

BÁLINT ABLONCZY | CONVERSATIONS ON THE FUNDAMENTAL LAW OF HUNGARY

Bálint Ablonczy

CONVERSATIONS ON THE
FUNDAMENTAL LAW
OF HUNGARY

Interviews with József Szájer,
Hungarian Member of European Parliament,
and Gergely Gulyás,
Member of Parliament in Hungary

Bálint Ablonczy: Conversations on the Fundamental Law of Hungary
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FOREWORD

FOREWORD BY THE SPEAKER OF THE HUNGARIAN PARLIAMENT

In 2011, for the first time in Hungarian history, a democratically elected Parliament adopted the country's constitution. The Fundamental Law was adopted by the Parliament elected in 2010, but prior to that, irrespective of whether parties of the centre-right or the Socialists were in power, every mainstream political party since the collapse of Communism has agreed that it was necessary to draw up a new constitution.

The constitution amended at the time of the transition also stipulated the adoption of a new constitution, as was clear from the 1989 amendment to the text of the constitution adopted in 1949 by the Parliament of the one-party Communist dictatorship, following a Stalinist template. The amendments to the latter were adopted by the last Communist Parliament having reached agreement on their substance with the opposition organisations of the time. In order to be able to proceed to democratic elections, putting in place the minimum needed to

ensure the constitutional functioning of the country was as essential a part of that compromise as was the provisional nature of the amended constitution, since all opposition forces considered democracy inconceivable without a constitution adopted by a parliament enjoying democratic legitimacy. After the transition, each successive government (including every Conservative and Socialist Prime Minister) set itself the objective of drawing up a new constitution. This remains true even if now that same objective is being called into question by those who formerly considered it a significant element of their programme but failed to attain it whilst in government. For the coalition of Fidesz and the Christian Democratic People's Party, the adoption of the new Constitution also means that we have remained consistent in pursuing the objectives that we set for ourselves prior to the restoration of democracy, fighting against the Communist dictatorship. Hungary is the only country

in the post-Communist part of Europe where the constitution in force until 2011 was not one adopted by a democratically elected parliament.

For every country possessing a written constitution, there is far more to this supreme law than its preeminent status in the hierarchy of laws. The message conveyed by the content of a constitution also possesses a symbolic dimension. In the 1949 constitution, the fundamental constitutional rights were set out in Chapter II, after the regulations on state organisation. The very fact that the fundamental rights – inspired by and in line with the Charter of Fundamental Rights – are placed at the beginning of the Fundamental Law conveys the same message as did the declaration of the inviolability of human dignity in the first section of the 1949 German Fundamental Law.

The fact that the fundamental rights are dealt with before the state organisation articulates unrelenting opposition to any dictatorship, and the espousal of freedom. The Hungarian Fundamental Law already states in its preamble that “human existence is based on human dignity.” The new Hungarian Constitution is both Hungarian and European at the same time. We believe that those who perceive a discrepancy between the two are either casting doubt on the notion of the various nations of Europe having

certain values in common, or on Hungary’s truly belonging to Europe. The Fundamental Law explicitly refers to the fact that Hungary shares European values by stipulating that “In order to enhance the liberty, prosperity and security of European nations, Hungary shall contribute to the creation of European unity.” In times of crisis, it is especially important to be aware that Europe cannot prosper without proud nations that cultivate their traditions, preserve their identity, and respect one another. Hungary is also proud of its thousand years of statehood, its role in the defence of Europe, and its culture, as well as the fact that after the blind alley of Communist dictatorship, we have become members of the European community of our own volition. All the implacable hostility, dividedness, and irreconcilable differences that have characterised the Hungarian mindset and the political elite for the past two decades, and which, unfortunately, have also typified the political reception given to the drafting of the Hungarian Constitution in Europe, do not exist in Hungarian society, in the everyday world of voters today. Hungarian people do not want to fight for ideologies, but to live their everyday lives in peace and justice. There is no such thing as right-wing or left-wing unemployment; there is no Socialist or Conservative debt, and there is no

Liberal or Christian Democrat child poverty. There are only people doing their best to cope with the same hardships and problems, who nurture similar desires, goals, and hopes, and expect the political parties and communities with which they feel the closest affinity to make their lives better. The essence of democracy is that various answers can be given to these questions, and a constitution only sets out the broadest framework within which our basic objectives can be interpreted.

When in August 2011 Germany's Chancellor Angela Merkel and France's President Nicolas Sarkozy put forward a joint proposal that the Member States of the European Union include a debt ceiling in their respective constitutions, beyond expressing our approval, we could say with pride that this had been included in the Hungarian Constitution adopted four months previously. We also recognised, and a few years earlier had experienced firsthand, that if no constitutional constraints were placed on economic policy in a democracy, then governments would fall prey to the temptation of plunging their countries into debt, not considering it too high a price to pay in exchange for winning an election. In today's Europe, we can see very clearly the almost unmanageable consequences of this detrimental process. Perhaps this issue alone suffices

to account for why Hungary's Fundamental Law became the subject of political debates in Europe, with very few people having the information at their disposal to arrive at an informed opinion. What we have witnessed today is that conclusions reached on the basis of erroneous statements take on a life of their own, and verdicts are passed without full knowledge of the relevant facts— not only about the constitution or other laws, but also about Hungary itself. By reacting in this way, it is possible to create a virtual reality that is fundamentally false and damaging to the basic values of democracy, which can be used in political skirmishes and is conducive to scaremongering, but for those who are familiar with actual reality, it discredits the institutions that have availed themselves of it for such purposes. The conversations between Bálint Ablonczy, a renowned Hungarian journalist, József Szájer, Member of the European Parliament from Fidesz, and Gergely Gulyás, the Vice-President of the Hungarian Parliament's Committee on Human Rights, Minority, Civil and Religious Affairs, will provide useful reading matter for everyone who, regardless of their party preferences, still believe common sense to be the core organising principle in politics. I hope that this book will contribute to the realisation that morally, spiritually and legally, the

new Fundamental Law represents the broadest possible framework, reflecting the widest attainable consensus for a national community that has been part of Europe for a thousand years. Therefore, despite the political disputes that have arisen since its adoption, I am

firmly convinced that the new Fundamental Law will prove to be a bastion of the constitutional state, democracy, and sustainable development, and as such, it will contribute to the richness of the constitutional tradition the nations of Europe have in common.

PREFACE

ABOUT THE BIRTH OF A CONSTITUTION

How does Hungary's new Fundamental Law – adopted on April 18, 2011 and in force as of January 1, 2012 – change the powers vested in the Constitutional Court? What values does the document embody and why? Have the rules on abortion really been tightened? Probably we are not entirely wrong in saying that in normal circumstances, these questions would hardly have attracted attention beyond the borders of the country. However, as it is, the changes listed above have been subject to a torrent of analyses and debates in the European Parliament, newspaper articles and opinion pieces by politicians. Some of these were written in a constructive manner, while others were less so – everyone has the right to do as they see best, all the more so because we all share European values. Meanwhile, it is hard to accept vehement criticisms when they are based on demonstrably erroneous interpretations, a lack of familiarity with the Hungarian political context, or simply on misconceptions.



We have seen and heard a great number of such opinions recently. This is why, after its publication last autumn in Hungarian, this book is now being published in English, German, and French, with the primary aim of offering insight. The conversations and discussions in this book, each of which are focusing on a separate group of questions, take place between the interviewer, a journalist working for the Hungarian current affairs magazine *Heti Válasz*, and two governing party politicians who played a key role in the drafting process of the Fundamental Law. They will probably make it a little clearer what was included in or omitted from the new constitution, and why.

The interviews took place early summer in 2011, shortly after the new Fundamental Law was passed, and were published in Hungarian in autumn 2011. Since then, some of the laws referred to have changed; in other cases bills mentioned have become laws. However, none of this alters the philosophy and intent behind the new constitution. Thus, we ask the reader to consider our volume a kind of snapshot, and urge them to further delve into the subject.

This volume is not a piece of political propaganda. The reader may be able to discern from the differences in the views of the participants in these conversations which issues enjoy a broad consensus in Hungarian society and which do not. It may also become clear which subjects even people sharing centre-right views differ on. It is a fact that the new Fundamental Law practically leaves the public law structure established by the 1989 constitution untouched, or, at some points, even reinforces it. Nevertheless, however lastingly relevant it has been, that document had a number of shortcomings beyond its symbolic dimension. Undoubtedly, among the most discomfiting of these was that although the text had changed fundamentally, the 1989 constitution still retained the title Act XX of 1949, a name given by the puppet government of the Soviet occupiers to a Stalinist law imposed on Hungary.

It is important to know that the constitution adopted more than 20 years ago was considered temporary even by the participants of the 1989 “roundtable revolution”. This is demonstrated, among other things, by the wording: “In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy, and a social market economy.” This has become strange and anachronistic in the meantime, not only because the first free elections took place in 1990, but also because since then all former communist countries have adopted new constitutions, except for Hungary. The Constitutional Court has played a key role in keeping the institutional system operational for two decades. In its resolutions over the past 20 years, that Court has interpreted the 1989 constitution at a high standard – acknowledged by almost everyone – and many of these resolutions are recognisably present in the text of the new Fundamental Law. This is also why one must be cautious about branding the new law “reactionary” or “theocratic”, for example, the passages about the protection of foetal life or marriage. Undoubtedly, the elections two years ago yielded a result unprecedented in the history of modern Hungarian democracy: a single political force gained a two-thirds majority, which empowered it to draw up a constitution. All of a sudden, the

adoption of a new fundamental law had come within reach. Indeed, each successive governments regardless of political hue had endeavoured to do so since 1990, which in itself, also proves the need for correction. A new fundamental law was not passed in Parliament between 1994 and 1998 due to the lack of agreement within the ruling coalition of Socialists and Liberals. Later on, the growing distrust among the players on the Hungarian political arena made it impossible to carry out such plans. Two years ago, it became clear that Hungarian citizens had had enough of the corruption that had destroyed the system of democratic institutions almost completely, of the weakening of the state, and of immense debts. Not only did huge numbers of them turn their backs on the socialists who had been in government for eight years, but they also ousted from

Parliament two parties that had played a key role in the transition to democracy, the Alliance of Free Democrats (SZDSZ) and the Hungarian Democratic Forum (MDF). These parties were replaced by a green party and one from the far right, both of them ardent critics of the state of affairs at the time. The parliamentary majority behind the present government responded to the crisis of the Hungarian democracy, among other things, by drafting and adopting a new constitution.

The author of this book does not believe that the new Fundamental Law will bring the worst or the best of all existing worlds to Hungary. But he does believe that its text is worth knowing and understanding because of its great significance. On the following pages we will make an attempt to assist in that endeavour.



CHAPTER I

THE BIRTH OF THE FUNDAMENTAL LAW

“Change must start from the foundations” – József Szájer

– Although the point has frequently been made by many how important it was to draw up a new constitution, let me start nevertheless by discussing this aspect. The political context of the drafting of the Fundamental Law is basically clear. But what are the other motives, including personal ones, underlying this enterprise? One would think, for example, that for a public figure with a law degree this is like winning the lottery, the crowning glory of a distinguished career. Of course, this could also mean that Gergely Gulyás has reached the pinnacle of his political career already at the start, and from here on, it is downhill all the way...

Gergely Gulyás: In my view, the political and personal motives cannot be separated. In political terms, the opposition formulated the question by asking whether there was any compulsion to draw up the constitution. To answer them, we pointed out many times that in a democracy there is no such thing as compulsion. What we can argue about is the necessity of drawing up the constitution. In fact, the question we had to answer was whether governing parties winning the majority needed to pass a new constitution in free elections have the option of not adopting a new fundamental law after all the successive abortive attempts over the last 20 years. **Since the democratic transition, regardless of who was in government, all the political powers have always agreed that it was necessary to make a new constitution.** The continuity of this intent is amply illustrated by the fact that at the start of the parliamentary debate on the basic standards to be enshrined in the Fundamental Law, Fidesz keynote speaker László Kövér quoted at length

József Szájer, the Fidesz group's keynote speaker during the debate on the draft constitution in 1996. Listening to László Kövér, nobody in the chamber realised that the ideas he expressed were not new. They were just as timely as they had been in 1996, and Fidesz's position on the issue had not changed in the slightest. All in all, following a two-thirds election victory, it was no longer an option to disregard the objective of adopting a new fundamental law – an objective that had existed over the last 20 years. This was the political situation.

With regards to my personal involvement, in the autumn of 2010 (when the mission of the sub-committee investigating the police brutality in the autumn of 2006 had been completed), the media increasingly began to turn to me as the Fidesz deputy chair of the ad hoc committee in charge of drafting the constitution. This committee had been set up in June 2010, and thanks to István Balsai, I became one of the three deputy chairpersons delegated by the governing parties. Due to the uncertainties surrounding the issue, few members of the committee were willing to speak to the media, whereas I, as a new MP, considered myself

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very lucky to have opportunities to speak about questions concerning the constitution – a subject I had already taken an interest in during my university years, and in some respects, even prior to that. As a result, it created the impression that I was one of the people in charge of drafting the constitution in the Fidesz parliamentary group. At that stage, no final decisions had been taken about the content, and in certain areas there was no agreement even about the

appropriate direction to be moving in. Of course, I did do my best to contribute actively to the work of the ad hoc committee, where László Salamon carried out the lion's share of that great undertaking. While it was almost always him who spoke about the committee's work on behalf of the Christian Democratic People's Party (KDNP), I usually spoke for the Fidesz parliamentary group. This is the backdrop against which the Fidesz-KDNP group held its external meeting in Siófok in February 2011, where it was decided that József Szájer would be the politician in charge of the Fundamental Law, and a three-member committee was formed under his leadership with another member of Fidesz and one from the KDNP to prepare the standard text. It seemed self-evident that the many coalition MPs would also would also delegate me to that committee also because we had known each other closely from the Freedom Circle (Szabadság Kör). During

the socialist government, this organisation had striven to safeguard fundamental constitutional rights, which meant that we had already cooperated regularly on a large number of issues.

It is perhaps generally true, and was also the case with me, that when you are handed such a great task, you can probably grasp its uniqueness and extraordinary significance intellectually, but you rarely devote any thought to it in the course of everyday work. Nevertheless, the fact remains, and I was well aware of it then, that for a politician and a jurist, especially one who is interested in constitutional law, it is hardly possible to take on a task nobler than that. During the drafting of the constitution I often said ironically that when we are done I might as well retire, because I cannot be sure that I would ever have a chance to represent a cause more significant than this.

József Szájer: Basically from the time of its very foundation Fidesz was inextricably linked with the issue of the Constitution and to forming a new constitution. Although a founding member of Fidesz, my active role in the party began by filing a test case (a libel suit) in connection with the section on the right to assemble in Act XX of 1949, X paragraph (significantly amended in 1972). In 1988, a few days after the foundation of Fidesz, daily newspaper Magyar Hírlap published an article contending that Fidesz was not a legal organisation. We argued that if no registration under the relevant law had been necessary for the establishment of the Communist Youth Organisation (KISZ), the trade union, and the Hungarian Socialist Workers' Party (MSZMP), then our group, as a national youth organisation, was also an organisation formed on a constitutional basis. **In the spirit of István Bibó, we took the fiction of freedom as our starting point.** Everybody knew that you could not invoke the Stalinist Constitution, because the human rights it contained could not be practised. Nevertheless, that law still made reference to the freedom of assembly, which served as the basis of our test case. Eventually, we lost the case badly, but in the meantime, from around 30 or so people, Fidesz had grown into an organisation with several thousand members. Already at the party's inception there was no agreement between those in favour of being an 'address party' and those who considered that we should be a 'resolution party'. In other words, the subject of the debate was whether the founders of Fidesz should declare the establishment of an organisation, or only the fact that we would establish an organisation later on. Long before us, it was announced that the Democratic

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Union of Scientific Workers (TDDSZ) would be established, but then nothing happened. Meanwhile, based primarily on Viktor Orbán's legal arguments, we said that we did not want to wait for anything, and we would establish the organisation legally on the basis of the Constitution. This is where Fidesz's view of the Constitution is rooted – for example, that it considers basic rights to be of the utmost importance, and it rejects the notion that rights come second after the state organisation and the establishment of other provisions. Fidesz actively participated in the constitutional debates of the Opposition Round Table: founders János Áder, Viktor Orbán, and László Kövér were there. And when I returned from America in September 1989, I took over that task in Parliament. In the process of

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making significant amendments to the Constitution based on the 1990 MDF-SZDSZ pact, János Áder and I represented Fidesz's position. We did so very resolutely as we were the only parliamentary party without a historical predecessor that remained outside the pact. I gave my maiden speech in Parliament about habeas corpus, about one of the fundamental rights today as well: anyone against whom criminal procedures are initiated is to be brought before a judge and is to be granted a fair trial. The paragraph on the

protection of property rights was also included in the text of my proposal. Later, in the mid-1990s, I was a member of the constitution-drafting committee led by Mihály Bihari, later I was involved in the drawing up of every amendment and in the early 2000s, I was a member with observer status of the Convention drafting the European Constitution.

A misconception prevails in Hungary with regard to the overriding necessity of drafting a new constitution. This view is propagated primarily by legal experts, but injecting a hint of self-criticism, I have to say that it is rooted in the lack of consensus that characterises politics. **According to this view, law and constitutions are phenomena elevated above and beyond politics, and can be defined objectively – because is not really possible to tinker with a fundamental law, as the opportunity to amend it arises very rarely.** Consequently, the Constitutional Court is the sole guardian of the constitution, and its word is final when it comes to settling disputes. In fact, unlike the European tradition of constitutional courts, the Hungarian body is a political court of arbitration, which delivers judgements on unresolved political disputes. Meanwhile – as we can discuss later – ideally,

the Constitutional Court, in essence, performs a logical operation: examining discrepancies between the fundamental law and secondary legislation, instead of functioning primarily as an institution that resolves disputes of party politics. This is how, due partly to the ineptitude of the political elite, over the past 20 years those representing the scholarly view have filled the vacuum and succeeded in creating a situation where the constitution is seen as a kind of unchangeable document, beyond politics, laying down the ultimate criteria of things. In the meantime, the country went bankrupt, deteriorated and fell apart at the seams, while people's faith in public order and the institutions of the state was gradually evaporating. Interestingly enough, this did not lead the public to put two and two together and realise that there might be something wrong with the foundations. **In other words, the omission of 1990, the fact that Hungary did not adopt a new constitution, the fact that we did not mark our transition to a new system formally, has had a ripple effect felt for many years to come, bringing with it numerous unresolved disputes.** Part and parcel of this was that the Constitution had to be amended, and, as Gergely has just pointed out, that a government and a parliament with a mandate of the present scale had to draw up a constitution. I would rephrase this in the following way: this governing coalition received a mandate not primarily to carry out some kind of a legal act but to make a root and branch change. Change must start from the foundations, and we realised that these foundations – which is where the personal aspect comes in – must also include the constitution. The core of the problems included the absence of a new constitution, the absence of a historic cut off point of Hungary adopting a new fundamental law to start a new page in its history. Politically as well as symbolically, we missed an opportunity to mark the beginning of the new democracy. Neither the revolutionaries of 1848 (the April Laws), nor even Mátyás Rákosi himself (Act XX that entered into force on August 20, 1949) missed out on such an opportunity. We believed that adopting a reconceived, coherent text, fitting for the 21st century, was indispensable to completing the reconstruction project we had embarked on. We do not see the constitution as a taboo or a sacred text that cannot be tampered with. The very fact that 20 years have gone by since it was last amended was enough to justify changes. Thomas Jefferson formulated this idea eloquently: “I am certainly not an advocate for frequent and untried changes

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in laws and constitutions... But I know also, that laws and institutions must go hand-in-hand with the progress of the human mind... We might as well require a man to still wear the coat which fit him when a boy..."¹ Jefferson participated in the work of the Philadelphia Convention, and then two decades later he said that with all of the experience that they had gained over the previous 20 years, they were far wiser than they had been then, so they should see how they could improve the Constitution.

– Are you sure that you identified the root of the problem correctly? **Did our problems really stem from the fact that we did not have a carefully crafted preamble? Were they not rooted more in our attitudes, indifference, jadedness, and lack of interest?**

Did our problems really stem from the fact that we did not have a carefully crafted preamble? Were they not rooted more in our attitudes, indifference, jadedness, and lack of interest?

Gergely Gulyás: To answer this question we need to look back further in time than I can draw on from my own memories as I am too young to do so. With a degree of irony, I could say that personal impressions do not hinder me in making an accurate judgement. It is not by accident that people developed a special kind of attitude towards the state, simultaneously paternalistic and mistrustful. When the MDF was able to form a government in 1990, Prime Minister József Antall had good reason to say when submitting the government programme to Parliament that "I turn to the Hungarian people from this place, now calling them to leave behind their reflexes of distrust ingrained over decades or even centuries, and to consider the institutions as their own, as the function of these institutions is to represent their interests, to protect and serve them." The traditions of this distrust reach back to

¹ Some men look at constitutions with sanctimonious reverence, and deem them, like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well: I belonged to it, and laboured with it. It deserved well of its country. It was very like the present, but without the experience of the present... I am not an advocate for frequent and untried changes in laws and constitutions. ... But I know, also, that laws and institutions must go hand in hand with the progress of the human mind. ... We might as well require a man to wear still the coat which fitted him when a boy... Let us follow no such examples, nor weakly believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs." Thomas Jefferson's letter to Samuel Kercheval (1816; 32/A)

times before communism, but the 40 years of dictatorship certainly reinforced them. To a very great extent, the persistence of this distrust was a contributing factor to the inability of the first democratically elected parliament to complete the transition through a symbolic legal act, namely by adopting a new constitution. After such an act, it would have been justified to tell people that these institutions genuinely belong to them, that they were established on the basis of a mandate from the people of Hungary, and therefore, they will serve the people of Hungary. Even after the official materialism of the Kádár era, the symbolic significance of such a solemn moment should not have been underestimated.

In order to identify the connection between the constitutional institutions of the public law system and society's attitudes, and to be able to fully appreciate the importance of the adoption of the Fundamental Law, it is worth to examine the concept of what makes a constitution in more general terms. A constitution is more than just the public law system in and of itself. When people argue that "the public law system functioned perfectly well over the past 20 years" I respond by pointing out that although there have been occasional failures and inadequacies the system of parliamentary rule has proven its viability in Hungary. Incidentally, regardless of the form of government, this model also derives from our traditions of public law. However, we are aware of the consequences of failures and inadequacies – such as the lack of protection of national assets, the lack of basic rules of economic constitutionality, or the fact that the dramatic increase of state debt has no consequences. At the same time, if these had been the only inadequacies, we could rightfully have said that they could have been eliminated through extensive amendment. In terms of the public law system, only corrections were necessary. **By contrast, there is far more to a constitution than the basic rules of the public law system.**

By contrast, there is far more to a constitution than the basic rules of the public law system.

Public attitudes towards the Fundamental Law and its institutions are influenced to a great extent by the question of whether this supreme law is passed by a legitimate, democratically elected parliament. Let us not forget that the adoption of the 1949 Hungarian Fundamental Law, modelled under a compulsion to draw up a constitution in the mould of the Stalinist Soviet Constitution of 1936, marked the beginning of one of the most oppressive dictatorships in Hungarian history.

Apart from formal criteria, it is also crucial for the public acceptance of a fundamental law for it to contain elements that help people identify with it in spirit,

forming a community – a function that is to be fulfilled, among others, by the Preamble, that is, the National Avowal of the Fundamental Law. In Hungary the transition from dictatorship to democracy took place separately from the adoption of the new Constitution, which obviously led to a situation that needs to be assessed in its long-term implications as well. For this reason, the two should be viewed as parts of a single process that has now been concluded in this sense. It is very damaging and inappropriate to set up an artificial opposition between this Fundamental Law and the one amended in 1989-90, because we have taken from it everything that was valuable, had proven its worth and was proper. This is why May 2, 1990 appears in the text as the date of the restoration of Hungary's constitutional order and self-determination, and this is also why no thorough changes were necessary in the state organisation.

Let me share a personal memory here: in 1999 and 2000, in my first and second years at university, I interviewed public figures for *Ítélet* (Judgement), the periodical of the Law Faculty of the Péter Pázmány Catholic University. One of those interviewed was László Sólyom, who by then had resigned his post as president of the Constitutional Court, and headed a department at the university at the university. The interview took place in the autumn of 2000, shortly after Ferenc Mádl had been elected president. My last question to László Sólyom was whether a new constitution was needed. He replied that it depends on what was meant by needed. If I interpret his answer correctly, he was implying that there was definitely a need for a new constitution in the sense that the Constitution originating in 1949 had to be replaced. It was a different matter that no-

Therefore, changes (...) will not result in such an immense change in the everyday life of Hungarian society as did the changeover from dictatorship to democracy in 1989 and 1990.

body wanted to reverse the transition from dictatorship to democracy anymore. **Therefore, changes** that are important in terms of form and content **will not result in such an immense change in the everyday life of Hungarian society as did the changeover from dictatorship to democracy in 1989 and 1990.**

Beyond the technical regulation of the public law system, the 1949 Constitution was definitely unsuitable for attaining the most important aims of the state. And it is also certain that once the current political disputes are over and done with, everyone will have the opportunity to convince themselves on the basis of the everyday application of the law that the constitutional framework defined by the new Fundamental Law brings progress, and this will further enhance the

legitimacy of the Fundamental Law, which is in a whole different league to its predecessor even now.

József Szájer: On top of all that, the 1949 Constitution was simply a copy, just one element in the network of Stalinist constitutions. The Soviet Constitution was simply copied verbatim not only in Hungary, but basically in all the Soviet republics and in Central-Eastern Europe. Anecdotes suggest that the Supreme Court's version contained grammatical mistakes because nobody dared to correct the mistranslations from the Russian original. At university, Csaba Varga and I held a seminar where we studied the tenets of law theory on the basis of which

The communist system, the Rákosi system, made efforts to shore it up by appropriating symbols...

Russia, or the Soviet Union, was exploring the possibilities of development in the 1920s, and we also analysed the mechanism of Communist takeover from the legal perspective. Summing it up, we can say that the law had no real significance in that process, but the Soviets considered it important to lend the system a veneer of legality.

Indeed, the reason why Act XX of 1949 is interesting is something Gergely has alluded to: it was not only a Soviet-type constitution foisted upon us, but it symbolically marked the introduction of communist dictatorship into Hungary.

The communist system, the Rákosi system, made efforts to shore it up by appropriating symbols: the fact that they chose August 20 as the date when the Constitution entered into force, associating Constitution Day with St. Stephen's Day was a way for the Communists to declare that they had taken power formally, too. Everyone had been aware of it before anyway, but that was the key moment of transition. From that point onwards, the last hope of Hungary continuing along the democratic path it had started out on back in 1945 was extinguished. When we say that the Constitution is not only a legal document but also a symbolic one, we also have to look at the wider context of the communist system. The text of the Communist Constitution more or less defined the state organisation, but the fundamental rights and the passages about those rights appeared in it only formally, as a kind of veneer. The significance of the Constitution far exceeds that of a simple legal document: at the moment of transition to democracy, no counterpoint was presented to the symbolic communist takeover. This was because from the very outset, the Opposition Round Table's standpoint had been that only the amendments most important in terms of transition should be adopted, and so the Fundamental Law was passed by a Parliament still ruled by the Hungarian Socialist Workers' Party (MSZMP), which could not be called legal. Let me add

that Fidesz and the SZDSZ did not sign the pact between the state party and the opposition forces – but they did not veto it either.

Gergely Gulyás: We have reached a very interesting juncture. Although I am too young to have been there in person, I am familiar with the minutes of the Round Table talks – published under the very inauspicious title of a *rendszer-váltás forgatókönyve* (The scenario of the transition). It is clear from these documents that at the Round Table talks, the opposition was aware of the fact that it would have been enough to repeal the passages of the Penal Code that stipulated that political organisation activities were a crime, to create a new suffrage law, and to pass a few amendments to the Constitution to bolster the parliamentary system. Due to the obvious lack of legitimacy, this would have been the least objectionable procedure, as the MSZMP and the last communist Parliament did not have a man-

This led to a paradoxical situation(...) It resulted in an illegitimate constitution and, at the same time, in the absence of the indispensability of drafting a new constitution.

date from the people, and the opposition organisations by definition could not yet have a mandate from the people to revise the Constitution thoroughly, because the free elections did not precede, but were the aim of the talks. This situation justified reaching an agreement only on amendments that were indispensable for the free elections, and any further amendments could have been left up to the new, democratically

mandated Parliament. Instead however, the opposition parties were faced with a situation in which the MSZMP was open to a full revision of the Constitution to include democratic solutions; indeed, if it had been up to them alone, they would even have liked to share the blame for the economic bankruptcy they had been solely responsible for personally and because of their politics. This is understandable, and it partly explains their willingness to amend the Constitution, but of course, we know that there were other underlying personal and political motives at play as well, such as the election of the president of the republic prior to the parliamentary elections. The opposition had to take a difficult decision in this situation, and the majority of the Round Table – unlike Fidesz – was of the opinion that legitimacy was of secondary importance, and they should do whatever they could then, because nobody knew what the future would hold. Let there be no mistake about it – most of the participants of the Round Table, especially the MDF delegates such as József Antall and György Szabad, were people who, in part because of their age, were well-acquainted with Hungarian history, and they were aware of all of the defeats Hungary had suffered because of compromises that had not been made. Therefore,

aware of the responsibility incumbent on them, their consciences would not allow them to squander the opportunity to achieve all they could at that particular moment, or to jeopardise it to be left with an uncertain future. As a result, agreement was reached on a much wider circle of amendments to the constitution than would have been strictly necessary from the point of view of free elections. **This led to a paradoxical situation** after the formation of the first freely elected Parliament. **It resulted in an illegitimate constitution and, at the same time, in the absence of the indispensability of drafting a new constitution.** Both factors were present simultaneously, and as political differences became pronounced very early on, before becoming irreconcilable, adopting a new constitution was no longer an option despite the fact that all the parties declared that it was necessary. The changes that were indispensable for the country to be governed were made as part of the agreement between the MDF and the SZDSZ, which has gone down in history as the MDF-SZDSZ pact.

This was concept of Fidesz as a 'child of divorced parents'.

József Szájer: Travelling back in time, we can say that Fidesz has been consistent from the very start. We were the ones who were in favour only of laws that were indispensable for the transition at that moment. If I may be allowed to speculate on what might have happened rather than sticking to historical events: If Fidesz had had the opportunity to draft a constitution after the first free elections, it would have embodied a philosophy of the state and politics similar those that feature in the new Fundamental Law. You can find the evidence for that claim in the documents Gergely has mentioned. We focused on the transition, but the fundamental point was that the constitution needs to be legitimate. And we did not consider either the Parliament governed by the MSZMP, which had never won a mandated in free elections, or the Opposition Round Table as legitimate.

– Talking about the failure to make a fresh start: would it not have been better to convene a constitutional assembly at the moment of transition, something which still figures on the agenda of the radical right?

József Szájer: The idea did crop up, but such a step was made impossible because of the rapidly escalating conflicts between the MDF and the SZDSZ. In fact, in the early 1990s Fidesz was the only party that took the stance, not only in terms of the constitution but also across the full range of issues, that the forces participating in the changeover to democracy should create a broader front. **This was concept of Fidesz as a 'child of divorced parents'.**

– And then you quickly grew closer to one of the parents, the SZDSZ.

József Szájer: Undoubtedly, there were changes in our relationships, and the parents often put forward serious demands, too. In the course of the divorce proceedings between the parties participating in the transition, we gravitated first towards one and then the other. But my impression is that in fact, the parents were prone to temper tantrums – they kept wrenching the steering wheel left and right, whilst we were sitting in the back seat ... Our basic stance was clearly that new concepts were needed in terms of constitutional issues as well as in politics. Therefore, it is unjust to accuse us of only coming up with our unique perspective in 2010, and of foisting a new constitution upon the country. We carried out this long overdue task as soon as we got the chance.

Hungary had a constitutional system that had been functional for centuries, and in fact, was one of the most advanced of its time.

And still on the subject of the previous question, let me go back even further in time, because the need for a constitution raises another issue too – namely, that a constitution is not only a legal document, as we have already discussed, but it also defines a country's identity to a great extent. One of the major components of Hungarian identity, a historical component for a thousand years, is that legalistic concept of the state, sometimes criticised rightfully, which was present in the historic constitution. If we discount the Constitution of the 1919 Soviet Republic that was in force only for a very short time and also copied the Soviet model, Act XX of 1949 was Hungary's first coherently worded real charter constitution. (The situation was the same as with the Civil Code, as it had also been historically lacking in Hungary, so that the first one was the product of the Communist system. The Civil Code adopted after 1956 was the work of Gyula Eörsi and his collaborators. Prior to that, the Civil Code had been a compendium of rules based on common law, scattered over several documents not gathered together in a single source. The same was true of the Constitution.) **Hungary had a constitutional system that had been functional for centuries, and in fact, was one of the most advanced of its time.** Of course, with the benefit of hindsight we can criticise it for the absence of universal voting rights or for not guaranteeing every freedom, and many other shortcomings, but it was one of the most advanced constitutional systems in the world in its time. The same is true of the laws of St. Stephen, St. Ladislaus, Endre II, or Werbőczy's Tripartite, which was a very early collection of common law, and was a pioneering legal document in Europe. But we could also mention the laws of 1848. We could also start enumerating all the features

that put the Historic Constitution in the vanguard, and we still would not have mentioned the groundbreaking qualities of the law on religious worship, religions and churches in the late 19th century.

In this sense, we had an existing and functional constitution, which provided a clear framework for Hungarian society and jurisprudence. By adopting a constitution in 1949, the Communist Parliament intended to throw away the preceding 950 years in the spirit of “wiping the slate of the past clean”, in a legal sense as well as symbolically.

When the changeover to democracy took place, when negotiations about this issue began, a modern European 20th-century tradition of how to organise the life of the state had already existed. In almost every country it meant a charter type constitution worded coherently. (There are exceptions here, too. The United Kingdom has managed to sustain the system that we had until the mid-20th century.) In Hungary, continuity had been disrupted, and by amending the Soviet-style pseudo-constitution we failed to create a fully legitimate Western-style fundamental law that would have been acceptable in every respect. The transition failed to do this, which is why we continue to have an ongoing dispute today about why the new Fundamental Law refers to the historic constitution. In a legal sense, and the sense of legal theory and social philosophy, **the new Fundamental Law had to define its position with respect to the thousand-year tradition that had always secured for Hungary a position at the forefront of Europe.** It had to come up with a response as to how to integrate this tradition as well as what kind of foreign models it would adopt. This also explains why we needed a new constitution. Maybe we did not need one in a legal sense: you can sip wine from a plain drinking glass, as it is perfectly suitable for the purpose of drinking, but for this to be more than just an act of becoming inebriated, you have to do it in proper style. It is a totally different feeling to sip the same wine from a nice crystal wine glass. A constitution defines a country's identity – it condenses what we think of our history, achievements and attainments. The United States, for example, is unthinkable of without its Constitution. After World War II, Germany in essence defined its identity through its Constitution adopted with external support, to put it euphemistically. Hungary's previous Constitution did not fulfil this function of defining the nation's identity. It functioned as a plain ‘water glass’, one which was even chipped here and there, so it perpetuated many problems and unresolved issues.

The new Fundamental Law had to define its position with respect to the thousand-year tradition that had always secured for Hungary a position at the forefront of Europe.

Gergely Gulyás: The constitution differs from a straightforward law in many respects, one of them being that it has a symbolic function that helps to define national identity, and reinforces nation's self-awareness. This means that the question at stake here is Hungary's view of its own history, so it is understandable that much more serious disputes arise than would be the case if it boiled down to merely legal technicalities. For example, the reference to the Historic Constitution evokes various reactions from people – although the Constitutional Court also used it as an interpretative framework before. For those Hungarian citizens who have an educational background in law or are familiar with the country's history, the fact that there are very few countries in Europe that have such a rich national history, legal history and set of legal traditions is not a matter of controversy.

– **As constitutional law is inconceivable without gradual evolution over time, it is a question of whether the thread of the historical constitution that was severed in 1949 can be picked up again. What makes the situation even more difficult is that after 1867, with the development of the institutions of the civil state, the common-law system that comprised much of the historical constitution began a process of decline. Does it really suit us to take old clothes out from the museum display case and put them on again?**

Gergely Gulyás: In order to be able to decide whether certain achievements of the historical constitution are applicable today, we need to cast a look back over the past 20 years. Then we can see that the system of democratic institutions that has emerged also has certain precedents in legal history, and these precedents were always referred to when it came to interpreting those institutions. For example, the question of ministers' responsibility can hardly be interpreted without reference to Acts III and IV of 1848, and to Act I of 1946 on the republic as the form of government. A good example of the fact that legal history has always had a defining function in the interpretation of laws is that when in the run up to the 2005 presidential elections a dispute arose concerning the interpretation of the relevant passages of the constitution – then the parties did not take the literal text of the Constitution as their starting point which stipulated that even in the third round, the majority of all members of Parliament would have been necessary. Instead, they went back to the relevant paragraphs of Act I of 1946 on the election of the president. The earlier law defined much more precisely that the purpose of the third round was clearly for the voting to deliver a result in that stage at the latest, for the country to have an elected head of state, and therefore the steering

committee adopted that interpretation. But if I had interpreted the text of the Constitution still in force then strictly, this would not necessarily have followed from the definition “majority of votes”. László Sólyom became the legitimate president as a result of an interpretation of the Constitution based on legal history. In my opinion, it is not proper for a Constitution to nullify everything that preceded it in our legal history. The traditions of Hungarian common law will not detract from the provisions of the Fundamental Law, but will be assisted in their interpretation. The term Fundamental Law conveys precisely the fact that the historical constitution will remain as an interpretative framework.

József Szájer: The presumption implied in your question is not valid because there is no such trend. **In my view, the process is exactly the opposite of the one implied in the question.** Let me take a concrete example first, and then take a theoretical approach. The fact that in the absence of a coherent constitution the doctrine of the invisible constitution emerged in Hungary contradicts the notion that the common law will lose significance and only a positivist interpretation of statutory law remains. In the political sense, and from the point of view of its political effects, the invisible constitution is a problematic concept, but in the given situation we did not really have any other option. In my view, it was a reasonably and logically defined doctrine in the early 1990s that filled in the gaps created by the absence of a coherently worded constitution. Let me note here that this tenet manifested itself for the first time in the Constitutional Court’s ruling on capital punishment in 1990, voiced by László Sólyom.² In that document, László Sólyom argues for the necessity of the existence of an invisible constitution, so that when Hungary adopts a new constitution, the Constitutional Court’s rulings and opinions would be relevant to that. In contrast with the opinion which Sólyom, the former president, has voiced recently comparing the new Fundamental Law to the National Theatre – saying that it is ugly and eclectic, but that you can stage good plays in it – I

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² “The Constitutional Court is to continue its work of formulating in its interpretations the fundamental principles of the Constitution and the rights included in it, creating a coherent system with its rulings, which, as an ‘invisible constitution’, is to serve as a solid measure of constitutionality, above the Constitution that is amended in our days often only because of daily political interests; this system of rulings is expected therefore not to be in conflict with a new constitution to be made, or constitutions to be made later in the future.” ABH 23/1990

consider that now, at the start of the 21st century, we are witnessing the final hours of the traditional liberal constitution. We are entering a postmodern age, where the formulae of the constitution disintegrate into various parts, and it no longer necessarily appears in its traditional role as a charter, nor does it perform a logical function the way it used to. What is the function of the modern constitution? It is to spell out every important function of the state in a coherent document. And

I consider that now, at the start of the 21st century, we are witnessing the final hours of the traditional liberal constitution. We are entering a postmodern age, where the formulae of the constitution disintegrate into various parts, and it no longer necessarily appears in its traditional role as a charter, nor does it perform a logical function the way it used to.

what is the function of the constitutional court that emerged in the 20th century as a logical complementary concept? It is that a public body is necessary to protect the constitution, ensuring through a logical operation that the fundamental law and the entirety of the legal system correlate. By contrast, Hungary's historical constitutions, and others, such as the British historical constitution, follow a more conservative logic. They state that the circumstances of life have certain consequences, and we regulate these in a legal sense, but those enforcing the law at any given time are free to adjust their interpretation, based on ancient documents, to the demands and realities of the age. Interestingly,

the American Constitution was created as this kind of charter type document, but it is very hard to amend. Consequently, it has become a document subject to the interpretation of legal practitioners and interpreters. This is why I said that the concept of the modern constitution evolves into a function where common law and legal tradition acquire significance, and serve as points of reference. By drafting the National Avowal, by using a different numbering system, by referring to the historical constitution, we basically carried out a deconstruction – that is, in order to replace Act XX of 1949 that endeavoured to define the organisation of the state in its entirety, we revived a system that is based more on interpretation, one that can relate more closely to life, to tradition and, in this sense, to common law. **It is from this point forward that we can start talking about national self-esteem.** What we say is that our Constitution ensures citizens' equality before the law not because we copied it from the German Fundamental Law but because (as a result of the organic evolution of our legal history) we created it and formulated it through our own struggles and efforts. (Here I could also refer to the resistance clause contained in the Golden Bull or in the laws of 1848, which we did not borrow from other countries but which evolved from our own national legal history.)

– If I understand you correctly, you got down to the business of drawing up the Constitution on the assumption that instead of the concrete block that we had at our disposal, we needed Plasticine which is easy to shape and is therefore more pliable.

József Szájer: At first, a tradition had to be reconnected to the present after 50 difficult years of disruption. One of the sources of the aversion to the historical constitution is that this tradition that was to be reconnected had not only become extinct in our legal practice but also in our concept of the law. This also has an ideological dimension to it. Communist ideology – and from a certain point of view, the extreme currents of liberalism too – intended to “wipe the slate of the past clean”, hence the accusations of the Fundamental Law being feudalistic, old-fashioned and outdated, and this is why they want to replace it with experience distilled from human interactions. However, society works in more complex ways than that, and this is why we intended to restore the fabric, offering an alternative to the positivist approach. Of course, we know that the majority of today’s jurists tend to fight the corner of this positivistic interpretation of the law, and the transition to a more open approach will take a very long time. But the situation is perhaps not as bad as it might seem, considering that over the past 20 years, the Constitutional Court has moved away from this very positivistic system and re-established a tradition that can serve as a foundation that can be built on.

To put it in layman’s terms rather than legal jargon:

we restored the social function of the constitution, its function as the country’s most important document, which nevertheless did not claim to extend to every single detail of people’s lives. In other words, the

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Fundamental Law embraces its own incompleteness. Perhaps the most vivid way of expressing this would be to say that the new Fundamental Law is a covenant according to which the Hungarian people agree to delegate power to the systems and institutions that take charge of their common causes and of organising their relations in their community.

Gulyás Gergely: In 1066 when William the Conqueror staked his claim to the country’s throne, set foot on England’s soil, and won the Battle of Hastings, he wanted to create a coherent legal system in order to consolidate his rule, a legal system that both the quarrelling subjugated tribes living on the island and the new Norman rulers would accept and abide by. William the Conqueror asserted that all the people living on the island had a “common law”, that is not a written law,

but is based on tradition, and that in each specific case the judge will determine what it consisted of. Although no such common law actually existed at the time, over the years the fiction nevertheless took shape, and it has been functioning smoothly for a millennium.

The situation is simpler in Hungary because we do have such a common foundation, the historical constitution. Although the term may evoke a notion of

turning back to the past, in fact, this is what keeps the Fundamental Law alive over the long term by opening up the framework of interpretation. László Sólyom said in an interview that, for example, the Constitutional Court's 20 years of practise also forms part of the historical constitution. I agree with him and this was the spirit in which we went about our work of drawing up the Constitution. At certain junctures we found the practise inadequate, for example, in

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the interpretation of the relationship between the president's political and constitutional veto, and so, in this area, the Fundamental Law prescribes a procedure that is contrary to the previous decisions taken by the Constitutional Court. In other cases, such as the definition of the president's rights of appointment and conferring distinctions, we codified the Constitutional Court's practise in the Fundamental Law. Likewise, we enshrined the Constitutional Court's practise concerning the protection of foetal life in the Fundamental Law. In this sense, the Fundamental Law reflects even the development of the legal system over the past 20 years, the most recent offshoots of the historical constitution. **The historical constitution cannot corrupt the unambiguous provisions of the written law, but the freedom of interpretation makes the new Fundamental Law flexible, and thus better able to withstand the test of time.**



CHAPTER II

THE NATIONAL AVOWAL

“We wanted to write a text that citizens who are not jurists could also understand, because the Fundamental Law is the country’s most important document. Therefore, we strove to word things clearly and unambiguously. At the same time, the structure of the Fundamental Law has a feature that is shocking to men of law, and which I supported despite my original vocation. A jurist would expect that, like laws in general, the Fundamental Law also consist of paragraphs, because that is just the way it has to be. However, in order to emphasise the uniqueness of the text, we used a specific system to divide it into different sections. Jurists may find it strange at first but then, I think, everybody will accept it and grow accustomed to it quite quickly.” – Gergely Gulyás

– Slowly but surely, we are getting as far as the text, so I would like to ask a few questions about its symbols, especially those contained in the National Avowal, such as the Holy Crown. If the historical constitution bears such a great significance to you, why did you not go all the way? Why did you not include the Doctrine of the Holy Crown or the Resistance Clause in the text?

Gergely Gulyás: Because the Fundamental Law has to guarantee the requisite level of legal certainty. It would have been extremely dangerous and unworkable in practise to abrogate Act XX of 1949 more than 60 years after the disruption of the period of the historical constitution, and at the same time to make the antecedents in legal history the basis of the functioning of the state and the application of law without a written fundamental law. At its birth and throughout the changes made to it, the Doctrine of the Holy Crown contained very enlightened rules, but by now many of its parts would be inapplicable, due also to the tragedies in Hungary’s history. For example, could we interpret the term of “the countries of the Holy Crown” today? I consider “the achievements of our historical

constitution” as the proper wording because it delineates the frameworks of its application. **Countless elements of the historical constitution have become inapplicable or outdated. However, some of its achievements have been incorporated into the Fundamental Law, while others help interpret the law.** The Hungarian legal community, including the judges, who have grown accustomed to a written constitution, would understandably feel completely at sea if we had based the central element of the system on the continuity that was disrupted in the middle of the 20th century. This would have led to the total disintegration of legal certainty.

József Szájer: The alternative solution would have been to draw up separate laws. The idea was broached that we should only create the National Avowal and a core constitution that defines only a few symbolic issues, and only afterwards would we proceed to adopt the laws that are fundamental in terms of the historical constitution; the laws that regulate, for example, the election of the president of the republic, the functions of the Parliament, the right to vote, etc. Eventually, discussing the issue, we decided not to take the deconstruction that I have mentioned quite that far. Constitutional traditions, in our view, include the historical constitution, but also the traditions of the past 20 years, for example, the corpus of rulings of the Constitutional Court – so much so, that the first draft

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of the National Avowal, which I proposed, included a reference to the role of the Constitutional Court in developing the constitution in the passage on the relationship of the new Fundamental Law to the history of Hungarian constitutionality. Ultimately, it was not included in the document, but its spirit is palpable. Let me recall the metaphor of the concrete block and the Plasticine: our intention was not only to create a fundamental law that reflects human relations and

historical traditions more adequately. A significant consideration was to adopt a more flexible fundamental law that would equip us with more effective means to solve problems in the future – for example, to prevent the country from becoming so indebted again, or the State from falling apart. But this already goes far beyond the question of the constitution: Hungarian society had not yet made up its mind on fundamental issues related to, for example, equitable burden sharing, basic freedoms, or the relationship between citizen and state. The debates fought over the last two decades often involving irreconcilable ideological differences have only served to exacerbate the situation. From this point of view, I see the adoption

of the Fundamental Law not as the conclusion of a process but the starting point of a debate on large number of basic issues.

Gergely Gulyás: If we had opted for the concept according to which the constitution would only be a core constitution, dealing only with the most essential questions, then we could have adopted fundamental laws on the various components of the organisation of the state. *Perhaps I can disclose a little of what was happening behind the scenes to reveal that when the Fidesz committee held its initial discussion of the first draft, after establishing the first three chapters (National Avowal, Foundation, Freedom and Responsibility), the Prime Minister broached the idea that we might as well stop there, because in that form, it was already fully-fledged constitution.* There is some truth

to that, because according to the other concept, it was indeed a complete constitution. In that case, the institutions of the organisation of the state would have been regulated in separate, constitutional laws. This is not unprecedented in Europe – it existed in the French Third Republic, and there are similar solutions in place in Scandinavian countries today. Of course, it would have been much more difficult to define the reasonable level of abstraction in drawing up other laws: what is a constitutional law and what is not? This solution would also have been at odds with the practise of the past 20 or even 60 years, and it have been a return to the historical constitution without meaning; it would simply have resembled it more

closely. Nevertheless, if this kind of political decision had been taken at the start of the constitution-making process, it could have been a viable model, too. **András Zs. Varga**, an expert in the preparatory committee, envisaged the latter type of constitution, which would indeed have been closer to the historical constitution.

József Szájer: Meanwhile, if we consider the alternatives, we could have adopted the Swedish model, where there are four constitutional laws. The aim in terms of form and content was to restore continuity, and deconstruct the constitution of 1949, that is, the charter-type constitution. We found a midway solution between the two, which is, of course, not midway in terms of the currently prevailing approach to law. So, taking stock of the current situation, there is a pronouncedly positivistic view of law on the part of legal practitioners, whose proponents found

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it hard to accept the mere idea of an invisible constitution. For them it is also difficult to digest the reappearance of the achievements of the historical constitution because a different tradition has developed over the past 50 years. Essentially, that tradition always wants to derive everything strictly from an existing rule, one

Unfortunately, the analysis implicit in your question about the U-turn in the constitution-making process has by now unfortunately become a widely held view, but in fact is a completely erroneous interpretation by the opposition.

that occupies a distinguished place in the hierarchy. However, society is far more complex than that. The law can work on the basis of the fiction that it is a clear and completely logical system, whereas in reality it cannot disregard the human and social factors. Not only in Hungary but also in other countries, the courts and the Constitutional Court sometimes try to forcibly regulate society by saying that their rulings are not decisions of a social nature but strictly logical deductions. Meanwhile, if we look beyond the strictly

abstracted doctrines of the law, we can see that every legal decision – each and every ruling by a judge or the Constitutional Court – is far too complex to have simply been derived by way of purely logical reasoning from a text considered to be of a higher order. The logical operation is often just a procedure to conceal a political decision; it is simply a point of reference.

– Gergely Gulyás has mentioned a meeting of the Fidesz committee, so let me ask you now about the work methods. Looking in from the outside, work seemed to flow smoothly in the parliamentary committee headed by László Salamon. Then, things took a U-turn at the parliamentary group meeting in Siófok: there was palpable discontent with the concept that was presented, so Prime Minister Viktor Orbán proposed a drafting committee to be headed by József Szájer.

Gergely Gulyás: *Unfortunately, the analysis implicit in your question about the U-turn in the constitution-making process has by now unfortunately become a widely held view, but in fact is a completely erroneous interpretation by the opposition.* I do not consider the decision at the parliamentary group meeting in Siófok as such a rupture. From the start of the constitution-drafting process in June 2010, guesswork was continually published virtually across the board in the press claiming that the committee was only a sham and that the real work was already in progress behind the scenes. As there has been a tendency to accept the validity of such suppositions even in the absence of evidence, it was easy to refer to the Siófok meeting later as evidence supporting groundless conjectures.

In September, the daily *Népszabadság* had already honoured me by claiming that while the committee in charge of the concept of the constitution was still working, I was already writing the text of the new constitution. The same assertion was published later on in the autumn about József Szájer. In light of what has happened since then, these speculations may even seem amusing, but in fact, nobody was writing anything back then. According to the normal procedures of a democratic parliamentary system, an ad hoc committee was going about its business, dividing up the task amongst smaller working parties. There was no political guidance whatsoever that could have prevented the committee from deliberating in complete freedom, and consequently, there were debates inside the governing parties' parliamentary groups. I led the work party in charge of fundamental rights, and I still remember the serious debates that arose within Fidesz when, in October, articles were published in the press claiming that the work party had adopted the stance that the right to vote should proceed automatically from citizenship. There were also completely open debates on the issue of a one- or two-chamber parliament, the right of the president to dissolve Parliament, or the majority needed to amend the new constitution. Frank and forthright discussions took place about most of these issues in the public arena – mostly between László Salamon and me. Even at the first meeting of government MPs, when everybody tried to find political principles to start out from, I said – as László Salamon has quoted several times since then – **that if there is no leash we should not try to obtain one.** The committee followed this principle throughout the entire work process. There were remarkably few political constraints. In this spirit, a concept was drawn up with the opposition participating fully in the substantive part of the work, as the bulk of the job was done by the individual working parties. Then, the opposition walked out on the committee, withdrawing from the process for an external political reason, not closely related to drafting a constitution in the strict sense, namely the narrowing of the Constitutional Court's jurisdiction. Consequently, the draft was passed only by the governing parties, but the opposition had also participated in the substantive part of the work. There were debatable elements in the draft in the areas I alluded to earlier, but there was full agreement not only between and within the governing parties but also with the opposition on the main cornerstones: the issues of the system of government, the independence of the Constitutional Court, and a separate and independent judicial organisation. The concept clearly defined the general

That if there is no leash we should not try to obtain one.

heading, as is shown by the fact that all these cornerstones now form part of the adopted Fundamental Law.

Since the opposition did not take part in adopting the draft by the commission (and in fact, only the Jobbik party had a divergent view on the basic principles), they began to attack some parts plucked arbitrarily out of context, and they endeavoured to base their negative campaign on those symbolic points. The opposition parties on the left formulated their criticism on the level of questions like “How many billions will it cost to introduce the coat of arms with oak leaves”, or “how many

There was a sharp turn in political strategy, but it did not affect the final content of the document.

billions will it cost to change the official name of the country?” In these circumstances a political decision was adopted in Siófok, according to which we would try to make the entire constitution-making process as open as possible, with the full involvement of the opposition parties, or, failing that, it should be made

clear that the opposition’s absence is groundless, irresponsible, and politically unjustified. We have good grounds to suppose that if any opposition party on the left had submitted their constitution draft to Parliament, it would have become evident that a consensus existed on 80% to 90% of the essential questions, and that would have put a completely different slant on the political debates about the drafting of the constitution. We wanted to make it absolutely clear that the opposition was criticising only certain details of the draft, rather than its entirety. The decision in Siófok helped us in that. The decision pertained to the process and not the substance, and so, it cannot be called a U-turn in terms of the content. The three-member drafting committee elected by the parliamentary group alliance in Siófok in itself symbolised continuity through the fact that László Salamon was selected to represent the KDNP, and I was selected to represent Fidesz. During the drafting process, the committee followed the preparatory committee’s draft, diverging from it only on the details that had been the objects of debate between the governing parties. If you read the final text of the Fundamental Law, you can say that even though at some points it differs from the original draft at some points, in essence, there is no major discrepancy between the two texts. **There was a sharp turn in political strategy, but it did not affect the final content of the document.**

József Szájer: I also think that if you strip away from the constitution-drafting process proper the political events surrounding it, you will see a totally natural and organic process. Parliament took the necessary preparatory steps, and when the time was ripe, drafting began. Drafting was the basic consideration in this process.

According to the original concept, Parliament was to define the main directions, draw up the underlying concept, and then the government was to work according to these instructions. This was the original plan. It was then changed with the intention of creating an opportunity to participate for anyone who wished to do so. It is probably not by accident that opposition parties did not draw up their own drafts of the constitution. They either simply couldn't be bothered, or maybe it was because then it would have become clear that there were no major differences compared to the governing parties' proposals. This, actually, is historically proven by József Petrétci's draft constitution, which unexpectedly came to light and which can rightfully be considered the germ of an MSZP draft. With respect to state organisation, fundamental rights, and values, it displays many similarities with the Fundamental Law that was eventually adopted. Of course, I understand that if opposition parties had come up with their own concepts, they would have lost their chance to reject the new Fundamental Law lock, stock, and barrel. Even in the final phase of the parliamentary debate proposals were tabled that we were able to include in the text. This also shows how perfectly open the process was.

As has already been alluded to several times in relation to the structure, it was very important to break it up, deconstruct it, and restore the lost historic continuity.

– *How and when was the final format of the text decided? How did you decide, for example, that you would call the introduction National Avowal, instead of Preamble?*

József Szájer: *As has already been alluded to several times in relation to the structure, it was very important to break it up, deconstruct it, and restore the lost historic continuity.* The second aim was to define the values espoused by the entire nation as a community. It was clear from the very beginning that it was necessary for society to have a self-definition. Many critics said that the more complex a nation's psyche, longer the preamble talks about self-definition. I do not question that there are serious problems with Hungarian society's view of its own identity, its attitude towards itself. There still are many undecided and unresolved questions. The horrors of the 20th century played a significant part in this.

The embittered ideological debates that have taken place in the years that have gone by since the restoration of democracy have often pushed consensus even further into the future. Undeniably, the self-definition in the National Avowal is much longer than is customary, because there are a lot of unresolved issues. But we should not forget that this is not a traditional preamble setting out who draws up the constitution, for what purpose, under what conditions, and on whose mandate.

Our aim was to make the Fundamental Law's preamble part of the definition of national identity. There are countries where it is not the constitution that fulfils this function. For example, the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution, is an independent document (actually, it is still not part of the French Constitution in formal terms, although at the beginning of the 1970s the Constitutional Court incorporated it into the Fundamental Law). Now, if we were to subject the French Constitution to a strictly European critique, we would say that it does not include fundamental rights. Similarly, it could be pointed out that the Declaration of Independence, the document that defines the United States, is not formally part of the American Constitution. If you look at Hungarian history, there is perhaps one document of this type, namely, the 12 Points proclaimed on March 15, 1848, which defines a kind of national identity, along similar lines to the examples I mentioned, and spells out political objectives, the objectives of the Revolution. We could have opted for the 12 Points, in which case we would have used the historical constitution as a template to an even greater extent. In fact, the second sentence of the 12 Points is the closing sentence of the Fundamental Law – not by accident. It was by means of this quotation that we integrated the 1848 Revolution in the system, although many people have wrongly criticised the text for making no reference to 1848.

Coming back to the problem of identity, there are very few documents in Hungarian history that are acceptable to everyone. The National Anthem undoubtedly meets with universal acceptance.

Coming back to the problem of identity, there are very few documents in Hungarian history that are acceptable to everyone. The National Anthem undoubtedly meets with universal acceptance. Consequently, when adopting a fundamental law that was aimed at restoring a kind of historical continuity and openness

to the future at the beginning of the 21st century, we had to grasp the opportunity to make up for the failures of the past 20 years. When it was formed, the first Parliament set out along this road by codifying the memory of the 1956 Revolution, but it could not go any further because it was deeply divided. Obviously, the preamble is part of the constitution in a different way than the normative text. At the same time, we also considered it essential to make it unambiguous that the National Avowal is part of the Fundamental Law. To reinforce this, several references are made to the values represented by the National Avowal. The enumeration of our national holidays or the description of the symbolism of the national flag's colours are also part of this undertaking.

The Constitution avails itself of the immense power of symbols beyond words and ideologies to become part of a set of values that we share. It is intended to function as a point of reference not only for lawyers but also for Hungarian society as a whole, a kind of text the likes of which have never existed in Hungarian history. In order to bridge the gap between the planes of interpretation of the introductory part and the normative text that follows it, we decided that instead of two parts, a preamble and a normative text, the Constitution would be comprised of several elements.

This is why the different parts are numbered in different ways. They can stand alone. The National Avowal is followed by the section of foundations, which is symbolic as well as defining the basic questions with respect to the functioning of the State, and defines objectives for the State. This is the section which deals primarily with the common objectives deriving from the social contract, which citizens entrust the state to achieve. It is followed by a “Bill of Rights”, which, in common with many other constitutional traditions, is a separate unit. But if you examine the EU Charter of Fundamental Rights, it

One final thought, which has significance beyond the formal structure: the issue of ‘fundamental law or constitution’.

is a separate document, and is not part of the founding treaty. The list of rights is followed by the itemised description of the state organisation, and then the closing provisions. By separating them formally, the parts of the Constitution which perform different functions are placed on an identical interpretative level. As the Fundamental Law is elevated above the law system, we did not make use of the formal features traditional in law. For instance, we did not use Arabic numerals for paragraphs. When someone refers to the paragraphs marked with Roman numerals, legal practitioners will more or less know that they are referring to the “Bill of Rights”. This was a conscious decision, as was the re-introduction of the concept of cardinal acts. Article traditionally meant act, and now we wanted to convey the idea that every article of the text would be an individual act – in today’s terminology.

One final thought, which has significance beyond the formal structure: the issue of ‘fundamental law or constitution’. A constitution encompasses the various rules of a country’s legal order in a broader sense, which includes not only the actual laws themselves, but also the principles of interpretation, as well as the legal tradition. According to this concept, the Fundamental Law is a coherent document, governing the system of laws. The Constitution includes the cardinal acts, the historical constitution, and the various principles of tradition and interpretation. According

to the text: “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 to the public’s benefit.” In other words, the Fundamental Law also defines the principles of legal interpretation. Of course, this refers to secondary legislation, which does not include the Fundamental Law itself, and the article just quoted also states that “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal, and the achievements of our historical constitution.” In essence, the concept of the constitution is much broader than that of the fundamental law, and this is why we decided to call the new document Fundamental Law. In doing so, we are not abusing the historical concept of the term “constitution”, which Act XX of 1949 did abuse in our view. In fact, due to the absence of actual content, according to democratic principles, Act XX of 1949 usurped the term “constitution” because it was not the product of a democratic system, and also because it dismissed and ruined the legal and constitutional achievements of the past, including human rights and freedoms, and made it impossible to enforce them. The formal features and elements of content we have enumerated, the rules of interpretation, all serve to lay the groundwork for a more organic development of the legal system and the Constitution. I have consulted extensively with historians, historians of law and philosophers about how to combine the function of defining the nation and the declarative function in a constitution, because this was an expectation on the part of society in relation to the constitution. The

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conclusion of these discussions was that the National Avowal had to be longer and should also be able to stand alone as an independent document (this is why it declares that the nationalities living in Hungary are constituent parts of the state – an element that also appears in the Fundamental Law later). In order to make the text easier to understand and assimilate, we deviated from the principle of the unified Constitution, which mentions one thing at one juncture only, leaving it up to lawyers to identify the connections between the points. This is also why we spelled out in the foundations that “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal, and the achievements of our historical constitution”; to avoid any misunderstandings and

to prevent anyone from labouring under the misapprehensions that the National Avowal is not an organic part of the Fundamental Law.

Our aim was for the National Avowal not only to serve as an introduction to something but also to be able to stand on its own. This is why we did not call it a preamble. This was my proposal, as were the formal features. Originally, I even proposed including the letters “á”, “é”, “ny”, and “ty”, which are not used in Hungarian law but are parts of the Hungarian alphabet. Then, on the advice of people wiser than me, we threw this proposal out because it would really have had an alienating effect on the community of legal practitioners accustomed to Latin letters. And if not a preamble, the genre of the “credo” was the obvious choice. This is a genre of literature, religion, and, in this sense, also of constitutional law; in other words, it is present in many areas of culture. It is not true that the word “credo” (note: the Hungarian term “hitvallás”, avowal, is synonymous and homographic with creed and confession) is only a religious term: it was used, for instance, by poets János Vajda and Attila József, and others. In our case, credo appears as a declaration of self-identity, a definition of national objectives. Who are we at the start of the 21st century? What are our objectives? What are our values? These are the questions the text addresses, and therefore, National Avowal is the most accurate term for it. “Nyilatkozat” (Declaration) also cropped up as an alternative. The Fidesz-KDNP group held a vote on this issue because there were objections on the part of Protestants.

– As a protestant, this mixing up of the concepts of confession and creed perturbs me. In our faith, a confession sums up the basic doctrines. It is the essence of our faith and church, in other words unquestionable. Is it proper to apply this concept to a legal text, however noble it may be? Meanwhile, for non-Christians or simply non-religious people, it makes it more difficult to identify with the text.

Gergely Gulyás: At the vote I was in favour of “nemzeti nyilatkozat” (“national declaration”); as a Protestant, I instinctively associated the term “hitvallás” with the Helvetic Confession. At the same time, I consider it an acceptable argument that “hitvallás” is no longer a religious term, and in everyday language it has not been so for a long time. As the expression “this is my credo” illustrates. The other important issue broached by József Szájer is whether the preamble is normative or not. Do things written in the preamble have legal consequences? The Fundamental Law makes it clear that the preamble can have legal consequences, since it is part of the Fundamental Law. However, the National Avowal may nevertheless contain statements that have no normative content.

– **This seems to be a bit of a contradiction.**

Gergely Gulyás: In my view, there is no contradiction. Even the Foundation, which is a classical normative text, contains provisions that can, by definition, have no legal consequences. Paragraph (2) of Article I. of the Foundation on the colours of Hungary’s national flag states that “red, white and green” are “the symbols of strength, fidelity and hope respectively.” It is hard to attribute any normative significance to this set of symbols. **The National Avowal features a great deal of symbolic content that does not prescribe any rules of conduct, and does not regulate any constitutional institution.** This also demonstrates that the constitution is more than any other law, as it includes content that is beyond, or, ideally, is elevated above the legal system.

The National Avowal features a great deal of symbolic content that does not prescribe any rules of conduct, and does not regulate any constitutional institution.

The normative quality of the preamble is a matter of long-standing debate in jurisprudence. A good example of this was when, at the time of the Brandt government, the Federal Republic of Germany would have been willing to recognise the citizenship of the German Democratic Republic in the Basic Treaty the two countries were to sign. The Constitutional

Court of the Federal Republic then quashed that provision of the treaty, because the Preamble of the German Fundamental Law prior to the reunification of the two countries stated that “we call upon every German to create the unity and freedom of Germany”, and according to the Court, from this it follows that constitutionally, there can be only one kind of German citizenship, which meant that recognition of the citizenship of the German Democratic Republic would be incompatible with the country’s fundamental law. This ruling had ramifications beyond the purely hypothetical. When in 1989 Hungary opened its borders for East Germans heading to the West, no international legal dispute arose from the fact that the Federal Republic took them in because the Federal Republic had never recognised East Germans as citizens of another country. As this example illustrates, it is not peculiar to Hungary that the content of the preamble can have legal consequences.

– **Does this imply, for example, that Béla Biszku will be prosecuted as a result of the passage condemning communist dictatorship?**

Gergely Gulyás: Obviously, no constitution or any law can criminalise any kind of conduct with retroactive effect.

– Speaking of retroactive effect, a case in point is the issue of taxing severance payments.

Gergely Gulyás: There, retroactive effect did not lead to any prosecutions, yet turned out to be unconstitutional nevertheless. Coming back to your original question, conduct that was not classified in the Criminal Law Statute as a criminal offence at the time when it was committed cannot be reclassified as such with retroactive effect. However, as far as the crimes committed in 1956 are concerned, we should not forget that the facts of cases in the Statute of the Nuremberg Military Tribunal were declared exempt from the statute of limitations by the 1971 New York Convention, which Hungary signed and ratified at its adoption. Consequently, the declaration in the National Avowal may be suitable for drawing attention to this unresolved legal situation, and if necessary, the Parliament or the public prosecutor's office may take action as required by our international obligations. The National Avowal can have an indirect normative effect in this sense, too.

József Szájer: If you interpret it in the narrow sense, the National Avowal does not go any further on the issue of the non-applicability of the statute of limitations for the inhumane crimes committed by communist and national socialist dictatorships than has been included in the international law system since the Nuremberg trials. However, in my view, a broader interpretation is also possible. When in 1992 the Constitutional Court ruled on the Zétényi–Takács law of administration of justice, no principle of interpretation similar to the one we have now existed. Therefore, the answer to your question is that the text of the National Avowal opens up the possibility of prosecution for past crimes. In other words, this paragraph may make it evident that the rules regulating the effect of statutes of limitations in international law can be applied in a broader sense, and not just for the period of the Soviet invasion in 1956, which was narrowed down to the months of October and November and was classified as a war by the Constitutional Court.

– Does this imply, for example, that Béla Biszku will be prosecuted as a result of the passage condemning communist dictatorship?

– For example, if someone was beaten to death by the State Security Authority (ÁVH) in 1951, which was a crime even according to the laws in force at the time, but somehow the case was forgotten over time, and was not prosecuted, can it be now?

Gergely Gulyás: You need to proceed with caution here, because what was considered crime then, namely, murder, has become statute barred in the meantime.

The Zétényi–Takács law would only have stipulated that until the collapse of Communism, the Hungarian state was not in a position to exercise its punitive power in relation to these crimes; prescription was in abeyance until the fall of dictatorship, or more precisely, until the constituent meeting of the first freely elected Parliament. And under the Zétényi–Takács law on the administration of justice, the crimes of high treason, murder, and assault leading to death from the injuries sustained would have been the only cases where the statute of limitations would have been in abeyance, and these crimes were crimes under communism,

Law unequivocally declares the two appalling dictatorships of the 20th century to be inhumane, and this represents a message for all state organisations.

too. (The reason why assault leading to death was included was that if the ÁVH beat someone to death in its headquarters, then the perpetrator should not be able to say that as the deliberate intent to kill his victim cannot be proven, his crime is subject to the statute of limitations). In my opinion, the Hungarian Constitutional Court committed a serious error and amassed one of the greatest moral debts of the tran-

sition by repealing that law. This is what made it possible that, apart from a few villains who fired rounds at innocent civilians, apart from these “petty murderers” compared to the real instigators of the bloody reprisals after 1956, the ones who ruthlessly put down the Revolution, ordered mass executions, headed the ÁVH, and even those who were overtly responsible for opening fire on crowds of civilians, escaped being brought to justice. The German Constitutional Court declared constitutional a similar law on East German communist criminals. However, the Hungarian Constitutional Court adopted a ruling in 1993 which unequivocally opens up the possibility of prosecuting such crimes under international law, primarily in relation to 1956. Many of us get the feeling that something is not quite right when Béla Biszku, who was clearly responsible for the reprisals and executions after 1956, is allowed to enjoy his peaceful years of retirement and follow the news of Sándor Képíró’s trial. Do not get me wrong: if anyone committed the kind of crime that the former gendarme officer was accused of – the court ruled that the accusations were unfounded – then that person would have to be punished. Meanwhile, it is indispensable for there to be general agreement about the fact that such crimes, irrespective of who committed them, should not be subject to the statute of limitations. The absurdity of the double standards being applied even to the condemnation of dictatorships can be revealed if we indulge in a thought experiment and turn the current situation in Hungary on its head.

What consequences would it have if one of the deputies of Ferenc Szálasi (note: the leader of the Hungarian Nazi Arrow-Cross Party) happened to be living in the exclusive, wealthy suburb of Rózsadomb, enjoying the privilege of his more generous pension accruing to former members of government, and was reading in the peace of his home the news of a trial against a former rank and file member of the ÁVH for a murder committed 60 years ago? The preamble of the new Fundamental Law unequivocally declares the two appalling dictatorships of the 20th century to be inhumane, and this represents a message for all state organisations. The Fundamental Law sends a robust message to legal practitioners, the prosecutors' offices, about such cases: if there is a legal base in international law, then action must be taken.

József Szájer: The passage quoted above calls upon the judiciary to decide on such issues. And let me return for a moment to the necessity for a new fundamental law. If a new constitution had defined this principle in 1990 in relation to the changeover to democracy, then criminal law would have taken a radically different approach to the issue of administration of justice. As the transitional provisions of the Fundamental Law are submitted to Parliament separately, rules fleshing them out with more specific content will be drawn up, which is important from the point of view of coming to terms with the past.

We wanted to write a text that citizens who are not jurists can also understand.

Gergely Gulyás: Going back to the structure: **we wanted to write a text that citizens who are not jurists can also understand**, because the Fundamental Law is the country's most important document. Therefore, we endeavoured to word things clearly and unambiguously. At the same time, the structure of the Fundamental Law has a feature that is shocking to men of law, and which I supported despite my original vocation. A jurist would expect that, like laws in general, the Fundamental Law also consists of paragraphs, because that is just the way it has to be. However, in order to emphasise the uniqueness of the text, we used a specific system to divide it into different sections. Jurists may find it strange at first, but then I think everybody will accept it and grow accustomed to it quite quickly. Furthermore, when it is referred to orally, the different numbering will enable the listener to know immediately which part of the Fundamental Law is being referred to, and so, the unique subdivision will make it easier to use the text in the long term.

József Szájer: Just a few comments about what Gergely Gulyás has called "a feature that is shocking to men of law." The previous fundamental law does not

make for pleasurable reading, as it were. Nobody sat down to read it through from start to finish despite the fact that the document occupies the highest position in the legal hierarchy. By avoiding foreign loan words, trying to use plain language understandable to everyone, and making a lot of aspects intelligible and palpable, we made a serious effort to write a text that can be understood without any in-depth knowledge of the law. Of course, we could not avoid, for example, using the term “interpellation” in the passage on state organisation, but in my opinion, the National Avowal, the Foundation and the passage on fundamental rights are easy to read and have the capacity to encourage the reader to identify with them, unlike the text of the previous constitution.

Gergely Gulyás: In our discussions with judges the question arose as to why the passage on courts is not an independent component, but a sub-section of the chapter about the state. The unity of the chapter also articulates the breakaway from the state-centric approach we have mentioned before. This type of structure also demonstrates what we have already referred to so many times: that there is far more to a constitution than establishing the parameters of the public law system.

– How did you decide which historical figures to mention in the National Avowal? Did everyone come up with his or her favourite hero from history after which a vote was held on whether St Ladislaus or Rákóczi would be mentioned?

József Szájer: It was beyond dispute that St. Stephen would be mentioned, but we deliberately refer to him not as the founder of the state, but as the person who placed the Hungarian state on solid foundations. This is significant because the National Avowal was not meant to take a stance on when the Hungarian State came into being. The next part relates to Hungarian society’s historic struggles, but without naming specific events. Reference is made here to the ordinary people who have worked for Hungary’s independence, freedom, and survival over a thousand years. It is also here that we speak of the battles fought in defence of Europe and her interests, and this part is followed by the mention of the unity of the nation, its heritage and national culture. The sentences setting out the fundamental values of living together within a state are emphatically not associated with an ideology but define the relationship between the state and its citizens, and their basic objectives. Solemn documents of the past (such as the law on Lajos Kossuth’s death, the one on honouring the memory of 1956, or the one passed on the 1,000th anniversary of the foundation of the state) usually consist of two elements: they define certain values, and the second part evokes the memory of the actual event.

As this declaration is at the beginning of the new Fundamental Law (and also if we take seriously the proposition that it has to be able to stand on its own), then beyond the fundamental values it defines first, it was indispensable for it also to also make reference to the continuity of constitutionality. Hence the long passage beginning with the declaration that “We honour the achievements of our historical constitution”, and ending with the sentence that refers to the Holy Crown and the relationship between the Fundamental Law and constitutionality. There was a proposal for a more detailed text than the one that was eventually adopted, which, as I have already alluded to, also made reference to the Constitutional Court and the transition. However, as there was general agreement on the issue that instead of mentioning events we would set out the values that are important from the point of view of constitutionality (which are predominantly related to historic deeds), we adopted the shorter version. If we strip it down to the bare bones of positivistic legal use, then we can say that the entity of the state has been uninterrupted for 1,000 years, and this is what the Holy Crown embodies. The issue of the interruption of the continuity of the historical constitution comes next. We can get round this issue in two ways: by referring to the historical constitution and by disqualifying Act XX of 1949. We establish continuity not only through the historical constitution but also by referring to the democratic traditions symbolised by the 1956 Revolution. Of course in a constitutional sense, the historical constitution is there, but the Fundamental Law derives its respect of equality before the law, human rights, the modern state of law, and freedom from the ideas of the 1956 Revolution, that is, from the events of recent history that have symbolic power.

– Why is there no room for paying tribute to the attempt at establishing democracy in 1945? What more potent symbol of democratic continuity could there be than János Horváth who was a Member of Parliament then and sits on the Fidesz benches today?

József Szájer: The Constitution-making body did not take the liberty of assuming the role of historiographers. The Constitution is not a historical tableau! But there was a serious debate about this specific issue. It probably would not have smacked too much of a textbook to mention the 1945 attempt here, but the main objective nevertheless was to restore continuity with the historical constitution, to disqualify the communist constitution of 1949, and to include the 1956 Revolution, together with the democratic transition – this is why reference is made to the fact that the first freely elected Parliament paid tribute to 1956. In fact, the substance

of the attempt to establish democracy after 1945 is included in the constitution, through integrating Act I of 1946, in the passage about the election of the President of the Republic. As was the case in 1989, this was what the antecedent we drew on now too. This can be a stronger link than simply making a symbolic reference to it.

Gergely Gulyás: *Since the Fundamental Law is not a history textbook*, only events and persons whose effects are still present today were eligible for inclusion: St Stephen and the founding of the State obviously come under this category, as

*Since the Fundamental Law
is not a history textbook.*

does 1956. Many perceive the inclusion of the loss of self-determination as an inconsistency, but in my view, this criticism is groundless. It is decidedly progressive and factually accurate that the country lost

its sovereign rights of self-determination on 19th March, 1944 with the German occupation, and that they were restored on 2nd May 1990, when the first freely elected Parliament held its constituent session. It is important to emphasise that the Fundamental Law does not recognise the validity of the communist constitution. At the same time, as the National Avowal explicitly states, on 2nd May, 1990 the first freely elected Parliament was formed as of which date self-determination was restored. There can be no question about the constitutionality of the functioning of the state from that moment on, regardless of the fact that Act XX of 1949 remained in force with the amendments made at the time of transition. The only discussion that is worthwhile centres on whether the state's self-determination is the most important aspect to accentuate in the constitution. *Meanwhile, nothing can be more important for a state than its own sovereignty, in other words that the fate of the country is determined by its own citizens.* The citizens of Hungary were not in a position to do so from 19th March 1944 to 2nd May 1990.

– **The Soviet troops were stationed here until June 1991, and so, strictly speaking, the self-determination of the country was restored fully only after they left.**

Gergely Gulyás: This is true of the date of the end of Soviet occupation, but nobody forced any decisions on the freely elected Parliament and on the government after 2nd May 1990. Many consider the wording of this passage unjust in relation to the period between 1945 and 1947, but they are wrong because in declaring the absence of self-determination, we are not denying the heroic nature of the attempt to establish democracy and the rebuilding of the country after the ravages of war. During the 1945 elections, 60% of the adult population of Hungary had the right to vote, which does not correspond to our concept of democracy

today; nevertheless, it was the broadest circle of people ever entitled to vote in Hungary up to that point in time. As far as self-determination is concerned, the key issue is that under pressure from the Allied Control Commission, the parties had agreed on the future coalition government before the 1945 elections were even held. Consequently, although those elections were more free and democratic than any that had preceded them, their significance was minimal because of the loss of self-determination resulting from the occupation.

The coalition and the composition of the government were determined by the occupying powers and not by the election results. To sum it up: the recognition of the attempt to establish democracy in the years after 1945 has been integrated into the Hungarian constitutional order by means of the inclusion of significant elements of the state organisation of that period in the new Fundamental Law as well. However, this does not alter the fact that the period between 1944 and 1990 should be dealt with as one continuous unit because it was the absence of self-determination that characterised it.

Meanwhile, nothing can be more important for a state than its own sovereignty, in other words that the fate of the country is determined by its own citizens.

József Szájer: The preeminent role of the 2nd of May is interesting because, according to contemporary Hungarian tradition – due partly to the manipulations of the party state of the time – the proclamation of the republic was associated with 23rd October. In other words, this involves linking the change to the proclamation of the amendment of the constitution associated with the previous system, which came into being on the basis of an agreement and which cannot be regarded as legitimate in every respect precisely because of that association. For us, it is very important (and this has always featured in Fidesz’s value system), that May 2 1990 was the dividing line: that was the moment at which the autonomous Hungarian State and its constitutional self-determination were restored. Its political source is 1956, while its backdrop is the 1,000-year continuity of Hungarian history, which was formally ruptured by the German occupation on 19th March 1944. Therefore, the Fundamental Law represents a coherent and meticulously thought through system in this sense too, rather than just an interpretation of history or sterile legal self-definition.

Unlike many others, I feel that the starting date does possess significance. For example, László Sólyom, in his capacity as the President of the Constitutional Court, and then as the President of the Republic, always stressed the discontinuity aspect in contrast to the continuity theory of the transition which occasionally

crops up and is fashionable on the left. In other words, **László Sólyom has always insisted that the rule of law began in 1990, and there is no continuity with the period of dictatorship. Putting his idea into practice twenty years ago would have led to serious problems because the transition from dictatorship to democracy was a single fabric in which the various laws were interwoven.** Today, the stakes involved in making a symbolic declaration concerning the complete absence of continuity are considerably lower from a practical point of view. We will see how freely legal practitioners will interpret these points. I hope they will be more courageous!

– Is the reason why the text emphasises that self-determination was lost on 19th March 1944 because it allows the Hungarian state to wriggle out of taking responsibility for the deportation of Hungarian Jews?

Gergely Gulyás: This is a complete misinterpretation of the concept of self-determination. What we are talking about here is self-determination on the part of the state, which did not in fact exist. It never occurred to anyone to dispute that there were Hungarian people and authorities who participated in the deportation of other Hungarians. However the picture is only complete if we add here that there were also people who risked their lives by hiding victims from persecution. For example, the father of late Prime Minister József Antall (who during his premiership was accused of right-wing nationalism and occasionally of anti-Semitism) saved the lives of thousands of Jewish people, as did Home Affairs Minister Ferenc Keresztes-Fischer, a Catholic priest Béla Varga, and gendarme colonel Lajos Kudar, who was executed for doing so by the Nazis.

József Szájer: I consider this criticism invalid also because we clearly state that the responsibility exists at other junctures: we declared that we do not recognise any statute of limitations in relation to these crimes, in other words, we are not just putting forward a historical assessment, but are also opening up the possibility for legal proceedings to be launched. The fact of occupation does not absolve people of the responsibility of abiding by the law and the rules of humane behaviour. Those who level the accusation you alluded to are also claiming that a state of lawlessness began on

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19th March 1944, where responsibility ceased to exist, and that the Fundamental Law's aim is to articulate that view. However, our intention was the exact opposite.

Gergely Gulyás: Applying the logic of the criticism, it would be possible to conclude that we also want to exonerate the Communists of their crimes, since the latter were also committed under foreign occupation.

– Earlier, József Szájer said that the Hungarian society has not found clear answers to many fundamental questions related to national identity and the past. If I have understood you correctly, the National Avowal seeks to make up for that too, by establishing a view of history containing a minimum that is acceptable

to everyone. **Why then do values held dear by people with a left-wing or liberal inclination not appear in it?**

Obviously, they would identify more closely with the text if, say, not only the Holy Crown were mentioned in it, but, for example, the concept of the Republic.

Why then do values held dear by people with a left-wing or liberal inclination not appear in it?

József Szájer: Why is a constitution drawn up?

Because citizens give a mandate to the state to take care of their common matters, whilst at the same time prohibiting it from encroaching on certain spheres. The values in the National Avowal are to be interpreted in the framework of the relationship between state and citizen, and not of a political ideology – there is no left-wing or right-wing definition of human dignity. Neither the left nor the right enjoy a monopoly on the obligation to help the poor and the downcast. As the old constitution was still in force, it did not follow that the state, in its actions, when it applies a law or does anything in relation to its citizens, must bear the common good in mind. This is a genuinely innovative feature of the Fundamental Law, as, rising above particular world views, it has freedom, human dignity, unity of the nation, loyalty, faith, love, labour, well-being, order, safety, justice, helping the poor, and fair and impartial administration of citizens' affairs as its focal points.

In other words, by defining these common values and objectives in terms of the relationship between state and citizen, the state also places constraints on itself in the sense that the Fundamental Law and all other laws are to be interpreted in light of these values and objectives. Unlike the mass of secondary legislation, which does not embody values, the Fundamental Law sets out objectives for the state, in the acceptance of which there is practically no difference between the views of citizens of a left-wing, right-wing, or liberal persuasion, because everyone shares the view that that the state must not violate human dignity: it must deal

with citizens' matters efficiently, and it must create order and security. Therefore, in essence, the text of the Fundamental Law sets out the values of every rational member of society. This is the most significant philosophical change compared to the previous constitution. In order to decrease the immense lack of trust that we have both mentioned, citizens must be made to feel that "the state belongs to

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us, we are stakeholders in the development of society." The accusations of ideological bias are false, but those who voice them exclude themselves from the community of rational citizens encompassing every member of society!

Gergely Gulyás: We have arrived at an essential juncture in terms of politics. We can try to arrange the contents of the National Avowal into categories and claim that that the Holy Crown belongs to the supporters of Fidesz, while helping the poor belongs to socialists. But what this type of labelling exercise illustrates more clearly than anything else is how end-

lessly divided political life have been over the past two decades, as well as the superfluous nature of the debates engendered by the divisions. We do not consider the mentioning of the Holy Crown to be a gesture to please people on the right or radicals, a gesture that is to be compensated for somewhere else to avoid giving anyone ammunition against us.

We are convinced that the Holy Crown defined Hungarian history for 900 years, it was the basis of the notion of independence; a modern concept of sovereignty lay behind it, and made resistance to autocratic rule possible. We do not intend to exclude the left from these values, so there is nothing to be compensated for here. Just like helping the poor and the downcast is not the exclusive preserve of the left, especially not of today's socialists. The National Avowal defines values and references that are acceptable for everyone.

József Szájer: Who is speaking in this text? "We, the members of the Hungarian Nation..." It is the members of the Parliament, who are drafting the text and presume that the other members of the nation share these ideas. Consequently, the narrators of the National Avowal are the members of the Hungarian Nation – everyone who feels that they belong here can become part of this text. The Fundamental Law is open and inclusive. Members of the Hungarian Nation talk about how they see their own national community, and what values they

associate with living together throughout history. In my view, there is not much room for ideological debate, since the nation, the family, loyalty, faith, and love are basic universal values and objectives that everyone tries to attain in some way. Of course, there may be differences in emphasis, but we deliberately opened the gate as wide as possible.

– How did you decide that the Fundamental Law will start with the National Anthem? It was as if you didn't quite dare to start it with a straightforward transcendental reference, which is why you "hid behind" Ferenc Kölcsey's text...

Gergely Gulyás: Our aim was to find a solution that was in line with our convictions but would also be acceptable to everyone, believers and non-believers alike. As the Anthem is also referred to in Act XX of 1949, and not even the Rákosi regime dared to delete (anecdote has it that the dictator wanted to persuade Zoltán Kodály to compose a new one, but his efforts did not meet with success), it is hard to dispute that everyone feels a sense of ownership towards the first line of our national prayer. The closing sentence of the Fundamental Law, declaring responsibility before God and man, is identical with the eloquent wording of the German Fundamental Law.

József Szájer: I think two things are being mixed up here. One is the question of *invocatio dei*, a genre of literature, theology, and constitutional law, which is a supplication, while the other is the text's reference to Christianity – a lot of misunderstandings have been voiced about that, too. When composing a great epic, a poet starts with an *invocatio dei*, invoking gods or God, as the act of creation is associated with something supernatural. It is not by accident that many states around the world have transcendental references in their national symbols or documents. The American Dollar is probably the most widely known example, but the Polish Constitution also frequently served as a reference during the drafting of the new Fundamental Law. The Polish text is very beautiful and solemn, but it draws a distinction between citizens who believe in God and those who do not. We wanted to avoid this complicated and divisive approach, and we stuck to the National Anthem that is acceptable to everyone. It has been the clearest symbol of national unity for a long time now, and there are no question marks surrounding it. Therefore, the Hungarian Fundamental Law starts with the same word as our national poem accepted by everyone, which also performs the constitutional

– How did you decide that the Fundamental Law will start with the National Anthem?

role of the invocatio dei. The question had already arisen during the drafting of the European Constitution, and I proposed an amendment to the text drafted by the Convention at the time. **In my opinion, whenever we embark upon a human endeavour related to the infinite, whenever we try to include the ultimate questions of human existence in a profane document, we may also express our human frailty.** We Hungarians are immensely fortunate that our National Anthem is also a prayer to God and infiniteness. This is a fortuitous coincidence, which, however, does not open the debate on secularity and non-secularity. The fact that this debate arose nevertheless reveals more about the country's poor state of mind than about the genuine system of values in the Fundamental Law.

– Without disputing your argument, it still represents a choice of a values for the Fundamental Law to begin with the name of God – the quote from the Anthem might just as well appear elsewhere, too.

József Szájer: In my view, alongside the unity of the Hungarian Nation, this line may indeed express some kind of relationship with the transcendental, but it does not force anyone to take any kind of stance. However, the question of Christianity arises at this point, if for no other reason beyond the fact that using the word “God” takes a stance by not talking about gods. Consequently, one may interpret it in a way that it is discriminatory against polytheists, but this is perhaps just a peripheral dispute. If the line “God bless the Hungarians” does not bother us in the

Anthem, and we can even view it solemnly, regardless of our political views, then making reference to the role of Christianity in preserving the nation cannot be deemed problematic either, especially given the fact that the National Avowal guarantees respect of the freedom to have a religious faith or not for everyone.

Gergely Gulyás: The question of Christianity became the focus of public debate because even critics of the Fundamental Law did not consider open confrontation about the first line of the Anthem worth

the effort, so their attacks against mentioning the transcendental were targeted at the mention of Christianity. However, this is erroneous, as mentioning Christianity has nothing to do with transcendence. What we have there is a simple statement of a fact that was taught in schools even during the years of Communist rule, and this was certainly true as the Communist era drew to a close – namely, that the baptism

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of St Stephen and the crown requested from the pope were decisive in preserving the sovereignty of the State and the survival of the Hungarian Nation. This is how Hungary as a state became part of the Christian community of the Europe of the time. The significance of Christian roots is as much a fact of Hungarian history as of European history, and just because Europe does not identify with its religious and cultural roots, does not mean that we have to deny ours. Let me quote József Antall's witty remark here: "In Europe, atheists are also Christians," as the roots of our culture take all of us back to those first principles. Unfortunately, when these disputes grew more acrimonious during the drafting of the European Constitution, which was eventually rejected, the countries (including Hungary) that made it unambiguously clear that without reference to Christianity, Europe is not disregarding its faith but its cultural heritage, were in the minority. Although it is very similar to the draft constitution in terms of its institutional solutions, the Constitutional Treaty of Europe has been stripped of the expression of values, which demonstrates that the European Union is incapable of adopting a common stance on basic issues that would be suitable for creating a solid foundation for a community of values. However, the Hungarian Nation does have the possibility of defining its identity on its own, and it only makes sense to adopt a Fundamental Law that clearly reflects this.

This text can provide symbolic points of identification in a way that does not exclude anyone.

József Szájer: *This text can provide symbolic points of identification in a way that does not exclude anyone.* Neither is the reference to God, the invocatio dei, since it appears in the form of a quote from the National Anthem, nor are the references to Christianity offensive. "Our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago." This is a historical fact. Even the most ideologically biased historians link the preservation of the Hungarian State and the Nation to the adoption of Christianity. At the same time, the text opens up the concept to cover Europe, since Christianity was a very important factor in the thousand-year unity of the continent. The other juncture at which we declare that we recognise the role of Christianity in preserving the nation acknowledges the unity based on faith. "We recognise the role of Christianity in preserving nationhood." This sentence states a historical fact. The text goes on to declare that "We value the various religious traditions of our country." This is already a normative sentence, stating that we respect various religious traditions. This sentence has a much stronger normative

function than the previous one, and there is nothing exclusive about it at all. Because as soon as we start drawing normative conclusions from it, we start talking about various religious traditions; traditions are a historical given.

By way of an interesting detail, many pressed for the 1568 Edict of Torda to be mentioned along with Act of 1894 on established religions, arguing that Hungary has always been at the forefront of the protection of religious freedom. Let me

It was the various religious denominations who requested that the rules on freedom of religion be as detailed as possible, because they are not just relevant in terms of the question of believers and non-believers, but also in terms of the dominance of various religions.

note here that **it was the various religious denominations who requested that the rules on freedom of religion be as detailed as possible, because they are not just relevant in terms of the question of believers and non-believers, but also in terms of the dominance of various religions.** What we have here is by no means a compromise because, in my opinion, the text of the Polish Constitution expresses a compromise. In order to be able to include the passage about God, they divided people into two categories. The sentence there says something along the lines of: “All those who believe in God as the source of good, beauty,

truth and justice as well as those who derive this belief from other sources...” Our Fundamental Law does not draw this kind of distinction between believers and non-believers, but creates the possibility of emotional and political resonance for everyone. I am proud of our wording because it has immense power and is clear.

– The points we have discussed were perhaps the objects of the most vociferous criticism. “Hungary gone back to the Middle Ages”, “Hungary would not be admitted to the EU today”, and “theocracy”, especially in the press of the German-speaking countries.

Gergely Gulyás: Whenever a right-wing government is in power in Hungary, you can always expect this kind of inaccurate reporting to varying extents and with varying degrees of vehemence. Furthermore, facing the truth is always the most painful for someone who had previously denied it. And as has already been pointed out, while the debate on the European Constitution failed to deliver on the issues of the choice of values and religion, the latter became part of the Hungarian Constitution. Therefore, Europe today is confronted by the fact that unlike the rest of the old continent, Hungary proudly declares its roots. In addition, **the negative reaction to the Media Law created an unfavourable climate for the reception of**

the new Fundamental Law: only two or three months elapsed between the two. In many instances we are dealing with misunderstandings, in others cases deliberate distortions, and often downright lies. It's as though some sections of the foreign press were waging a war against a constitution that bears no resemblance whatsoever to the new Hungarian Fundamental Law. Anyway, I have to say that the potency of the attacks against the Fundamental Law was negligible compared to those on the Media Law. It could have been worse, although there were articles that contained appalling falsehoods.

József Szájer: I would like to add to the points Gergely has just made by citing some international parallels. We have witnessed a process in which thinking about the constitution is becoming more European and also more universal. This is clearly demonstrated by the fact that the Hungarian Constitutional Court sees no difficulties in referring to rulings of the US Supreme Court, whilst the Venice Commission is trying to smooth the edges of the invisible constitutions of various countries to bring them more closely in line with one another. Consequently, traditional terms, such as 'Christianity' or 'historical past' can trigger incredible fits of rage anger amongst the left-wing and liberal press, which at present, represents the mainstream in Europe, despite the fact that these concepts figure in other countries' constitutions. I was involved right through the debates on this issue in the European Convention. There too, we strove to codify the freedom of religion and to guarantee a structured dialogue between churches and the state, that is, we tried to ensure that before a state or the European Union takes a decision, they consult not only civil society organisations but also religious organisations – especially if the decision affects the latter. The other side voiced 200-year-old Jacobin views as the mainstream in this debate. The moment we mentioned Christianity, lengthy treatises were presented about the Spanish Inquisition. Quite literally! For example, Spanish socialist MEP Joseph Borell, who later became the President of the European Parliament, wrote a lengthy petition analysing at length the crimes against humanity committed by Christianity. I got the feeling that I was reading a French anticlerical pamphlet from the end of the 18th century.

I have quoted this example to illustrate that certain ideologies cannot overcome their prejudices, and perceive the open espousal of the issues mentioned above as

the negative reaction to the Media Law created an unfavourable climate for the reception of the new Fundamental Law: only two or three months elapsed between the two. In many instances we are dealing with misunderstandings, in others cases deliberate distortions, and often downright lies.

an attack on their existence. Rather than viewing these subjects in their proper context; I see this kind of intention, this breed of tolerance only on the other side. For example, even the Pope acknowledged the crimes of the Inquisition. Churches are also human institutions and as a result even Catholic theology does not consider them free of sin. Instead of a fair and balanced historical assessment, an uncompleted European debate continues in Western Europe – as also becomes

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apparent from the contents of certain resolutions of the European Parliament where the left, joining forces with the liberals have a majority over the civic right. These forces perceive the adoption of the Hungarian Constitution as a defeat. This is why the Hungarian Constitution receives so much attention, while almost nobody paid any attention to other fundamental laws

adopted since the democratic transition.

The drafting and international introduction of the Polish Constitution proceeded relatively smoothly. A gentleman by the name of Kwasniewski chaired the drafting committee in Warsaw, which as a result of an agreement between the right and the left, included the reference to God in the text. Kwasniewski metamorphosed from a young communist to a democratic socialist; a bit like Péter Kiss, even if perhaps not entirely.

What makes the Hungarian Constitution so frightening for them is that it might start a trend. Therefore we can regard their attacks against us as something of a basis for higher self-esteem, as judging by their reactions, Hungary is an important state, one that attracts the attention of others, and whose system of values can somehow serve as a point of reference for others. Nevertheless, according to the ultra-liberal media, it is not desirable for Europe to follow this precedent. They won this battle in the case of the European Constitution, but lost it in respect of the Hungarian Fundamental Law. We do not think in ideological terms, which is something that cannot be said of most of our detractors. **Of course, it is also true that others are not as fortunate as to have a national anthem that starts with the line God bless the French, the Spanish, etc.** And the fact that he is not familiar with Hungarian history or literature is not the only reason why we can safely ignore Cohn-Bendit...



CHAPTER III

THE FOUNDATION

“We are dealing with important passages here because the professed objective of the Fundamental Law is to establish a kind of emotional connection; although this cannot be achieved on the basis of a dry legal text, a solemn declaration and a definition of national symbols is ideally suited to the purpose.” – József Szájer

– **Let us move on to the Foundation. Did you really rename the country?**

József Szájer: Please allow me to make one point before turning to your question. This is yet another issue related to the structure. We had to decide what to highlight and what not to highlight, as even the use of capital letters has significance. We debated this in depth as well. In the National Avowal, certain passages are written purely in capital letters, such as “WE, THE MEMBERS OF THE HUNGARIAN NATION”, whilst in the Foundation we put “OUR COUNTRY” in capitals, and the same applies to “MAN” in the chapter on Freedom and Responsibility, and “HUNGARY” in the section on The State. Comparing these snippets of text should be enough to indicate the philosophy underpinning the document. As far as the naming of the country is concerned, this is also a sign of continuity. In no way do we want to change Hungary’s form of government. Moreover, neither a monarchy nor a republic are prerequisites for democracy or the rule of law. The course of Hungarian history was such that the monarchy came to an end and there are no serious political calls or intent to restore the kingdom. (Unless we consider the statements occasionally made by historian András Gerő as such a call, but even he considers the notion of monarchy important only from a social-psychological perspective, as satisfying a kind of need for stability.) When, during the course of a conference abroad, we were asked why we wanted to change the name of the country, my reply was that

Did you really rename the country?

“You used the name Hungary three times your speech earlier on because this is the word that everyone uses to refer to the country.” It is self-evident that Hungary has been called Hungary for a thousand years, therefore a title that leaves out the form of government is better suited to expressing continuity. The new Fundamental Law is the first document in constitutional law that defines the country’s official name; the former constitution was inconsistent in this respect. The whole question, I think, is a bogus ideological controversy. The only reason behind it is that a single person, Ferenc Gyurcsány, latched on to the concept of the republic that formed part of Hungarian political tradition, but was an idea that had never been fully thought through or debated fully. He adopted it as part of a personal campaign on the basis of which he wanted to construct a kind of left-wing identity. Motivated by carefully calculated political interests, he and his followers kicked up a fuss over this simple fact; obviously, what they had in mind was that this kind of cultural clash would help them unite their supporters.

– We have already talked about the logic underpinning the National Avowal, but what considerations guided you when drafting the Foundation?

Gergely Gulyás: When defining the internal structure of the new Fundamental Law, we would have liked to have integrated an organising principle that was completely absent from the constitution still in force. When, by amending the communist constitution in 1989, the legal frameworks of the rule of law were put in place, the structure of the constitution was not tampered with despite the fact that it bore clear hallmarks of the dictatorship. This was not because a superficial approach had been adopted or bad faith was at play. Perhaps even the pressing nature of the historical circumstances, which left no time to devote to the format, did not play a prominent role in leaving the structure intact. Obviously, the decisive factor was that all parties taking part in the Round Table negotiations believed that the amendments were only temporary in nature, designed simply to ensure that the democratic framework for holding an election were put in place; it would suffice for the new National Assembly – when adopting the definitive fundamental law – to take into account the customary formal requirements applicable in democratic states. In addition, when dealing with a Fundamental Law, even format is considered content. It is no mere coincidence that the first paragraph of the German Fundamental Law adopted in the wake of World War II declares that “human dignity shall be inviolable.” The inclusion of this sentence is much more eloquent than any lengthy historic commentary in demonstrating the relationship

of the newly established democracy to the former dictatorship. The fundamental freedoms enjoyed by every person in Hungary remained in Article XII, after the regulations concerning certain state bodies. Now, with the new Fundamental Law going into force, these issues have been settled. The basic provisions are followed by the fundamental constitutional rights, and only afterwards come the regulations pertaining to the institutional system.

As far as the “debate on the republic” is concerned, first and foremost, we want to put down a clear marker that this is not a debate on the form of government.

Since 23rd October 1989, Hungary’s form of government is and has been a republic and it will continue to be a republic even after the Fundamental Law has entered into force on 1st January 2012. Therefore the debate is purely a symbolic one. Everyone would acknowledge that it is a good idea to use symbols that the citizens of the country feel an affinity towards and apply. Up to now, everyone has considered Hungary, rather than the “Republic of Hungary”, to be their homeland. This is also true of the voters of the parties that are now the most vociferous in their protests. On the other hand, let’s not conceal the fact that the republican form of government did not play such a key role in Hungary’s history, nor does it have any additional connotations that could justify its appearance in the name of the country.

As far as the “debate on the republic” is concerned, first and foremost, we want to put down a clear marker that this is not a debate on the form of government.

In addition, the Foundation contains numerous basic provisions reflecting deliberate value choices, for example, the principle of the separation of powers, which was not included expressis verbis in the former Hungarian constitution. It is worth pointing out here that although everyone agreed that establishing the principle of the separation of powers in the Fundamental Law was considered an important improvement, when in the run-up to the 2010 elections a few MSZP-friendly publicists propagated a completely unfounded nightmare vision of a presidential state if Fidesz were to secure a two-thirds majority. The presidential state as a form of government was suddenly portrayed as some kind of diabolical attempt at dictatorship. In order to avoid any misunderstandings, I am convinced that Hungary’s traditions of constitutional law justified the upholding and indeed the bolstering of a parliamentary system, and I am glad that this has now been set out in the new Fundamental Law. However, the classic separation of powers in Montesquieu’s sense can only be achieved in a presidential state, where the holder of executive power does not necessarily enjoy the backing of the majority in the

legislative branch even if the minority is substantial. Parliamentary governance assumes as a rule that the executive power belongs to the entity that is able to assert its will in the legislative body; therefore two of the three branches of power are simultaneously under its direct influence.

By raising and specifying the issue, we have clarified and stressed the responsibility incumbent on the Hungarian state for the continued survival, fate, and preservation of the cultural identity of Hungarians living in neighbouring countries, both formally and in terms of substance in the Fundamental Law. **The most**

The most important change here involves just a brief formulation: Hungary no longer “feels responsible” but “bears responsibility” for our fellow nationals stranded beyond the borders.

important change here involves just a brief formulation: Hungary no longer “feels responsible” but “bears responsibility” for our fellow nationals stranded beyond the borders. In this context, a particularly interesting debate was held at the Forum of Hungarian Representatives of the Carpathian Basin – convened by Speaker of the House László Kövér – to which all Hungarian organisations from neighbouring countries sent representatives. Many of the forum’s partic-

ipants emphasised that the verb “assume” is much more expressive than the verb “bear”. I argued that one has to be very careful about using the verb “assume” because “assuming” implies a voluntary commitment whereas “bear” simply states a fact. We were looking for an expression that made it clear that the Hungarian state does have a responsibility, and this cannot be the result of a voluntary decision on the part of any government. It is also very important that the same rights that we insist on being upheld and respected with regard to Hungarians living in neighbouring countries should equally apply to the fullest possible extent to the national minorities living in Hungary as a result of the Hungarian Fundamental Law. There was one more question of principle that had to be settled when adopting the Fundamental Law, which I hope is no less important for members of the Hungarian nation living within the territory of the motherland, and that was the definition of the concept of the unitary Hungarian nation. A decade ago it seemed that the Hungarian political powers had arrived at a compromise on this issue, as the concept of the unitary Hungarian nation was already part of the preamble of the Status Law, which was adopted by the National Assembly on the basis of a majority of over 90% including the MSZP party. It was only rejected by SZDSZ – the party that was extremist only in matters pertaining to national policies, but has by now shuffled off its mortal coil due to a favourable turn of fate. Then just a

little over one year after they came to power, the socialists by adopting pointless amendments emasculated the Status Law, and because they were also greatly perturbed by the concept of the unitary Hungarian nation, they also had it removed from the preamble of the legal document.

As far as the provisions governing the national flag in the Fundamental Law are concerned, it is worth noting – particularly because it provides proof of the openness of the process – that even the historian András Gerő contributed to the constitution-drafting exercise, because in one of his articles he wrote that the constitution should state that “red represents strength, white loyalty, and green symbolises hope.” There was a lengthy debate over whether the national flag should be emblazoned with Hungary’s coat of arms, and, if so, what the coat of arms should look like since there are innumerable variants of the one incorporating the Holy Crown that are both known and in use. We were aiming for a compromise: we did not change the flag and coat of arms that we have grown accustomed to using over the past two decades, but we also stipulated that according to the provisions of a cardinal act, the other forms of the flag and coat of arms that have become established historically, such as the one with the laurel wreath or the angels, and they should be deemed equal and equivalent to the flag and coat of arms defined in the Fundamental Law, and hence they may also be used officially.

József Szájer: The phrase stating that “people shall exercise power through elected representatives or, in exceptional cases, in a direct manner” and “the source of public power shall be the people” takes us straight to the heart of a very important debate on the theory of state. Traditional socialist theory links popular sovereignty to popular representation; of course in real socialism, the vesting of popular power in the Parliament has a questionable foundation in reality. Not to mention the fact that the National Assembly at the time was not a body elected in a democratic contest at the polls. In modern democracies, the principle of the separation of powers always asserts itself and – based on the earlier interpretation of the invisible constitution by the Constitutional Court – we claim that the direct exercise of power (i.e. a referendum) is secondary to elected representatives, and this is also where we define the principle of the separation of powers. This latter point is important because there were several criticisms, stemming from ignorance of the new Fundamental Law that took a dim view of the alleged weakening of the separation of powers.

We tried to strike some kind of balance between them, taking into account the experience accumulated over the last 20 years as well as European constitutional history.

Actually, the opposite is true. We have integrated new balances into the system: for example, the Budget Council now has the power to veto any future budget that adds to the national debt. It is a particularly gripping development when the very group of people who accuse us of abolishing the system of checks and balances also attack us for introducing new elements of control.

This is the ultra vires rule of democracy, since no text, including the text of the Constitution, can act beyond its powers, but serves as a reference point.

This is one of the innovations in the new Hungarian Constitution, an addition to the 18th-century theory of Montesquieu that separated the executive, the legislature and the judiciary, and defined their relationship. By contrast, today we are facing a much more complex situation. Ranging from the Constitutional Court through the public prosecutor's office and local

governments to the head of state, there are numerous other branches of power that do not fit in with the theory. **We tried to strike some kind of balance between them, taking into account the experience accumulated over the last 20 years as well as European constitutional history.**

Article C. (2) states that “No person's activity shall be aimed at the forcible acquisition, exercise, or exclusive possession of power”; this article once again refers partly to the categories of the historical constitution and partly to European constitutional development. The sentence is partly a consequence of the formulations of the Golden Bull, and its direct antecedent is a passage in the German Constitution. This is an Archimedean point: if the operation of the state oversteps the boundaries of constitutionality, and the traditional methods of constitutional protection no longer afford adequate safeguards against the actors who use force against democracy, this creates a right to resist on the part of those seeking to defend democracy.

– Right now there are hundreds of thousands of citizens who believe that Fidesz has designs on the exclusive exercise of power and is demolishing democracy. According to the new Fundamental Law, these people can also avail themselves of the right to resist (*jus resistendi*).

József Szájer: In Hungary, power is shared between the judiciary, the public prosecutor, the president, the legislature, and the government. In other words, the separation of powers is implicit in the very organisation of the state itself and we have not even got as far as talking about the institution of the referendum. The text does not talk about political influence acquired through free elections, but

about communist or fascist systems which were run in contradiction to the law, as is familiar from Hungarian history. Having said that, the right to resist is a very important notion in Hungarian history because the Golden Bull empowered the nobility to disobey the king in instances where the latter failed to respect the provisions of the Golden Bull. We have to be aware, however, that the right to resist has been annulled several times, for example, by Franz Joseph after the Compromise. Nevertheless, the Fundamental Law provides for this situation and excludes the person or persons who repudiate the Constitution in a desire to exercise exclusive power from the constitutional system. **This is the ultra vires rule of democracy, since no text, including the text of the Constitution, can act beyond its powers, but serves as a reference point.** Nowhere else does the Constitution mention how citizens can exercise their right to resist, therefore its significance lies more in that it enshrines certain values. By way of a precedent, I could cite the example of the Tejero coup in Spain. If this coup had succeeded, for example, and if the Spanish Constitution had included a right to resist along similar lines to ours, a political community could have formed that would not have had to recognise the seizure of power, and could have legally stood up against the government. In Spain the king, being part of the constitutional system, intervened to prevent that situation from ensuing.

The “right to resist” not only authorises everyone to stand up against a person or groups that attempt to exclusively exercise power, but it also obliges them to do so.

The next paragraph also bolsters democracy as it states that only the State is entitled to the use of force. From the penal acts of St Stephen onward, and through extending gradual control over civil justice and penal law, the State has gradually acquired a monopoly on the means of violence. This otherwise self-evident proposition had to be stated explicitly because in the past socialist era in Hungary social order and public safety fell apart at the seams to such an extent that various uniformed “law enforcement” groups emerged that behaved however they pleased, whose operations are not dissimilar to those we are familiar with from the Weimar Republic. In addition, the dictatorial power, the communist party, also resorted to the workers’ militia to defend itself. One of the most crucial issues of the transition leading to the fall of communism was the demobbing of this party army.

Gergely Gulyás: As József Szájer has alluded to, **the “right to resist” not only authorises everyone to stand up against a person or groups that attempt to exclusively exercise power, but it also obliges them to do so.** Following on from this,

the Fundamental Law also contains a clause stating that only the State has the exclusive right to use coercion – in order to enforce the Fundamental Law or other legal statutes. At first glance these two provisions may even seem to contradict each other, but in practise any attempt to forcibly acquire power, or to exclusively exercise it results in a situation of constitutionally legitimate defence, and in such cases, in order to substitute for or to assist state coercive powers in practical terms, anyone shall have the opportunity to protect the democratic legal order. This provision is often misunderstood or deliberately misinterpreted; at any rate it does not under any circumstances create a legal basis for coercive action by political forces that have remained in the minority and the principle of proportionality must always be applied. The facts of the case designed to ensure the continued functioning of the institutional system of the democratic state in a crisis is similar to the case of legitimate self-defence at the level of the individual. In criminal law, this provides ground for exemption from punishment; in other words, a factual criminal act (for example, a murder) will remain unpunished. Because the victim had been attempting to kill the perpetrator or another individual and the only way to stave off the attack was to kill the attacker; therefore the act of self-defence was not disproportionately brutal and did not exceed the bounds of what was needed in order to stave off the attack, either in time or degree of force resorted to, or only did so as a result of the natural agitation involved in the heat of the moment. In this case, we do indeed accept – as an individual exception – that the state’s monopoly on the means of violence reverts to the individual.

József Szájer: One of the most interesting points of the subsequent sections relates to the concept of the unitary Hungarian nation. The Fundamental Law describes the foundation of the Hungarian State, the rules according to which it operates, and the rights of Hungarian citizens and people. Since the text makes mention of people living outside of Hungary as well, the question arises as to whether it has extraterritorial effect? The answer is an emphatic no, because every single passage in this Fundamental Law that defines obligations or rights speaks in terms of the relationship between Hungarian citizens and the Hungarian State. Where it talks about the ideal of the Hungarian cultural nation, the law is not describing an obligation pertaining to the citizens, but is referring to the responsibilities of the State. In other words, when the text talks about the unity of the nation, i.e. that Hungary “bears responsibility for the fate of Hungarians living beyond its borders”, what it means is that the State has certain obligations to meet in order to keep the nation together. This, however, does not necessarily

imply that the members of the cultural nation have to be Hungarian citizens. In other words, the Fundamental Law does not move beyond the boundaries of the system of constitutional law based on citizenship, but as an important guiding principle, it mentions what we call a nation, the community of Hungarians that exists in terms of society and history alike. Similar approaches are known to us from international practise; here let me just allude to the fact that Russia accepts that Germany extends special assistance to Germans living in its territory.

– Then why does Slovakia think that the Hungarian Fundamental Law extends beyond the borders?

József Szájer: States may, according to European Union and international law, freely decide who they consider to be under their jurisdiction; in other words, any state may – at its sole discretion – decide whom to grant citizenship to. If Hungary decides to grant Hungarian citizenship to individuals with a Hungarian cultural identity and Hungarian ancestors on the basis of an application via a fast-track procedure, it cannot be objected to on any grounds in international law. Political debate may, of course, be generated, but I think what those who object fail to consider is this: initiatives in a multinational region such as ours that are aimed at loosening up the rigid frameworks of nation states (initiatives which can expand opportunities to freely choose one’s identity) do not increase but in fact decrease the chances of conflict, whilst strengthening stability in the region, and last but not least, expand the rights enjoyed by the individual.

– Granting citizenship is part of national sovereignty, as is the refusal to allow dual nationality

– Granting citizenship is part of national sovereignty, as is the refusal to allow dual nationality – this conflict with Slovakia may be resolved through negotiations.

Gergely Gulyás: Certain scholarly legal commentaries on citizenship regard multiple, and thus dual, nationality as an abnormal state. However, the conditions prevailing in Central Europe and particularly in Hungary are abnormal. And those who are least to blame for this state of affairs are the millions who were the innocent victims of the interests of the Great Powers, which callously disregarded the historical, cultural and ethnic frontiers when deciding where to draw the country’s borders. József Szájer has explained clearly how the question of citizenship falls exclusively within national jurisdiction. I would take it one step further: keeping a register of citizens is also the exclusive right of any given state; in the future,

nobody can oblige us to disclose the names of Hungarian citizens to anyone. Of course, it is also true that since the power of the state is, as a general rule, mainly enforced on a territorial basis, the neighbouring countries can encumber the exercise of certain rights pertaining to citizenship. This may happen in relation to the right to vote, which usually does not present any problems because in international practise, states do not tend to impede dual nationals residing in their territory from exercising their right to vote in elections. Romania, for example, reached an agreement with Spain and Italy without any further ado on the electoral districts to be set up for the Romanian citizens working in these two countries.

We have to be clear and precise in our dialogue with neighbouring countries as well. As András Sütő said at the funeral service of József Antall, in reference to the former prime minister's promotion of the spiritual unity of 15 million Hungarians, "trusting in the power of clear words thereby trusting in the power of others to think clearly." Maintaining a good relationship with her neighbours is of vital importance to Hungary, for national and geopolitical reasons alike. We know that there is no realistic prospect of changing the status quo, which emerged in the

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wake of World Wars One and Two and which will be a source of tragic pain to Hungary for all eternity. Respect for our international legal commitments is clearly declared by the Fundamental Law. We have, however, a full claim for Hungary to be allowed to grant citizenship to anyone with a Hungarian cultural identity (in keeping with international laws) upon the individuals' request for it, and consequently we also expect all states to provide all Hungarians living in their territories with all the rights that Hungary guarantees to national minority communities and their members living in Hungary. For Hungary, "good neighbourly relations" in themselves do not constitute a value; when people who declare themselves

to be Hungarian are forced to fight for basic individual and community rights, good neighbourly relations are a hollow declaration devoid of any true substance. Unfortunately, precisely in the period when the basic treaties were concluded with Romania and Slovakia, Hungary had a government which was perfectly satisfied with meaningless declarations, and went as far as trying to present them as genuine achievements. Although in reality, even the short-lived pretence of good

neighbourly relations was made possible because the very concept of national policy was something it could not fathom. Good neighbourly relations may only be achieved on the basis of the mutual recognition of interdependence; now the community of interests existing in numerous areas is a political fact, as we are all members of the European Union and have all attained approximately the same level of development and economic conditions. For this reason, the most important task of Hungarian foreign policy today in relation to neighbouring states is for us to demonstrate to them that shared action stemming from this community of shared interests is more important and beneficial for our neighbours than the debates that necessarily stem from curtailing the rights of national minorities.

József Szájer: In 2004, when Hungary joined the European Union, we adopted the text that has now been integrated into the Constitution after a few stylistic changes, with a view to establishing the precise relationship between EU and Hungarian law. **A very important philosophical question lies behind this exercise: where, in fact, does the European Union derive its power and sovereignty from?**

Our answer to this, in line with the laws of many other EU countries, takes as its starting point the premise that the EU has no independent sovereignty and may only exercise those powers which the Member States transferred to the shared pool and which have been set out in the founding treaty. In the European Convention, I personally insisted until the very last that the EU's convention or constitution may only be amended by the parliaments of the Member States in accordance with the procedures customarily employed by them. In essence, this is what later ended up in the Treaty of Lisbon. In this sense, we are not talking about relinquishing sovereignty, but rather about the exercising of sovereignty through common institutions.

Gergely Gulyás: The process of drafting the constitution was accompanied from start to finish by allegations on the part of Jobbik that labelled the transfer of powers to the EU as high treason and voluntary capitulation. In order to respond to these allegations seriously, it is worthwhile defining the parameters of the debate. The response to the questions raised which would have been satisfactory from their point of view would not have involved the effective assertion of Hungarian interests within the European Union, but instead would have involved Hungary leaving the EU. In other words, they first of all have to make their minds up about whether they are able to accept the EU's fundamental rules and express their

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criticisms within this setting or whether they are disputing the correctness of EU membership in the first place and adopt the objective of leaving that organisation. Therefore all of the criticisms of the constitutional provisions pertaining to the European Union are not in fact attacks on the legal solution contained therein, but dispute the correctness of EU membership. We argue that the advantages of membership considerably outweigh its disadvantages and if anyone takes a different view they should say up front that they believe Hungary should leave the EU rather than hiding behind legal technicalities when indulging in criticisms.

– There were a number of symbolic issues not only in the National Avowal, but also in the Foundation. In one draft, for example, there was the idea that counties be renamed *comitatus*, reverting to the historical designation, which seemed like going back to an archaic usage without any particular content. It would be useful to say a few words on the subject of the flag and coat of arms as well.

One can accuse the Holy Crown of being a feudal relic, but it has been so intimately bound up with the ideals of Hungarian freedom and independence and Hungarian statehood that in my opinion the attacks simply shot wide of the mark. The crown is a sacred and incontestable national relic, part of Hungarian constitutional law.

József Szájer: We are dealing with important passages here because the professed objective of the Fundamental Law is to establish a kind of emotional connection; although this cannot be achieved on the basis of a dry legal text, a solemn declaration and a definition of national symbols is ideally suited to the purpose. We have already mentioned the Holy Crown, which, by the way, was also part of the old constitution through the inclusion of the coat of arms. I can remember that back in 1990, when in the first round of voting neither version of the coat of arms – the one with the crown or the other with the Kossuth coat of arms – achieved the necessary two-thirds majority, I

was one of the Members of Parliament who changed their minds between the two rounds of voting. In the first round, I voted for the Kossuth coat of arms; when it transpired that it was impossible to obtain the necessary majority, but at the same time it was also obvious that the country could not be left without a coat of arms, I – basing my decision on the findings of public polls and research – also opted for the one that is still in force today. I found even back then that many people had strong emotional ties to the crown. **One can accuse the Holy Crown of being a feudal relic, but it has been so intimately bound up with the ideals of Hungarian freedom and independence and Hungarian statehood that in my opinion the**

attacks simply shot wide of the mark. The crown is a sacred and incontestable national relic, part of Hungarian constitutional law.

– I remember what a ferocious cultural clash was inspired by moving the Holy Crown to the Parliament in 2000; however, today even left-wing politicians take their visitors' groups to the Dome Hall...

József Szájer: Yes, I think we do have a few symbols that cross the political divide. The National Anthem and the flag are amongst them and everyone supports the idea that the explanation for the colours red, white, and green (originating from Archduke Joseph, Palatine of Hungary), the trinity of strength, loyalty, and hope, should be included in the text. This continues to be the case, even though we knew that the definition is not the traditional heraldic definition, but involves the inclusion of the message of the 1848 Revolution, the representation of the traditions of the “Kossuth” coat of arms, if you like. Although Katalin Szili proposed that we do so, we did not separate the state flag and the national flag (the former with the coat of arms, the latter without it), yet maintained the possibility of using both, not only so as not to separate the state and cultural nations, but also because of an international legal consideration. If we were to integrate the coat of arms into the flag, the red, white, and green colour combination would no longer enjoy protection, and could be used by any newly formed state. I am convinced that the power of the flag lies in its simplicity. Small states of dubious provenance tend to pack a multitude of symbols into their flags to make themselves distinct from others. Hungary has no need to do so.

Gergely Gulyás: The wording that says that “the coat of arms (...) may also be used in other historical forms” essentially sanctions an existing practise. The Prime Minister, for example, uses a letterhead with the coat of arms with the laurel wreath, whilst the Speaker of the House uses one with the coat of arms with the angels in official correspondence. As for the national holidays: not only did we define the three national holidays, but we also made it clear what they signified. It was a dreadful communist habit, which persisted in the post-communist era that lumped together incompatible events. This is how 20th August, which traditionally commemorated St Stephen and the foundation of the state, became a celebration of the communist constitution. This is how 23rd October became a celebration of the proclamation of the republic, so that during the few years when the politicians who had been enthusiastic servants of communism would have felt awkward about commemorating the 1956 Revolution, they would still have something to celebrate. **It was perverse in its own right that the legal successor of the party that**

bloodily suppressed the 1956 Revolution proclaimed the republic on the anniversary of the outbreak of the revolution. The idea was mooted that we adopt the new constitution on 15th March, but the mere thought sent shivers down my spine.

It was perverse in its own right that the legal successor of the party that bloodily suppressed the 1956 Revolution proclaimed the republic on the anniversary of the outbreak of the revolution.

The significance of the great national holidays cannot be obscured, even if the new Fundamental Law has a lifespan comparable to that of the American Constitution. Therefore the Fundamental Law quite rightly makes it clear that 23rd October is not a day commemorating the proclamation of the republic, but the 1956 Revolution and the problem relating to the symbols associated with 20th August is resolved by the mere adoption of the new Fundamental Law, even

though the birth of the former constitution was probably only rarely celebrated in public and also probably only by a very few.

József Szájer: The question as to why 1848 has not been included in the Fundamental Law has cropped up several times, but as we have seen it has actually been included in relation to the national holiday on 15th March. There were, by the way, proposals to increase the number of national holidays in the spirit of the values defined in the Fundamental Law. Not only because everybody looks after Number One, but as a native of Sopron, I broached the issue of declaring the anniversary of the Sopron referendum as Day of Fidelity. On the other hand, 14th December is a state commemoration anyway, pursuant to a government resolution from 2011. Although the 1921 referendum only concerned one city, it had a national significance, and provided an opportunity for the tragedy of Trianon to appear in the text of the Fundamental Law. Even though the initiative did not get majority backing, I am nevertheless glad that the idea of fidelity at least found its way into the text through the explanation of the colours of the flag.

– **If you attached such great importance to traditions, why did you not revert back to the comitat, the system that had proven its mettle for 900 years?**

Gergely Gulyás: This was one of the questions that divided the Fidesz parliamentary group, and so it was necessary to carefully review the historical antecedents: in the time of St Stephen counties were in use, then the name comitat was adopted during the reign of King St Ladislaus. The 1848 acts also used counties, and the two names were used alternately thereafter. During the thousand-year history of Hungarian statehood, the term comitat was used over a longer period of

time, yet it is far from true that it was the communists who got rid of the historical designation and made up the new one to replace it. So no clear-cut decision could be taken on the basis of the historical antecedents; however a number of MPs indicated that the idea had not gone down at all well in their constituencies. So in the end, because there was no unambiguous legal historical tradition, whereas the potential reintroduction of the old designation had been unpopular, and since at the present stage of Hungarian political life it is always dangerous to make symbolic decisions that subsequently entail costs, the parliamentary group eventually decided to stick to the word “county” with two-thirds against and one-third in favour. This too was a completely open issue right up to the last minute.

József Szájer: The debate on the history of the constitution presented us with a good opportunity to make the question of continuity tangible to the public, as the institution of county was the only one that had been in continuous existence for over a thousand years.

The concept of national and ethnic minorities is replaced by nationalities; instead of the Republic of Hungary we use Hungary.

The debate also helped to shed light on the fact that the new Fundamental Law replaces concepts in a way which may still seem strange to many, but in a few years' time they will not cause anyone to so much as bat an eyelid.

For example, **the concept of national and ethnic minorities is replaced by nationalities; instead of the Republic of Hungary we use Hungary;** we change the term used for employer to convey the idea of someone who provides you with work rather than someone who puts you to work; and all these adjustments will have an impact across the Hungarian legal system as a whole in the sense that it is not the Constitution that needs to be adapted to bring it in line with secondary legislation, but from now on, secondary legislation will be adapted to the Fundamental Law, and these adjustments will be rolled out across the entire legal system.

– In the Foundation there are at least three passages involving very clear value choices which will have a specific impact on people's lives. One is Article L on marriage; then “Every person shall be responsible for himself or herself” as set out in Article O, and finally Article C, which stipulates the protection of natural resources, especially agricultural land, forests, and water reserves. What considerations did you take into account when you selected the final versions?

Gergely Gulyás: **In certain cases we did nothing other than simply integrate earlier Constitutional Court rulings into the Fundamental Law.** This is reflected in

the formulation on marriage as a union between a man and a woman. As László Salamon put it jokingly, “we are grateful for the words of appreciation, but the credit really goes to the Constitutional Court.” This is precisely why this particular provision does not have a normative effect, given that, based on the decision of the Constitutional Court, allowing for the marriage of same-sex couples would have been unconstitutional even without this provision being explicitly included in the Fundamental Law. This passage is a clear value choice: marriage, I believe both on a conceptual level, according to the Fundamental Law, and also according to the Constitutional Court, can only be a union between a man and a woman. This has been the case up to now and will certainly continue to be the case in the future. This, of course, does not mean that the institution of registered civil partnerships is under any threat.

Article O on responsibility was lifted from the Swiss Constitution. We wanted to break with the doomed notion, which has been repudiated by both the political right and the left and which dates back to the Communist era, that the individual expects the state to provide everything and does not feel the need to make any effort to better their lot in life. To couch it in political terms, we wanted to present the ideal of the citizen which was so successfully represented in Fidesz’s 1998 campaign.

Article C was intended to fill a gap. This clearly shows that the Fundamental Law, whilst reflecting the values of the past and the importance of protecting traditions, at the same time looks ahead to the future. Consensus has by now been reached among experts that water and agricultural land will figure among the most precious treasures and resources of future decades. The mention of these points in the Fundamental Law, and the references to them in a cardinal act will provide an opportunity for more effective protection and state intervention than was the case before.

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József Szájer: The Foundation articulates three very important sustainability principles. This, of course, was not always clear for everyone in the petty debates on the Constitution in the media and politics, not to mention that sustainability is also not among the most elegant of Hungarian words, which is why we tried to couch it in slightly different terms. These three principles of sustainability form the basis of all state life. One of them is demographic sustainability, which translates to the communal biological survival of a society, which is linked to child allowances, starting a family, and other similar consequences. The sustainability of the budget is important primarily because of

the problems of recent decades: **we considered it important that the state also abide by the principle of “living within one’s means”**. The third one is environmental sustainability, which is linked to the clarification of property issues every bit as much as to the responsibility that we bear towards future generations and the protection of traditions. I consider the wording of the responsibility clause a fundamental paradigm shift, because with this the Fundamental Law has put an end to statism. In other words, action is required not only of the state, but also of each individual; everyone is responsible for himself or herself and his or her community.

As far as marriage as the union between a man and a woman is concerned, my stance is that this is a traditional concept enshrined in the Civil Code. It is already part of the Hungarian legal system and the issue has been clarified by the Constitutional Court on several occasions. Any call to change an institution must have strong social backing. We cannot decree that a notion is set in stone forever, but at this stage, the idea that Hungarian society has of marriage dovetails completely with the definition currently contained in the Civil Code. What does the Fundamental Law say?

We considered it important that the state also abide by the principle of “living within one’s means”.

“Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision.” This does not imply a ban on other forms of marriage if you look at it from a purely grammatical perspective. All this says is that it shall protect this particular form. This is why I say that the critics have misinterpreted the wording, which at the same time also reflects the intentions of the lawmaker to ensure that marriage will, for quite some time to come, remain what it has traditionally been considered to be. There is one further element to the story: major criticisms, mainly emanating from abroad, were expressed in relation to the passage stating that “Hungary shall protect (...) the family as the basis of the nation’s survival”; many believe that this excludes single-parent families, and is therefore discriminatory in nature.

This is a misapprehension: this passage of the constitution does not define the concept of family, which in essence is left up to the current laws to define. Taking Hungarian reality as our starting point: a personal income tax rebate is also extended to include couples who live together, and similarly, child allowance is not restricted to married couples. It is therefore clear that any insinuations of discriminatory intent are in bad faith to say the least. One final point on marriage: there was debate within the parliamentary group as to whether it was necessary to

include the subject at all in the Fundamental Law. I also assumed that the Civil Code and the decision of the Constitutional Court rendered its integration into the Fundamental Law superfluous. However, we have to realise that the formulation is included in, for example, the Lithuanian, Polish, Bulgarian, and – surprisingly – in the Spanish constitutions as well.

– As far as the protection of agricultural land is concerned, let me refer to the criticism by Jobbik, which I presume is shared not only by this party’s voters. Many are afraid that after the moratorium on land purchases expires, the bulk of Hungarian land will end up in foreign hands. What opportunities does the Fundamental Law provide to prevent this from happening, and is the buying up of land by foreigners a genuine threat?

Gergely Gulyás: Land is obviously the last fallback for many nations. In Europe, many countries do everything in their power to protect their agricultural land, which serves to demonstrate that the regulation of land ownership is a matter of national life and death elsewhere as well. The EU Member States have usually been able to come up with solutions that are compatible with community rules, which enable them to keep foreigners out of the domestic land market without violating the basic principles of the European Union. The new

For once it is enough simply to copy some of the incredibly ingenious European examples.

Fundamental Law empowers lawmakers to seek such solutions. **For once it is enough simply to copy some of the incredibly ingenious European examples:** for example, the right of first refusal to buy land may be given to the neighbouring farmer, then local residents, then the state land fund, and if necessary, the transactions may be backed by state loans at a preferential rate. So, without having to define an *expressis verbis* ban, a regulatory framework can be put in place that would in essence make the acquisition of land by foreigners contingent upon the free decision by the local farmers and the Hungarian state.

József Szájer: Let us mention at this juncture the concept of biodiversity, because it played a very prominent role in the debate within the party, and enjoyed widespread support. This also relates to one of the environmental sustainability issues referred to earlier, which attempts to represent the diversity of nature. When we talk about what makes this Fundamental Law a constitution for the 21st century, we are thinking of the three following issues: environmental sustainability, biodiversity, and being a GMO-free region.

– Why did you include things that are self-evident in the Foundation? The forint has been the official currency up to now anyway, and the laws are binding on everyone.

József Szájer: The Foundation is actually the realm of the self-evident; this is the place where we describe or name fundamental matters. The forint, I think, is a symbolic question, even if it may sound funny to some to say that the national currency is one of the symbols of budgetary sustainability. The forint, similarly to the flag and the National Anthem, is part of the national repository of symbols. Older people might still remember what a relief it was to introduce the forint after a period of record hyperinflation: the only lasting outcome of the brief attempt made to establish democracy after 1945 is the forint. Perhaps I am not the only one who feels that key economic concepts are missing from the constitution amended in 1989–90; had they been included, we could have avoided certain difficulties. For example, constitutional regulation could have reduced indebtedness.

Article M includes a truly substantive innovation, and at this juncture I would like to refer you back to the issue of the ideological antecedents. The wording of the article demonstrates that the aim of the lawmaker was not to cement any particular ideology into the Fundamental Law, but to revert back to basic social concepts. So we are not saying that Hungary is a market economy, and we are not saying that it is a social market economy, as there were major debates over this in the early 1990s. If memory serves me well, Fidesz was opposed to Hungary being called a social market economy, yet the term market economy, encapsulating the general definition summarising the economy, is also insufficient. Here we went back to basics and said that the country's economy is based on work and enterprise. This is a reflection of certain social-philosophical considerations. Fidesz continues to argue today that the Kálmán Széll Plan is an economic programme that builds on work. From a similar theoretical starting base, Viktor Orbán talks about a workfare state rather than a welfare state; we want a work-based state in order to preserve the values of European civilisation. The text is then followed by a passage that expresses one of the most important lessons of the past 20 years: namely, that contrary to certain claims, the market cannot solve everything. The state is under a strict obligation to define clear rules and monitor compliance with them, but it was not always strong enough to do so; this is why the relevant provisions had to be established in the Constitution. It had to be transformed into a state objective,

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and the Constitution had to set out clearly that the protection of consumer rights was a fundamental issue alongside the guarantee of free competition, similarly to outlawing abuse of a dominant position. These are therefore very important rules, and I am confident that the beneficial effects of this new direction in state philosophy will be felt at least in the medium-term if not sooner. The past 20 years in Hungary have led to a situation where, invoking the slogan of the free market, many unscrupulous individuals have been deceiving citizens about their rights and grossly violating them. For example, large enterprises were able to do this because, under the bogus rallying cry of dismantling the state, they rendered the latter incapable of protecting its citizens. The ability to do so naturally does not hinge on the will of the state alone, but I trust that with the inclusion of this important issue in the Fundamental Law, future governments will have a powerful mandate to take action. What I have in mind here is that the text includes consumer rights, and the state's obligation to enforce the rules on fair competition.

Gergely Gulyás: *If we want a fundamental law that Hungarian people can truly identify with, then it is only right and proper for the Constitution – in addition to abstract legal concepts stemming from the peculiar nature of the genre – also to contain regulations that reflect everyday experience.* The currency of a country, the currency in which citizens receive their wages, is an important enough issue

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to warrant inclusion in the Constitution (by the way, this was Mihály Varga's proposal, but I thought it a good idea). In order to avoid any misunderstandings, this decision was not about the forint, but the currency. When one day the euro becomes the official currency, Article K will not have to be deleted, but it will be enough to modify the wording to mention the euro as the official currency. The simple fact that this will require an amendment of the Fundamental Law will not make any real difference, since changing the regulatory framework pertaining to the National Bank of Hungary will also require a similar majority. Among

the parties currently represented in Parliament –with the possible exception of Jobbik – there is consensus on the future introduction of the common European currency. The majority is therefore secure, so in answer to the criticisms accusing us of being provincial for including the forint, we can safely respond that including the forint in the Constitution does not alter our commitment undertaken in

2004, according to which we will join the euro zone once all the criteria have been met—provided that the common currency still exists by that stage, which many are beginning to have doubts about. What we found infuriating was that certain individuals portrayed this in such a way as to suggest that we are against the euro; despite of the fact that in 2002, Fidesz handed power back to the socialists in such a way that even after a nasty election campaign, and the change of government, consensus continued to exist on the issue of the euro being introduced in either 2006 or the following year at the very latest, depending on the state of the Hungarian economy. In 2010 by contrast, we regained power in a situation in which there was once again almost complete consensus that it would be irresponsible to set even a tentative target date for joining the euro zone; now we stand accused of wanting to set the forint in stone as the only possible currency for Hungary.

– József Szájer mentioned the intention of strengthening the state in relation to which, it may legitimately be asked whether you had not overshot the mark, as the Fundamental Law stipulates that the principle of sustainable economy must be borne in mind by the courts when making decisions. A situation might therefore ensue in which the courts may refuse to award the payment legitimately claimed by, let’s say, firemen for the overtime they worked, on the grounds that it might jeopardise the budget.

Gergely Gulyás: Sustainable economy is only an interpretive framework, which, by the way, the Constitutional Court has so far taken into account in most instances. You have to realise that the state of the central budget affects everyone: the state is able to pay out certain allowances for the simple reason that it is not bankrupt. This is an aspect that the Constitutional Court usually investigates, and may be published when a piece of legislation is abolished, when the Court abolishes a legal regulation not retroactively, but which will apply in future. The practise of the Constitutional Court of taking economic restrictions into account is also discernible in other areas. When interpreting the “right to enjoy the highest attainable standard of physical and mental health” which featured in the previous constitution, the Court adopted the stance that the adjective “highest attainable standard” had no meaning, since the quality of the healthcare provided was a function of the country’s economic performance; in essence what the Constitutional Court was saying was that economic reality

Sustainable economy is only an interpretive framework, which, by the way, the Constitutional Court has so far taken into account in most instances.

could supersede the Constitution. In fact, what the Court did in weighing up the abstract legal concept with the reality was – correctly – to give precedence to the latter because if we were to hold all Hungarian healthcare institutions accountable for providing the highest attainable service available today according to the latest scientific achievements, then quite a few hospitals would have to be closed down immediately for being unconstitutional. I would not include overtime pay in the same category because the costs thereby incurred do not threaten economic stability as a proportion of the budget as a whole. This was particularly true when the decision was taken and substantial interest payments did not yet have to be made in respect of the principal sum.

– Which category do the assets of the private pension funds come under?

Gergely Gulyás: The repayment of the assets of the private pension funds would most certainly lead to the collapse of the budget, therefore the Constitutional Court will also have to take this into account when taking a decision on the issue. Moreover, according to the Constitution in force, I think the Hungarian State is completely free to decide how it wishes to define the various pillars of the pensions system. As far as the essence of the restructuring is concerned, I don't think there is any reason to believe it was unconstitutional.

József Szájer: Regarding the State, a misguided debate has been taking place in Hungary. According to one camp, the State is a bad and incompetent owner and steward, and should therefore be dismantled. According to the other camp, state intervention is the sole panacea. In contrast to this, the only rational stance –

and therefore the one which has been adopted by Fidesz – is that the State should be strong where there is a need for the State to be strong. Where fair competition can only be achieved through forceful intervention, the state needs to be strong; when the criminal statute needs to be enforced the State must once again be strong. But the State should not meddle in other areas

However, success is not guaranteed even with these legal statutes, but I am convinced that we are on the right track.

of its citizens' lives; it should not compile data that is superfluous and pointless. The Fundamental Law was also conceived in this spirit: on the one hand, it attempts to bolster the State by clearly stipulating that the State has upheld monopoly on the means of violence and that it shall guarantee compliance with competition rules in the economic sector, but on the other hand, the clause on responsibility has also been included.

As far as the principle of sustainable budget management is concerned, it is, in fact, a genuinely new principle in terms of constitutional law. When we give the Budget Council the power of veto, when we define normative rules to reduce the national debt, what we are essentially doing is trying to force ourselves and our successors to manage the budget responsibly – given that the governments before us had not bothered in the slightest about the interests of future generations. This is not a problem exclusive to today: one of the reasons the French Revolution broke out in 1789 was the immeasurable indebtedness of the kingdom, and the financial problems that resulted from it.

However, success is not guaranteed even with these legal statutes, but I am convinced that we are on the right track. And contrary to appearances, this is not merely a question of the economy: in a country that has gone bankrupt, the rule of law cannot be guaranteed. As far as the firemen of the previous question or the decisions with a major impact on the budget are concerned, this does not mean that the judge cannot arrive at a verdict as he deems fit. All this means is that the judge, when mulling over the decision, must take account of the consequences because under the present circumstances even a single decision can plunge the country into economic ruin.

The checks and balances related to the stability of the budget and the management of state institutions were not strong enough.

Gergely Gulyás: The new Fundamental Law introduces in the chapter on fundamental rights an obligation on the part of the state to pay compensation for unlawful detention. The unambiguous inclusion of this has led to unworthy debates in the compensation cases in the wake of the police brutality of autumn 2006 and the completely unfounded arrests and subsequent periods of detention. Judicial practise, however, clearly defines the amount of compensation to be paid; in other words, this will not lead to the payout of the kind of unrealistic amounts of compensation being awarded that we are familiar with from the United States. The checks and balances related to the stability of the budget and the management of state institutions were not strong enough; they are now clearly defined in the constitutional rules of the Fundamental Law on public funds. However, the obligation for state authorities to cooperate with a view of pursuing transparent and sustainable budget policies continues to be in force nonetheless.



THE ENDURING LEGACY OF THE HISTORICAL CONSTITUTION

“Achievements enter into the discussion when the text stipulates that the Fundamental Law shall be interpreted in accordance with the achievements of our historical constitution.” – József Szájer

“I am convinced that the achievements of our historical constitution refresh the present Hungarian legal system. If we were able to accept the European achievements of the invisible constitution, then our historical constitution can indeed corroborate the notion that we have on numerous occasions already been amongst the leading lights of Europe in terms of the enforcement of rights.” – József Szájer.

– The subject of the historical constitution has already been mentioned several times, and the concept has already been defined. Why has this become one of the most important reference points of the Fundamental Law?

József Szájer: Achievements enter into the discussion when the text stipulates that the Fundamental Law shall be interpreted in accordance with the achievements of our historical constitution. This is a novelty to the extent that it originates from EU law; it is the translation of the expression “*acquis communautaire*”. When Hungary joined the European Union, the *acquis communautaire*, which contained regulations on the most diverse levels, had to be taken on board. It consisted of rules stipulating a certain degree of protection for basic rights (e.g. prohibiting gender discrimination at the workplace) and competition law. But it also contained the stupid and extremely expensive rule stating that the European Parliament continues to have three official seats. As a result, European taxpayers are stumping up an extra 200 million euros because the European Parliament, like a travelling circus, moves from one country to the other, from Brussels to Strasbourg. Changing this requires consent on the part of all Member States.

The word *acquis* means apex, which is accurately reflected in the Hungarian translation *achievement*, which in this sense cherry picks from amongst the rules contained in the historical constitution. So, for example, rules decreeing that the hands of a thief be cut off, or anti-Semitic laws, cannot under any circumstances be construed as achievements on the part of the historical constitution, since the latter eradicated the civic equality before the law proclaimed in 1848 in Hungary, and led to the appalling tragedy of the nation. The meaning of the word “achievement” therefore is as follows: we “superimpose” the system of the current Fundamental Law on the historical constitution, and then we take a look at what stands out as an achievement or as a virtue that ought to be retained. Nobody disputes that the transformation of the deeply ingrained positivist way of thinking (that has been mentioned several times already) and the restoration of continuity calls for intellectual audacity, yet there is a genuine need for

The concept of cardinal acts does have a historical tradition in Hungarian law – albeit differing in terms of the precise majority necessary to pass them – and moreover, “cardinal” is more expressive and simpler than “two-thirds”.

new solutions. I am convinced that the achievements of our historical constitution refresh the present Hungarian legal system. If we were able to accept the European achievements of the invisible constitution, then our historical constitution can indeed corroborate the notion that we have on numerous occasions already been amongst the leading lights of Europe in terms of the enforcement of rights. When we talk about civic equality before the law, not only the achievements of the French Revolution should spring to mind, but many other elements from the evolution of Hungarian law from the Edict of Torda onwards. If we interpret these events and are proud of them, then what is to prevent the Constitutional Court from replacing a reference to the US Supreme Court in the justification of any of its decisions with a 19th century ruling passed by the Curia?

– But what will ensure that politicians will interpret the parts of the historical constitution correctly? Let’s take the example of the term “cardinal act”. Traditionally, this used to be a compilation of the most important rules of Hungarian constitutional law, from the order of succession to the April Laws. In the new Fundamental Law, the term “cardinal act” simply refers to laws requiring a two-thirds majority to be passed, which represents a complete transformation of meaning.

Gergely Gulyás: *The concept of cardinal acts does have a historical tradition in Hungarian law – albeit differing in terms of the precise majority necessary*

to pass them– and moreover, “cardinal” is more expressive and simpler than “two-thirds”.

József Szájer: One of the traditional meanings of “cardinal act” was to regulate the constitutional order of the country. Something similar is happening now too – the laws of greatest importance from the point of view of the State are called cardinal acts: there has been no major change, whereas we have retied the broken thread of continuity with just a slight change in meaning, as we have readjusted one of the classical concepts of the historical constitution to bring it in line with today’s constitutional order.



CHAPTER V

FREEDOM AND RESPONSIBILITY

“We had at least three main objectives. The most important aim was to create a coherent and transparent basic legal regulatory framework that reflects reality. [...] The decision to draw up the chapter of the Fundamental Law on fundamental rights not by simply copying the European Union Charter of Fundamental Rights, but by taking it into account, proved to be ahead of its time as it provided a response to questions that were still unknown 20 years ago or had not yet been given the attention they deserved. [...] Finally, as far as fundamental rights are concerned, we had to take decisions on a few political issues, and here I am thinking primarily of the right to vote, whereby we opened it up to Hungarian citizens living beyond our frontiers who had been excluded from exercising that right by the constitution in force up to now” – Gergely Gulyás

– What was the reason behind placing chapter 12 of the constitution currently in force on rights and obligations, entitled Freedom and Responsibility, straight after the Foundation?

Gergely Gulyás: If the only amendment we made had been to bring this chapter forward it would already have been a major improvement. In Act XX of 1949, the fundamental rights are listed almost as an afterthought right after the last institution of the state organisation, which is a reflection of a communistic, state-centred philosophy. Not to mention that the title “rights and obligations” has a distinctly Communist flavour to it; by contrast, “freedom and responsibility” is a much more precise and less legalistic-sounding term. As far as the responsibility clause of the Foundation is concerned, we have already mentioned that in some areas citizens

can enjoy certain rights without corresponding responsibilities. You are entitled to freedom of speech even if you do not meet your obligation to contribute to the public purse by paying taxes. However, even if the individual does not fulfil his obligations he nevertheless continues to have responsibilities in relation to the rights he enjoys. Freedom of speech, freedom of the press, even the right to vote all involve responsibilities without concomitant obligations.

After 1989, chapter 12 of the Hungarian constitution contained the fundamental rights customary in states where the rule of law prevails, but the very fact that 20 years had gone by was enough in itself to justify certain changes. For example, the development of genetics or increased awareness of environmental protection both gave rise to a number of questions that could not have been foreseen even by the most meticulous of lawmakers, which is why they could not have come up with an appropriate response by definition. Moreover, the importance of rights is what has primarily stuck in the public mind from the current constitution, even though it defines obligations as well.

– **One of the most important criticisms of the new Fundamental Law was that the document is diametrically opposed to the constitution currently in force in that it makes the exercise of even the most important right conditional upon the fulfilment of obligations.**

Gergely Gulyás: We must be self-critical here and admit that the draft adopted by the ad hoc committee on drawing up the constitution really did contain an unfortunate sentence from which this conclusion could be arrived at. However, the definitive version of the Fundamental Law as adopted makes the distinction very clear: for example, everyone enjoys freedom

of speech, freedom of assembly, freedom of religion, and freedom of expression, regardless of whether they fulfil any of their civic obligations or not. There are, however, certain entitlements, primarily in the realm of social rights, which the state might justifiably make conditional upon the fulfilment of certain obligations.

József Szájer: Along similar lines to other sections, the part on Freedom and Responsibility is also separate from all the others; it may be understood as a peculiar Hungarian “Bill of Rights”.

One of the most serious defects of the constitution amending process during the transition was that although we had planned to do so, we did not succeed in

We did, in fact, succeed in breaking with the Stalinist concept that derives human rights from the state. We start precisely the opposite way around.

adopting a new constitution that placed fundamental rights ahead of others in a manner worthy of a democratic state.

We did, in fact, succeed in breaking with the Stalinist concept that derives human rights from the state. We start precisely the opposite way around. This is one of the main starting points. The other point concerns the theory of obligations: when in the framework of the National Consultation, we asked the question as to whether citizens should only have rights or obligations as well, the latter proposition enjoyed overwhelming support. True enough, setting this down in writing is hardly a revolutionary innovation, since compulsory military service or tax liability are both included in the constitution currently in force.

Hungarian society palpably rejects the excessively liberal approach, and this can be distilled from the debates on the deterioration of law and order, which look at the rights of victims and criminals in the course of being prosecuted. These reflect that society is in support of a balanced approach: it does not support the principle of “I only have rights and the State only has obligations” which is an expression of an exaggerated individualism.

The intention that has already been alluded to by Gergely Gulyás, the one that would link the exercise of certain rights to meeting obligations, stands on shakier ground. Here we have Article XIX for example, which states that: “The nature and extent of social measures may be determined by law in accordance with the usefulness to the community of the beneficiary’s activity.” In essence, this clause makes the payment of certain allowances conditional upon carrying out some useful activity for the community. But let’s not jump to conclusions, we are not talking about fundamental rights; they may still be exercised without having to meet any obligations.

But what would impede, let’s say, a Constitutional Court of the future from saying that if such an obligation may be prescribed in relation to social rights then why should the same not be applied to, for the sake of argument, freedom of the press? For example, you would only be allowed to write a blog or publish a newspaper if you have excelled at picking up litter in public places.

Nothing of this kind can be prescribed even if the narrowest interpretation of the Fundamental Law were to be applied. The legislator did not specify any actions in relation to the responsibility clause; this option is exclusively limited to welfare, and even there it is in the conditional.

Gergely Gulyás: The Fundamental Law makes it unambiguously clear that everyone is entitled to the classical freedoms. Even the most notorious criminals,

robbers or murderers may not be subjected to torture, or inhumane and degrading treatment.

József Szájer: In the Fundamental Law, on the one hand, we stipulate the obligation to perform work, but do not introduce sanctions for failing to do so; one must work to the extent that one's abilities and opportunities allow. We also define the obligation to serve one's country in the event of war, but in peacetime there

Because we believe it to be a legitimate social expectation that members of the community obey the rules.

is no compulsory military service. A new obligation is that of protecting the environment, creating the criminal offence of damaging nature. The obligations to attend school and to bring up children without neglect have also been included. However, the latter ones really ought to be considered responsibilities rather than obligations **because we believe it to be a**

legitimate social expectation that members of the community obey the rules. At the same time, certain rights must still be guaranteed for people who, for example, have excluded themselves from society by committing crimes.

As far as the overwhelming majority of the classical rights are concerned, the state must simply refrain from intervening; the passages on the right to freedom of speech and freedom of assembly and association, for example, have been drafted in this spirit. As for the codification of freedom and responsibility, on the other hand, we have brushed up against several issues left unresolved over the last two decades. In Western countries, for example, it has been established over the course of many decades that if society wants to have small tax burdens and a minimal state presence, many things will have to be taken care of by the individual, or he may have to accept higher burdens in return for a broader range of services. That is, the nature of the contract between state and citizens is clear to all. In Hungary, on the other hand, this issue has never been clarified; instead, it has become bound up with a distorted ideological dispute. I hope that the Fundamental Law has succeeded in separating the rights which must be guaranteed by the state from the state goals which, although they should be aspired to, cannot be guaranteed for all.

– Are you saying that the components of the 1989 Constitution that guaranteed extensive social security have been deliberately dismantled?

József Szájer: We have been living a constitutional lie over the past 20 years. The text guaranteed social rights on paper that no government could guarantee in practice. Fortunately, the Constitutional Court interpreted the rights in question

in a restricted fashion. Although, for example, the document guaranteed work to all, the consistent practise of the judicial forum has made it impossible for anyone to sue the Hungarian State for not providing them with a job.

Gergely Gulyás: On one hand, we have broken with hypocrisy and a practise that did not even have a nodding acquaintance with reality. On the other hand, however, substantive changes have taken place only in a few areas in comparison with longstanding practice; rather, we have simply accepted the viewpoints defined clearly by the Constitutional Court a very long time ago. The best example is none other than the right to social security, which has thus far been treated by the Constitutional Court merely as a state objective, impossible to realise fully. The “right to the highest level of physical and mental health” (which we have already dealt with, and which has been included in the Fundamental Law as “the right to physical and mental health”), also belongs here, and it continues to guarantee free healthcare according to the legislation currently in force. It is of the utmost importance to stress that we have not deprived anyone of any rights by means of these amendments, but have made the text more true to life by bringing it into line with the legal practise that has become established. The philosophical change started out on the road towards making the contents of the Fundamental Law enforceable in the courts in the form in which they appear.

The Constitution is sincere in this sense too, but it cannot be a substitute for a social debate aimed at straightening out the issues.

József Szájer: **The Constitution is sincere in this sense too, but it cannot be a substitute for a social debate aimed at straightening out the issues.** We have tried to streamline the Fundamental Law, and to make it clear what everyone is entitled to and what can be no more than a state goal. At the same time, the latter also imposes obligations on future governments. For example, efforts should be undertaken through loan programmes, support granted to local authorities, and by regulatory means to ensure that as many people as possible, and if possible absolutely everyone, should live in decent conditions in Hungary. But this cannot be extracted from the State by means of legal action in the courts, because the left wing (which aspires to a monopoly on social affairs) would like to include in every country’s constitution that every person has the right to work and to decent housing, and should be able to force the state to deliver on it— provided, of course, that they do not happen to be in power at the time.

Just by way of an interesting detail, I would note that I consulted American constitutional lawyers when writing the Fundamental Law and according to them

including state goals in the constitution represents an unpardonable crime against the market economy. Naturally, there are no social rights similar to ours in the American Constitution; it lists, in essence, the classical freedoms, and even those only in the Amendments.

At the same time, the Fundamental Law expanded the list of state goals: for example, the state obligation to provide decent housing and conservation of the environment were included. And I didn't hear, though maybe I wasn't paying attention, any words of congratulation coming from the Hungarian left when full employment appeared as a state goal. This had been in the Fidesz manifesto since 1998, and I can still remember the sarcastic reception given to the idea by Imre Szekeres in 1997, whilst in the meantime the MSZP has also adopted it as its own.

– We haven't yet spoken about a symbolic and ideologically charged topic also involving the issue of responsibility: abortion. I realise that the wording in the Fundamental Law simply codifies, once again, the established practice of the Constitutional Court. But maybe it has occurred also to others apart from the critics that this might be the first step towards the significant tightening of the rules on abortion.

Gergely Gulyás: The wording expresses that foetal life represents something of inherent worth in the eyes of the state. On the other hand, since it does not state that the foetus enjoys legal personhood, it keeps the promise of the parliamentary

László Sólyom wrote that giving the foetus legal personhood would be on a par with the emancipation of the slaves.

group of the governing parties at their meeting in Siófok – namely, that we would adopt a constitutional solution for the protection of foetal life which does not make it necessary to amend the existing legislation on the protection of foetal life. Legally, the question is whether the embryo enjoys legal personhood or not. If it does, this sets up an opposition between

the lives of the mother and the embryo, both of which are of equal value, in which case, along similar lines to the state of affairs concerning legitimate self-defence, one could only choose between the two if the life of the foetus were to directly put the life of the mother at risk. In his parallel opinion expressed on the ruling in his capacity of President of the Constitutional Court, **László Sólyom wrote that giving the foetus legal personhood would be on a par with the emancipation of the slaves.**

The inclusion of the protection of foetal life as expressed in the Fundamental Law makes the relevant practise of the Constitutional Court part of the Fundamental

Law. According to this practise, although the foetus does not enjoy legal personhood, its life is regarded as having inherent value and as such is to be afforded constitutional protection. By doing so, the Fundamental Law meets the requirements prescribed by the Constitutional Court in 1991. When 20 years ago the Constitutional Court repealed the decree governing abortion at that time, it made it absolutely clear that foetal life is important enough to merit constitutional regulation or at the very least to be regulated by law. The answer was the Act of 1992 on the Protection of Foetal Life, in connection with which, in my opinion, the primary question is not whether it is liberal or not – although the accusation itself is interesting when you become aware that the motion was tabled by a Christian Democratic minister – but rather why the state has not had adequate recourse to some of the instruments placed at its disposal by legislation, such as sex education, for example. Although my personal opinion is that abortion is the killing of a living human being, which I deeply condemn, in the full awareness that Hungarian social reality is such that I do not think that a total ban on abortion could be introduced here. All it would achieve is that women who have already made up their minds to have an abortion would travel abroad, resorting to illegal abortion which is particularly dangerous.

On the other hand, I am very confident that much more efficient awareness-raising and sex-education campaigns could be carried out at secondary-school level than is currently the case. For example, I have seen a film on abortion; if as many young people as possible were to see it, correspondingly fewer of them would regard abortion as a form of contraception that they take for granted. Another reason why discussing this issue is important is that while 40,000 abortions are performed each year, the population decreases annually by 30,000. If every life conceived were allowed to be born, we would be able to talk about a population increase from year to year rather than a demographic crisis.

József Szájer: This debate is taking place in other countries as well as in Hungary; in the European Parliament, on an almost weekly basis we are confronted by the clash between mutually irreconcilable opinions, which are, by the way, occasionally exaggerated on both sides. This passage has to be interpreted against the backdrop of the principle alluded to above in connection with the demarcation lines between the rights of individual citizens and state goals. Every human being has the right to life and human dignity; this is an unrestricted, inviolable entitlement. In other words, the State must provide every guarantee that it shall not interfere with human dignity and human life. Then the second

part of the sentence states that foetal life shall be subject to protection from the moment of conception. And that is a state goal, in the framework of which **the State has a genuine obligation to protect foetal life**. But precisely because of its character as an objective of state, it cannot imply a ban on abortion. In this sphere, the state is free to decide what type of restrictions it may wish to impose. For example, from which phase of foetal life the State will penalise its extinguishing. Or it may have recourse to a range of different options from a prenatal care system to sex-education programmes, to comply with its obligation to protect the foetus.

The State has a genuine obligation to protect foetal life.

I consider it particularly important that foetal life is given protection under the Fundamental Law, because not even the most hard core pro-abortion organisations claim that abortion is a good and proper thing. At the same time, we are aware that the debate on this topic is far from rational. We see that in the US, extremist activists kill doctors who perform abortions, whereas the other side lobbies for the possibility of carrying out abortion at a dramatically late stage of the pregnancy.

I am firmly convinced that the solution applied in the Hungarian Fundamental Law does not overturn what has by now become an established system. The Act on the Protection of Foetal Life which entered into force in the early 1990s lived up to expectations: the number of abortions dropped significantly in Hungary, and attitudes towards abortion changed as well, albeit not to the extent that would have been possible based on the available legal options. But our belief that we had succeeded in coming up with a balanced compromise this time round proved to be overly optimistic – it has not prevented the most diverse women’s organisations the world over from writing letters of protest. By the way, the vast majority of these texts simply contained falsehoods, and the Fundamental Law stands accused abroad to this day of prohibiting abortion, despite the fact even our home-grown critics do not go so far as to accuse it of that, which just goes to show that translation can transform many things...

– I seem to detect a major discrepancy concerning the symbolically powerful issues discussed so far. On one hand, it was said in connection with same-sex marriage that this was not in keeping with the values held by the overwhelming majority of Hungarian society, and that was one of the reasons why it was not included in the Fundamental Law. On the other hand, it is well known that the

death penalty meets with widespread social approval, but it did not even figure in the consultation questionnaires, in order to avoid any unpleasant surprises, I assume.

József Szájer: In the questionnaires that were filled in and returned, the reinstatement of capital punishment featured amongst the ten most frequent proposals made by citizens. All I can say on the issue is that we have signed several international treaties that prohibit capital punishment. By the way, this dispute has been settled in a somewhat unconventional manner in a state based on the rule of law, by a Constitutional Court decision. It would have been more correct though, for it to have been put to the vote in the legislature, which most closely matches the value system of society, and is also accountable for its decisions to voters. Let me add that the judges did the political elite a massive favour by relieving it of this burden. Anyway, there has been no social controversy in Hungary over this issue either; we have not ascertained how many actually think that the right to human life is forfeited as a result of flagrantly anti-social behaviour, which might manifest itself in, say, multiple murders. At any rate, the EU Charter of Fundamental Rights expressly prohibits the death penalty.

Let's be honest, the law of talion – “an eye for an eye, a tooth for a tooth” – is not far removed from the human sense of justice. If we speak of the death penalty in more abstract terms, as a matter of principle, many are willing to accept that the state has no right to deprive someone of his life, not to mention the possibility of a miscarriage of justice as a result of an error.

Gergely Gulyás: Since in the framework of the ad hoc subcommittee on drafting the constitution I was the head of a work group also in charge of dealing with the issue of the death penalty, I had an opportunity to be confronted with the relevant standpoints first hand. I proposed including the prohibition of the death penalty in the Fundamental Law expressis verbis, although of course I am aware that the majority of Hungarian society disagreed. Not only Fidesz MPs were opposed to the ban on capital punishment being mentioned explicitly in the Fundamental Law, but the socialists did not support it either. Péter Kiss was the first to say that this ought to be left out: since the ban already existed it would be superfluous to include a separate provision to that effect. So there was unanimous agreement that this step, although fully in keeping with our convictions and a direct consequence of our international legal obligations, but politically unpopular albeit not irrational, did not have to be undertaken. All the more so, since in 1990, the Constitutional Court did the favour to every political

party of declaring capital punishment unconstitutional, which has rendered political disputes over the issue senseless. Nevertheless, the idea that the death penalty would be the only rightful punishment always arises in conjunction with especially brutal murders, if only for the sake of playing to the gallery. **Let's be honest, the law of talion – “an eye for an eye, a tooth for a tooth” – is not far removed from the human sense of justice. If we speak of the death penalty in more abstract terms, as a matter of principle, many are willing to accept that the state has no right to deprive someone of his life, not to mention the possibility of a miscarriage of justice as a result of an error.** That the risk of committing an error is very real, as opposed to purely hypothetical, is illustrated by the fact that Ede Kaiser, wrongfully accused of and sentenced for the Mór killings, would have been executed for a crime which he had not committed, had the death penalty existed. The more specifically we speak of a crime, the more difficult it becomes to argue in favour of the preservation of the ban on a theoretical basis, since the brutality of killing means that emotions run high, trumping reason. **In my opinion, we should nevertheless insist that the state cannot have the right to deprive anyone of his or her life,** and this is still true even if it is difficult to stand firm on rejecting the death penalty as a matter of principle when you encounter such egregious cases as the Olaszliszka lynching or child murders. All in all, in my opinion, no Christian person and no Christian Democratic party can support the restoration of the death penalty.

József Szájer: One more thing in relation to the death penalty: in Hungary, as elsewhere, there are initiatives to classify actual life imprisonment as an inhumane, degrading punishment, i.e., to make it unconstitutional. The very reason

In my opinion, we should nevertheless insist that the state cannot have the right to deprive anyone of his or her life,

why the option of imposing it ought to have been included in the Fundamental Law was to have at least a constitutional obstacle to the repeal of this penalty. In the answers to the questionnaire, this is what was given most widespread support, which is indicative of the serious social demand for certain individuals representing a severe threat to the community, as

manifested on multiple occasions to be taken out of circulation permanently. As to whether this is contrary to international law will be revealed in the future in connection with specific cases. But this, too, is a discussion the drafter of the Constitution consciously chose to engage in by formulating the text in this way, precisely because of the social backing it enjoys.

– If the European Court of Human Rights deems the penalty inhumane, is it conceivable that such sentences might be reviewed, say, every 30 years?

József Szájer: There are two conflicting considerations at stake here: whether the threat of readmission into society, of reoffending, is serious enough to warrant the severity of this kind of penalty and the absence of any prospect of release. Public opinion considers this blindingly obvious; whereas the domestic and international legal community is debating it. One of the other reasons why this problem has surfaced is because some countries have greatly relaxed their rules on life imprisonment. In Belgium, for example, the prospect of release has been opened for Dutroux, convicted of serious paedophile offences. The Belgian rule of law is unable to cope with this story precisely because of the prevailing liberal doctrine.

– In addition, the German Constitutional Court has recently deemed it incompatible with the Fundamental Law to keep dangerous criminals in protective custody after they have served out their sentences.

Gergely Gulyás: In criminal proceedings punishment has two objectives: special and general prevention. The first refers to the person of the perpetrator: the punishment should act as a deterrent to dissuade the perpetrator from reoffending. The latter is designed to protect society as a whole: the perpetrator is put in prison not only to be punished, but also to protect society by excluding the possibility of a repetition of the offence. In my opinion, the murder of several persons already belongs to the category of offences where considering actual life imprisonment would be justified; where the need to protect society outweighs the rehabilitation of the individual. True, the European Court of Human Rights seems to be moving in the opposite direction in terms of its rulings, but this debate has not yet run its course. When a few months ago a single assailant killed 77 people in Norway, the initial shock gave way to incredible outrage when it turned out that the maximum sentence which can be imposed on the 32-year-old perpetrator was 20 years of imprisonment, since Norwegian criminal law has no more severe penalty. In such cases, in order to be able to defend the ban on the death penalty to the general public, actual lifelong imprisonment ought to be almost automatic. I think that the relevant debate will continue in the European arena as well, and actual life imprisonment will become an established legal institution in several countries. Let us add that **Hungary is not the only country today where life imprisonment in the**

Hungary is not the only country today where life imprisonment in the original meaning of the term can be applied.

original meaning of the term can be applied; this is possible also in England, Wales, and the Netherlands, and since 2008, also in Switzerland and Slovenia, so Hungary is not on its own in representing this side of the debate at European level.

– In all probability, more people are affected by Article V under Freedom and Responsibility, i.e. “Every person shall have the right to repel any unlawful attack against his or her person, or property, or one that poses a threat to the same”, than by actual life imprisonment. Some fears have been expressed that the night would be filled with the sounds of guns going off, and hapless hen and cucumber thieves would die by the dozen because of electrified fences. Why did you think this issue belonged here rather than, say, the criminal statute?

Gergely Gulyás: Several provisions in the Fundamental Law are linked expressly to criminal law, civil law, or as the case may be, even narrower areas of specialist law – such as ensuring the conditions for fair competition, for example – to competition law. The elevation of these provisions into the Fundamental Law indicates the rules pertaining to specific legal areas which the drafter of the Constitution considered to be of special importance, and therefore worthy of constitutional protection. It is wrong to conclude from this provision that the floodgates will be opened for vigilantism. The right of legitimate self-defence provides an opportunity to defend yourself or someone else when and until such a point in time as the state agencies invested with the monopoly of using force can actually guarantee such protection. The scope of legitimate self-defence has already been expanded, quite correctly, by a penal code amendment passed under the socialist government, and in recent years case law has clearly shifted in favour of the position that, in a situation of legitimate self-defence, if the person subjected to attack or someone rushing to his or her aid exceed(s) the degree of force needed to ward off the attack, this will not result in criminal liability. That is, if a person frightened by a break-in at night causes permanent injury while trying to avert the attack, no criminal liability shall be established due to the perfectly understandable state of alarm, not even if taken together the circumstances of the case make it obvious with hindsight that a much lesser degree of force would have been sufficient to ward off the attack. There are some really extreme examples of this in the world: in the United States and in Brazil, for example, you can shoot someone who breaks into your house without any particular consequences to your action. We would not like to take it that far, but in my opinion it is a legitimate expectation that the law-abiding citizen subjected to an attack should enjoy enhanced criminal law protection while warding it off. **This,**

however, does not mean the liberalisation of the use of firearms, nor does it annul the codification in the Fundamental Law of the state monopoly on the use of force.

József Szájer: The rule is important because it shifts the balance within the criminal law system. In this respect, case law has really not gone along with the social value judgement, which represents a perfectly reasonable approach, by the way. In my opinion, the state-centred approach has once again been caught in the act here, i.e. that the state shall do everything and the citizen will even be punished for so much as lifting a finger. The responsibility clause and the rule we have just referred to relays a clear message to the interpreters and practitioners of the law, to the courts first and foremost. We have already spoken of the fact that it is not the Constitution that should be adjusted to criminal law but vice versa. As a politician, however, I would loath to advocate the liberalisation of the laws on possession of firearms given the inevitable result that shootings would follow, well-known from the United States and elsewhere. In those countries, enormous social pressure is brought to bear after every incident to tighten the rules on the use and purchase of firearms. What can be wholeheartedly and unflinchingly endorsed, on the other hand, is to transform legal practise in such a way that I have the right to protect myself, my family, and my property. In parentheses I would point out that, as a matter of fact, there is no problem with the current regulations; only the dispensation of justice has been gradually sliding in an inappropriate direction.

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– You have spoken in detail about the citizen’s right to self-defence against criminals; in some sense, the next topic also belongs to the issue of protection in the broader sense. So far data protection has been supervised by an independent commissioner elected by Parliament; from now on, the same work will be carried out by an authority. Why did the post of the commissioner have to be abolished? Will an authority integrated into the public administration be able to proceed efficiently, let’s say, to promote making data of public interest accessible and available on demand?

József Szájer: The text of the Fundamental Law is not very revealing in this respect, since the authority’s room for manoeuvre will depend on how the act specifying the relevant details will regulate this scheme. True, this might lead to more restricted data protection than it is currently the case, but it might equally lead to a more extensive

system. The office of data protection commissioner does not dovetail completely with the kind of activity traditionally carried out by the ombudsman on fundamental rights since the most distinguishing characteristic of the latter is that he only enjoys minimal powers. The data-protection commissioner has differed from the other ombudsmen up to now in that he has been carrying out activities pertaining to data storage and had other powers as well. The state maintains the institution of independent ombudsman to badger itself, and to provide the citizens with an option within the normal state system of judicial protection. **What does the Fundamental Law say? On the one hand, it unifies the fragmented system of ombudsmen; on the other hand, it gives the new data-protection institution powers to intervene.**

– **If the Fundamental Law does not adopt a stance on the sphere of competence, would you be in favour of the widening or the narrowing of data protection?**

József Szájer: I consider the current state of affairs appropriate, but the system has some irrational offshoots. I do not think it reasonable that in Hungary citizens have to carry 15 different types of documents and various identification numbers on their person because of the stringent ban on the linkage of databases. Nevertheless, there is no need for comprehensive changes; in terms of data protection, Hungary is a frontrunner in the European Union. I would also maintain independence; this is why the term “independent authority” figures here, although, let’s be honest, this is squaring the circle, since the authority obviously fulfils a state function. But I think that the amendment was justified, since the model of the proliferation of ombudsmen obviously did not live up to the expectations: the

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institution has become lightweight, its actors competing with one another.

Gergely Gulyás: There is an apparent contradiction in linking the word “independent” to that of “authority”, expressing also that it belongs to the state in organisational terms. However, the independence of the authority is an EU requirement, expressing autonomy and freedom from the influence of the central administration’s agencies. The reason why the current regulations had to be renewed was that at the time of the establishment of the system of ombudsmen in 1996, a few years after the communist dictatorship, the protection of personal data was understandably uppermost in people’s minds compared with the freedom of information and the accessibility of data of public interest. Based on

the experiences of a decade and a half, the opinion of experts in the field (the current data-protection commissioner included) was that the competences of the ombudsman were not sufficient for effective data protection, whereas extensive powers of intervention are alien to the institution of the ombudsman. In a peculiar way, the data-protection commissioner has had official jurisdiction— he could order the deletion of data managed unlawfully, but he had no right to impose any substantive penalties beyond that. Furthermore, we know that there are serious problems in Hungary concerning the processing of personal data in practice. It should be enough to refer here to the fact that at many companies, especially multinational ones, the surveillance of employees, and reading their mails, is standard practise. The only really effective means against such unlawful practises is the right to impose fines. The new independent authority will be able to penalise such firms in the future. In many countries in Europe such a system is already up and running; moreover, the right to impose fines means that a large proportion of the budget of the authorities is already covered. The new act passed by Parliament in July on Self-Determination in Respect of Data and Freedom of Information supplies the authority with these new instruments.

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József Szájer: In my opinion, the provisions concerning the accessibility of data of public interest demonstrate also that **the constitution cannot be read simply in linear fashion**, because this idea does not only figure here, but also appears in Article 39 on public funds, which stipulates that every organisation managing public funds shall be obliged to account for its management of those funds to the general public.

I would consider it expedient precisely for the sake of the more transparent management of public funds that the powers of the authority be expanded when more detailed rules are drawn up. The new institution could be the watchdog of the state, keeping an eye on indebtedness as well as other processes which erode public confidence.

– You have both already talked about fundamental rights and state objectives; that we should not deceive ourselves by codifying an entitlement to housing for all in the Fundamental Law. On what basis did you assign the rights to one category or the other?

Gergely Gulyás: We had at least three main objectives. The most important aim was to create a coherent and transparent basic legal regulatory framework

that reflects reality. Once again, I feel obliged to point out that although the practise of totalitarian dictatorships is identical, there are significant differences between their respective constitutions. It is easier to transform a Communist text into a democratic one than it is to transform a Nazi text into a democratic one, since the former bestows a wealth of formal rights on its citizens. It can do so without taking any particular risks, since these purely cosmetic rights cannot be enforced in any case, and even an attempt at enforcing fundamental rights would be punished. Hence when in 1989, during the drafting of the constitution, the part on fundamental rights was transformed so as to fit a state based on the rule of law; without the benefit of any practical experience of democracy, **it was difficult to determine what should be regarded as a fundamental right and what**

it was difficult to determine what should be regarded as a fundamental right and what should be regarded as a state objective. This had to be sorted out no matter what.

should be regarded as a state objective. This had to be sorted out no matter what. The decision to draw up the chapter of the Fundamental Law on fundamental rights, not by simply copying the European Union Charter of Fundamental Rights, but by taking it into account, proved to be ahead of its time as it provided a response to questions that were still unknown 20 years ago or had not yet been given the attention they

deserved, such as genetics or environmental protection, for example. Finally, as far as fundamental rights are concerned, we had to take decisions on a few political issues, and here I am thinking primarily of the right to vote, whereby we opened it up to Hungarian citizens living beyond our frontiers who had been excluded from exercising that right by the constitution in force up to now. Parliament has extensive discretion when adopting legislation on electoral law, but we have made it abundantly clear that the intention of the governing parties was that, as is the case in the overwhelming majority of the democratic countries of Europe, citizenship and the right to vote should go hand-in-hand also in Hungary.

József Szájer: From 1990 onwards, the most important task of the Constitutional Court was the protection of fundamental rights. During the last 20 years it has accomplished a staggering amount of work in clearly delineating fundamental rights. The first legal comments said that the relevant chapter of the Fundamental Law moulded the system which has crystallised over two decades into a coherent form. This creates legal certainty, since the courts and the Constitutional Court interpret the legal regulations passed by legislature, but in the absence of a clear system, the justice system has a very wide margin of discretion in interpreting the

laws. If this is the case, the balance between the agencies which create and apply the law is upset; the administration of justice becomes by and large uncontrollable, and breaks away completely from the legislator, which enjoys a closer relationship with society as it goes to the polls every four years in the framework of the general elections. This is the very essence of the separation of powers: the court is empowered to interpret the content defined by Parliament, not to create new laws.

This balance has tipped in the past 20 years. The Fundamental Law adopted now – primarily the chapter on Freedom and Responsibility – creates balance. From now on, the content and form of fundamental rights will be defined by the legislator, instead of being deduced from an imagined ideal text via the creative interpretation of law on the part of constitutional lawyers. At the same time, it also carries out another task: it integrates the legal achievements of recent years such as the European Charter of Fundamental Rights into the system, and does so not only by lifting literal quotations wholesale, but also in terms of content. In terms of its structure and content, there is a very significant overlap between the Fundamental Law and the Charter. What is worth knowing about the latter is that it was thrashed out by a Convention at the end of the 1990s, and it had had no legal status initially. It was the first fundamental rights catalogue of the 21st century to be taken seriously; of course, it could not be copied literally. That would not have been desirable either in terms of Hungarian sovereignty (namely the case law of the Constitutional Court referred to above), or in terms of our national self-esteem; we did however transpose its content and its structure. The old law was worded in keeping with the Hungarian traditions in strongly positivistic impenetrable legal jargon. The fact that an international document served as a template for the new Fundamental Law brought with it a fresh approach and often a new phraseology.

– Indeed, there are many junctures at which the Fundamental Law and the Charter are identical, but, for example, the ban on unjustified dismissal was left out, although it features prominently in the European text. The topical political concern is clear, but as you emphasised yourselves, the Fundamental Law is intended to last, ideally, for decades, so the pressing needs of the moment and the interests of certain segments of society as opposed to society as a whole should be avoided.

József Szájer: Everything can be explained in terms of party political concerns, but it is also useful to familiarise ourselves with the circumstances of the birth of the Charter. The rights of employees have been included in the European

document to an exaggerated level of detail because the issue was the object of a bargain between the European right-wing and the left that was pushing for it. As we discussed earlier, in the interests of legibility, the fundamental rights and the goals of the state are separated out in the new Hungarian Fundamental Law, although those issues are mixed up even in the Charter, e.g. in relation to employment. Our text is not 100 percent consistent either, because it was impossible to

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fully disregard that pan-European false or erroneous approach even in Hungary, but this is one of the reasons why I regret that the socialists did not take part in the discussion on the Constitution. Had they been there at the table, perhaps we could have discussed this issue more thoroughly.

Gergely Gulyás: I do not perceive any contradiction, because the activities of the Constitutional Court over the last 20 years laid the groundwork for the changes. The Constitutional Court carried out the unpopular job of drawing distinctions between declared rights, primarily with regard to the state's ability to deliver the goods. Over the last 20 years, people have come to take it for granted that the right to employment does not mean that unemployment is contrary to the Constitution, and that social rights do not guarantee an actual minimum level of subsistence. People have grown used to it, and have perhaps even accepted it, but it is very likely that this fact has had an unfavourable influence on their views about the Constitution. In his dissenting opinion on the Constitutional Court's decision repealing capital punishment, former constitutional judge Péter Schmidt stated that in his view the Constitutional Court had assumed the role of the legislator by deciding on the matter. I do not wish to take a standpoint in this debate, and I am glad that there is no capital punishment, but it is a fact that the frequently cited activism of the Constitutional Court has manifested itself primarily in the interpretation of the fundamental rights. Moreover, in doing so the Constitutional Court removed a heavy weight from the legislator's shoulders, because Members of Parliament were relieved of the obligation to take decisions that were often necessary, but clearly unpopular. The new Fundamental Law contains the fundamental rights, faithfully replicating Constitutional Court practice over the last two decades.

József Szájer: Yes, things are being gradually put in place. *I also agree that sincerity is the most important factor in restoring confidence, and that also links in with the currently relevant political steps.* It could be presented in such a way

that, for example, in relation to employment, a step backwards has been taken in the world of work, but society cannot be lulled into a false sense of security by creating the impression that the law will solve all their problems for them. When we seek to bring policemen who retired prior to the statutory retirement age back into employment, our intention is not only to put paid to an illusion (specifically that the mass retirement and having society pay for the keep of people in the 40-45 age bracket is fair enough because it is their “due”), but also because, beyond the purely economic considerations, we also want to promote social justice.

– **One more thought in relation to the Charter of Fundamental Rights of the European Union: in the relevant passage of the Fundamental Law, which was drawn up on the basis of the European model, why is there no ban on discrimination on the grounds of sexual orientation?**

Gergely Gulyás: It is included also in the Fundamental Law, but it is not mentioned specifically. However, discrimination on the grounds of sexual orientation should be understood as being subsumed under the general ban on discrimination on “other grounds”. The issue does not have any legal significance, yet I think that the drafter of the constitution may freely decide on the aspects to be singled out for specific mention within the scope of outlawed forms of discrimination and those to be prohibited in general terms.

It does not mean that all forms of discrimination are prohibited; such forms of discrimination cannot be applied specifically in respect of fundamental rights.

József Szájer: The discrimination clause is also open in all constitutions, if it is included in them at all. **It does not mean that all forms of discrimination are prohibited; such forms of discrimination cannot be applied specifically in respect of fundamental rights.**

– **Now that the issue of the public interest and private interest has been broached in relation to policemen, I cannot help but mention Article X. What is the justification for granting constitutional protection, generally reserved for outstanding public interests, and considerable budgetary support, to a private organisation, the Hungarian Academy of Arts, associated with the name of Imre Makovecz, a highly talented architect, who passed away recently?**

József Szájer: A few moments ago, when examining the office of data protection commissioner, we saw that the constitution remodelled an existing system of institutions. The same process is at work here, too: the Fundamental Law refers to

an academy of arts and an academy of sciences as equal institutions. Parliament will decide on what type of rules to adopt, i.e., whether to integrate the new Academy of Arts into an extant institution, and on the definition of the interrelationship between the two academies, etc. If the new institution really will be based on the academy associated with the name of Imre Makovecz, a new act will be adopted which will not talk about a civil organisation, but a national institution anchored in the Fundamental Law.

Gergely Gulyás: The new Fundamental Law creates the Hungarian Academy of Arts alongside the Hungarian Academy of Sciences, with the same ranking and prestige. Because such an organisation does not even exist right now as a public body, it is a different issue that all kinds of unworthy allegations will be made for political motives. Everyone will have to make up their own minds whether the establishment of an academy of arts as a public body is the right way to go or whether it is unnecessary. I can only hope that the Hungarian Academy of Arts will turn out to be an enduring institution serving Hungarian culture for many decades, and thus contributing to the preservation of the nation's identity in a manner worthy of the legacy of Imre Makovecz.



THE IMPACT OF ECONOMIC FACTORS

“If we could wave a magic wand and resolve all the problems of unemployment and national debt, we would still need to maintain the work ethic and a strict, transparent, and frugal budget policy. Indeed, the experience of economic policy over the last few years suggests that it is worthwhile keeping a tight rein on spending and approving a balanced budget in periods of growth and easy borrowing, i.e., during an upturn in the world economy. Consequently, when the salient points are defined, our intention is not to satisfy the political demands of the moment, but to look for solutions that lose none of their topical relevance even if the economy takes a positive turn, which we hope will happen sooner or later.” – Gergely Gulyás

– We are all aware of the economic crisis which provided the backdrop to the constitution-drafting process. Obviously, that situation left a deep impression on the formulation of the text. Might we expect certain provisions to change after the crisis has ended or eased off, such as those pertaining to social rights?

Gergely Gulyás: If we could wave a magic wand and resolve all the problems of unemployment and national debt, we would still need to maintain the work ethic and a strict, transparent and frugal budget policy. Indeed, the experience of economic policy over the last few years suggests that it is worthwhile keeping a tight rein on spending and approving a balanced budget in periods of growth and easy borrowing, i.e., during an upturn in the world economy. Consequently, when the salient points are defined, our intention is not to satisfy the political demands of the moment, but to look for solutions that lose none of their topical relevance even if the economy takes a positive turn, which we hope will happen sooner or later.

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József Szájer: The function of a constitution that involves identifying and enshrining values is perhaps even more important than its legal one. When we say that the amendment of the Constitution in 1989 and 1990 did not deal with economic issues at all, we are not just thinking about privatisation, but perhaps also about the failure to declare simple truths. The kind of thing we have in mind is what replaced the formulation “Hungary is a social-market economy”: according to this article, the economy of our country is based on work which creates value, and on the freedom of enterprise. This is a fundamental issue in terms of the long-term survival of a society: countries which do not rely on their own performance for success cannot be successful in the long run. In my opinion, this needs to be put on record, even if Europe and Hungary tend to forget about these aspects. Here we are confronted by the problem that the **law, naturally, is not able to create jobs, or make employment the focal point of a society**, yet it may help dismantle the barriers to the restoration of an employment-based and enterprise-based economy. It is an important lesson of the last few months that the government has encountered systems whose continued existence can no longer be justified in the present circumstances almost right across the board in its efforts to restructure of society – from policemen retiring at the age of 45 to sickness insurance rules, we could quote numerous components of a non-viable status quo.

– Mr Szájer, you witnessed events first hand: **Why do you think that the opposition groups who were the driving force behind the transition devoted much less attention to economic factors at the Round Table in the course of establishing the state and institutional frameworks? We have a tendency to think that the bigwigs of the Communist party were quite happy to let the lawyers and historians of the opposition tinker away at establishing the rule of law whilst they got down to the serious business of laying the foundations of capitalism.**

József Szájer: In my opinion the leading opposition intellectuals of the time ascribed greater significance to the law and the constitution than was either necessary or was warranted by reality. In that sense they were led up the garden path by those who knew that it was possible to re-write a fundamental law from one day to the next, but it was significantly more difficult to re-weave the social and economic fabric. It was the reform-Communists’ ambition to establish the Constitutional Court as soon as possible because, as it has now become obvious,

this step put in place a certain bulwark against justice being done or compensation being paid in the longer term. However, the fundamental error made at the time of the transition was in fact that we were unable to shake off the thousand-year curse of being a nation of lawyers and ascribed greater significance to the law than we ought to have done. It was therefore no accident that during that period the role of the lawyers stood out more prominently than that of the economists. The latter were happy to take a back seat and propagate their neo-liberal theories, which were seen as the sole panacea then. Taking a cue from József Antall, the first democratically elected government was also primarily dominated by this blinkered legalistic approach – to avoid any misunderstandings, I include myself and in certain respects Fidesz amongst those ranks as well. We were thinking in terms of the rule of law and a constitution, while the former Communists were quietly getting on with stripping the country bare.

Gergely Gulyás: During the National Round Table discussions, the Communists in power also took the initiative of proposing that economic discussions be held within the framework of the negotiations. When the structure of the National Round Table discussions was agreed upon, the economic working groups were also established formally at medium or expert level alongside the so-called “political working groups” responsible for discussing the legal issues indispensable for holding free elections, but they failed to deliver any substantive results. This was partly due to the fact that the opposition was afraid that the only purpose of the negotiations would be for MSZMP to pass the buck on the parlous state of the country that had ensued as a result of decades of economic mismanagement, for which it bore exclusive responsibility, and that it wished to do so in plain view of the public. On the other hand, according to the original concept of the opposition, they perceived the Round Table as nothing more than an instrument for establishing the legal guarantees necessary for holding free elections, and everybody thought that the economic problems would have to be resolved by the first freely elected government.

József Szájer: When we conduct the debate on the limitation of the powers of the Constitutional Court on budgetary matters, the conflicts of the end of the 1980s and beginning of the 1990s flare up again over precisely the issue of whether or not the economic state of a country and the responsibilities of the established set of institutions can be separated from each other. In other words: is it possible for us to conclude that a constitution has functioned properly and served its purpose for 20 years if, in the meantime, a majority of the successive governments have

deepened the economic crisis? We made a mistake by taking it for granted that the law in itself would be able to guarantee economic sustainability purely through its democratic operation. This explains why the new Fundamental Law states that

If the self-defence mechanism of a society cannot guarantee corrections through the state, then the law remains as a last resort.

these institutions are not enough –they have to be complemented by robust rules to prevent, for example, any increase in the national debt. For this very reason, I do not consider the much-maligned decision on the sphere of competence of the Constitutional Court as a measure curtailing its rights, but look at the self-protection reflex of it as a kind of sharing of responsibility.

Its purpose is to ensure that the constituent parts of the existing institutional system take responsibility for the maintenance of that system, even if to varying extents. The majority of governments failed miserably in this respect, and the country almost collapsed in 2008. **If the self-defence mechanism of a society cannot guarantee corrections through the state, then the law remains as a last resort.** Of course, we now have institutionalised a constitutional self-defence mechanism in the Fundamental Law. The opposition criticising this measure interprets it as a curtailment of the powers of future governments. This is true enough, but it also applies to the current government. The purpose of it all is to prevent future resources from being depleted.



ON THE RIGHTS OF HUNGARIANS
LIVING BEYOND THE COUNTRY'S BORDERS
AND THE RIGHT TO VOTE

“The post-Trianon arrangements were not capable of guaranteeing either collective or individual minority rights, and if the Hungarian efforts in this direction are greeted by incomprehension, then we must have recourse to legal instruments to protect fellow members of our nation. This is what Viktor Orbán referred to as the discontinuation of the category of Hungarians living beyond the borders. This will be a definition based on the current place of residence as opposed to a concept that differentiates between Hungarian citizens and non-Hungarian citizens who are Hungarian nevertheless. The more people apply for simplified naturalisation, the more insignificant this kind of distinction will become. International law accepts that everyone is allowed to support their own citizens. We Hungarians are too frank in that respect. Whilst other countries have managed these problems without major conflicts, we Hungarians always tell the whole world what we are doing and, in addition, we also fall out over it at home.” – József Szájer

– We have already touched upon the right to vote on the part of citizens living abroad, yet I would like to talk about it in more detail. Article XXIII, Section 4 of the Fundamental Law states: “The exercise or completeness of active suffrage may be subject to the requirement of residence in Hungary, and passive suffrage may be subject to further criteria under cardinal act.” If I understand this correctly, you are using the conditional to prepare the groundwork for the right to vote to be given to Hungarian citizens living abroad. Would it not have been easier simply to include it in the text directly?

Gergely Gulyás: According to Act XX of 1949, Hungarian citizens domiciled in Hungary have the right to vote. The fundamental rights working group of the

Constitution-drafting committee already voted in favour of granting the right to vote to all Hungarian citizens. When I declared this in public in my capacity as chairman of the fundamental rights working group in October 2010, my statement triggered massive disputes, and even some of the well-known politicians of the governing parties deemed it necessary to make it clear (to the press as well) that the statement reflected my own private opinion.

The right to vote on the part of Hungarians living beyond the borders has been assessed on the basis of the political interests of today, although it is primarily a theoretical judgement as opposed to a political one. If, in line with

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the Fundamental Law, we accept the principle that the Hungarian Nation is a unitary nation, then no Hungarian citizen can be deprived from the right of having a genuine say in our common affairs, regardless of whether they live in Romania, the United States of America, Slovakia, or Israel. In constitutional law, the right of participation in public affairs is guaranteed primarily through the right to vote. Hungarian citizens living on the territory of

Hungary have the right to vote not only because they are affected to a greater or lesser extent by the decisions of the Hungarian government, but also because it is obvious that Hungary's international standing or fate for the better or the worse is something that might be of importance to all Hungarians. Those who truly consider it important must not be denied the opportunity to have a say in the key public matters of their own home country. In addition, in certain areas, such as foreign and national policy, neighbourhood policy, and the enforcement of minority rights, the decisions and national commitment of the current Hungarian government (or the lack thereof) have a more direct impact on Hungarians living beyond the borders than on the citizens of the home country.

It is no coincidence that the Member States of the European Union stipulate in their electoral laws almost without exception that the right to vote is an integral component of citizenship.

– Deputy Prime Minister Zsolt Semjén declared that there was no first- or second-class citizenship, and that citizens having obtained their papers in the framework of the simplified naturalisation procedure should also have the right to vote. However, to me the principle that each vote carries equal weight alluded

to earlier means that those living beyond the borders will be able to vote both for lists and individual Members of Parliament.

Gergely Gulyás: Another means by which the principle of each vote carrying equal weight can be achieved would be for citizens living abroad to vote for separate lists, but international practise recognises a wide variety of solutions. It would be ideal if the citizens living in other countries were to consider their Members of Parliament their own, but this can also be achieved in several ways.

József Szájer: The unity of right to vote and citizenship is normal; the separation of the two is absurd. It would do no harm for me to remind you that a few years ago even those citizens who were permanent residents of Hungary were deprived of their right to vote if they did not happen to be at home on the day of the elections. Fortunately, things have changed in the meantime. The fact remains that certain restrictions apply to foreign nationals exercising their right to vote, primarily in the form of the capacity of embassies and consular offices to accommodate them. In Hungarian electoral law, the postal vote or voting by proxy do not yet exist. Beyond these purely practical considerations, I cannot see or accept any theoretical reason for discriminating between citizens, but the details will be dealt with in the electoral law.

Let us not forget that, with the exception of three MPs, the parliamentary group of MSZP voted in favour of dual citizenship last year, which presumably was also the result of their guilty conscience about 5th December.

– The legal standpoint is clear, but due to the special xenophobia inherited from the Kádár regime, in Hungary it is still possible to whip up bad feeling against Hungarians living beyond the borders. We only need to recall the referendum on 5th December, 2004. Are you not afraid that certain individuals might decide to play the same card in a tense election situation?

Gergely Gulyás: That referendum was deemed null and void due to the lack of interest, but the majority of those who did take part, 51.5 percent, voted for dual citizenship even then. It does not alter the fact that due to the low turnout and the large number of “no” votes, 5th December 2004 remains a dreadful blot on the copybook of post-transition Hungarian history, but I am confident that any policy aimed at turning Hungarians against Hungarians on the basis of our having been separated and kept apart by a historical tragedy would be even less successful today than it was seven years ago. In addition, a positive spin-off of the extension of the right to vote is that these days the socialists will have to take into account what

the impact of their policy might be, also in terms of votes, amongst Hungarians all over the world (not confined to those living in neighbouring countries), all of whom are keeping close tabs on the country's fate. **Let us not forget that, with the exception of three MPs, the parliamentary group of MSZP voted in favour of dual citizenship last year, which presumably was also the result of their guilty conscience about 5th December.**

József Szájer: There is no doubt that there are concerns due to the two extremely close run Hungarian elections, but it is not a unique problem. We need only think of the battle between George W. Bush and Al Gore in the American elections of 2000. In countries where there are such tight contests, it is very difficult to restore the unity of society afterwards.

According to the Constitution currently in force, responsibility for the Hungarian Nation is a common national objective, on which we should not be divided depending on our political affiliations.

The right to vote on the part of Hungarians living beyond the borders is a political issue, which we have to go back to Trianon or, more specifically, Hungary and Europe's failure to come to terms with Trianon and its consequences, in order to understand fully. Europe is not willing to face up to the situation that resulted from the peace treaty signed in 1920, and tries to sweep aside the issue of indigenous minorities by tenaciously defending the status quo. This is why any support for the rights of national minorities is fairly unpopular, unlike the protection of other minorities, as if we were dealing with some kind of atavistic revanchism. This reluctance to get involved was only reinforced by the South Slav civil war, and since then many in the European Union immediately hear Srebrenica and ethnic cleansing whenever we talk about rights or community autonomy. Coming back to dual citizenship: in my opinion, being welcomed back into the fold of the political nation could be important not only for the Hungarians living beyond the borders, but it could also be a historic experience for Hungarian society. From that moment on, it will become an eminent political issue.

Not simply in the sense in which Barack Obama, US President, visits Ireland because one of his great-grandfathers was of Irish descent (and therefore he can count on the sympathy of the million-strong Irish community at home), but because it will genuinely open up the possibility of historic reconciliation. **According to the Constitution currently in force, responsibility for the Hungarian Nation is a common national objective, on which we should not be divided depending on our political affiliations.**

– I think I can grasp the motives, but the question looms large nevertheless: why should anybody who does not pay taxes at home be allowed to vote?

József Szájer: This is a bogus argument, because we could equally contend that pensioners should not be allowed to vote either, because they do not pay income tax. Paying taxes is not the only qualification for the right to vote, and the government and parliament of a country do not deal exclusively with economic issues. This is where the issue of the right to vote on the part of minors enters into the frame. Are they not represented by anyone because they do not pay taxes either? Although the VAT of the food consumed by them is paid by their parents and grandparents, so why should their parents not be able to vote in their stead? Some people are trying to make one aspect –paying taxes– into an absolute category, although the Hungarian state also represents a kind of national community, and participation in its public affairs should not be limited on a theoretical basis.

Gergely Gulyás: I was absolutely delighted to take part in the debates where the opposition linked the right to vote with paying taxes. If that is the case, then they should take the trouble to be coherent in their arguments, because if we leap back 100 years in the development of law, and were really trying to make paying taxes the main qualification for the right to vote, and if we were to reintroduce the property ownership qualification for enjoying the right to vote, then several million citizens living on the territory of Hungary would also be excluded from taking part in the elections. However, at the same time we would not be able to deny the right to vote to Angelina Jolie and Brad Pitt, who during their six-month film shoot in Budapest paid as much tax into the Hungarian budget in the form of VAT alone as ten Hungarian families on an average income would pay throughout their lifetimes.

– How did the European Parliament react to the decision introducing simplified naturalisation? We saw during the Hungarian Presidency that the unfortunate carpet exhibited on Parliament's premises could also be viewed as proof of creeping Hungarian irredentism...

József Szájer: These are truly hysterical reactions, typical not only of representatives of successor states, but also of some politicians from the Western countries that won World War II. However, we are not depriving anyone of a right, we are bestowing a right. I'm not claiming that it would not create competition, as in certain cases people living beyond the borders who will become Hungarian citizens will be able to decide on the composition of the government in Budapest, and not only in Bratislava or Bucharest.

The post-Trianon arrangements were not capable of guaranteeing either collective or individual minority rights, and if the Hungarian efforts in this direction are greeted by incomprehension, then we must have recourse to legal instruments

This is what Viktor Orbán referred to as the discontinuation of the category of Hungarians living beyond the borders. This will be a definition based on the current place of residence as opposed to a concept that differentiates between Hungarian citizens and non-Hungarian citizens who are Hungarian nevertheless.

to protect fellow members of our nation. **This is what Viktor Orbán referred to as the discontinuation of the category of Hungarians living beyond the borders. This will be a definition based on the current place of residence as opposed to a concept that differentiates between Hungarian citizens and non-Hungarian citizens who are Hungarian nevertheless.** The more people apply for simplified naturalisation, the more insignificant this kind of distinction will become. International law accepts that everyone is allowed to support their own citizens. We Hungarians are too frank in that respect. Whilst other countries have

managed these problems without major conflicts, we Hungarians always tell the whole world what we are doing and, in addition, we also fall out over it at home.

– Is citizenship awarded on the basis of simplified naturalisation eligible for consular protection in the country where the citizen happens to be living at a particular point in time?

József Szájer: Yes, but the Hungarian State will obviously not establish a parallel system of public administration in the neighbouring countries.



CHAPTER VIII

NATIONALITIES LIVING WITH US

“In fighting for the rights of Hungarians living beyond the borders, we can take as our starting point and shore up our position with what we provide to the nationalities living with us in Hungary. Let us add that the members of nationalities living in Hungary often have multiple identities, which is a major asset, and a continuation of the inclusive traditions of Hungary that have existed since St. Stephen.” – Gergely Gulyás

– There is an important terminological change in the Fundamental Law, as the expression Hungarian minorities has been replaced by the phrases “nationalities living with us” and “constituent parts of the State”, respectively. Have they only been included to put a more positive PR spin on our national policy endeavours abroad?

Gergely Gulyás: It is a much more complicated issue. Act XX of 1949 also refers to the nationalities living on the territory of Hungary as constituent parts of the state. In my opinion, the replacement of the previous term “national and ethnic minorities” by “nationality” creates the proper resonance, because if we truly consider nationalities living with us as constituent parts of the state, then it is completely unjustified to approach them on the basis of the concepts of majority and minority. It is inherent in the designation that we consider the rights of such communities a collective right. This is a solid theoretical standpoint, yet we would be hypocrites if we failed to acknowledge that one of the reasons why Hungary wishes to set an example in its treatment of nationalities and to involve them in some shape or form in the work of Parliament is not only because it is our moral and legal duty to do so, but also because for us it is an eminent national policy interest. In fighting for the rights of Hungarians living beyond the borders, we can take as our starting point and shore up our position with what we provide

to the nationalities living with us in Hungary. Let us add that the members of nationalities living in Hungary often have multiple identities, which is a major asset and a continuation of the inclusive traditions of Hungary that have existed since St. Stephen. Already when the first Orbán government was in office, the Prime Minister said once that the members of nationalities living in Hungary would become good Hungarian citizens if they remained good Slovaks, Serbs, and Romanians. I would like to live to see the day when I could hear the same coming from the leader of one of the neighbouring countries.

József Szájer: It is a gift from God that a lot of nationalities live in Hungary, yet we have not paid enough attention to them. Parliamentary representation has not yet been resolved and debates are held over every single penny to be spent, down to

However, as the result of an amendment to the National Avowal the text now states that the State should be able to protect not only Hungarian culture, but also the culture of the nationalities living with us.

the details of tiny amounts of money, about minority self-governments, or a museum in a local house displaying everyday objects typical of the region or school, and this subject deserves much more attention. In my opinion, Hungary has not in the least been guilty of window-dressing. The Fundamental Law tries to introduce a new approach, and this is why I would grant more powers to minority self-governments, which are in the process of being transformed into nationality

self-governments and in fact represent the cultural autonomy of particular ethnic groups. Indeed, also in order to demonstrate that it is possible to pursue a policy that can serve as an example for others to emulate in relation to ethnic groups which due to their modest numbers and degree of assimilation are otherwise more vulnerable than the larger Hungarian communities in neighbouring countries. If modesty did not forbid it, I would say that during the negotiations laying the groundwork for the Fundamental Law, the nationalities were almost unable to ask for anything that would not have been included in it anyway.

–Did they not support, for example, the retention of the ombudsman’s office specifically dedicated to minorities?

József Szájer: The minority ombudsman’s position has not disappeared, it will be incorporated into a consistent system which is still in charge of dealing with the same area. **However, as the result of an amendment to the National Avowal the text now states that the State should be able to protect not only Hungarian culture, but also the culture of the nationalities living with us.** I deem it important

now that those declarations have been made in the constitution for us to match the words with deeds in everyday life as well. However, rights should be granted in Székely Land in Transylvania and in Slovakia based on universal human values, and not because Slovaks and Romanians living in Hungary also have rights. This is also why we have to resolve the issues of the parliamentary representation of nationalities, which we have been dragging on over the last 20 years.

– The Fundamental Law is not particularly clear on that issue either; it confines itself to stating that the participation of nationalities in the work of Parliament will be regulated in a cardinal act. This might mean that speakers with consultation rights only will be sitting in Parliament, or that MPs from the respective nationalities will not be able to vote on the candidates for Prime Minister.

József Szájer: This issue has not yet been exhaustively discussed, but in my opinion, as there are no first or second class citizens, there are no first or second class MPs either.

– There have to be two categories, because without positive discrimination, the Hungarian Ruthenians would not be able to elect a representative, given their low number.

József Szájer: The method of election is indeed an issue: as to whether all recognised nationalities will be automatically entitled to delegate a representative, or whether the numbers will be an important factor after all and several nationalities will have to co-operate to obtain a seat, will have to be regulated in the electoral law.

Gergely Gulyás: In general there is a misconception here, which was pointed out by constitutional lawyer András Jakab. Parliament is not breaching the Constitution by default in relation to the parliamentary presence of nationalities, because the issue of ensuring that they are represented was resolved in 1993 when the system of minority self-governments was established. Nevertheless, it is a fact that coming up with a solution to their parliamentary presence, maybe even with the help of a preferential quota, is in our national interest, especially with regard to those minorities whose parent country grants the opportunity for Hungarians to obtain seats under preferential conditions.

This issue has not yet been exhaustively discussed, but in my opinion, as there are no first or second class citizens, there are no first or second class MPs either.



A FUNDAMENTAL LAW FOR THE 21ST CENTURY

“Some people are of the opinion that it would be fitting for a constitution that was written in part on an iPad to stipulate that making use of the advances of computer science and engineering should be mandatory.” – József Szájer

– Article XXVI on Freedom and Responsibility declares that the State shall strive to make use of the latest technological solutions. Do I understand this correctly to mean that the foundations of a functional electronic public administration will be put in place at long last?

Gergely Gulyás: Public administration must always be versatile, but on the other hand, dealing with official business cannot be based fully on the Internet, because this would end up excluding a large number of citizens from carrying out their official transactions as a result of their age or social circumstances. To date, every government has set itself the goal of making it possible for official business to be conducted effectively, swiftly, accessibly, via a one-stop shop that should encompass all types of transaction. I think that in their more sincere moments (and please consider that particular choice of words as a gesture of good will on my part), even opposition MPs are obliged to acknowledge that the present government has progressed the furthest on the road toward those goals within a short time by setting up government offices and government contact points. Public administration is synonymous with the State in the eyes of its citizens, and because there are many different kinds of people, it is worth the effort for public administration to adapt to that reality in the interests of greater effectiveness. Teenagers of today can manage all of their affairs on the Internet, so it is practical to give them the opportunity to do so. On the other hand, you cannot expect a pensioner to sit in a computer course first if they need a new driving licence. It is extremely infuriating that in football it is still the linesman who decides whether or not the ball has fully gone

over the goal line, whilst technology could have done the job instead for quite some time now. I think that it is correct if the State – unlike FIFA – does not insist on conservative solutions, but in addition to traditional forms of managing our affairs, provides alternative opportunities for the practical use of scientific advancements without making them exclusive.

József Szájer: In a legal sense, the issue is simple; a new government objective has been set that did not exist previously.

– **Is that the high-tech clause?**

József Szájer: Yes. Some people are of the opinion that it would be fitting for a constitution that was written in part on an iPad to stipulate that making use of the advances of computer science and engineering should be mandatory. For example, none other than the President of the Hungarian Academy of Sciences strongly supported the idea. In the National Avowal we have already said, “the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse.” The Internet might play a key role in this. It is not necessary for everyone to bring shards of pottery to the agora as in ancient Greece, for a wide range of people to be consulted before taking certain decisions.

Naturally, the new state objective may not supersede people’s rights to human dignity, to life, or to the freedom of speech, but it nevertheless conveys the idea of the benign intention that lies behind the state’s activities. It is very important that this article links the operational efficiency of the state to improving the quality of public services, to greater transparency and to equal opportunities. In other words, you should not avail yourself of these achievements simply because a tablet looks good in the hands of an office manager, but because they can help you to serve your clients better and they may even be cheaper or less polluting to the environment. So I consider this article as one of the citizen-friendly elements of the text.



CHAPTER X

ON THE STATE

“The most conservative part of the Fundamental Law is that pertaining to the organisation of the state. This is where we have made the fewest changes; the core categories of the system established 20 years ago have been preserved. The earlier text did not contain anything even remotely similar to the National Avowal, but the Foundation or the passage on fundamental rights also includes numerous innovations compared to the relevant passages of the old constitution.” – József Szájer

– **The final chapter is about the State, and it was the subject of the most ferocious debates. Before moving on to, for instance, the question of the Constitutional Court, I would like to ask you, once again, to explain the guiding principle of conceptualising the state organisation.**

Gergely Gulyás: First, the decision had to be taken as to whether a chancellor-type parliamentary system should remain, or whether there should be a shift towards a presidential system. To avoid any misunderstandings, a great many democracies operate perfectly well in Europe with strong or much stronger presidential prerogatives than in Hungary – the examples of France or Poland, where a ‘semi-presidential’ system has proven its worth should suffice to illustrate the point. In our case, however, both prior to Communism and since the transition, a strong parliamentary system has always been a determining factor in constitutional law, so retaining a state organisation in keeping with our constitutional law traditions was an almost automatic decision. I have stressed on numerous occasions that the state organisation basically cannot be held accountable for the parlous state of a country, so I think that was the best possible decision. Still, it is worth speculating on whether a fundamentally different constitutional law system would be able to function in our country. It is easy to answer that question because there is no threat of the answer being expected to withstand the test of reality; nevertheless

I am firmly convinced that whereas a presidential system might function, a semi-presidential one could not. In the latter case, the powers of the executive are divided between the head of the state and the Prime Minister, which necessitates a type of collaboration between the President and the Prime Minister, who sometimes belong to different parties, which would result in critical situations in practise. In our case, it would jeopardise the smooth functioning of the state and

The most important innovation was the Budget Council and the related issue of defining the constitutional limitations of economic policy as well as modifying the powers of the Constitutional Court.

would render any major restructuring impossible. A presidential system would presumably not result in the same disruptions to the smooth functioning of the state; indeed, because one person has to win the elections, it would result in a more frequent turnover of the elite. However, this is not only alien to the Hungarian tradition of constitutional law, but it is also far removed from what people have become familiar with over the last two decades with regards to the

operation of a state. Since it had been decided that the foundations would remain unchanged, the only issue of interest was to see what shifts of emphasis would take place in the structure of constitutional law. **The most important innovation was the Budget Council and the related issue of defining the constitutional limitations of economic policy as well as modifying the powers of the Constitutional Court.** Apart from that, it is worth saying a few words about the courts more generally.

József Szájer: The most conservative part of the Fundamental Law is the one pertaining to the organisation of the state. This is where we have made the fewest changes; the core categories of the system established 20 years ago have been preserved. The earlier text did not contain anything even remotely similar to the National Avowal, but the Foundation or the passage on fundamental rights also include a numerous innovations compared to the relevant passages of the old constitution.

– Does this mean that you do not consider the abolition of ombudsmen’s offices a significant step?

József Szájer: From the very outset, Fidesz’s stance has been that a single body for protecting fundamental rights would be more effective and have greater authority than a host of ombudsmen bickering with each other over professional issues, their respective prerogatives and, very often, staffing matters. But let me come back for a moment to the core idea on state organisation; a shift to a presidential

system did in fact crop up. Or, for instance, in relation to the events in 2006 the question arose as to whether or not our structure was flexible enough if it was unable to offer anything in response to such a major crisis, other than elections due to be held four years down the line. Perhaps it is not a coincidence that the system of constitutional law in essence temporarily broke down five years ago, putting a severe dent in citizens' trust in the state, the after-effects of which have continued to be felt in the longer term. That was the reason why several actors proposed including the right of the president of the republic to dissolve Parliament in the Fundamental Law. Let me add that the debate on the pros and cons of the presidential versus the prime ministerial system has been going on for 20 years. It came very conspicuously to the fore already at the time of the MDF–SZDSZ pact, because although that agreement introduced, or even reinforced a chancellor system in constitutional law terms, politically it presaged the debates between the President and the head of government – as József Antall came from the MDF, while Árpád Göncz came from the SZDSZ. At the time, László Sólyom, then head of the Constitutional Court, wanted to move towards a chancellor-type rather than a presidential-type system. Then, when he became the head of state himself, he was the embodiment of a more autonomous presidential model, less closely associated with the executive – but without, however, overstepping the boundaries defined for him by the constitution. In other words, unlike the Prime Minister, he respected the constitutional constraints and behaved as a moral authority. Such conduct is open to criticism on political grounds, but László Sólyom interpreted his constitutional law jurisdiction in accordance with the spirit of the constitution.

Őszöd cannot be ignored from the perspective of constitutional law either, because what happened in 2006 rocked the foundations of state organisation for two reasons.

In this section, in fact, the chapter on public spending was redrafted to the greatest extent, and once again this was the result of Hungary's social experience. In effect, it was a final and desperate attempt to guarantee the state a kind of economic stability on the basis of the Fundamental Law that is immune to political changes or the hue of different governments.

Gergely Gulyás: *Őszöd cannot be ignored from the perspective of constitutional law either, because what happened in 2006 rocked the foundations of state organisation for two reasons.* On one hand, it was not possible to find an immediate constitutional way out of a situation when it became obvious that legitimacy

had been obtained formally at the cost of deceiving the voters. On the other hand, Hungarian society, having lived within the framework of a democratic state in which the rule of law prevailed for over 15 years, was confronted with a brutal and shocking series of fundamental rights violations committed by the state. The police responded to peaceful anti-government demonstrators with a brutality the likes of which had not been seen not only since the collapse of Communism, but which were unprecedented even in the dying days of the Kádár regime. They had, for example, dispersed the throngs commemorating the 30th anniversary of the execu-

If Hungary had had a presidential system in spring 2006, Ferenc Gyurcsány would have been elected head of state.

tion of Imre Nagy in 1988, but they did not fire rubber bullets into the crowd and they did not repeatedly kick defenceless people lying on the ground. The autumn of 2006, in fact, really did undermine confidence in the State, and many people blamed the constitution for failing to provide an option for removing a mendacious and ruthless power immediately. I argued for

the prevailing form of the system of parliamentary government then as well, because no constitutional structure can be founded on dishonourable behaviour, lies and the lust for power. **If Hungary had had a presidential system in spring 2006, Ferenc Gyurcsány would have been elected head of state.** The final dilemma facing democracy has always been *quis custodiet ipsos custodes*, because the system of checks and balances in itself provides an opportunity to immediately remove the head of the executive only in the rarest of normatively interpretable cases (e.g., disenfranchisement or conflict of interests).

– In the autumn of 2006, many people believed a President equipped with a robust set of powers would have been useful. That experience resurfaces in the first draft of the Fundamental Law by László Salamon, according to which the head of the state may dissolve Parliament in the event of a serious loss of confidence.

Gergely Gulyás: I voted against the proposal in the sub-committee and I opposed it in public to the end. The reason behind my opposition was that it would overturn the chancellor-type system and would provide the President with constitutionally enshrined powers that might have been wielded by László Sólyom at the time of the Gyurcsány government in the spirit intended by the legislators, but let us imagine for a minute what Árpád Göncz might have done at the time of the taxi drivers' blockade with such powers at his disposal. Indeed, it is not beyond the bounds of possibility to envisage a scenario in which the Fidesz government

might trigger such massive social protest that the head of state responds by simply dissolving Parliament. It would be an absurdity in terms of constitutional law to grant a sphere of competence without objective constraints and which may be interpreted elastically by the President who is elected by Parliament and whose powers are largely symbolic within a constitutional system built on the Prime Minister wielding supreme power. Let me add that the advocates of such an approach as a general rule had a preference for a presidential or semi-presidential system, the pros and cons of which and the chances of its actually functioning in this country have been dealt with earlier. At any rate, citizens always elect a President directly in such a system.

If the original question had been whether the Fundamental Law offers a response to the situation that ensued in 2006, we would have been able to reply with a resounding yes. The Fundamental Law's response is to prevent such a crisis from ensuing in the first place, and makes it impossible to mislead people for any length of time by placing constitutional restrictions on the economic policy of whichever government happens to be in power. If the provisions of the Fundamental Law had been in force in the period following 2002, the socialists would not only have been unable to conceal the reality, but would never have been permitted to ruin the economy to the extent that they did. The Budget Council would have had sufficient powers to veto the draft budgets (considered devoid of any foundation in reality at the moment of their birth by all economists) that were successively adopted by the socialists after 2002.

József Szájer: There have been minor adjustments to the presidential prerogatives. For example, the LMP party proposed that the head of the State should be entitled to dissolve Parliament if the budget is not adopted. We have accepted that. In addition, we furnished the Budget Council with robust powers of scrutiny—with the veto – if the Parliament wanted to adopt a budget that would lead to an increase in debt and the deficit. And the President may dissolve Parliament and schedule a new general election if MPs do not adopt the budget before 31st March.

– **This combination provides an opportunity for Viktor Orbán to use the bodies and offices filled with people loyal to him to continuously stymie the adoption of the budget of his successors, as a means of forcing early elections, as we were able to read in criticisms both in Hungary and abroad.**

József Szájer: Yes, I have also heard such a line of argument from people who otherwise have the reputation of being serious individuals. Let me state quite

emphatically that we harboured no such ulterior motives. Anyway, if a sensible government majority wishes to ward off the nightmare scenario of Parliament being dissolved all it has to do is refrain from adopting a budget that fails to respect the rule on reducing the deficit.

Gergely Gulyás: The process of legislation and the veto right of the head of state are much more elaborate in the new Fundamental Law than in the constitution currently in force. The situation was exacerbated further by a ruling of the Constitutional Court in 2003, which I alluded to in an article in the daily

newspaper *Magyar Nemzet* in 2008 as “the shoddiest decision in the otherwise distinguished history of the Constitutional Court”. **This was before I became an MP, so I could happily get away with voicing the harshest of criticisms of any Constitutional Court ruling.** At the time, the Constitutional Court interpreted the relationship between the President’s political and

This was before I became an MP, so I could happily get away with voicing the harshest of criticisms of any Constitutional Court ruling.

constitutional veto in such a way that in cases where the head of state avails himself of his political veto to refer a bill back to Parliament, which the latter subsequently adopts with amendments, then the President cannot turn to the Constitutional Court even in respect of the amended provisions, but is obliged to sign the act. We have now clearly stipulated that the President’s primary responsibility is that of carrying out a prior check of compatibility with the constitution. Accordingly, if the President believes an act is in breach of the constitution, then – irrespective of whether he agrees with it politically or not – he is under an obligation to turn to the Constitutional Court. If that body does not share the President’s opinion, the head of the state may not use his political veto any longer but is obliged to sign the act. **Where the change of substance enters the frame is that if the President does not consider an act unconstitutional yet does not support it politically, and refers it back to Parliament for renegotiation for that reason, and the Parliament amends the act, then – but only in relation to the amendments – the President’s constitutional veto right applies once again.** The significance of this is that it builds in safeguards: because if up to now the Parliament had amended the bill after the President had referred it back in such a way that – to take a ludicrous example – it deprived everyone in Hungary of human dignity, then according to the ruling passed by the Constitutional Court in 2003, the President would not have been entitled to request a prior compatibility check, but would have been under an obligation to sign the act.

József Szájer: The reason why it is important is that the government majority could have played a dirty trick from the very start by adopting the unconstitutional part of the text in the second round, in other words when no legal remedy is possible.

– We have arrived at the question of the Constitutional Court’s jurisdiction, in relation to which I believe the governing majority has marshalled contradictory arguments. Last autumn they said this temporary restriction of its powers was necessitated by the extraordinary economic situation. If that was true, why was it not possible to restore the lost powers when the Fundamental Law takes effect as of 1st January 2012? Particularly if we take into account that the crisis has had an impact on all European states, but the governments in power have not curtailed the powers of their Constitutional Courts – which might potentially thwart the cabinet’s plans – or have postponed their restoration to the distant future. On the other hand, there is a lot of truth in what an excellent constitutional lawyer, András Jakab, has said: if the Constitutional Court is only allowed to review the budget or tax laws in connection with the freedom of conscience, the freedom of religion, or the right to human dignity, what would prevent a government from, for instance, nationalising holiday homes on Lake Balaton?

Gergely Gulyás: The Constitutional Court does not agree with the interpretation just alluded to. I believe that those debates have become pointless after the second resolution on severance payments. The Constitutional Court has interpreted the restriction so narrowly that it has deduced the protection of property from human dignity or from the right of self-determination which is an integral component of it in issues involving much less serious infringements of rights than the one cited. Following the adoption of the new Fundamental Law, the Constitutional Court has unquestionably become the number one judicial forum in Hungary; although it is possible to quibble over the earlier restriction of its jurisdiction in relation to economic issues, but overall the Constitutional Court has clearly emerged as the victor of the constitution-drafting process. As for the restrictions on decision-making concerning economic issues, they have to be looked at in the broader

Where the change of substance enters the frame is that if the President does not consider an act unconstitutional yet does not support it politically, and refers it back to Parliament for renegotiation for that reason, and the Parliament amends the act, then – but only in relation to the amendments – the President’s constitutional veto right applies once again.

context together with the regulations on the protection of public monies and keeping the national debt in check. From the vantage point of legal theory, constitutional courts operate according to the same principles everywhere: the freely elected Parliament enjoying direct legitimacy, voluntarily places restrictions on its own powers, accepts a compromise as part of the rule of law to the effect that a body consisting of judges elected by it is entitled to overrule its decisions on the basis of the constitution, with no possibility of legal remedy.

The Fundamental Law grants these powers of review temporarily to the Constitutional Court in relation to budgetary acts – in circumstances where the national debt exceeds 50 percent of the annual GDP

I am not claiming that this section of the Fundamental Law is the dearest to my heart, but it cannot be denied that these lines reflect a philosophy that has been excruciatingly absent from the way the state has been run for the past 20 years.

– only in cases where specified fundamental rights have been breached and in which cases the legislative process has been unlawful. At the same time, however, the Fundamental Law has introduced a different, but much stricter limitation on the Parliament’s prerogatives, when it allowed the Budget Council to veto the budget altogether if that budget were to increase debt. So whilst the level of protection for the individual has been reduced (albeit to an extremely limited extent, as

it has become clear following the second resolution of the Constitutional Court on severance payments) the protection of the national economy and thereby that of the community as a whole has been significantly bolstered. Moreover, the authors of the constitution view this situation as being a temporary state of affairs because the Constitutional Court will once again be able to exercise its earlier powers as soon as the national debt has dropped below 50% of GDP. **I am not claiming that this section of the Fundamental Law is the dearest to my heart, but it cannot be denied that these lines reflect a philosophy that has been excruciatingly absent from the way the state has been run for the past 20 years.**

On the other hand, by introducing the concept of constitutional complaints, the Constitutional Court is already able to exercise powers of scrutiny and review in relation to specific rulings as well, therefore, it will not only be sitting in judgement over Parliament, but over the judges as well, in order to safeguard and enforce the provisions of the new Fundamental Law.

József Szájer: **There are certain economic preconditions for a democracy to function.** Even though the legislature narrows down its sphere of competence in relation to ensuring a balanced budget, it nevertheless does not hand over its

responsibility in this respect wholesale to the Constitutional Court, but retains an – albeit modest – component of exclusive jurisdiction, arguing that it will not accept a temporary restriction of its powers as regards short-term measures with a major economic impact, which are essential for guaranteeing the normal functioning of the state. I think this is justifiable in the case of a country that nearly went bankrupt three years ago. The economists I consulted welcomed the decision because they were also afraid that the protection of fundamental rights would take precedence over economic necessity. And they can also see – which takes us back to the issue of the state organisation – that the relationship between the Constitutional Court and Parliament has to be sorted out definitively. We have already mentioned that in the absence of a detailed, consolidated, and uniform constitutional text, Constitutional Court judges have acquired enormous political freedom over the past 20 years. In theory, the activity of the Constitutional Court simply involves the application of logic, according to which the judges compare the constitution with statutory law and if there is a discrepancy between the two, the law possessing lower status is repealed. In reality, the Hungarian Constitutional Court has almost attained the status of a political power – largely due to the inability of the political parties to draw up a new constitution – which, as a result of the prestige of its members, has been able to elevate itself above daily skirmishes. Since we are on the subject of its members, a row erupted in connection with the election of István Stumpf, over the issue whether at present (as a result of the rules governing appointments to the position of constitutional judge) the system has not shifted too far in favour of theory at the expense of individuals of a more practical bent, such as those with experience in criminal or administrative law. Let me note here that in Germany a former minister of a federal state has recently been elected as a judge of the Constitutional Court.

There are certain economic preconditions for a democracy to function.

Coming back to the text, I think it is a great achievement of the section on public monies – including the restrictions on the competences of the Constitutional Court at certain points – that it succeeded in linking these strictly to a crisis situation. However, when we talk about the narrowing down of the Court's jurisdiction, it is important to see how broad-ranging they were before. On one hand, the Court could deal with any issue it wanted to. As a result of *actio popularis*, anybody could turn to the Constitutional Court, but due to the large number of cases, the Court carried out a preliminary selection, deciding on what it would rule on within

three months and what it would put off indefinitely. In addition, the concept of the ‘invisible constitution’ devised by László Sólyom – which, of course, had its justification during a transitional period and in circumstances where the core document had its shortcomings and contradicted itself on several points – had solved the problems resulting from the constitutional stalemate which in turn was

In addition, the concept of the ‘invisible constitution’ devised by László Sólyom (...) had solved the problems resulting from the constitutional stalemate which in turn was the product of the political situation.

the product of the political situation. On the other hand, it provided the Constitutional Court with almost unlimited powers of annulment, in conjunction with which the issue of these competences placing completely unjustified constraints on the powers of the legislature in emergencies becomes highly relevant. The countries condemning us for whittling down the powers of the Constitutional Court may of course say that we have taken a step backwards compared to the

higher level of protection that existed previously. But in most of these countries, the level of protection of general fundamental rights falls short of the level of protection afforded to the constitution by the Hungarian Constitutional Court over the past 20 years. Although it is important for us to be world champions and European champions when it comes to the theoretical protection of fundamental rights, this cannot be allowed to result in the country falling apart at the seams or going bankrupt

– Let me continue playing the devil’s advocate. Not only has the jurisdiction of the Constitutional Court, but also the number of its members and composition changed: right-wing MPs, elected prior to or in 2010, have also become members. With that, the governing majority has confirmed earlier suspicions.

Gergely Gulyás: If the government parties had believed that they could exert political influence by expanding the number of members, it would have been enough to increase the size of the Constitutional Court and it would not even have been necessary to modify its jurisdiction. On the other hand, we have increased the number of judges in the Constitutional Court by four judges in total, which is the same as the number originally defined in the Act on the Constitutional Court drawn up by László Sólyom and Péter Tölgyessy and adopted in 1989. The measure was absolutely necessary because the Constitutional Court’s case workload will increase significantly with the introduction of the constitutional complaint. And as for bias, many people have been accused of it already, for instance, István

Stumpf or Mihály Bihari, who was an MSZP MP between 1994 and 1998. Time has not borne out the prejudices; the parallel opinions written by István Stumpf on the Resolutions of the Constitutional Court and his voting patterns attest to his being unbiased and fair-minded. The case of Mihály Bihari is even more telling; he was the MSZP's candidate when elected for the first time, whilst he was re-elected by Fidesz in 2010.

József Szájer: We emphasised throughout the process that the competences of this important institution were defined quite broadly, and the Court itself has striven to the same end. And such a process provides opportunity for the human factor to play a more prominent role. By redrafting the proceedings of the Constitutional Court, through stipulating that future decisions must be linked to specific issues, we have curbed the subjective elements. Of course, I do not believe that the role played by the judges' personalities will become negligible, but nor would such an outcome be desirable. At the same time, we have to realise that Constitutional Courts everywhere function as political counterbalance. **It is no coincidence that in recent years, the issues of the highest political relevance are the ones that have been singled out for some kind of special treatment, either by the judges fast-tracking them or by failing to do so.** On the other hand, a new constraint has been built into the system by transferring a certain component of the protection of the Constitution to the Budget Council, because from now on complying with the debt ceiling is going to be synonymous with defending the constitution.

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Gergely Gulyás: If we take an unbiased look at it, the Constitutional Court has been given new competences that will not only strengthen it but will also be advantageous for citizens seeking redress. As József Szájer has already indicated, the real legal uncertainty that has prevailed up to now meant that since anybody could submit a petition contesting a law just for the sake of it without any legal interest in the outcome the Constitutional Court sometimes left such a file to gather dust for up to ten years. This represents the greatest affront to the legal certainty so beautifully elaborated and frequently invoked by the Constitutional Court. This situation was caused precisely by petitions being filed by people not directly affected by the issue and having no legal interest. That was the reason why the Court itself requested that *actio popularis*, the right for absolutely everyone

to turn to the Constitutional Court be discontinued. At the same time, the possibility of a prior check of compatibility with the constitution was expanded; not only the President of the Republic may avail himself of it, but Parliament as well, supported by the government, the speaker of the house, or the MP tabling a bill. True enough, a majority of MPs must support the move, but the possibility of taking such an initiative in the first place is an important political instrument in the hands of the opposition. On the other hand, the provision on constitutional complaints has resolved a long-standing dispute between ordinary judges and the Constitutional Court that has mainly been manifested in the Constitutional Court's reviews of resolutions on the uniformity procedure, since the Supreme Court disputed the Constitutional Court's right to influence judicial practice. The authors of the constitution have now unequivocally made it the responsibility of the Constitutional Court to review the enforcement of the Fundamental Law when courts hand down rulings.

József Szájer: If we consider the changes affecting the Constitutional Court more generally rather than concentrating exclusively on its powers in relation to the budget, there were three motives behind them. We have already discussed the first one at some length, namely, that the Constitutional Court's position had to be redefined in the system of separating the branches of power. In its relationship to the legislature, some none too felicitous outgrowths that might potentially have given rise to an excessive concentration of power had to be lopped off. The second motive behind the changes is to get closer to citizens, i.e., if a citizen files a petition, they should be given at least a minimum chance that their case will be processed. Naturally, this cannot be realised fully; even in Germany which provides the gold standard, for example, the Constitutional Court is only able to deal with a fraction of the cases. The third motive is legal certainty. There were many debates on the prior check of compatibility with the constitution; we also consulted the Venice Commission. There are systems where prior compatibility checks predominate. However, one thing cannot be doubted against the backdrop of the experience of the past 20 years: it also has an impact on the prerogatives of the legislature and gives rise to a kind of legal uncertainty for everyone to be kept waiting for the Constitutional Court to arrive at a decision on an issue of particular importance, such as the social referendum or the introduction of the tax to be paid by home owners on their properties. This is piquant, **because in the bulk of its resolutions, the Court has usually condemned the Hungarian State precisely for the lack of legal certainty – perhaps even to an exaggerated degree for my liking as a lawyer,**

but this is understandable if we consider the demand on the part of Hungarian society for stability over the past 20 years. The new prior compatibility check at least provides an opportunity for the government majority to ask the Constitutional Court in a fast-track procedure within the framework of a general constitutional review whether or not a legal provision corresponds to the Fundamental Law at least in principle. If such a prior compatibility check had existed and if enough time had been available, the government coalition might not have decided to restrict the powers of the Constitutional Court in relation to the one-off 98 percent tax on severance payments or the pension funds. To sum up, I believe closeness to citizens, legal certainty, and the separation of powers, that is, the restoration of the system of checks and balances, are the three reasons why the powers of the Constitutional Court had to be re-examined to take into account the practise and the experience of the past 20 years. This, naturally, is set out in detail in the relevant cardinal act.

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– In contrast to what was planned earlier, the Courts of Appeal are not included in the Fundamental Law, only the Curia features. Are you going to restructure the judiciary completely?

Gergely Gulyás: I think you should not draw any conclusions about the various tiers of the judiciary from the text, but you should do so about the National Judicial Council instead. The problem with this body was not that in 1997 the government majority then in power rammed it down Parliament's throat, thereby breaking its earlier promise concerning a moratorium on modifying the constitution, but that it started operating as of 1st January 1998 at a stage when the problems that persist with the judiciary today were already present or had even taken a turn for the worse. If in a country a judge has a workload comprising may have five, six, or seven times more cases than a colleague depending on which county they happen to work in or whether they have the misfortune to work in the capital, the system of administration is dysfunctional. To avoid any misunderstandings, I am fully aware that the budget set aside for the courts, which has not even seen a nominal increase since 2004, is inadequate; indeed, the practitioners of a vocation that has attained a high degree of social prestige are often confronted with disgraceful

working conditions. However, it is an organisational issue rather than a financial one that over a period of 15 years, an administrative system ought to have been able to secure a regionally more even distribution of the case workload, and a timeframe for proceedings of at least statistically comparable length. The former has not been achieved, and as for the latter, we do not even have statistics that

Not to mention that I have never met a practising judge who was satisfied with the operation of the National Judicial Council.

can be taken seriously at our disposal. “I only trust the statistics I have falsified myself,” Churchill said, and this is truer of court statistics which are supposed to illustrate the actual duration of court cases from start to finish than it is of any other area. Whereas for a citizen seeking redress the only thing that matters is when an enforceable ruling or sentence is passed, in

court statistics cases are recorded as having been completed when proceedings have been adjourned, interrupted or if the Court of Appeal has quashed the initial ruling resulting in proceedings being re-launched in the Court of First Instance. So, statistically, five completions often result in a single definitive judgement. **Not to mention that I have never met a practising judge who was satisfied with the operation of the National Judicial Council.**

Irrespective of the verdict on the operation of the National Judicial Council, it remains true that the structure of the judiciary should be regulated in a cardinal act rather than in the Constitution. There is widespread agreement on this, because the draft constitution drawn up by Csaba Gáli, Tibor Sepsi, and Csaba Tordai (high-ranking civil servants of the Gyurcsány and Bajnai governments) very eloquently expounds in detail why it is unnecessary to regulate the various tiers of the judiciary and the relationship between them in the Constitution, so much so that we could not have put it better ourselves. So, on one hand, the National Judicial Council is not a constitutional body, whilst on the other hand, the hands of the legislators should not be tied before a cardinal act is drafted.

A more pressing issue than the debate on the various court tiers is that of the need for significant changes to their respective powers and spheres of competence. There are enormous problems in this area: every fourth or fifth person comes into contact with the justice system through court cases and we must always bear in mind that legislators have a huge responsibility incumbent on them to preserve and indeed to improve the quality of the rulings handed down. A decision awarding the custody of a child or the settling of a dispute over property rights can completely change the course of people’s lives. And when a major restructuring

is taking place it is best not to tie the hands of Parliament beyond codifying the core constitutional guarantees of the rule of law or, in our case, of respecting the independence of judges to the absolute maximum. This is the area where cardinal acts will be of key importance.

József Szájer: Due partly to time constraints, we did not conclude our discussions on the justice system in the same way as we did not conclude them on other issues, such as for example the right to vote. Nevertheless, I consider the restoration of the separation of powers, and of checks and balances to be of primary importance, because a judge can be independent but the dispensing of justice can not: independence does not necessarily mean independence in the sense of management and organisation, because a judge must be independent not only of the executive and its influence, but also of the decision of another judge, even of one taken by a superior. It should not be admissible for the head of a court to call a judge on the phone to give good advice or make a request concerning a particular case that judge is dealing with. The principle of independence renders such conduct unacceptable. Meanwhile, in the overwhelming majority of the models that we are familiar with, the sharing of organisational, administrative, and appointment-related competences is not considered a violation of judges' independence. A judge is subordinate to no one, but in almost every democratic system, the legislature or the executive, or both, are accorded a role in the appointment of the heads of court. In the United States, the President nominates the members of the Supreme Court and the Senate hears them, so the powers are divided between the legislature and the executive. This guarantees that the judiciary and its legitimacy are nevertheless connected with the citizens. What makes a court an independent power is not that it is independent of everything – it functions within the context of a modern society. Let us take an example: over the past 20 years, or even beforehand, there has been a strong tendency in the Hungarian judicial system to impose milder punishments. Although there was a palpable increase in society's demand for order, the courts were unable to respond to it as they had lost touch with reality. Legislators had no choice but to successively ratchet up the penalties. **Another sign of being cut off from the citizens was that neither the old constitution nor other legal provisions guaranteed that**

Another sign of being cut off from the citizens was that neither the old constitution nor other legal provisions guaranteed that cases would proceed through the courts and be brought to a conclusion within a reasonable timeframe. Now this has been rectified by the Fundamental Law.

cases would proceed through the courts and be brought to a conclusion within a reasonable timeframe. Now this has been rectified by the Fundamental Law. The regulation adopted in the mid-1990s is replete with dead rules. For example, it stipulates that Parliament is not allowed to change a draft budget submitted by the National Judicial Council. This was, however, never applied in practise. An appropriate legal solution was always devised, one that was in keeping with the constitution, and which also took full account of the budgetary considerations. Part of the running of the courts must be left up to the court self-governments, because these are functioning organisations. But at the end of the day it will always be the executive which citizens hold to account if the court system does not function properly. And it is currently in the throes of a systemic breakdown, which is demonstrated to a considerable extent by a general loss of confidence in the courts.

At present, this is one of the most painfully sensitive points of the life of the state. The affair of the Constitutional Court also affects a certain segment of society. However, judicial practise is a matter that concerns all Hungarian citizens.

If legislators do not sort it out using the powers at their disposal, they are guilty of a serious dereliction of their duty towards the citizens.

If somebody incurs damages in spite of sticking to the letter of the law, can they be confident of being able to successfully assert their legitimate claim with the state's assistance within the foreseeable future? Today we cannot answer this question with a resounding "yes".

Gergely Gulyás: Our starting point is that voters first and foremost hold the political power in government accountable for any disruptions to the smooth functioning of the courts, even though the Parliament or the government have no competence in this area beyond adopting the principal amounts of the court's budget. Voters will ask us why court cases in Budapest or Pest County often last for more than five years. And here once again, what is at stake is legal certainty and confidence in the state: **if**

somebody incurs damages in spite of sticking to the letter of the law, can they be confident of being able to successfully assert their legitimate claim with the state's assistance within the foreseeable future? Today we cannot answer this question with a resounding "yes". As to what kind of organisation or self-regulating body is required to ensure an efficient and high-quality justice system is an extremely important, but nevertheless technical issue. There are some examples in Europe of the legal professions regulating themselves possessing broad-ranging autonomy, but there is also a substantial Western tradition of judges being managed as part

of the executive. Whichever model is chosen, it may not, of course, impinge on the independence of judges.

– Without quibbling with the criticism of the National Judicial Council expressed by lawyers of the most varied political persuasions from Béla Pokol to Zoltán Fleck, curtailing autonomy brings with it the threat that political logic will gain further ground. There might be a justification for transferring the competences of the National Judicial Council to a Ministry, but if we examine it together with the lowering of judges' retirement age, it becomes more difficult to deflect accusations of a full-scale assault.

Gergely Gulyás: According to the present draft, courts' self-administration will be retained – which is justified because prosecutors' offices will also be granted similarly independent legal status by the Constitution – but the self-regulation that has been the norm thus far within the National Judicial Council will be replaced by a single person with a clear mandate who will be put in charge of the judges' offices, which in turn will be responsible for the smooth functioning of the justice system. Allegations that the lowering of judges' retirement age was politically motivated are easy to refute, because the decision primarily affects heads of courts appointed by István Balsai under the Antall government, when the Ministry of Justice was in charge of court administration. Those familiar with the practise of appointing judges adopted following the establishment of the National Judicial Council are aware that it has not always been possible to dismiss the accusations of economic, political, and other interests motivating the appointment of court heads over the past ten years or so, and I am putting it very tactfully.

Branch of power can be left completely to its own devices.

József Szájer: The question may indeed arise over which is worse; political pacts or the series of bargains concluded inside the judiciary, which Gergely Gulyás has referred to. No **branch of power can be left completely to its own devices**. Of course, it is an established custom in Hungary that laws regulating judges are written by judges, laws regulating solicitors are written by solicitors, laws on doctors by doctors, or laws on teachers by teachers, but this practise has nothing to do with democracy or the separation of powers. The very reason politics exist in the first place is to ensure that the broader interests of society are represented in relation to these issues as opposed to the narrow interests of particular groups. Namely, as Montesquieu correctly intuited, it does a system good for the branches of power to keep tabs on one another and for the division of labour to be appropriate.

– **Judging by recent statements, the government cannot seriously expect that judges demoralised by the changes to the retirement rules will co-operate in implementing the reforms.**

Gergely Gulyás: A dialogue is taking place and the overwhelming majority of judges welcome the abolition of the National Judicial Council. As far as the lowering of the retirement age is concerned, opinions are divided, but neither would I dare to claim that only a small minority is in favour of the change, the reason being that the majority of those affected by the changes are mainly judges on the appellate court, or ones who work in high courts or in the Supreme Court. The positions being freed up due to retirement can be redistributed taking account of the case workload of the individual courts. I grant that if someone had planned on being a judge for another eight and half years and all of a sudden this period is reduced to six months, they would be justified in considering the decision unfair. Nevertheless, the accusation of violating the independence of the judiciary or attempting to exercise unlawful influence must be emphatically rejected: it is precisely because the same retirement age applies across the board that there is no room for discrimination.

József Szájer: Two of the arguments against the lowering of the retirement age are completely unfounded. One is that the rule is discriminative. How can a rule be discriminative if applies equally to every person of a certain age? The other groundless argument is that a European standard exists and the new Hungarian provision is not in keeping with it. On the contrary, in the same way as there is no general standard on the administration of courts, there is none on the retirement age either.

– **A separate article is devoted to the protection of national assets. With a slight note of cynicism: why bother regulating something that barely exists? Or if I want to be a little less sceptical, I can put the question in slightly different terms: has this rule not come too late? Nowadays practically everything is privately owned, from the food industry to energy providers and to a greater extent than is the case in, say, Germany or France.**

József Szájer: It could also have been said about the tackling of government debt that we have been trying to lock the stable door after the horse has bolted. There is certainly some difference between the two regulations in that whilst in relation to public debt the Fundamental Law formulates tough normative rules, all it does in relation to public assets is to prescribe a duty on the part of the state to protect them.

There is a doctrine still subscribed to by many today, according to which public assets do not have to be protected or, if they do, then only to the extent that anybody else's assets need to be protected, but reality has revealed the bogus nature of such arguments. I find it indefensible for example that there are no public assets in strategic sectors because the state is not considered to be a good owner. This might be true in certain cases, but from the state's perspective, a private owner is not always a good owner either, and it has become apparent that the state has not been able to stave off abuses either in relation to property or at the regulatory level. The passage of the Fundamental Law pertaining to public assets legitimises the tightening up of the rules and boosts the transparency of measures related to them.

Gergely Gulyás: *It is never too late to improve.* Obviously, this kind of a rule would have had greater impact around the time of the transition or in the years immediately afterwards than now. Fortunately, however, there is still something left to protect and on the other hand we can at long last – both symbolically and in practice – do away with the “state is a bad owner” mantra at constitutional level. It is sufficient to point to the fact that our state-owned strategic energy companies were bought up by firms part-owned by the French and German states, which refuses the liberal dogma in almost tragicomic manner. Obviously, we must protect what is left, but I believe that we should also not give up on the idea of the State being allowed to acquire or repurchase assets in certain areas – we have seen good examples of this at local authority level.

It is never too late to improve.

– Paragraph 4 of Article 38 stipulates that national assets may not to be sold off to offshore companies –paraphrasing the concept. What does it mean when it says that you cannot conclude a contract with a company whose ‘shareholding structure is not transparent’? In future, what will be the status of a Cyprus-based company for instance?

József Szájer: The details are stipulated in the relevant laws, but clearly, no legal provision can overrule the Fundamental Law.

Gergely Gulyás: I have also read the ironic articles, but I cannot see any colossal problem. It is the sovereign right of the Hungarian State to specify with whom it wishes to sign a contract. It may still be a company registered in Delaware, USA, or in Cyprus, only the company has to present a credible declaration on its core data and shareholders' structure. I don't think this is too much to ask.

– A little later on, Article 40 states that that the fundamental rules of tax liability and of the pension system will be regulated by a cardinal act. Apart from tying the hands of your successors, what justifies linking the flat-rate tax to a two-thirds majority?

Gergely Gulyás: If the rule on the last tax concession, on tax credits also belonged here then the question would be justified, but for the time being we have only got as far as deciding that these laws will definitely include, in the case of the pension system that membership of the statutory and private pension schemes will be on a genuinely voluntary basis. Tax breaks for families with children will definitely be protected by a two-thirds majority, but I believe we should not shy away from conflicts in this area, but should make it absolutely clear that starting

a family is something that needs to be supported as a strategic objective of such magnitude for the country that we should avail ourselves of every means at our disposal to achieve it. All economists assert that the greatest virtue of a tax system is its simplicity and predictability.

József Szájer: *The experience of Hungarian society has been that tax rules change virtually every year or even several times a year. That is why the authors of the constitution deemed it necessary to enumerate certain principles.*

And indeed, the provision does not exclude, for example, the principles of a flat-rate tax from being regulated in a

cardinal act, thereby really tying the hands of their successors. But obviously, it would be irrational to go beyond certain limits – even Fidesz does not dream of ruling the country with a two-thirds majority for the next 20 years. For my tastes, it is still within the boundaries of reasonableness for the cardinal laws to stipulate proportional rather than progressive taxation, but I fully accept that not everyone agrees with me on where the boundaries should be drawn.

We will see what path the legislature decides to go down and these competing views will be measured up against each other in the subsequent debate. As a general rule, those who are involved in drafting constitutions steer clear of associating such viewpoints, which depend to too great an extent on economic policy with a text that is difficult enough to modify as it is. A bad example of this sort already exists in Hungary: if the MDF–SZDSZ pact had not come into being in 1990, not even the budget could have been adopted because originally, the budget belonged to the ranks of laws requiring a two-thirds majority.

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ON THE STATE OF EMERGENCY AND THE SITUATION OF LOCAL AUTHORITIES

“In my opinion, nations making the transition from dictatorship to democracy need a system that continues to protect the rule of law—at most by having recourse to special instruments—in case, God forbid, war or another type of unexpected calamity come raining down on us. Covering this kind of scenario is already difficult to justify on the grounds of the limited space available since relatively detailed provisions have to be drawn up. As a matter of fact, the state of emergency is the response on the part of the rule of law to crises, disasters, and abnormal situations and it is important from that point of view.”—József Szájer

—The oddest part of the constitution-drafting process might possibly have been formulating the section on the state of emergency. A state of emergency has never been declared in Hungary since the transition.

József Szájer: In my opinion, nations making the transition from dictatorship to democracy need a system that continues to protect the rule of law—at most by having recourse to special instruments—in case, God forbid, war or another type of unexpected calamity come raining down on us. Covering this kind of scenario is already difficult to justify on the grounds of the limited space available since relatively detailed provisions have to be drawn up. As a matter of fact, the state of emergency is the response on the part of the rule of law to crises, disasters, and abnormal situations and it is important from that point of view.

Gergely Gulyás: Since the state of emergency opens up the possibility of curtailing fundamental rights or indeed of withdrawing certain fundamental rights altogether, they have to be regulated in the Constitution because otherwise any curtailment of rights necessitated by extraordinary situations would be unconstitutional. So, in this respect, our intentions were different, but we had no other choice. I had always argued that general provisions should be kept as brief as possible. Then it became clear that it could be very dangerous to leave it up to laws of lesser standing to deal with such circumstances, particularly in situations that are

already critical anyway. Nobody wanted to incur that opprobrium simply because, for aesthetic reasons, we would have liked the new constitution to be shorter than the previous one, which is why we stuck with the more detailed provisions after all.

József Szájer: I would like to raise two further issues here: one is that of local authorities. My reason for broaching the subject is because **the truth is that the Fundamental Law only goes halfway with respect to local authorities, regulating part of the system only.** For example, the new Fundamental Law does not even stipulate rules pertaining to administrative units because local authorities are regulated by a separate law. Meanwhile, the text offers no response to the basic question: to what extent are local authorities part of the state organisation and to what extent are they not? Is the system of local authorities an independent branch of power? Are local authorities' assets independent? Are the tasks carried out by local authorities delegated to them by the state or do they emanate from the very existence of a system of local authorities in the first place? We need to answer these questions. It was decided in 1990 that the assets to be transferred to local governments would have the same properties of any other assets. Some of the local governments have used all their assets up, paying off their debts, while others managed them well and finally some asked the state to bail them out when they went bankrupt. For this very reason, we placed limits on the funding of local authorities from the public purse. We have bolstered the rules pertaining to the state's role and the extent to which it may intervene in the functioning of local authorities, but many questions remain open.

Gergely Gulyás: As far as local authorities are concerned, the most important modifications are those regulating their finances. In theory, up to now, the government had to provide the necessary resources for the local authorities to perform the tasks stipulated by the relevant law. Only if this condition is met can the other condition also be expected to be met: namely, that a contribution from the state is necessary for taking out loans or entering into financial commitments. Harmony between these two conditions had to be created in the Fundamental Law, because it had been completely lacking hitherto.

the truth is that the Fundamental Law only goes halfway with respect to local authorities, regulating part of the system only.

The government did not arrogate the powers necessary to stop local authorities from running up debts; on the other side, it did not fund the tasks bequeathed to the local authorities by the relevant legislation. Once these two rules are complied with, the entire system will become more transparent. Moreover, the debts

incurred by the local authorities ultimately come back to haunt the state because only the state can bail out local authorities that have run up enormous debts or have become insolvent.

It is also important that the term of office of local authority leaders and representatives has been increased to five years. It would be felicitous if the timing of parliamentary elections could be separated from the timing of local government elections, and it would be useful to link local government elections to the European Parliament elections from 2019 in order to ensure a higher turnout and reduce costs.

József Szájer: Since holding down both the post of mayor and of MP is not deemed to involve a conflict of interest at present, it is extremely difficult to plan and implement any restructuring of the system of local authorities. **In my view, many benefits can accrue from local interests and values being articulated in Parliament, but it constitutes a serious breach of the principle of equality of representation.** At the moment, the fact that the mayor of Sopron is not a member of the Parliament but the mayor of Debrecen is, gives rise to an inequality in the system of local authorities' representation. It is still to be decided how the system of local governments could be involved in the life of the State if holding office in local government is declared incompatible with holding office in Parliament. For example, the right to submit proposals to the legislature could be guaranteed by establishing a kind of chamber – but this is just an idea. Here we have the question of Budapest. The 1990 act on local authorities established a model that has proven dysfunctional and constantly fuels conflicts. We hope that the specialist laws which are in the process of being debated at the time of writing of this book will represent an improvement because it is an untenable situation for the various administrative tiers to be embroiled in a perpetual dispute over their respective competences.

In my view, many benefits can accrue from local interests and values being articulated in Parliament, but it constitutes a serious breach of the principle of equality of representation.

I would like to add one more thought on the subject of the referendum. As we have already discussed, in a democracy, people exercise power indirectly, through their elected representatives. The institution of the referendum provides for the direct exercise of power, and the Fundamental Law has shifted towards the principle of different degrees of legitimacy accruing to legislation adopted by Parliament and those adopted as the result of a referendum, as outlined by the Constitutional Court. This is reinforced by the rule in Article 8 that increases the chances of a valid referendum.

The referendum has become an exceptional institution of democracy, and also a safety valve for releasing major tensions should the need arise. We have talked about the serious crisis caused by the Ószöd speech and what followed in its wake. The subsequent social referendum functioned as such a safety valve for society. It is not the goal of the parliamentary system to prevent the emergence of broad political unity of such proportions from emerging between elections. It is a functional rule; we were not simply improvising when we raised the numbers in order to make it impossible to hold a referendum on a certain issue below a certain threshold. Quite the opposite: in keeping with the Constitutional Court's decision and with the rule set out in the initial sentences on the relationship between representational and direct democracy, we established a ratio that makes it possible for a realistic expression of the will of the people. At the same time, it does not open the doors to abuses in the sense that it is not possible to overrule representational democracy in every instance, the latter being the primary form of representation.

Gergely Gulyás: We reinstated the previous minimum threshold for referenda, which had been lowered by the left-wing governing majority in 1997 which had good grounds to fear that the referendum on NATO membership would not be valid. They modified the rules in such a way that the turnout did not have to exceed 50 percent for the result to be valid. Instead, it sufficed for over one quarter of voters to respond to the question in the same way. Today, there is no referendum of such vital political importance to the nation as the ones on NATO and EU membership. There is an average turnout of between 60 and 70 percent at elections involving the exercise of power indirectly through voting for representatives. Therefore it is an entirely logical expectation that if people wish to avail themselves of the instrument of the direct exercise of power; if they wish to take back power from those to whom they have entrusted it for a predetermined timespan in relation to some issue or other, then at least half of the electorate should express their opinion. Fidesz cannot be accused of inconsistency in this area, because in 1989 a successful referendum was held under the rules applicable at the time, which were identical to the ones currently in effect. The "four-yeses" referendum was successful, and over half of the electorate took part in the social referendum as well.

IN PLACE OF AN AFTERWORD



In our respective capacities as chairman and member delegated by Fidesz to the governing parties' constitution-drafting committee, we were delighted to accept the invitation to assess Hungary's new Fundamental Law and the process of drafting the constitution in the informal setting of conversations. This is justified for two reasons: firstly, we hope that the Fundamental Law will define the framework within which the country goes about its everyday business for a long time to come. The other important reason is that in the political struggle, debates are often reduced

to sound bites; simplified into opinions and counter-opinions. However, the constitutional framework of a country's functioning cannot be simplified to this extent. A nation's identity is an extremely complex phenomenon in itself, and this is particularly true of us Hungarians. Exploring the deeper context of the constituent parts of the institutional system established by constitutional law is a worthwhile endeavour, as the underlying objectives of regulating the individual institutions can rarely be formulated in a way that is compatible with the strictures of modern political communication.

We hope that this book will not only provide insights into the process of drafting the Constitution, but will also be of value in assisting anyone interested in the process to acquaint themselves with the intentions of the legislators, indispensable for the interpretation of

any law – the intentions that guided the governing parties’ decision-making bodies when they determined the detailed contents of the Fundamental Law.

It is often said that one of the reasons for the widespread distrust in politics is the fact that public debates do not get down to the nitty-gritty. Indeed, oversimplified statements sometimes become detached from reality, and are incapable of conveying the most important motives behind a political decision. However, this book really does discuss the most significant issues in relation to drafting a constitution – it does get down to the nitty-gritty. We hope that these conversations will facilitate a more composed, more objective, and



even-handed dialogue on Hungary’s Fundamental Law.

It is with pleasure that we recommend this book to the supporters and the detractors of the Fundamental Law alike, as we are convinced that these conversations are of relevance to everyone who does not reject the new Constitution in a knee-jerk reaction, excluding even the possibility of a substantive exchange of views.



APPENDIX

THE FUNDAMENTAL LAW OF HUNGARY*

(25 APRIL 2011)

God bless the Hungarians!

NATIONAL AVOWAL

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:

We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago. We are proud of our forebears who fought for the survival, freedom and independence of our country.

We are proud of the outstanding intellectual achievements of the Hungarian people.

We are proud that our people has over the centuries defended Europe in a series of struggles and enriched Europe's common values with its talent and diligence.

We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country.

We promise to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century. The nationalities living with us form part of the Hungarian political community and are constituent parts of the State. We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore we shall protect

* The Fundamental Law of Hungary adopted by National Assembly on 18 April 2011.

the living conditions of future generations by making prudent use of our material, intellectual and natural resources.

We believe that our national culture is a rich contribution to the diversity of European unity.

We respect the freedom and culture of other nations, and shall strive to cooperate with every nation of the world.

We hold that human existence is based on human dignity.

We hold that individual freedom can only be complete in cooperation with others.

We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are fidelity, faith and love.

We hold that the strength of community and the honour of each person are based on labour, an achievement of the human mind.

We hold that we have a general duty to help the vulnerable and the poor.

We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-being, safety, order, justice and liberty.

We hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse.

We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation.

We do not recognise the suspension of our historical constitution due to foreign occupations. 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.

We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid.

We agree with the members of the first free Parliament, which proclaimed as its first decision that our current liberty was born of our 1956 Revolution.

We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected body of popular representation was formed. We shall

consider this date to be the beginning of our country's new democracy and constitutional order.

We hold that after the decades of the twentieth century which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal. We trust in a jointly-shaped future and the commitment of younger generations. We believe that our children and grandchildren will make Hungary great again with their talent, persistence and moral strength.

Our Fundamental Law shall be the basis of our legal order: it shall be a covenant among Hungarians past, present and future; a living framework which expresses the nation's will and the form in which we want to live. We, the citizens of Hungary, are ready to found the order of our country upon the common endeavours of the nation.

FOUNDATION

Article A

The name of OUR COUNTRY shall be Hungary.

Article B

- (1) Hungary shall be an independent, democratic state governed by the rule of law.
- (2) Hungary's form of government shall be that of a republic.
- (3) The source of public power shall be the people.
- (4) The people shall exercise its power through its elected representatives or, in exceptional cases, in a direct manner.

Article C

- (1) The functioning of the Hungarian State shall be based on the principle of separation of powers.
- (2) No person's activity shall be aimed at the forcible acquisition, exercise or exclusive possession of power. Every person shall be entitled and obliged to act against such attempts in a lawful way.
- (3) The State shall have the exclusive right to use coercion in order to enforce the Fundamental Law and legislation.

Article D

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.

Article E

- (1) In order to enhance the liberty, prosperity and security of European nations, Hungary shall contribute to the creation of European unity.
- (2) With a view to participating in the European Union as a member state, Hungary may exercise some of its competences arising from the Fundamental Law jointly with other member states through the institutions of the European Union under an international agreement, to the extent required for the exercise of the rights and the fulfilment of the obligations arising from the Founding Treaties.
- (3) The law of the European Union may stipulate a generally binding rule of conduct subject to the conditions set out in Paragraph (2).
- (4) The authorisation to recognise the binding nature of an international agreement referred to in Paragraph (2) shall require a two-thirds majority of the votes of the Members of Parliament.

Article F

- (1) The capital of Hungary shall be Budapest.
- (2) The territory of Hungary shall be comprised of counties, cities, towns and villages. Cities and towns may be divided into districts.

Article G

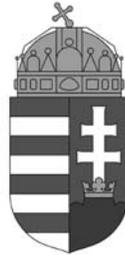
- (1) The child of a Hungarian citizen shall be a Hungarian citizen by birth. A cardinal Act may define other cases of the origin or acquisition of Hungarian citizenship.
- (2) Hungary shall defend its citizens.
- (3) No person may be deprived of Hungarian citizenship established by birth or acquired in a lawful manner.
- (4) The detailed rules for citizenship shall be defined by a cardinal Act.

Article H

- (1) In Hungary the official language shall be Hungarian.
- (2) Hungary shall protect the Hungarian language.
- (3) Hungary shall protect Hungarian Sign Language as a part of Hungarian culture.

Article I

- (1) 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 atop the central hill and a silver patriarchal cross issuing from the middle of the crown. 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, fidelity and hope respectively.



- (3) The anthem of Hungary shall be the poem Himnusz by Ferenc Kölcsey set to music by Ferenc Erkel.
- (4) The coat of arms and the flag may also be used in other historical forms. The detailed rules for the use of the coat of arms and the flag, and state decorations shall be defined by a cardinal Act.

Article J

- (1) The national holidays of Hungary shall be:
 - a) the 15th day of March, in memory of the 1848-49 Revolution and War of Independence,
 - b) the 20th day of August, in memory of the foundation of the State and King Saint Stephen the State Founder, and
 - c) the 23rd day of October, in memory of the 1956 Revolution and War of Independence.
- (2) The official state holiday shall be the 20th day of August.

Article K

The official currency of Hungary shall be the forint.

Article L

- (1) Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the nation's survival.
- (2) Hungary shall encourage the commitment to have children.
- (3) The protection of families shall be regulated by a cardinal Act.

Article M

- (1) The economy of Hungary shall be based on work which creates value and freedom of enterprise.
- (2) Hungary shall ensure the conditions for fair economic competition, act against any abuse of a dominant position, and shall defend the rights of consumers.

Article N

- (1) Hungary shall enforce the principle of balanced, transparent and sustainable budget management.
- (2) Parliament and the Government shall have primary responsibility for the enforcement of the principle set out in Paragraph (1).
- (3) In the course of performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect the principle set out in Paragraph (1).

Article O

Every person shall be responsible for his or herself, and shall be obliged to contribute to the performance of state and community tasks to the best of his or her abilities and potential.

Article P

All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.

Article Q

- (1) In order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with every nation and country of the world.
- (2) Hungary shall ensure harmony between international law and Hungarian law in order to fulfil its obligations under international law.
- (3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in the form of legislation.

Article R

- (1) The Fundamental Law shall be the foundation of the legal system of Hungary.
- (2) The Fundamental Law and legislation shall be binding on every person.
- (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.

Article S

- (1) A proposal for the adoption of a new Fundamental Law or any amendment of the present Fundamental Law may be submitted by the President of the Republic, the Government, any parliamentary committee or any Member of Parliament.
- (2) The adoption of a new Fundamental Law or any amendment of the present Fundamental Law shall require a two-thirds majority of the votes of all Members of Parliament.

- (3) The Speaker of the House shall sign the Fundamental Law or the amended Fundamental Law and send it to the President of the Republic. The President of the Republic shall sign the Fundamental Law or the amended Fundamental Law and shall order its publication in the Official Gazette within five days of receipt.
- (4) The designation of the amendment of the Fundamental Law made during publication shall include the title, the serial number of the amendment and the date of publication.

Article T

- (1) A generally binding rule of conduct may be laid down by a piece of legislation which is made by a body with legislative competence as specified in the Fundamental Law and which is published in the Official Gazette. A cardinal Act may lay down different rules for the publication of local ordinances and other legislation adopted during any special legal order.
- (2) Legislation shall include Acts of Parliament, government decrees, orders by the Governor of the National Bank of Hungary, orders by the Prime Minister, ministerial decrees, orders by autonomous regulatory bodies and local ordinances. Legislation shall also include orders issued by the National Defence Council and the President of the Republic during any state of national crisis or state of emergency.
- (3) No legislation shall conflict with the Fundamental Law.
- (4) Cardinal Acts shall be Acts of Parliament, the adoption and amendment of which requires a two-thirds majority of the votes of Members of Parliament present.

FREEDOM AND RESPONSIBILITY

Article I

- (1) The inviolable and inalienable fundamental rights of MAN shall be respected and defended by the State as a primary obligation.
- (2) Hungary shall recognise the fundamental rights which may be exercised by individuals and communities.
- (3) The rules for fundamental rights and obligations shall be determined by special Acts. A fundamental right may be restricted to allow the exercise

of another fundamental right or to defend any constitutional value to the extent absolutely necessary, in proportion to the desired goal and in respect of the essential content of such fundamental right.

- (4) Subjects of law established by an Act shall have the fundamental rights and obligations that by nature not only apply to natural persons.

Article II

Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception.

Article III

- (1) No person shall be subjected to torture, any inhuman or degrading treatment or punishment, or be enslaved. Human trafficking shall be prohibited.
- (2) All medical and scientific experiments on human subjects without their free and informed consent shall be prohibited.
- (3) All practices aimed at eugenics, any use of the human body or any of its parts for financial gain, and human cloning shall be prohibited.

Article IV

- (1) Every person shall have the right to freedom and personal safety.
- (2) No person shall be deprived of his or her liberty except for statutory reasons or as a result of a statutory procedure. Life imprisonment without parole shall only be imposed in relation to the commission of wilful and violent offences.
- (3) Any person suspected of and arrested for committing any offence shall either be released or brought before a court as soon as possible. The court shall be obliged to give such person a hearing and to immediately make a decision with a written justification on his or her acquittal or conviction.
- (4) A person whose liberty has been restricted without a well-founded reason or in an unlawful manner shall be entitled to indemnity.

Article V

Every person shall have the right to repel any unlawful attack against his or her person or property, or one that poses a direct threat to the same.

Article VI

- (1) Every person shall have the right to the protection of his or her private and family life, home, relations and good reputation.
- (2) Every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest.
- (3) The exercise of the right to the protection of personal data and the access to data of public interest shall be supervised by an independent authority.

Article VII

- (1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other persuasion, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other persuasion by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.
- (2) The State and Churches shall be separate. Churches shall be autonomous. The State shall cooperate with the Churches for community goals.
- (3) The detailed rules for Churches shall be regulated by a cardinal Act.

Article VIII

- (1) Every person shall have the right to peaceful assembly.
- (2) Every person shall have the right to establish and join organisations.
- (3) The right to freedom of association shall allow the free establishment and operation of political parties. Political parties shall participate in the formation and proclamation of people's will. No political party may exercise public power in a direct way.
- (4) The detailed rules for the operation and financial management of political parties shall be regulated by a cardinal Act.
- (5) The right to freedom of association shall allow the free establishment and operation of trade unions and other representative bodies.

Article IX

- (1) Every person shall have the right to express his or her opinion.
- (2) Hungary shall recognise and defend the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion.

- (3) The detailed rules for the freedom of the press and the organ supervising media services, press products and the infocommunications market shall be regulated by a cardinal Act.

Article X

- (1) Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge, and the freedom of teaching within the framework determined by law.
- (2) The State shall not be entitled to decide on questions of scientific truth, and scientists shall have the exclusive right to evaluate any scientific research.
- (3) Hungary shall defend the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts. All institutions of higher education shall be autonomous in terms of the contents and methodology of research and teaching, and their organisations and financial management shall be regulated by a special Act.

Article XI

- (1) Every Hungarian citizen shall have the right to education.
- (2) Hungary shall ensure this right by extending and generalising public education, providing free and compulsory primary education, free and generally available secondary education, and higher education available to every person according to his or her abilities, and by providing statutory financial support to beneficiaries of education.

Article XII

- (1) Every person shall have the right to freely choose his or her work, occupation and entrepreneurial activities. Every person shall be obliged to contribute to the community's enrichment with his or her work to the best of his or her abilities and potential.
- (2) Hungary shall strive to create conditions ensuring that every person who is able and willing to work has the opportunity to do so.

Article XIII

- (1) Every person shall have the right to property and inheritance. Property shall entail social responsibility.

- (2) Property may only be expropriated in exceptional cases and in the public interest, in legally defined cases and ways, and subject to full, unconditional and immediate indemnity.

Article XIV

- (1) No Hungarian citizen may be expelled from the territory of Hungary and every Hungarian citizen may return from abroad at any time. Any foreign citizen staying in the territory of Hungary may only be expelled by a lawful decision. Collective expulsion shall be prohibited.
- (2) No person may be expelled or extradited to a state where he or she faces the danger of a death sentence, torture or any other inhuman treatment or punishment.
- (3) Hungary shall grant asylum to all non-Hungarian citizens as requested if they are being persecuted or have a well-founded fear of persecution in their native countries or in the countries of their usual residence due to their racial or national identities, affiliation to a particular social group, or to their religious or political persuasions, unless they receive protection from their countries of origin or any other country.

Article XV

- (1) Every person shall be equal before the law. Every human being shall have legal capacity.
- (2) Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, sex, disability, language, religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever.
- (3) Women and men shall have equal rights.
- (4) Hungary shall adopt special measures to promote the implementation of legal equality.
- (5) Hungary shall adopt special measures to protect children, women, the elderly and persons living with disabilities.

Article XVI

- (1) Every child shall have the right to the protection and care required for his or her proper physical, mental and moral development.

- (2) Parents shall have the right to choose the type of upbringing they deem fit for their children.
- (3) Parents shall be obliged to look after their children. This obligation shall include the provision of schooling for their children.
- (4) Adult children shall be obliged to look after their parents if they are in need.

Article XVII

- (1) Employees and employers shall cooperate with each other in order to ensure jobs, make the national economy sustainable and for other community goals.
- (2) Employees, employers and their representative bodies shall have a statutory right to bargain and conclude collective agreements, and to take any joint action or hold strikes in defence of their interests.
- (3) Every employee shall have the right to working conditions which respect his or her health, safety and dignity.
- (4) Every employee shall have the right to daily and weekly rest times and annual paid leave.

Article XVIII

- (1) The employment of children shall be prohibited except for cases laid down in an Act posing no risk to the child's physical, mental or moral development.
- (2) Hungary shall adopt special measures to protect young people and parents in the workplace.

Article XIX

- (1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to statutory subsidies for maternity, illness, disability, widowhood, orphanage and unemployment not caused by his or her own actions.
- (2) Hungary shall implement social security for the persons listed in Paragraph (1) and other people in need through a system of social institutions and measures.
- (3) The nature and extent of social measures may be determined by law in accordance with the usefulness to the community of the beneficiary's activity.
- (4) Hungary shall promote the livelihood of the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. Eligibility for a state

pension may include statutory criteria in consideration of the requirement for special protection to women.

Article XX

- (1) Every person shall have the right to physical and mental health.
- (2) Hungary shall promote the exercise of the right set out in Paragraph (1) by ensuring that its agriculture remains free from any genetically modified organism, by providing access to healthy food and drinking water, by managing industrial safety and healthcare, by supporting sports and regular physical exercise, and by ensuring environmental protection.

Article XXI

- (1) Hungary shall recognise and enforce the right of every person to a healthy environment.
- (2) A person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration as defined by law.
- (3) No pollutant waste shall be brought into Hungary for the purpose of dumping.

Article XXII

Hungary shall strive to provide every person with decent housing and access to public services.

Article XXIII

- (1) Every adult Hungarian citizen shall have the right to be a voter as well as a candidate in the elections of Members of Parliament, local representatives and mayors, and of members of the European Parliament.
- (2) Every adult citizen of any other member state of the European Union who is a resident of Hungary shall have the right to be a voter as well as a candidate in the elections of local representatives and mayors, and of members of the European Parliament.
- (3) Every adult person who is recognised as a refugee, immigrant or resident of Hungary shall have the right to be a voter in the elections of local representatives and mayors.
- (4) The exercise or completeness of active suffrage may be subject to the requirement of residence in Hungary, and passive suffrage may be subject to further criteria under a cardinal Act.

- (5) Every elector may participate in the election of local representatives and mayors in the locality of his or her residence or registered address. Every elector may exercise his or her right to vote in the locality of his or her residence or registered address.
- (6) A person disenfranchised by a court for committing an offence or due to his or her limited mental capacity shall have no suffrage. No citizen of any other member state of the European Union who is a resident of Hungary shall have passive suffrage if he or she has been disenfranchised in his or her native country under any law, court or official decision of his or her state of citizenship.
- (7) Every person entitled to vote in elections of Members of Parliament shall have the right to participate in national referenda. Every person entitled to vote in elections of local representatives and mayors shall have the right to participate in local referenda.
- (8) Every Hungarian citizen shall have the right to hold a public office corresponding to his or her aptitude, qualifications and expertise. A special Act shall determine public offices that may not be held by members or officials of any political party.

Article XXIV

- (1) Every person shall have the right to have his or her affairs administered by the authorities in an impartial, fair and reasonably timely manner. This right shall include the obligation of the authorities to justify their decisions as determined by law.
- (2) Every person shall have the right to statutory state compensation for any unlawful damage caused by the authorities while performing their duties.

Article XXV

Every person shall have the right to submit a written application, complaint or proposal, whether individual or joint, to any organ which exercises public power.

Article XXVI

The State shall strive to use the latest technological solutions and scientific achievements to make its operation efficient, raise the standard of public services, improve the transparency of public affairs and to promote equality of opportunity.

Article XXVII

- (1) Every person lawfully staying in the territory of Hungary shall have the right to freedom of movement and to freely choose residence.
- (2) Every Hungarian citizen shall have the right to be protected by Hungary during any stay abroad.

Article XXVIII

- (1) Every person shall have the right to have any charge against him or her, or any right and duty in litigation, adjudicated by a legally established independent and impartial court in a fair public trial within a reasonable period of time.
- (2) No person shall be considered guilty unless his or her criminal liability has been established by an effective court ruling.
- (3) Every person subject to prosecution shall have the right to legal defence at every stage of the trial. No counsel shall be made liable for his or her opinion expressed while providing legal defence.
- (4) No person shall be found guilty or be punished for an act which, at the time when it was committed, was not an offence under the law of Hungary or of any other state by virtue of an international agreement or any legal act of the European Union.
- (5) Paragraph (4) shall not exclude the prosecution or conviction of any person for an act which was, at the time when it was committed, an offence according to the generally recognised rules of international law.
- (6) Except for extraordinary cases of legal remedy determined by law, no person shall be prosecuted or convicted for any offence for which he or she has already been acquitted or convicted by an effective court ruling, whether in Hungary or in any other jurisdiction as defined by international agreements or any legal act of the European Union.
- (7) Every person shall have the right to seek legal remedy against any court, administrative or other official decision which violates his or her rights or lawful interests.

Article XXIX

- (1) Nationalities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to any nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall

have the right to use their native languages and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages.

- (2) Nationalities living in Hungary shall have the right to establish local and national self-governments.
- (3) The detailed rules for the rights of nationalities living in Hungary and the rules for the elections of their local and national self-governments shall be defined by a cardinal Act.

Article XXX

- (1) Every person shall contribute to satisfying community needs to the best of his or her capabilities and in proportion to his or her participation in the economy.
- (2) For persons raising children, the extent of contribution to satisfying community needs shall be determined in consideration of the costs of raising children.

Article XXXI

- (1) Every Hungarian citizen shall be obliged to defend the country.
- (2) Hungary shall maintain a voluntary reserve force for national defence purposes.
- (3) During a state of national crisis or, by decision of Parliament during a state of preventive defence, every adult male Hungarian citizen living in Hungary shall perform military service. If armed service is incompatible with the conscience of any person obliged to perform military service, he shall perform unarmed service. The forms and detailed rules for military service shall be defined by a cardinal Act.
- (4) Every adult Hungarian citizen living in Hungary may be ordered to perform work for national defence purposes during a state of national crisis as defined by a cardinal Act.
- (5) Every adult Hungarian citizen living in Hungary may be ordered to engage in civil protection for the purpose of national defence and disaster management as defined by a cardinal Act.
- (6) Every person may be ordered to provide economic and financial services for the purpose of national defence and disaster management, as defined by a cardinal Act.

THE STATE

Parliament

Article 1

- (1) In HUNGARY the supreme body of popular representation shall be Parliament.
- (2) Parliament shall:
 - a) enact and amend the Fundamental Law of Hungary,
 - b) adopt Acts of Parliament,
 - c) adopt the State Budget and approve its implementation,
 - d) authorise recognition of the binding nature of any international agreement subject to its responsibilities and competences,
 - e) elect the President of the Republic, the members and President of the Constitutional Court, the President of the Curia, the Supreme Prosecutor, the Commissioner for Fundamental Rights and his or her deputies, and the President of the State Audit Office,
 - f) elect the Prime Minister and decide on any matter of confidence related to the Government,
 - g) dissolve any representative body which operates in violation of the Fundamental Law,
 - h) decide to declare a state of war and to conclude peace,
 - i) make decisions on any special legal order and participation in military operations,
 - j) grant pardons, and
 - k) exercise other responsibilities and competences defined by the Fundamental Law and other laws.

Article 2

- (1) Electors shall exercise universal and equal suffrage to elect the Members of Parliament by direct and secret ballot, in elections allowing the free expression of voters' will, in the manner defined by a cardinal Act.
- (2) Nationalities living in Hungary shall contribute to Parliament's work as defined by a cardinal Act.
- (3) The general elections of the Members of Parliament shall be held in April or May four years after the election of the previous Parliament, except for the elections held due to the voluntary or mandatory dissolution of Parliament.

Article 3

- (1) Parliament's mandate shall commence with its inaugural session and be terminated by the inaugural session of the next Parliament. The inaugural session shall be convened by the President of the Republic within thirty days of the elections.
- (2) Parliament may decide to be dissolved.
- (3) The President of the Republic may dissolve Parliament and simultaneously announce elections if:
 - a) when the Government's mandate ends, Parliament fails to elect the person proposed by the President of the Republic to serve as Prime Minister within forty days of presentation of the first nomination, or
 - b) Parliament fails to adopt the State Budget for the current year by 31 March.
- (4) Before dissolving Parliament, the President of the Republic shall be obliged to ask the Prime Minister, the Speaker of the House, and the heads of parliamentary groups for their opinions.
- (5) The President of the Republic may exercise his or her right set out in Paragraph (3)a) until Parliament elects the Prime Minister. The President of the Republic may exercise his or her right under Paragraph (3)b) until Parliament adopts the State Budget.
- (6) The new Parliament shall be elected within ninety days of the voluntary or mandatory dissolution of the previous Parliament.

Article 4

- (1) Members of Parliament shall have equal rights and obligations, perform their activities in the public interest, and may not be instructed in that context.
- (2) Members of Parliament shall be entitled to immunity and remuneration in order to promote their independence. A cardinal Act shall list the public offices which may not be held by Members of Parliament and may determine other criteria for incompatibility.
- (3) The mandate of a Member of Parliament shall be terminated:
 - a) when Parliament's mandate is terminated,
 - b) upon his or her death,
 - c) by the declaration of his or her incompatibility,
 - d) by resignation,
 - e) if the conditions for his or her election no longer exist, or
 - f) if he or she has failed to participate in Parliament's work for one year.

- (4) Parliament shall decide with a two-thirds majority of the votes of the Members of Parliament present to declare the absence of requirements for the election of any Member of Parliament, to declare incompatibility and to establish that a particular Member of Parliament has failed to participate in Parliament's work for one year.
- (5) The detailed rules for the legal status and remuneration of Members of Parliament shall be defined by a cardinal Act.

Article 5

- (1) The sessions of Parliament shall be open to the public. Parliament may decide with a two-thirds majority of the votes of the Members of Parliament to hold any session in camera at the request of the Government or any Member of Parliament.
- (2) Parliament shall elect the Speaker of the House, Deputy Speakers of the House and Clerks from its members.
- (3) Parliament shall establish permanent committees consisting of Members of Parliament.
- (4) Members of Parliament may establish parliamentary groups to coordinate their activities under the Rules of Procedure.
- (5) Parliament shall have a quorum if more than half of its members are in attendance.
- (6) Unless otherwise provided for by the Fundamental Law, Parliament shall make decisions by a simple majority of votes of members present. Particular decisions may be subject to a qualified majority under the Rules of Procedure.
- (7) Parliament shall determine the rules of its operation and the order of its debates in its Rules of Procedure adopted by a two-thirds vote of Members of Parliament present.
- (8) The provisions on Parliament's regular sessions shall be laid down in a cardinal Act.

Article 6

- (1) The President of the Republic, the Government, any parliamentary committee and Member of Parliament may propose bills.
- (2) Parliament may send the adopted Act to the Constitutional Court to examine its conformity with the Fundamental Law upon the motion of the proponent of the bill, the Government or the Speaker of the House, submitted

before the final vote. Parliament shall decide on the motion after the final vote. If the motion is adopted, the Speaker of the House shall immediately send the adopted Act to the Constitutional Court to examine its conformity with the Fundamental Law.

- (3) The Speaker of the House shall sign the adopted Act and send it to the President of the Republic within five days. The President of the Republic shall sign the Act received and order its publication within five days. If Parliament sends the Act to the Constitutional Court to examine its conformity with the Fundamental Law under Paragraph (2), the Speaker of the House may only sign and send it to the President of the Republic if the Constitutional Court has not found any violation of the Fundamental Law.
- (4) If the President of the Republic finds the Act or any constituent provision contrary to the Fundamental Law and no examination has been held under Paragraph (2), he or she shall send the Act to the Constitutional Court to examine its conformity with the Fundamental Law.
- (5) If the President of the Republic disagrees with the Act or any constituent provision and has not exercised his or her right under Paragraph (4), he or she may return the Act once to Parliament for reconsideration along with his or her comments before signature. Parliament shall hold a new debate on the Act and decide on its adoption again. The President of the Republic may also exercise this right if the Constitutional Court has not found any violation of the Fundamental Law during the examination conducted according to Parliament's decision.
- (6) The Constitutional Court shall decide on the motion under Paragraphs (2) or (4) as soon as possible but no later than thirty days from receipt. If the Constitutional Court finds any violation of the Fundamental Law, Parliament shall hold a new debate on the Act in order to eliminate such a violation.
- (7) If the Constitutional Court does not find any violation of the Fundamental Law during the examination proposed by the President of the Republic, the President of the Republic shall immediately sign the Act and order its publication.
- (8) The Constitutional Court may be requested to re-examine the Act discussed and adopted by Parliament under Paragraph (6) for its conformity with the Fundamental Law under Paragraphs (2) and (4). The Constitutional Court shall decide on the repeated motion as soon as possible but no later than ten days from receipt.

- (9) If Parliament amends the Act returned due to any disagreement of the President of the Republic, the examination of its conformity with the Fundamental Law under Paragraphs (2) and (4) shall only be applicable to the amended provisions or on the grounds of failure to meet the Fundamental Law's procedural requirements for the drafting of such Act. If Parliament adopts the Act returned due to any disagreement of the President of the Republic with the text unamended, the President of the Republic may propose that it should be examined for conformity with the Fundamental Law on the grounds of failure to meet the procedural requirements for the drafting of such Act.

Article 7

- (1) Members of Parliament may ask questions of the Commissioner for Fundamental Rights, the President of the State Audit Office, the Supreme Prosecutor, and the Governor of the National Bank of Hungary about any matter within their competence.
- (2) Members of Parliament may submit interpellations and questions to the Government and any government member about any matter within their competence.
- (3) The supervisory activities of parliamentary committees and the obligation to appear before any committee shall be regulated by a cardinal Act.

National referenda

Article 8

- (1) Parliament shall order a national referendum upon the motion of at least two hundred thousand electors. Parliament may order a national referendum upon the motion of the President of the Republic, the Government or one hundred thousand electors. The decision made by any valid and conclusive referendum shall be binding on Parliament.
- (2) National referenda may be held about any matter within Parliament's responsibilities and competences.
- (3) No national referendum may be held on:
- a) any matter aimed at the amendment of the Fundamental Law,
 - b) the contents of the Acts on the State Budget and its implementation, the central tax type, pension or healthcare contributions, customs and the central conditions for local taxes,

- c) the contents of the Acts on the elections of Members of Parliament, local representatives and mayors, and members of the European Parliament,
 - d) any obligation arising from an international agreement,
 - e) any matter related to human resources and the establishment of organisations within the competence of Parliament,
 - f) the voluntary dissolution of Parliament,
 - g) the mandatory dissolution of any representative body,
 - h) the declaration of a state of war, state of national crisis and state of emergency, and on the declaration or extension of a state of preventive defence,
 - i) any matter related to participation in military operations,
 - j) the granting of pardons.
- (4) A national referendum shall be valid if more than half of all electors have cast a valid vote, and shall be conclusive if more than half of all voters casting a valid vote have given the same answer to a question.

The President of the Republic

Article 9

- (1) The head of State of Hungary shall be the President of the Republic, who shall embody the nation's unity and shall safeguard the democratic operation of state organisation.
- (2) The President of the Republic shall be the Commander in Chief of the Hungarian Defence Forces.
- (3) The President of the Republic:
 - a) shall represent Hungary,
 - b) may attend and address any session of Parliament,
 - c) may propose bills,
 - d) may propose national referenda,
 - e) shall set a date for the general elections of Members of Parliament, local representatives and mayors, and of members of the European Parliament, and for national referenda,
 - f) shall make decisions on any special legal order,
 - g) shall convene the inaugural session of Parliament,
 - h) may dissolve Parliament,

- i) may send adopted Acts to the Constitutional Court to examine their conformity with the Fundamental Law, or may return them to Parliament for reconsideration,
 - j) shall propose persons for the positions of Prime Minister, the President of the Curia, the Supreme Prosecutor and the Commissioner for Fundamental Rights,
 - k) shall appoint professional judges and the President of the Budget Council,
 - l) shall confirm the appointment of the President of the Hungarian Academy of Sciences, and
 - m) shall form the organisation of his or her office.
- (4) The President of the Republic shall:
- a) recognise the binding nature of international agreements by authorisation of Parliament,
 - b) accredit and receive ambassadors and envoys,
 - c) appoint Ministers, the Governor and Deputy Governors of the National Bank of Hungary, the heads of autonomous regulatory bodies and university professors,
 - d) appoint university rectors,
 - e) appoint and promote generals,
 - f) award statutory decorations, prizes and titles, and authorise the use of foreign state decorations,
 - g) exercise the right to grant pardons to individuals,
 - h) decide on any matter of territorial administration within his or her responsibilities and competences, and
 - i) decide on any matter related to the acquisition and termination of citizenship,
 - j) decide on any matter assigned to his or her competence by law.
- (5) Any measure and decision of the President of the Republic under Paragraph (4) shall be subject to the countersignature of a government member. An Act may provide that a decision within the statutory competence of the President of the Republic shall not be subject to a countersignature.
- (6) The President of the Republic shall refuse to perform any of his or her obligations in Paragraphs (4)b-e) if the legal conditions are absent or if he or she has a well-grounded reason to conclude that it would result in a serious malfunction of the State's democratic operation.

- (7) The President of the Republic shall refuse to perform his or her obligation set out in Paragraph (4)f), if it violates the values enshrined in the Fundamental Law.

Article 10

- (1) The President of the Republic shall be elected for five years by Parliament.
 (2) Any Hungarian citizen above the age of 35 years may be elected to serve as the President of the Republic.
 (3) The President of the Republic may be re-elected only once.

Article 11

- (1) The President of the Republic shall be elected no sooner than sixty but no later than thirty days before expiry of the mandate of the previous President of the Republic, or, as the case may be, within thirty days of the premature termination of his or her mandate. The date for the election of the President of the Republic shall be set by the Speaker of the House. Parliament shall elect the President of the Republic by secret ballot.
 (2) The election of the President of the Republic shall be preceded by nomination. Any nomination shall be valid subject to a written proposal by at least one-fifth of the Members of Parliament. Nominations shall be submitted to the Speaker of the House before the vote is ordered. Every Member of Parliament may propose one candidate. No proposal for multiple candidates shall be valid.
 (3) The President of the Republic elected in the first round of voting shall be the candidate who received a two-thirds majority of the votes of the Members of Parliament.
 (4) If the first round of voting is inconclusive, a second round shall be held. In the second round of voting, votes may be cast for the two candidates receiving the highest and second highest numbers of votes respectively in the first round. In the event of a tied vote for first place in the first round of voting, votes may be cast for the candidates who have received the highest number of votes. In the event of a tied vote only for second place in the first round of voting, votes may be cast for all candidates who have received the highest and second highest numbers of votes. The President of the Republic, elected in the second round of voting, shall be the candidate who has received the majority of valid votes, irrespective of the number of voters. If the second round of voting is also inconclusive, a new election shall be held after repeated nomination.

- (5) The elections procedure shall be completed within two consecutive days at most.
- (6) The President-elect of the Republic shall swear an oath before Parliament and take office on expiry of the mandate of the previous President of the Republic or, in the event of the early termination of such mandate, eight days after the announcement of the result of the election.

Article 12

- (1) The person of the President of the Republic shall be inviolable.
- (2) The office of the President of the Republic shall be incompatible with any other state, social, economic and political office or assignment. The President of the Republic may not pursue any other remunerated occupation, and may not receive a fee for any other activity, except for an activity subject to copyright protection.
- (3) The mandate of the President of the Republic shall be terminated:
 - a) by the expiry of his or her term,
 - b) upon his or her death,
 - c) by his or her inability to perform his or her responsibilities for over ninety days,
 - d) if the conditions for his or her election no longer exist,
 - e) by the declaration of his or her incompatibility,
 - f) by resignation or
 - g) by removal from office as the President of the Republic.
- (4) Parliament shall decide with a two-thirds majority of the votes of members present to establish any condition of the President of the Republic which has prevented the performance of his or her responsibilities for over ninety days or on the absence of the requirements for his or her election, or on the declaration of his or her incompatibility.
- (5) The detailed rules for the legal status and remuneration of the President of the Republic shall be defined by a cardinal Act.

Article 13

- (1) The President of the Republic may only be prosecuted after termination of his or her mandate.
- (2) If the President of the Republic wilfully violates the Fundamental Law or any Act while in office, or if he or she commits a wilful offence, one-fifth of the Members of Parliament may propose his or her removal from office.

- (3) The impeachment procedure shall require a two-thirds majority of the votes of the Members of Parliament. Voting shall be held by secret ballot.
- (4) The President of the Republic may not exercise his or her competence from the day when Parliament makes its decision until the end of the impeachment procedure.
- (5) The impeachment procedure shall be conducted by the Constitutional Court.
- (6) If the Constitutional Court establishes the liability of the President of the Republic under public law, it may remove him or her from office.

Article 14

- (1) In the event of any temporary incapacity of the President of the Republic, his or her responsibilities and competence shall be exercised by the Speaker of the House until the termination of such incapacity or, if the mandate of the President of the Republic expires in the meantime, until the new President of the Republic takes office.
- (2) The temporary incapacity of the President of the Republic shall be established by Parliament on the recommendation of the President of the Republic, the Government or any Member of Parliament.
- (3) While substituting for the President of the Republic, the Speaker of the House may not exercise his or her rights as a Member of Parliament, and his or her responsibilities as the Speaker of the House shall be performed by the Deputy Speaker of the House designated by Parliament.

The Government

Article 15

- (1) The Government shall be the general body of executive power, and its responsibilities and competences shall include all matters not expressly delegated by the Fundamental Law or other legislation to the responsibilities and competences of another body. The Government shall be answerable to Parliament.
- (2) The Government shall be the supreme body of public administration and may establish public administration organs as defined by law.
- (3) Acting within its competence, the Government shall adopt decrees by statutory authorisation on any matter not regulated by an Act.
- (4) No decree of the Government shall conflict with any Act.

Article 16

- (1) The Government's members shall be the Prime Minister and the Ministers.
- (2) The Prime Minister shall adopt decrees to designate one or two Ministers to serve as Deputy Prime Ministers.
- (3) The Prime Minister shall be elected by Parliament on the recommendation of the President of the Republic.
- (4) The election of the Prime Minister shall be subject to a majority vote of the Members of Parliament. The Prime Minister shall take office on the day of his or her election.
- (5) The President of the Republic shall make his or her proposal set out in Paragraph (3):
 - a) at the inaugural session of the new Parliament, if the Prime Minister's mandate was terminated by the formation of the newly-elected Parliament;
 - b) within fifteen days of termination of the Prime Minister's mandate, if the Prime Minister's mandate was terminated by resignation, upon his or her death, the establishment of incompatibility, absence of the requirements for his or her election or because Parliament expressed its lack of confidence in the Prime Minister at the confidence vote.
- (6) If Parliament has not elected the candidate for Prime Minister defined by Paragraph (5), the President of the Republic shall propose a new candidate within fifteen days.
- (7) Ministers shall be appointed by the President of the Republic on the recommendation of the Prime Minister. Ministers shall take office on the date designated in their appointment document or, in the absence thereof, on the day of appointment.
- (8) The Government shall be formed by the appointment of Ministers.
- (9) Government members shall swear an oath before Parliament.

Article 17

- (1) The Ministries shall be listed in a special Act.
- (2) Ministers without portfolio may be appointed for the responsibilities defined by the Government.
- (3) The Government's regional administrative bodies with general competence shall be the metropolitan and county government offices.

- (4) An Act may amend the provision of a cardinal Act on the designation of Ministries, Ministers or public administration organs.
- (5) The legal status of government officials shall be regulated by law.

Article 18

- (1) The Prime Minister shall determine the Government's general policy.
- (2) Ministers shall have autonomous control of the sectors of public administration and the subordinated organs within their competence in line with the Government's general policy, and shall perform the responsibilities determined by the Government or the Prime Minister.
- (3) Acting within their competence, government members shall adopt decrees by authority of an Act or a government decree, whether independently or in agreement with any other Minister; such decrees may not conflict with any Act, government decree or any order of the Governor of the National Bank of Hungary.
- (4) Government members shall be answerable to Parliament for their activities, and Ministers shall be answerable to the Prime Minister. Government members may attend and address any session of Parliament. Parliament and any parliamentary committee may oblige government members to attend any of their sessions.
- (5) The detailed rules for the legal status and remuneration of government members and the substitution of Ministers shall be determined by an Act.

Article 19

Parliament may ask the Government for information on its position to be adopted in the decision-making process of the European Union's institutions operating with the Government's participation, and may express its position about the draft on the agenda in the procedure. In the European Union's decision-making process, the Government shall take Parliament's position into consideration.

Article 20

- (1) The mandate of the Government shall be terminated by the termination of the Prime Minister's mandate.
- (2) The Prime Minister's mandate shall be terminated:
 - a) by the formation of the newly-elected Parliament,
 - b) if Parliament adopts a motion of no-confidence in the Prime Minister and elects a new Prime Minister,

- c) if Parliament adopts a motion of no-confidence in the Prime Minister at the confidence vote proposed by the Prime Minister,
 - d) by resignation,
 - e) upon his or her death,
 - f) by incompatibility or
 - g) if the conditions of his or her election no longer exist.
- (3) A Minister's mandate shall be terminated:
- a) by termination of the Prime Minister's mandate,
 - b) by resignation,
 - c) by removal,
 - d) upon his or her death.
- (4) Parliament shall decide on the establishment of the absence of requirements for the election of the Prime Minister and on the declaration of incompatibility by a two-thirds vote of Members of Parliament present.

Article 21

- (1) One-fifth of the Members of Parliament may submit a written motion of no-confidence in the Prime Minister by proposing another person to serve as Prime Minister.
- (2) By endorsing a motion of no-confidence, Parliament shall express its lack of confidence in the Prime Minister and shall simultaneously elect as Prime Minister the person proposed in the motion of no-confidence. Such decision by Parliament shall require a simple majority of the votes of the Members of Parliament.
- (3) The Prime Minister may propose a confidence vote. Parliament shall adopt a motion of no-confidence in the Prime Minister if a simple majority of Members of Parliament do not support the Prime Minister in the confidence vote proposed by the Prime Minister.
- (4) The Prime Minister may propose that the vote on a government proposal shall be regarded as a confidence vote. Parliament shall adopt a motion of no-confidence in the Prime Minister if it does not endorse the government proposal.
- (5) Parliament shall make a decision on the matter of confidence three days after submission of the motion of no-confidence or the Prime Minister's proposal set out in Paragraphs (3) and (4), but no later than eight days after submission.

Article 22

- (1) The Government shall exercise its competence as a caretaker government from termination of its mandate until the formation of the new Government, but may not recognise the binding nature of an international agreement, and may only adopt decrees in cases of extreme urgency by authority of an Act.
- (2) If the Prime Minister's mandate is terminated by resignation or the formation of the newly-elected Parliament, the Prime Minister shall exercise his or her competence as a caretaker Prime Minister until the election of the new Prime Minister, but may not propose the removal of any Minister or the appointment of a new Minister, and may only adopt decrees in cases of urgency by authority of an Act.
- (3) If the Prime Minister's mandate has been terminated upon his or her death, by the establishment of incompatibility or due to the absence of the requirements for his or her election or because Parliament adopted a motion of no-confidence in the Prime Minister at a confidence vote, the Prime Minister's competence shall be exercised by the Deputy Prime Minister or, in the case of several Deputy Prime Ministers, the Deputy Prime Minister designated as first choice until the new Prime Minister is elected, with the restrictions set out in Paragraph (2).
- (4) Every Minister shall exercise his or her competence as a caretaker Minister from termination of the Prime Minister's mandate until the new Minister's appointment or the designation of any other member of the new Government for the temporary performance of the responsibilities of Ministers, but may only adopt decrees in cases of urgency.

Autonomous regulatory bodies*Article 23*

- (1) Parliament may establish autonomous regulatory bodies to perform and exercise particular responsibilities and competences of the executive branch by virtue of a cardinal Act.
- (2) The heads of autonomous regulatory bodies shall be appointed by the Prime Minister or the President of the Republic on the recommendation of the Prime Minister for the term defined by a cardinal Act. The heads of autonomous regulatory bodies shall appoint one or more deputies.
- (3) The heads of autonomous regulatory bodies shall present an annual report to Parliament on the activities of their respective autonomous regulatory bodies.

- (4) Acting within their competence defined by a cardinal Act, the heads of autonomous regulatory bodies shall issue decrees by statutory authorisation, which may not conflict with any Act, government decree, any decree of the Prime Minister, ministerial decree or with any order of the Governor of the National Bank of Hungary. The heads of autonomous regulatory bodies may be substituted for by their deputies designated in their decrees for the purpose of issuing decrees.

The Constitutional Court

Article 24

- (1) The Constitutional Court shall be the supreme body for the protection of the Fundamental Law.
- (2) 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 Rights,
 - 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.
- (3) The Constitutional Court:
- a) shall annul any piece of legislation or any constituent provision which conflicts with the Fundamental Law, within its competence set out in Paragraphs (2), Subparagraphs b), c) and e);
 - b) shall annul any court ruling which conflicts with the Fundamental Law within its competence set out in Paragraph (2)d);

- c) may annul any piece of legislation or any constituent provision which conflicts with an international agreement, within its competence set out in Paragraph (2)f); and shall determine further legal consequences set out in a cardinal Act.
- (4) The Constitutional Court shall be a body of fifteen members, each elected for twelve years by a two-thirds vote of the Members of Parliament. Parliament shall elect, with a two-thirds majority of the votes, a member of the Constitutional Court to serve as its President until the expiry of his or her mandate as a constitutional judge. No member of the Constitutional Court shall be affiliated to any political party or engage in any political activity.
- (5) The detailed rules for the competence, organisation and operation of the Constitutional Court shall be regulated by a cardinal Act.

Courts

Article 25

- (1) Courts shall administer justice. The supreme judicial body shall be the Curia.
- (2) Courts shall decide on:
 - a) criminal matters, civil disputes, other matters defined by laws;
 - b) the legitimacy of administrative decisions;
 - c) the conflict of local ordinances with other legislation and their annulment;
 - d) the establishment of a local government's neglect of its statutory legislative obligation.
- (3) In addition to the responsibilities defined by Paragraph (2), the Curia shall ensure uniformity in the judicial application of laws and shall make decisions accordingly, which shall be binding on courts.
- (4) The judiciary shall have a multi-level organisation. Special courts may be established for particular groups of cases, especially for administrative and labour disputes.
- (5) The organs of judicial self-government shall participate in the administration of the courts.
- (6) An Act may authorise other organs to act in particular legal disputes.
- (7) The detailed rules for the organisation and administration of courts, and of the legal state and remuneration of judges shall be regulated by a cardinal Act.

Article 26

- (1) Judges shall be independent and only subordinated to laws, and may not be instructed in relation to their judicial activities. Judges may only be removed from office for the reasons and in a procedure defined by a cardinal Act. Judges shall not be affiliated to any political party or engage in any political activity.
- (2) Professional judges shall be appointed by the President of the Republic as defined by a cardinal Act. No person under thirty years of age shall be eligible for the position of judge. With the exception of the President of the Curia, no judge may serve who is older than the general retirement age.
- (3) The President of the Curia shall be elected from among its members for nine years by Parliament on the recommendation of the President of the Republic. The election of the President of the Curia shall require a two-thirds majority of the votes of the Members of Parliament.

Article 27

- (1) Unless otherwise provided for by law, courts shall administer justice in panels.
- (2) Non-professional judges shall also participate in the administration of justice in the cases and ways defined by laws.
- (3) Sole judges and chairpersons of panels shall be professional judges. In cases defined by law, court secretaries may also act within the competence of sole judges subject to Article 26(1).

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.

Prosecution services*Article 29*

- (1) The Supreme Prosecutor and prosecution services shall contribute to the administration of justice by enforcing the State's demand for punishment. Prosecution services shall prosecute offences, take action against any other unlawful act or omission, and shall promote the prevention of unlawful acts.

- (2) By statutory definition, the Supreme Prosecutor and prosecution services shall:
 - a) exercise rights in conjunction with investigations,
 - b) represent public accusation in court proceedings,
 - c) supervise the legitimacy of penal enforcement,
 - d) exercise other responsibilities and competences defined by law.
- (3) The organisation of prosecution shall be led and directed by the Supreme Prosecutor, who shall appoint prosecutors. With the exception of the Supreme Prosecutor, no prosecutor may serve who is older than the general retirement age.
- (4) The Supreme Prosecutor shall be elected from prosecutors for nine years by Parliament on the recommendation of the President of the Republic. The election of the Supreme Prosecutor shall require a two-thirds majority of the votes of the Members of Parliament.
- (5) The Supreme Prosecutor shall present to Parliament an annual report on his or her activities.
- (6) No prosecutor may be affiliated to any political party or engage in any political activity.
- (7) The detailed rules for the organisation and operation of prosecution services, and the legal status and remuneration of the Supreme Prosecutor and prosecutors shall be defined by a cardinal Act.

The Commissioner for Fundamental Rights

Article 30

- (1) The Commissioner for Fundamental Rights shall protect fundamental rights and shall act at the request of any person.
- (2) The Commissioner for Fundamental Rights shall examine or cause to examine any abuses of fundamental rights of which he or she becomes aware, and shall propose general or special measures for their remedy.
- (3) The Commissioner for Fundamental Rights and his or her deputies shall be elected for six years by a two-thirds vote of the Members of Parliament. The deputies shall defend the interests of future generations and the rights of nationalities living in Hungary. The Commissioner for Fundamental Rights and his or her deputies shall not be affiliated to any political party or engage in any political activity.

- (4) The Commissioner for Fundamental Rights shall present to Parliament an annual report on his or her activities.
- (5) The detailed rules for the Commissioner for Fundamental Rights and his or her deputies shall be determined by an Act.

Local governments

Article 31

- (1) In Hungary local governments shall be established to administer public affairs and exercise public power at a local level.
- (2) A local referendum may be held on any matter within the responsibilities and competences of local governments as defined by law.
- (3) The rules of local governments shall be defined by a cardinal Act.

Article 32

- (1) In administering public affairs at a local level, local governments shall, to the extent permitted by law:
 - a) adopt ordinances,
 - b) make decisions,
 - c) perform autonomous administration,
 - d) determine their regime of organisation and operation,
 - e) exercise their rights as owners of local government properties,
 - f) determine their budgets and perform independent financial management accordingly,
 - g) engage in entrepreneurial activities with their assets and revenues available for the purpose, without jeopardising the performance of their compulsory tasks,
 - h) decide on the types and rates of local taxes,
 - i) create local government symbols and establish local decorations and honorary titles,
 - j) ask for information, propose decisions and express their views to competent bodies,
 - k) be free to associate with other local governments, establish alliances for the representation of interests, cooperate with the local governments of other countries within their competences, and be free to affiliate with organisations of international local governments, and
 - l) exercise further statutory responsibilities and competences.

- (2) Acting within their competences, local governments shall adopt local ordinances to regulate local social relations not regulated by an Act or by authority of an Act.
- (3) Local ordinances may not conflict with any other legislation.
- (4) Local governments shall send their ordinances to the metropolitan or county government office immediately after their publication. If the metropolitan or county government office finds the ordinance or any constituent provision unlawful, it may apply to any court for a review of such ordinance.
- (5) The metropolitan or county government office may apply to a court to establish a local government's neglect of its statutory legislative obligation. If such local government continues to neglect its statutory legislative obligation by the date determined by the court's decision on the establishment of such neglect, the court shall order, at the initiative of the metropolitan or county government office, the head of the metropolitan or county government office to adopt the local ordinance required for the remedy of the neglect in the name of the local government.
- (6) The properties of local governments shall be public properties which shall serve for the performance of their duties.

Article 33

- (1) The responsibilities and competences of local governments shall be exercised by local representative bodies.
- (2) Local representative bodies shall be headed by mayors. County representative bodies shall elect one of their members to serve as president for the term of their mandate.
- (3) Local representative bodies may elect committees and establish offices as defined by a cardinal Act.

Article 34

- (1) Local governments and state organs shall cooperate to achieve community goals. An Act may define compulsory responsibilities and competences for local governments. Local governments shall be entitled to proportionate budgetary and other financial support for the performance of their compulsory responsibilities and competences.
- (2) An Act may authorise local governments to perform their compulsory duties through associations.

- (3) Mayors and presidents of county representative bodies may exceptionally perform administrative responsibilities and competences in addition to their local duties by virtue of an Act or a government decree by authority of an Act.
- (4) The Government shall perform the legal supervision of local governments through the metropolitan and county government offices.
- (5) An Act may define conditions for, or the Government's consent to, any borrowing to a statutory extent or to any other commitment of local governments with the aim of preserving their budget balance.

Article 35

- (1) Electors shall exercise universal and equal suffrage to elect local representatives and mayors by direct and secret ballot, in elections allowing the free expression of the will of electors, in the manner defined by a cardinal Act.
- (2) Local representatives and mayors shall be elected for five years as defined by a cardinal Act.
- (3) The mandate of local representative bodies shall end on the day of the national elections of local representatives and mayors. In the case of elections cancelled due to the absence of candidates, the mandate of local representative bodies shall be extended until the day of the interim elections. The mandate of mayors shall end on the day of the election of the new mayor.
- (4) Local representative bodies may decide to be dissolved as defined by a cardinal Act.
- (5) Parliament may dissolve any local representative body which violates the Fundamental Law at the proposal of the Government made after consultation with the Constitutional Court.
- (6) Voluntary and mandatory dissolution shall also terminate the mandate of mayors.

Public finances

Article 36

- (1) Parliament shall adopt an Act on the State Budget and its implementation for each calendar year. The Government shall submit to Parliament a bill on the State Budget and its implementation by the statutory deadline.

- (2) All bills on the State Budget and its implementation shall contain all state expenditures and revenues in the same structure, in a transparent manner and in reasonable detail.
- (3) By adopting the State Budget Act, Parliament shall authorise the Government to collect the revenues and to disburse the expenditures defined by the same.
- (4) Parliament may not adopt a State Budget Act which allows state debt to exceed half of the Gross Domestic Product.
- (5) 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.
- (6) Any deviation from the provisions in Paragraphs (4) and (5) shall only be possible during a special legal order, to 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.
- (7) If Parliament fails to adopt the State Budget Act by the beginning of the calendar year, the Government shall be entitled to collect statutory revenues and disburse expenditures for the previous calendar year on a pro-rata basis in accordance with the expenditure targets defined by the State Budget Act.

Article 37

- (1) The Government shall be obliged to implement the State Budget in a lawful, practical and transparent manner, with efficient management of public funds.
- (2) During the implementation of the State Budget, no debt or financial obligation may be assumed which allows state debt to exceed half of the Gross Domestic Product, with the exceptions defined by Article 36(6).
- (3) During the implementation of the State Budget, as long as state debt exceeds half of the Gross Domestic Product, no debt or financial obligation may be assumed which allows the share of state debt related to the Gross Domestic Product to exceed its level in the previous year, with the exceptions defined by Article 36(6).
- (4) 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.

- (5) The rules for the calculation of state debt and the Gross Domestic Product and for the implementation of the provisions in Article 36 and Paragraphs (1)-(3) shall be defined by an increase of the state debt compared to that of the preceding calendar year.

Article 38

- (1) The properties of the State and local governments shall be national assets. The management and protection of national assets shall aim to serve the public interest, to satisfy common needs and to safeguard natural resources in consideration of the needs of future generations. The requirements for the preservation, protection and responsible management of national assets shall be defined by a cardinal Act.
- (2) The scope of the State's exclusive properties and exclusive economic activities, and the limitations and conditions of the alienation of national assets that are strategic in terms of the national economy, shall be defined by a cardinal Act in consideration of the goals set out in Paragraph (1).
- (3) National assets shall only be transferred for the purposes and with the exceptions determined by law and in consideration of the requirement of proportionate values.
- (4) Agreements on the transfer or utilisation of national assets shall only be concluded with any organisation which has a transparent ownership structure, organisation and activity aimed to manage the national assets transferred or assigned for utilisation.
- (5) All business organisations owned by the State and local governments shall perform independent economic management in a lawful, responsible, practical and efficient manner.

Article 39

- (1) The State Budget may only be used for providing support or performing any contractual payment to an organisation which has a transparent ownership structure, organisation and activity aimed to utilise such support.

- (2) Every organisation managing public funds shall be obliged to account for its management of public funds to the general public. Public funds and national assets shall be managed according to the principles of transparency and the elimination of corruption. The data related to public funds and national assets shall be data of public interest.

Article 40

The fundamental rules of general taxation and the pension system shall be defined by a cardinal Act for the predictable contribution to the satisfaction of common needs and to ensure decent living conditions for the elderly.

Article 41

- (1) The National Bank of Hungary shall be the central bank of Hungary. The National Bank of Hungary shall be responsibility for monetary policy as set out by a cardinal Act.
- (2) The Governor and Deputy Governors of the National Bank of Hungary shall be appointed for six years by the President of the Republic.
- (3) The Governor of the National Bank of Hungary shall present to Parliament an annual report on the activities of the National Bank of Hungary.
- (4) Acting within his or her competence defined by a cardinal Act, the Governor of the National Bank of Hungary shall issue orders by statutory authorisation, which may not conflict with any law. The Governor of the National Bank of Hungary may be substituted for by a Deputy Governor designated in an order for the purpose of issuing orders.
- (5) The detailed rules for the organisation and operation of the National Bank of Hungary shall be defined by a cardinal Act.

Article 42

The rules for the body supervising the system of financial mediation shall be defined by a cardinal Act.

Article 43

- (1) The State Audit Office shall be the financial and economic audit agency of Parliament. Acting within its statutory competence, the State Audit Office shall audit the implementation of the State Budget, the management of public finances, the utilisation of funds from public finances and

the management of national assets. The State Audit Office shall examine the criteria of lawfulness, practicality and efficiency.

- (2) The President of the State Audit Office shall be elected for twelve years by a two-thirds vote of the Members of Parliament.
- (3) The President of the State Audit Office shall present to Parliament an annual report on the activities of the State Audit Office.
- (4) The detailed rules for the organisation and operation of the State Audit Office shall be defined by a cardinal Act.

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.

The Hungarian Defence Forces

Article 45

- (1) Hungary's armed forces shall be the Hungarian Defence Forces. The core activities of the Hungarian Defence Forces shall include the military defence of Hungary's independence, territorial integrity and state borders, common defence and peacekeeping tasks arising from international agreements, and humanitarian activities according to the rules of international law.
- (2) Unless otherwise provided for by an international agreement, Parliament, the President of the Republic, the National Defence Council, the Government, and the responsible and competent Minister shall have the exclusive right to direct the Hungarian Defence Forces according to the Fundamental Law

and a cardinal Act. The operation of the Hungarian Defence Forces shall be directed by the Government.

- (3) The Hungarian Defence Forces shall contribute to disaster prevention and the relief and elimination of the consequences of disasters.
- (4) The professional members of the Hungarian Defence Forces shall not be affiliated to any political party or engage in any political activity.
- (5) The detailed rules for the organisation, tasks, direction, management and operation of the Hungarian Defence Forces shall be defined by a cardinal Act.

The police and national security services

Article 46

- (1) The fundamental duties of the police shall include the prevention and investigation of offences, and the protection of public security, law and order, and the state borders.
- (2) The operation of the police shall be directed by the Government.
- (3) The fundamental duties of national security services shall include the protection of Hungary's independence and lawful order, and the enforcement of its national security interests.
- (4) The operation of national security services shall be directed by the Government.
- (5) The professional members of the police and national security services shall not be affiliated to any political party or engage in any political activity.
- (6) The detailed rules for the organisation and operation of the police and national security services, the rules for using secret service means and methods, and the rules for national security activities shall be defined by a cardinal Act.

Decisions on participation in military operations

Article 47

- (1) The Government shall decide on any cross-border manoeuvre of the Hungarian Defence Forces and foreign armed forces.
- (2) With a two-thirds majority of the votes of its members present, Parliament shall decide on any foreign or domestic deployment and foreign stationing of the Hungarian Defence Forces and on any deployment of foreign armed

forces in Hungary or departing from Hungary, except for the cases defined by Paragraph (3).

- (3) The Government shall decide on any deployment of the Hungarian Defence Forces and foreign armed forces under Paragraph (2) based on the decision of the European Union and the North Atlantic Treaty Organisation, and on any other manoeuvre of the same.
- (4) The Government shall immediately report to Parliament, and notify the President of the Republic of, any decision made under Paragraph (3) or made to authorise the participation of the Hungarian Defence Forces in any peacekeeping or humanitarian activity in a foreign operational area.

SPECIAL LEGAL ORDERS

Common rules for the state of national crisis and the state of emergency

Article 48

- (1) Parliament shall:
 - (a) declare a state of national crisis and establish the National Defence Council in the event of a state of war or an imminent danger of armed attack by a foreign power (danger of war);
 - (b) declare a state of emergency in the event of armed acts aimed at the overturning of the constitutional order or at the exclusive acquisition of power, and of serious mass acts of violence threatening life and property, committed with arms or in an armed manner.
- (2) The declaration of any special legal order, the conclusion of peace and the declaration of the state of special legal order under Paragraph (1) shall require a two-thirds majority of the votes of the Members of Parliament.
- (3) The President of the Republic shall be entitled to declare a state of war and a state of national crisis, establish the National Defence Council and to declare a state of emergency if Parliament is prevented from making such decisions.
- (4) Parliament shall be considered prevented from making such decisions during parliamentary recess and if the limited time available or the events which have resulted in the state of war, state of national crisis or state of emergency create an insurmountable obstacle to its convening.

- (5) The incapacity of Parliament and the justifiability of the declaration of state of war, state of national crisis or state of emergency shall be unanimously determined by the Speaker of the House, the President of the Constitutional Court and the Prime Minister.
- (6) Parliament shall review the justifiability of the declaration of state of war, state of national crisis or state of emergency at its first session once it is able again to convene, and shall decide on the legitimacy of the measures adopted. Such decision shall require a two-thirds majority of the votes of the Members of Parliament.
- (7) During a state of national crisis or a state of emergency, Parliament may not undergo voluntary or mandatory dissolution. During a state of national crisis or a state of emergency, no general elections may be called or held. In such cases, a new Parliament shall be elected within ninety days of termination of the state of national crisis or state of emergency. If the general elections of Members of Parliament have already been held, but the new Government has not been formed yet, the President of the Republic shall convene the inaugural session within thirty days of termination of the state of national crisis or state of emergency.
- (8) Parliament under voluntary or mandatory dissolution may be convened by the National Defence Council in a state of national crisis, and by the President of the Republic in a state of emergency.

State of national crisis

Article 49

- (1) The President of the National Defence Council shall be the President of the Republic, and its members shall be the Speaker of the House, the heads of parliamentary groups, the Prime Minister, Ministers and the Chief of the National Defence Staff with a consultative right.
- (2) The National Defence Council shall exercise the rights:
 - a) delegated to it by Parliament,
 - b) of the President of the Republic,
 - c) of the Government.
- (3) The National Defence Council shall decide on:
 - a) any foreign or domestic deployment of the Hungarian Defence Forces, their participation in any peace-keeping activity, engagement

- in humanitarian activities in any foreign operational area, and their stationing abroad,
 - b) the deployment of foreign armed forces in Hungary or departing from Hungary, and their stationing in Hungary,
 - c) the introduction of any extraordinary measure defined by a cardinal Act.
- (4) The National Defence Council may adopt orders to suspend the application of particular laws, to deviate from any statutory provision and to adopt any other extraordinary measure.
- (5) Any order of the National Defence Council shall be repealed by termination of the state of national crisis, unless its effect is extended by Parliament.

State of emergency

Article 50

- (1) The Hungarian Defence Forces may be involved in a state of emergency if the use of the police and national security services is insufficient.
- (2) In a state of emergency, the President of the Republic shall decide on the involvement of the Hungarian Defence Forces under Paragraph (1) in the event of Parliament's incapacity.
- (3) In a state of emergency, the President of the Republic shall pass orders to adopt any extraordinary measure as defined by a cardinal Act. The orders of the President of the Republic may suspend the application of particular laws, deviate from any statutory provision, and adopt any further extraordinary measure.
- (4) The President of the Republic shall immediately notify the Speaker of the House of the adoption of any extraordinary measure. In a state of emergency, Parliament or, in the event of its incapacity, Parliament's National Defence Committee shall hold sessions on a continuous basis. Parliament or, in the event of its incapacity, Parliament's National Defence Committee may suspend the application of any extraordinary measure adopted by the President of the Republic.
- (5) Any extraordinary measure adopted by an order shall remain effective for thirty days, unless its effect is extended by Parliament or, in the event of its incapacity, Parliament's National Defence Committee.
- (6) Any order of the President of the Republic shall be repealed by termination of the state of emergency.

State of preventive defence

Article 51

- (1) In the event of a danger of an external armed attack or in order to perform an obligation arising from a military alliance, Parliament shall declare a state of preventive defence for a particular period, and shall simultaneously authorise the Government to adopt extraordinary measures defined by a cardinal Act. The period of a state of preventive defence may be extended.
- (2) The declaration and extension of the special legal order set out in Paragraph (1) shall require a two-thirds majority of the votes of Members of Parliament present.
- (3) After proposing the declaration of a state of preventive defence, the Government may pass decrees to adopt any measure in deviation from the laws regulating the operation of public administration, the Hungarian Defence Forces and law enforcement agencies, and shall continuously inform the President of the Republic and the relevant and competent permanent committees of Parliament accordingly. Such measures shall remain in effect until Parliament decides on the declaration of a state of preventive defence but for no longer than sixty days.
- (4) During a state of preventive defence, the Government may adopt decrees to suspend the application of particular laws, to deviate from any statutory provision and to adopt any further extraordinary measure as defined by a cardinal Act.
- (5) Any government decree shall be repealed by termination of the state of preventive defence.

Unexpected attacks

Article 52

- (1) In the event of any unexpected invasion of the territory of Hungary by external armed groups, the Government shall be obliged to immediately take action with forces duly prepared and proportionate to the attack to repel the same, to safeguard the territory of Hungary with domestic and allied emergency air defence and aviation forces, and to protect law and order, life and property, public order and public safety, according to an armed defence plan approved by the President of the Republic as necessary, until it makes a decision on the declaration of a state of emergency or a state of national crisis.

- (2) The Government shall immediately notify Parliament and the President of the Republic of its action taken according to Paragraph (1).
- (3) In the event of any unexpected attack, the Government may adopt decrees to suspend the application of particular laws and to deviate from any statutory provision, and may adopt any further extraordinary measure as defined by a cardinal Act.
- (4) Any such government decree shall be repealed by termination of the unexpected attack.

State of extreme danger

Article 53

- (1) The Government shall declare a state of extreme danger and may adopt any extraordinary measure defined by a cardinal Act in the event of any natural disaster or industrial accident endangering life or property, or to mitigate the consequences.
- (2) The Government may adopt decrees in a state of extreme danger to suspend the application of particular laws, to deviate from any statutory provision and to adopt any further extraordinary measure as defined by a cardinal Act.
- (3) The government decree set out in Paragraph (2) shall remain effective for fifteen days, unless the Government extends the effect of such decree by authority of Parliament.
- (4) The government decree shall be repealed by termination of the state of extreme danger.

Common rules for special legal orders

Article 54

- (1) In a special legal order, the exercise of fundamental rights may be suspended or restricted beyond Article I(3), except for the fundamental rights set out in Articles II and III, and Article XXVIII(2)-(5).
- (2) In a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted.
- (3) Any special legal order shall be terminated by the organ entitled to introduce the special legal order if the conditions for its declaration no longer exist.
- (4) The detailed rules for any special legal order shall be defined by a cardinal Act.

CLOSING PROVISIONS

1. The Fundamental Law of Hungary shall take effect on 1 January 2012.
2. Parliament shall adopt the Fundamental Law pursuant to Sections 19(3)a) and 24(3) of Act XX of 1949.
3. Parliament shall adopt the temporary provisions related to this Fundamental Law in a special procedure defined in point 2.
4. The Government shall be obliged to submit to Parliament all bills required for the enforcement of the Fundamental Law.

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We, the Members of the Parliament elected on 25 April 2010, being aware of our responsibility before God and man and in exercise of our constitutional power, hereby adopt this to be the first unified Fundamental Law of Hungary.

“MAY THERE BE PEACE, FREEDOM AND ACCORD”

PREAMBLES

1949–2011

1949–1973

The great armed force of the Soviet Union liberated our country from fascist oppression, destroyed the antidemocratic state power of landowners and plutocrats, and opened the way for our working people towards democratic development. Accessing to power in a hard struggle against the lords and defenders of the old regime, the working class, in alliance with the working peasantry and with generous help from the Soviet Union, reconstructed our country ruined in the war. Led by our working class hardened in decades of fight, enriched with the experiences of the 1919 Socialist Revolution, relying on help from the Soviet Union, our people have begun to lay down the foundations of Socialism, and our country is

progressing towards Socialism along the road of people's democracy. The achievements of this struggle and of the construction of the country, the fundamental changes in its economic and social structure are formulated in the Constitution of the Hungarian People's, which also charts the road for further development.

1973–1989

With this Act, the Parliament amends Act XX of 1949, and establishes the effective text of the Hungarian People's Republic.

The CONSTITUTION of the People's Republic of Hungary.

For more than a thousand years, Hungary has been preserved and sustained by its people's work, sacrifice, and strength to mould society. However, state power was a tool for the ruling classes to oppress and exploit the people deprived of their rights. Our nation pursued a hard struggle for the progress of the society and the country's independence, defending and sustaining our national existence amid innumerable tribulations.

A new era began in our history when, in the course of its victories in World War II, the Soviet Union liberated our country from fascist oppression, and opened the road of democratic progress for the people of Hungary. With friendly help from the Soviet Union, the working people reconstructed the country, torn by war, lying in ruins. In the fight against the rulers and defenders of the old regime, the Hungarian workers' class, in alliance with the working peasantry and in cooperation with the progressive intelligentsia, achieved and consolidated the rule of the working people.

Led by our working class hardened in decades of fight, enriched with the experiences of the 1919 Soviet Republic, and relying on the community of socialist countries, our people have laid the foundations of socialism. The socialist modes of production have become predominant in our country. A new country was born in place of the old – one, in which state power serves the people's interests, the free unfolding of their creative power and of their wellbeing. In close national unity, the people of Hungary are working on completing the construction of socialism. The Constitution of the Hungarian People's Republic expresses the fundamental changes in the life of our country, the historic achievements of the struggle for the progress of the society and of the labour to build the country.

As the fundamental law of the Hungarian People's Republic, the Constitution ensures our achievements and further progress on the road to socialism.

1989–2011

In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted.

