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# The Hungarian Constitution of 2012 and its Protection of Fundamental Rights<sup>1</sup>

## Abstract

As early as the end of 2010 and the beginning of 2011, the new Hungarian media law was vividly discussed throughout Europe.<sup>2</sup> The EU Commission decided in January 2011 to bring a legal action against this law, a move that forced the Hungarian government and Parliament to change certain parts of it. However, when this discussion arose, a proposal for a new Hungarian Constitution had already been launched, and at that stage it was already possible to see that this new constitutional text, which was adopted by the Hungarian Parliament on 18<sup>th</sup> and 25<sup>th</sup> April 2011<sup>3</sup> and entered into force on 1<sup>st</sup> January 2012, despite widespread international criticism, was going to be even more controversial.<sup>4</sup>

This paper intends to explain why that is the case,<sup>5</sup> and to view the discussion concerning the new Constitution from a legal and constitutional perspective, related to the old Hungarian Constitution of 1989 as well as to European law. It also looks at the possible impact of new legal measures that have been or may be brought by the EU against Hungary. In order to fully understand the current situation, certain crucial historical and political factors must also be taken into account.

A thorough analysis of the new constitution reveals that it is based on mainly conservative ideals and values, such as Christianity, family and the Hungarian nation. The main problem is not any attack or assault on crucial human rights, but rather a wish of the governing party to preserve its power, e.g. in terms of appointing judges and other high officials, through constitutional and other legal arrangements.

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<sup>2</sup> See Nergelius, *Pressfriheten i Europa och EU – Ungerns medielag i ett rättsligt sammanhang*, Sieps, 2011:2epa.

<sup>3</sup> 25th April 2011 happens to be the first anniversary of the great electoral victory of the governing Fidesz party in 2010. No referendum was held concerning the new constitution, which was voted through by the MPs of Fidesz and its alliance partner KDNP.

<sup>4</sup> There are few references in English to the new Constitution, but the main one – so far – is probably L. Csink/B. Schanda/A. Zs. Varga (eds.), *The Basic Law of Hungary – A First Commentary*, Heidelberg (Claruss Press) 2011.

<sup>5</sup> Despite the fact that some of the original, very controversial rules – like increased voting rights for parents with many children – were eventually dropped.

## Background to the current discussion

From a legal and purely ideological point of view, the new Hungarian Constitution is very different from the previous, “post-revolutionary”, Constitution of 1989, which was entirely based on the rule of law and other modern, liberal constitutional ideas. In comparison, the new Constitution of 2012 is based on traditional, conservative, national and mainly Christian ideas and values.<sup>6</sup> This can be seen not least in its Preamble, with the sub-title “Avowal of national faith” (added as an appendix to this text). Here, rich tribute is paid to the national, cultural and Christian heritage of Hungary, in a rhetorical, almost propagandist way that does not seem entirely modern; the Preamble talks, for instance, about the need for “a spiritual and intellectual renewal”. Values such as community and family are strongly stressed.<sup>7</sup> Art. II, for example, protects the life of the foetus from the moment of conception, a rule that may indicate – though this is not stated anywhere – that abortions will at some time be deemed to be illegal.

Structurally speaking, the new constitution is drafted in the following way. The Preamble is followed by a section called “Fundamentals”, articles A to T, which continues the enumeration of important, mainly national, values, but also contains an important rule on how to change the constitution (art. S sect. 2, which prescribes a two-thirds parliamentary majority for any such change). After that comes a more modern catalogue of fundamental rights (articles I-XXXI), which is followed by the fourth and last section, containing rules on how Hungary is organized and on the main state institutions (articles 1-54). Important rules, principles and values are thus to be found in all four sections of the new Constitution. As will be explained below, however, the current debate and controversies have also centred on many of its *Transitory Provisions*, and some of the *Cardinal Laws*, particularly the ones on the judicial system. Reading the constitutional text in itself is thus not sufficient to allow one to grasp the current discussion.

## The main content of the new Constitution

As already indicated, the catalogue of human rights does not in itself give rise to many critical reflections. The same is true for most of the rules concerning state bodies, with the notable exception of the courts, as explained below. Here, for example, it may be noted that the President of the Republic is elected by Parliament (i.e. not by the people) for five years (art. 10), and that the Government answers to Parliament in a parliamentary system, as explained in articles 15 to 22. Votes on lack of confidence in the Prime Minister are held at the request of one fifth of the MPs, and the PM himself is elected by a majority of all MPs. Parliament is elected every fourth year (art. 2 sect. 3), but may dissolve itself or be dissolved by the President of the Republic, in which case a new election is held within ninety days, as described in articles 2 and 3.<sup>8</sup> It may also be observed that, under art. 8, national referenda are held at the request of no more than 200,000 citizens who have the right to vote, but these referenda cannot be requested for a number of issues including the budget, the dissolution of Parliament and amendments to the Constitution.

Perhaps the most controversial parts of the new Constitution are the rules dealing with the judicial system. Some of these are analysed in the next section, but the role and the legal status of the important Constitutional Court will be mentioned at this stage.

The ancient Constitution of 1989 introduced a wide-ranging, though abstract, form of judicial review for the Constitutional Court, under which anyone could challenge the constitutionality of laws before the court without time limit or proven individual interest. At the same time, the court had no competence to review the individual application of laws in concrete cases.<sup>9</sup>

These facts turned the court into an important agent in politics, but the new art. 24 abolishes this abstract review and introduces a model of individual constitutional

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<sup>6</sup> See e.g. art. D.

<sup>7</sup> See e.g. art. XVI, that mentions not only the obligation of parents to take care of their children, but also that adult children shall take care of their parents when needed. For a modern, contemporary constitution, that is indeed quite an unusual rule. Also art. L, protecting the institution of marriage, “understood to be the conjugal union of a man and a woman established by their voluntary decision”, seems very traditional in its view.

<sup>8</sup> In this respect, it may be noted that certain discussions have already taken place concerning the new electoral rules, supervised by a special Electoral Commission, and whether they contain sufficient guarantees enabling other parties than Fidesz to win and thus gain governmental power. These rather technical rules will however not be commented upon here. For further reading, see report 662/2012 of the Venice Commission, Election of Members of Parliament of Hungary.

<sup>9</sup> See for a description of how this system worked Georg Brunner, Structure and Proceedings of the Hungarian Constitutional Judiciary, in L. Sólyom/G. Brunner (eds.), *Constitutional Judiciary in a New Democracy: The Hungarian Constitutional Court*, Ann Arbor, University of Michigan Press, 2001 p. 65 ff.

complaints, which appears to be inspired by the German legal instrument *Verfassungsbeschwerde*.<sup>10</sup> At the same time, a kind of preliminary or abstract norm control may be initiated by the Government, the Commissioner of Fundamental Rights (the former Ombudsman<sup>11</sup>) and by one fourth of the MP's. Here, however, it must be noted that no other political party than Fidesz possesses that number of seats in the Parliament, which means, obviously, that such a move could only come about due to a joint action by the socialist party MSZP and the nationalist, extreme right-wing Jobbik party. It may also be noted that while this new procedure will increase the supervision of how public authorities will apply laws in general, it is likely to make it more difficult for human rights groups and other NGO's to bring attention from the Constitutional Court to various controversial matters.

Furthermore, the new constitution does also change the rules for electing judges to the Constitutional Court. According to art. 24 sect. 4, the Constitutional Court shall be composed by fifteen members, who are each elected for twelve years by a majority of at least two-thirds of all MP's. With the same majority, the Parliament will also elect among the judges the President of the Court, who shall serve until his or her mandate as constitutional judge expires. Once again, only *Fidesz* seems to be able to possess this majority and as a result, all judges who have been appointed in 2010, when these rules were first changed, and 2011 appear to have been candidates of that party (though they must not formally be members of any party at all, under art. 24 sect. 4 in fine). This is a great change compared to the old constitution, under which the Constitutional Court was perceived as politically totally neutral.<sup>12</sup>

A particular legal controversy is related to the new art. 37 sect. 4 of the Constitution, which states the following:

“As long as the level of state debt exceeds half of the Gross Domestic Product, the Constitutional Court may...review the Acts on the central budget, on the implementation of the budget, on central taxes, on duties and on contributions, on customs duties, and on the central conditions for local taxes as to their conformity with the Fundamental Law exclusively

in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or in connection with the rights related to Hungarian citizenship, and it may only annul these Acts for the violation of these rights. The Constitutional court shall have the right to annul without restriction Acts governing the above matters if the procedural requirements laid down in the Fundamental Law for the making and publication of such Acts have not been observed.”

The background to this unusual and controversial rule is to be found in attempts in 2010 of the new government to save money and make budgetary restrictions by curtailing economic advantages and payments for all employees in the public sector, for whom a punitive tax with a maximum level of 98 % was introduced, retroactively as from 1 January 2010, on all payments related to the termination of their employments. In order to ensure that this new law was constitutional, a change was made in § 70/I of the old constitution, allowing “tax liabilities of a special extent” in respect of any remuneration “received against the good morals from public funds”. Nevertheless, the Constitutional Court declared that law unconstitutional and annulled it<sup>13</sup>, since incomes that were once lawful could not retroactively be considered immoral. In response, the Parliament then reintroduced the tax, still with an effect of 98 %, but this time with retroactive effect from 1 January 2005 for all incomes above 3.500.000 forint. At the same time, on 30<sup>th</sup> December 2010, § 70 of the Constitution was changed in order to allow retroactive taxation going back as far as five years.

Also at the same time, a limitation of the competence of the Constitutional Court, similar to the current one in art. 37 sect. 4, was introduced in § 32/A sect. 2-3 of the former Constitution. In a new decision<sup>14</sup>, however, the Constitutional Court also annulled the new law, though in its reasoning it clarified that the Court could only review the Act on the basis of the right to human dignity, “the mother of all rights” as it is sometimes described, and that only the taxation of income earned before 2010 violated this right. As a consequence, the Constitution now states that judicial review under the new art. 37 sect. 4 will be reserved for serious human rights violations which are

<sup>10</sup> This change was as such viewed positively by the Venice Commission; see Opinion no. 614/2011 of 25-26 March 2011 of the European Commission for Democracy through Law (CDL-AD (2011) 001, Para. 57, 62 and 64, available at <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29001-e.pdf>).

<sup>11</sup> See art. 30 of the Constitution.

<sup>12</sup> See § 32 of the old constitution, as well as the ancient Act XXXII of 1989 on the Constitutional Court in comparison with the new Act CLI of 2011 on the Constitutional Court.

<sup>13</sup> Decision 184/2010.

<sup>14</sup> Decision 37/2011.

also harmful to human dignity. It remains to be seen, of course, how the Constitutional Court will react to this new restriction in future cases within this area.

Furthermore, the lack of rules in the new Constitution protecting the independence of the National Bank has given rise to a lot of discussion. According to art. 41, the Bank is regulated by yet another Cardinal Law<sup>15</sup>, and its Governor and Deputy Governors are appointed for six years by the President of the Republic. Under the Cardinal Law, the members of the Monetary Council or Advisory Board are elected by Parliament.

### Legal Problems and Action taken by the EU

A basic problem concerning the above-mentioned Transitory Provisions is, of course, their legal status: do they actually form part of the Constitution or not? If they do, they must be applied by the Constitutional Court, although the Court may, on the other hand, set them aside as unconstitutional if they are not seen as a part of the Constitution. This question is in many ways crucial and at the core of the whole current dispute. While art. 31 sect. 2 of the Transitory Provisions stipulates that they do indeed form part of the Constitution, this is contrary to a previous decision of the Constitutional Court.<sup>16</sup>

The “transitory” rules were adopted by Parliament on 30<sup>th</sup> December 2011<sup>17</sup> and came into force at the same time as the new Constitution on 1<sup>st</sup> January 2012. Some of their most controversial provisions are related to former leaders of the old Communist regime (though it is left to the legislator to define who did in fact act as such a leader). Thus, the pensions and other welfare benefits of such persons may be reduced by law, and the prohibition against retroactive criminal legislation will not apply to serious crimes committed during the time of Communist rule which were never tried due to political reasons. Another important issue has to do with the registration and authorization, as well as the criteria, of churches and new religious communities to be acknowledged as such, which must be approved by a two-thirds Parliamentary

majority in order to be recognized in each individual case. That rule undoubtedly violates the right to freedom of religion.<sup>18</sup>

Still, the so-called Cardinal Laws concerning the Judiciary and the Legal Status of Judges are perhaps even more controversial. Art. 25 of the new Constitution prescribes that the highest body of the multi-level judicial system will be the new *Curia*, which replaces the old Supreme Court. However, according to art. 25 sect. 4, special or separate courts may be established for specific groups of cases, especially in public administration and labour matters, which may seem slightly worrying.

The rules on the appointment of judges are even more worrying and controversial. Here, we may note that all professional judges are appointed by the President of the Republic, art. 26 sect. 2, though the President of the Curia is elected by Parliament, by a two-thirds majority, voting on a proposal made by the President of the Republic (art. 26, sect. 3). It may also be noted that when his mandate expires it will automatically be prolonged until Parliament has elected a new President of the Curia in the same way.<sup>19</sup> Obviously, all this makes it likely that his appointment will be (or will at any rate be considered to be) more or less a political appointment, which seems highly unfortunate, to say the least. Taking this together with the many controversies concerning the Constitutional Court that were mentioned above, it seems clear that the constitutional guarantees of the independence of the judiciary could and should have been much stronger.

The EU decided in January 2012 to initiate legal actions against Hungary on three specific points which mainly arise not from the Constitution as such but from subsequent legislation related to its enactment. These actions may all be seen as the first step of a so-called *infringement procedure* (see art. 258 of the Treaty on the Functioning of the European Union (TFEU)), and meant that Hungary, as a first step, had to answer certain questions from the Commission within a month.

<sup>15</sup> Act LVIII on the National Bank of Hungary. It may be noted here that, according to art. 23 of the Constitution, Parliament may establish all sorts of formally autonomous regulatory organs for the performance of different tasks through such Cardinal Laws. The heads of such bodies are appointed by the Prime Minister and may themselves appoint their deputies.

<sup>16</sup> Decision No 1260/B/1996, ABH 1998, 816, 819.

<sup>17</sup> Magyar Közlöny 2011/166, 41613. These provisions are in many ways the most debated and controversial of all the new constitutional rules, which makes it a very regrettable fact that they have not yet been translated into English.

<sup>18</sup> See also opinion 664/2012, 19 March 2012, of the Venice Commission.

<sup>19</sup> He or she may also be dismissed from duty by Parliament in the same way, at the request of the President of the Republic. See also opinion 663/2012, of 17 March 2012, from the Venice Commission.

It may be added that the European Parliament decided in February 2012 to draft a report on the situation concerning democracy, human rights and rule of law in Hungary.<sup>20</sup> Based on that report, the European Parliament will eventually decide whether to support a legal action based primarily on art. 7 of the Treaty on European Union (TEU), according to which the Council of Europe may establish that an EU Member State violates those crucial values (and this may then lead to a decision whereby that state will temporarily lose some of its rights as a Member State, including the right to vote at the Council).<sup>21</sup>

The three issues dealt with in this way concern the independence of the Hungarian Central Bank, which is allegedly not constitutionally respected in the way prescribed in art. 127 sect. 4 and art. 130 of the TFEU, since the responsible Hungarian minister may take part in the meetings of the above-mentioned Monetary Council of the National Bank. Furthermore, the agendas of the meetings of this Board are sent to the government before meetings. When the new legislation was enacted on 1<sup>st</sup> January 2012, the remuneration rules concerning the Managing Director were also changed, although he was in the middle of his period of office. He and the other members of the Board of the Bank – which is soon to be merged with the Financial Supervisory Authority, according to a new constitutional rule<sup>22</sup> – all, before beginning their mandates, have to swear an oath of allegiance and fidelity to the nation and its interests, which might, at least theoretically, threaten their independence. Parliament may even suggest at any time that the members of the Monetary Board must resign.

Even more controversial, however, are the rules concerning the legal and judicial system and its independence, as indicated above. The age when judges and prosecutors have to resign has been reduced from seventy to sixty-two years as of 1<sup>st</sup> January 2012, which

has meant that no less than 274 judges – some of whom were members of the Supreme Court<sup>23</sup> – have now had or will soon have to resign.<sup>24</sup> Sixty-two years of age happens to be the general retirement age in Hungary, but on this occasion the retirement age was not changed for any other profession, which is a fact that may amount to unlawful discrimination against judges. The situation is further complicated by the fact that the Hungarian government had previously stated to the EU Commission its intention to raise the general retirement age to sixty-five years, as a part of necessary and required economic reforms. This new measure against the judges obviously points in quite another direction.

Also the general organization of the Courts has given rise to doubts from the point of view of the rule of law and judicial independence. A new law on the organization of the courts will concentrate almost all administrative powers – including the right to appoint judges – in the hands of the director of a new administrative agency, the so-called National Judicial Office.<sup>25</sup> Together with the Attorney General, this Director – who is elected, for nine years, from among the judges<sup>26</sup> by two-thirds of Parliament on the recommendation of the President of the Republic and may also be relieved of his duties in the same way – will also be able to designate, for specific cases, the court in which a certain case shall be tried (instead of the court that has normal, territorial jurisdiction).<sup>27</sup> Furthermore, the mandate of the former President of the Supreme Court, who had been appointed in June 2009 for six years, was prematurely cancelled at the end of 2011; this became legally possible when the court was reorganized and its name formally changed. Needless to say, these provisions are quite worrying from many points of view.

Finally, the independence of the new National Authority for Data or Computer Protection has also now been put

<sup>20</sup> The resolution was adopted on 16th February 2012 (2012/2511 (RSP)) by 315 votes. 263 MEPs voted against adopting it, and 49 abstained.

<sup>21</sup> Formally, this procedure has never been used, but it was discussed when a number of less severe “sanctions” were directed – without great success – against Austria in 2000.

<sup>22</sup> Art. 30 of the Transitory Provisions.

<sup>23</sup> However, the President of the new Supreme Court, the Curia, is the only judge who is exempt and does not have to resign due to his age; see art. 26 sect. 2 of the Constitution.

<sup>24</sup> To be precise, the service of those judges who passed their age limit of 62 years before 1st January 2012 will end on 30th June 2012, while all those who pass the limit during 2012 will end their service on 31st December 2012.

<sup>25</sup> In Hungarian, Országos Bírósági Hivatal, OBH.

<sup>26</sup> But who will, however, not be the same person as the President of the Curia. See, for more detail, arts. 25 and 26 of the Constitution.

<sup>27</sup> See art. 11 sect. 3-4 of the Transitory Provisions. Judges may also be removed to other courts, without their consent, for one year at a time every third year.

into question by the EU. This new agency replaced the Ombudsman for such matters from 1<sup>st</sup> January 2012. The main task of both the old and the new agency is (or was) to supervise the domestic application of the EU Directive 95/46 on Data Protection, in a manner that must, according to EU law, be totally independent.<sup>28</sup> However, the six-year mandate for the former Ombudsman, which was to have lasted until 2014, was curtailed on 1<sup>st</sup> January this year, and no specific guarantees seem to protect the independence of the new Ombudsman or director of the new agency, once installed in office.<sup>29</sup>

On 17<sup>th</sup> February, the Hungarian Government responded to the EU Commission by saying, in a long response covering almost 100 pages, that some changes could be made, in particular in order to strengthen the independence of the Data Protection Agency. Concerning the Central or National Bank, the Government defended the requirement for bank officials to swear an oath of allegiance and the decision to cut the salary of the governor; this latter decision was explained to be part of wider efforts to reduce salaries in the public sector. The independence as such of the Bank was said to be sufficiently protected through the special Cardinal Law on the Bank (mentioned above). And as far as the early retirement of judges is concerned, the Government expressed its intention to make it possible for judges who wish to continue working until they are 70 years old to apply for this through a new permission procedure, which would give them the same pension schemes as other high-ranking civil servants and thus not be discriminatory any more. A move in this direction was also made in the end of March.

The Commission immediately stated that it will urgently deal with this reply. It may either agree with and accept these explanations, or send a formal request requiring Hungary to comply with EU law.<sup>30</sup> In the latter case, should Hungary not change its mind, the Commission may bring a case to the EU Court of Justice (a so-called

infringement procedure, the formalities and possible effects and consequences of which are described in arts. 258 and 260 of the Treaty on the Functioning of the European Union, as mentioned above). On 7<sup>th</sup> March 2012, the Commission told the Hungarian government that it had one month to change the contested laws, before such a legal procedure was going to be initiated. The future development will be followed with great interest throughout Europe.

## Conclusions

The general impression that is gained by the interested reader who studies the new Constitution and the many vivid debates that have surrounded it is in many ways the same as the impression gained when reading the Media Law of 2010; namely, that the main idea behind it is not to limit freedom of speech or other basic rights as such, and certainly not to make life difficult for certain ethnic or other weak minorities, but rather to enforce and strengthen the powers of the governing party, in a way that will make it more difficult for other political parties or groups to be reckoned with and to really be able to influence society in the future. The new Constitution concentrates political power in the hands of Parliament and gives the current, strong political majority the chance to appoint many judges and other important persons in such a way that, because it is based on qualified parliamentary majority, will make it very difficult for other political parties to win back the initiative and thus influence or control future development.

The constitutional text also has many authoritarian features and is extremely nationalistic given the values that it stresses and emphasizes. In the Preamble, for example, it states among many other things that: "We hold that the family and the nation provide the most important framework for our coexistence, and that our fundamental cohesive values are fidelity, faith and love". Even the rule on membership of the EU, art. E, stresses national

<sup>28</sup> See e.g. Case C-518/07, *Commission v. Germany*, ECR 2010 I p. 1885.

<sup>29</sup> Also the system of appointing the more traditional Ombudsman has recently been changed, and one single such person has replaced the four people who used to serve. The new Ombudsman, who is now called The Commissioner for Fundamental Rights (see art. 30 of the Constitution), is elected by Parliament, and the Fidesz party has not been willing to discuss the names of possible candidates with the Opposition. According to a new act (Act CXI of 2011) on this Commissioner, it is to him that any person may turn if he or she has suffered an injury as a result of an action of any public authority. The Commissioner or Ombudsman will then decide whether to submit this case to the Constitutional Court.

<sup>30</sup> It may here be noted that, almost simultaneously, on 22<sup>nd</sup> February 2012, the EU Commission decided to suspend certain economic commitments to Hungary (of no less than 495 million euro) from the EU Cohesion Fund from January 2013, due to Hungarian non-compliance with recommendations of the Ecofin Council of 24<sup>th</sup> January 2012 on how to correct the allegedly excessive budget deficit. The decision referred to previous shortcomings in this respect and repeated failure to address the deficit, though the final decision on the matter has later been postponed until May 2012.

sovereignty to the utmost, stating in sect. 2 that: “In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfill the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union”.<sup>31</sup> In reality, that is hardly a correct description of how EU membership works or how its effects take place; even if an individual Member State does prefer to see things that way, the EU is not just another international organization in which all Member States retain their former sovereignty (a fact that is indeed also very present and evident in the current row between the EU and Hungary).

To be more precise, actions by the State against judges in general, and against the former President of the Supreme Court in particular, may threaten judicial independence and thus, eventually, the right to a fair trial under art. 6 of the European Convention on Human Rights, or art. 47 of the EU Charter of Fundamental Rights. Actions against the National Bank and other public authorities clearly might violate the new right to “good administration” that is guaranteed in art. 41 of that same Charter.

For the future and against this background, the position taken by the Constitutional Court on the legal status of the Transitory Provisions seems to be a very important issue. Also, of course, the position and strategy chosen by the EU Commission in relation to possible future legal proceedings – and the response to these future actions

from the Hungarian government – will be of the utmost importance, not only for Hungary. In reality, this matter is likely to have a wider importance for future relations between the EU and other Member States that might, once having been accepted as EU Members with all the legal and political obligations that such a change requires<sup>32</sup>, for some reason lower their standards concerning vital democratic principles or legal and other administrative standards. Having this in mind, it would not be totally surprising should the EU Commission, after the long discussion that had already started in 2010 with the Media Law and has in fact characterized the whole reign of the Fidesz party, now actually decide to initiate legal proceedings against Hungary. While it is well known and generally recognized that the EU action against Austria in 2000 (which did not amount to sanctions in the formal sense) was inefficient and lacking legal basis, since Austria had in fact not violated any of the core values mentioned in arts. 2 and 6 of the EU Treaty (or in any other binding Human Rights documents), the situation is in fact quite different this time, when we are dealing with what seems to amount to a series of real violations of human rights and the rule of law.

Thus, the moment for the EU Commission to act may now have come. But what will come from such an initiative? Well, that will of course depend on the reactions and reasoning of both the Hungarian government and the Court of Justice. A formal decision of the EU Council on real sanctions against Hungary, under art. 7 of the EU Treaty, may still be far away – but for the first time ever, such a move is now at least possible to imagine.

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<sup>31</sup> In this respect, it is also slightly odd for an EU Member State that is, at least theoretically, aiming for future euro membership despite the current economic crisis, to state that “The official currency of Hungary shall be the forint” (art. K).

<sup>32</sup> These are often referred to as the Copenhagen criteria for EU membership, after an EU summit meeting that took place in Copenhagen in 1993. They include democracy, rule of law and respect for human rights as well as independent courts and public administration.

## Appendix

# The Fundamental Law of Hungary

(25 April 2011, Official Journal No 93, Item 10656, 2011)

Excerpts from the official translation available on the website of the Hungarian government

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 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.

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## **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.

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### **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.