not exclude that a foreigner, an EU citizen, be a mayor.

At its end, the Fundamental Law deals with two topics which have not played a significant role in the Hungarian constitution and the constitutional history until now – the public finances and various crisis state. The enhanced attention the constitutional body pays to these issues is probably connected both with a difficult economic situation of the country which the majority wants to consolidate on a long-term basis in any case and with various present trends and safety challenges faced by the recent modern societies. Especially the part on public finances belongs among the news of the new Fundamental Law which worth thinking about in the context of economic-financial crises of the world and Europe.

The provisions which deal with public finances have already been partially stated above in a different context. At the very beginning of the constitution, Article N reads that Hungary applies a principle of balanced, transparent and sustainable budget economy. The responsibility for this is borne, in particular, by the Parliament and the Government. The Constitutional Court, other courts, local governments and other state bodies are obliged to respect this principle during the performance of their tasks. The part on the local governments even reads that the Act may condition the use of a credit by self-governments in excess of a certain limit, in the interest of preserving the budget balance, or any other form of charging, by the consent of the government.

According to the Article 36 of the new Fundamental Law „the Parliament may not adopt a State Budget Act which allows the state debt to exceed by half of the Gross Domestic Product. As long as state debt exceeds half of the Gross Domestic Product, Parliament may only adopt a State Budget Act which contains state debt reduction in proportion to the Gross Domestic Product. Any deviation from the provisions in Sections (4) and (5) shall only be possible during a special legal order, within the extent required for mitigating the consequences of the causes, and if there is a significant and enduring national economic recession, to the extent required for redressing the balance of the national economy."

Alongside the situations described in the previous sentence, it is not possible to take a new loan during the implementation of the central budget and it is not possible to bind oneself financially if the state debt exceeds a half of the gross domestic product. The limitations valid for the Constitutional Court in such situation have already been discussed above.

The Fundamental Law declares the property of the state and local governments to be the national property. The aim of the administration of the national property can only be a service to the public interest, the satisfaction of shared needs and the protection of natural sources. It is also necessary to consider needs of the future generations. The national property can be sold only in case of the objectives which are stipulated by the Act, and alongside the exceptions determined by the Act, only in the way that the requirement for a reasonable price for the values handed over is considered. A contract which relates to the sale of the national property or to its use can be concluded only with such organization the ownership and internal structure, as well as the activity, of which are transparent. This provision is directed mainly towards the companies of the off-shore type. Public finances and property must be administered according to the principle of transparency and cleanness of public life.

VI. CONCLUSION

It is really not an easy task to briefly characterize the Fundamental Law of Hungary. The excessive dependency of the Hungarian constitutional body on its own past and towards the own nation proved to be partially contra-productive. The task of every constitution shall be, in particular, to find a common value and spiritual factor for as much wide spectrum of own citizens possible. It is not sure that the Hungarian parliament was completely successful. The Fundamental Law which expresses the current state and opinions of the present two-thirds majority of the Parliament may be a bit more conservative, as the mental and value state of the two-thirds majority of the Hungarian society. The political one-sidedness of the constitution making act, in which the non-conservative forces of the society or their representatives did not participate, was significantly reflected in it. However, independently of this fact, it is a legitimate document which is not, principally, anti-democratic. In some issues, the Hungarian

parliament even tries to be innovative and creative. It concerns, in particular, the issue of rights and interests of the future generations, as well as the issue of public finances.

However, the excessive accentuation of traditional values, Christianity and the national-conservative approaches through which the present government and parliamentary majority probably want to consolidate the Hungarian society tired of the transformation period and disappointed by the results of the last two hundred years completely overshadowed this more innovative dimension of the new constitution. This „archaising whim" can even cause many problems in the future in some issues (for example, the unclarified issue of the „proceeds of the historical constitution"). Also a certain cultural-language ethnization of the concept of a nation seems to be useless. Neither in this issue did the new constitution manage to find a better solution than in 1989, more like on the contrary.

A similar situation can be seen in the human and mainly social area. Despite the fact that the Fundamental Law pays big attention to the cult of work and tries to ensure that the maximum number of people who ended up at periphery can be integrated or re-integrated into the national society through support of the creative work, it is not a social constitution, more like on the contrary, such dimension was knowingly weakened in it. This is not compensated by an increase concentration of the etatistic and collectivist elements in the Fundamental Law.

From the perspective of the power structure of the state, no radical changes were made. The Parliament completely preserved the dominant position which, however, needs to be examined in the complex context of the Hungarian constitutional and political establishment. The chance for an improvement and certain additional adjusting of the division of powers in the country was not made use of despite the fact that this chance was offered and could even be implemented on a conservative basis (for example, through the second chamber of the parliament or the directly elected president). On the other hand, the parliamentary majority really made use of its power to adapt the constitutional system to its present needs. It may not be elegant, but it is not unusual, in particular in the situation where the main cause of adopting a new constitution is not a radical state or revolutionary change but the simple fact that the government has the majority for it which it does not have to have 4 years later.

In particular liberal, left-wing but also some conservative lawyers and publicists sharply criticised the new constitutional text. The criticism was often formulated based on the constitutional position of 1989. Most opponents of the adoption of a new constitution preferred and still prefer the text of this breakthrough year which, despite all its problems, constituted a document adopted by bigger professional consensus. However, it would not be good if a deep gap among supporters of two constitutional platforms – that of 1989, as well as the new one of 2011 – was re-created in the Hungarian politicizing public. In the Hungarian constitutional and political history, before 1918, it already happened.

At that time, the supporters of the dualistic (Austro-Hungarian) compromise of 1867 and the principal supporters of the constitutional heritage of 1848 stood against each other. From this perspective, the words of the professor László Sólyom, the former President of the Republic who, among other things, belonged among the main authors of the constitutional document of 1989, are important. Despite this, in Hungary, Sólyom is considered a conservative lawyer, did not support the idea of adopting a new constitution and was, in particular, critical with respect to the present text. He summarized his opinion for the adoption of the Fundamental Law as follows: *"The new Fundamental Law is similar to the building of the National Theatre (in Budapest – remark of author) built at the turn of the millennium. Most professional public is critical towards it; it is a bad historicizing and eclectic building, however, despite this, it is possible to perform well there. It depends on actors and the content, or the quality of the plays presented."*