



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

The Fundamental Law

- The closing of the post-communist transformation has taken place in our country only recently. **Hungary had, up until 1 January 2012, a transitional constitution dating from 1949, which was based on the Soviet model.**
- **Hungary has been the last among the former communist countries in the region to adopt a new constitution since the Fall of the Berlin Wall**, - all the other former East Bloc countries already passed a new constitution in the 1990's, with Poland being „the last” in 1997.
- **The new government invited all Hungarian citizens** entitled to vote to the preparation of the new constitution (Fundamental Law), and under the aegis of the National Consultation initiated by the Government more than 1 million citizens had their say about the new constitution. The proposal on the new Fundamental Law, which was in turn, submitted to Parliament, incorporated the results of the National Consultation.
- Prime Minister Viktor Orbán and other leaders of Fidesz, the governing party, struggled for the toppling of the communist dictatorship back in the 1980's in order to create a **democratic Hungary based on the rule of law** providing freedom and security for its citizens. The new Fundamental Law provides both freedom and security.
- The new Fundamental Law **rectifies the major mistakes of the past twenty years**. The previous constitution failed to protect Hungary's national assets, and our country became impoverished while accumulating a huge state debt.
- **The new Fundamental Law can protect our national assets**, and it applies strict rules to **prevent that Hungary accumulate such a huge state debt again.**
- Our new Fundamental Law expresses **Hungary's commitment to the common values of the European Union**, and it vindicates the individual as well as the collective rights of all citizens and all ethnic groups in Hungary. It also defines the citizens' fundamental rights according to the Charter of Fundamental Rights of the European Union.
- With the adoption of the new constitution **Hungary has reinforced its commitment to the values of democracy and the rule of law.**



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

- **Our country upholds its parliamentary traditions in the framework of our republican form of Government**, and it maintains those state institutions that have proved their efficiency.



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

Hungary's New Fundamental Law

The Hungarian Parliament adopted a new constitution (referred to as the Fundamental Law of Hungary) in April 2011. Thus Hungary – **last among the former communist countries in the region** – is paying off a long-standing debt. The new Fundamental Law, effective from 1 January 2012, will replace the constitution dating from 1949, which was based on the Soviet model.

The aim of the new Fundamental Law is not to replace the system of public law, but **to stabilise the apparatus of a state under the rule of law and the country's economic renewal, and to reinforce citizens' belief in democracy.**

The Fundamental Law specifies the individual and collective rights of the country's citizens, whatever nationality they may belong to, and determines fundamental rights in the spirit of the Charter of Fundamental Rights of the European Union. It expresses Hungary's commitment to the shared constitutional values and traditions of the European Union. The Fundamental Law creates the necessary constitutional guarantees for economic renewal, and the reduction of state debt and its future restraint.

The process of creating the Fundamental Law

Since the political transition of 1989/90, there has been wide-ranging political consensus on the need to adopt a new constitution in Hungary. Regardless of political orientation, every Hungarian government in every parliamentary term has had the aim of adopting a new fundamental law. This was therefore the case under the government of József Antall and the first government of Viktor Orbán, but also under left-wing governments. In the 1994-98 period, under the socialist government of Gyula Horn, an *ad-hoc* parliamentary committee spent three years preparing a new constitution. In 2002 the program of the incoming government of Prime Minister Péter Medgyessy also made adoption of a new constitution one of its goals. In 2006, under the socialist government of Ferenc Gyurcsány, the Ministry of Justice produced a complete set of articles for a draft constitution. In all this time, however, such attempts met with failure, as there was never the necessary parliamentary majority and electoral mandate.

The 1949 Constitution was amended in 1989 to enable it to provide the operational framework for a state under the rule of law. These amendments were adopted by the last parliament to be formed without free elections. For this reason the text of the old Constitution itself showed that from the outset the Legislature considered it a temporary legislative framework.

The parliament elected in 2010 started the process of creating a new constitution with the setting up of the *ad-hoc* Committee for Preparing the Constitution in June 2010. The final vote on the new Hungarian Fundamental Law was set for 18 April 2011. The date set for its entry into force was 1 January 2012.



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

In the interest of wide-ranging specialist dialogue, the *ad-hoc* Committee for Preparing the Constitution consulted numerous specialist and societal organisations, while elaborating the constitution. The majority of those invited took advantage of this opportunity, and expressed their thoughts for the future within their specialist areas related to constitutional regulation. In response to a proposal from the Opposition, the *ad-hoc* Committee accepted that each parliamentary fraction should have the right to nominate five organisations drawn from society (associations or churches); on behalf of the Committee, the Chairman was obliged to ask these organisations for their comments, in order to involve them in the process of creating the Fundamental Law.

After the acceptance of the concept, a resolution of Parliament determined the process for creating the Fundamental Law; according to this every parliamentary group in Parliament and every independent Member of Parliament was requested by Parliament to submit a proposed draft constitution. Such drafts were only received from the governing party groups – Fidesz and the Christian Democratic People’s Party (KDNP) – and independent Member of Parliament Katalin Szili (who was Socialist speaker of the House from 2002 to 2010). Therefore debate in the Hungarian parliament focused solely on these two drafts. On the basis of parliamentary debates and analysis of completed questionnaires received from voters, the majority in Parliament accepted several proposed amendments.

Two opposition parties – MSZP and LMP – decided for party-political reasons not to take part in the process of creating the Fundamental Law.

Some key points in the Fundamental Law

The constitutional system

The democratic institutions of Hungary are not being changed in essence, or are being changed only to a limited extent. The structure of parliamentary democracy and the chancellery form of governmental structure remains the same. Compared to the old Constitution’s regulations, the possibility of preliminary constitutional review is wider (a constitutional review before an Act comes into force can be initiated not only by the Head of State, but also by Parliament). In the course of the subsequent constitutional review, the Constitutional Court will have the opportunity to review individual court judgments from a fundamental rights point of view. In line with the standards of a state under the rule of law, the new Fundamental Law guarantees the independent and uninfluenced operation of the judicial system. There is a single and efficient Ombudsman’s Office, which is also in charge of protecting the rights of nationalities. In the process of adopting the Budget, the Budgetary Council has the right of veto, in order to rein in public debt.

The structure of the new Fundamental Law

The new Fundamental Law also differs from the old Constitution in respect of its structure, being composed of five parts, in the following order:



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

- Preamble (National Avowal of Faith);
- Fundamentals (the form of government, territorial structure, symbols and holidays, European integration, Hungarians beyond the borders, nationalities living in Hungary);
- Freedoms and Responsibilities (constitutional fundamental rights);
- The State (cf. the constitutional system);
- Special Legal Order (extraordinary situations).

The Preamble

The Preamble confirms Hungary's place in Western Civilization, and evokes the spiritual and historical values which Hungary regards as determinative and which enjoy consensus. It highlights the importance of the struggle for freedom and independence.

This chapter commemorates the role of Christianity in Hungarian history, and the Holy Crown, which embodies the continuity of Hungarian statehood. It confirms that nationalities are part of the Hungarian political community and constituents of the State, and it undertakes the protection of their languages and cultures. It declares that no statutory limitation applies to the inhuman crimes committed against the Hungarian nation and its citizens under the National Socialist and Communist dictatorships. It also declares that the basis of human life is human dignity and codifies the obligation to help the vulnerable and the poor. The Preamble refers to the 1956 Revolution as the starting point for the present liberty of Hungary.

Fundamental rights

The Fundamental Law defines citizens' rights according to the Charter of Fundamental Rights of the European Union; it therefore declares the inviolability of human dignity, the right to freedom, security of the person and the protection of private property. Through separate measures, the Fundamental Law protects children, mothers, young people, the elderly and those living with disabilities. The provisions also state that marriage is possible only between a man and a woman. However, people of the same sex are entitled to registered partnerships, which are provided for within the existing Hungarian legal system. The Fundamental Law makes it clear that it is not enough for the State to act in the interest of equal opportunity, but its task is to create equal opportunity.

Rights of nationalities

The new Fundamental Law declares both in its Preamble and Articles that nationalities living in Hungary are seen as part of the Hungarian political community and constituents of the State. The State is committed to promoting and protecting the languages and cultures of nationalities. It makes it clear that every Hungarian citizen belonging to any nationality has the right to declare and preserve their identity. The new Fundamental Law protects the Hungarian language; at the same time, nationalities have the right to use their mother tongue, to use their own names in their mother tongue individually or collectively, to maintain their culture and to receive education in their mother



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

tongue. It also guarantees nationalities' right to establish local and national self-governments. In addition, it generally guarantees people's fundamental individual and collective rights.

Hungarians living beyond the borders

The new Fundamental Law, similar to the previous constitution, states that Hungary shall take responsibility for Hungarians living beyond its borders; it promotes the preservation and development of their communities, the assertion of individual and collective rights, the establishment of their self-governments, and their welfare in the land of their birth.

The Fundamental Law does not decide on the question of voting rights for Hungarian citizens not living in Hungary: this has been addressed through an amendment of the Act on Electoral Procedure. At the same time, governing party politicians have made clear their wish to follow the most widespread European practice on this question, according to which voting rights shall be granted to those with citizenship.

Protecting families and life

The Fundamental Law highlights the significance of the protection of families and human life. The Fundamental Law does not tie the concept of 'family' to marriage, and thus one-parent families enjoy identical rights in the area of family support. The new Fundamental Law has not amended the pre-existing regulations on abortion. The governing parties agreed earlier that they would only adopt a constitution which does not result in the amendment of the 1992 Act on the Protection of Foetal Life. By declaring protection of the life of the foetus, the new Fundamental Law confirms the accepted practice of the Constitutional Court in the course of the last two decades.

Environmental protection

In line with present-day concerns, the Fundamental Law frames basic constitutional principles for environmental protection. Thus it states that the right to a healthy environment is a basic right, and it defines the State's obligation to environmental protection in relation to citizens' rights to the protection of their physical and spiritual health. The Fundamental Law prohibits the permanent deposit of pollutant waste, and declares the principle that the 'polluter pays' in relation to environmental damage. As part of the obligation to protect the environment, the Fundamental Law separately mentions natural resources, agricultural land, forests and water reserves, and biodiversity – particularly the preservation and protection of native plant and animal species.

The protection of public funds and the control of state debt

Cutting state debt is one of the main goals of the Hungarian government. State debt is currently over 80 per cent of gross domestic product. This is an enormous burden for the Hungarian economy, reduces the country's competitiveness, and has a major impact on the state budget. State debt rose from 53 per cent in 2002 to over 80 per cent in 2010. For this reason, the new Fundamental Law



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

contains a major new chapter on public funds, which states that Parliament may only adopt a central budget which does not result in an increase in the level of state debt.

By continuously reducing public debt, a public debt ratio of 50 per cent can be reached by the end of this decade. Central budgets to be adopted later must guarantee that the debt ratio does not exceed 50 per cent of the gross domestic product of the previous year. The Budgetary Council may veto any central budget threatening these targets.

In the interests of transparency, only such organisations may receive funding or contracted payments from the central budget in which there is transparency of ownership structure, organisation, and of the activities for which funding is to be used.

On the whole, the new Fundamental Law is in conformity with European constitutional traditions, satisfies all the conditions for a state under the rule of law, and meets the undertakings Hungary agreed to at the time of its accession to the European Union. With adoption of the new Fundamental Law, Hungary strengthens its commitment to the values of a state under the rule of law and of democracy, it preserves the traditions of Hungarian parliamentarianism within the framework of the republican form of statehood, it maintains the present tried and tested institutions of state, it gives proper emphasis to fundamental rights and freedoms, and it draws the necessary conclusions from the mistakes of the last twenty years in the operation of a state under the rule of law, and from the deficiencies in regulations for the protection of public funds. All the above-mentioned facts create an opportunity for the country's citizens to realize the values of the political transition of 1989/ 90, and to strengthen their faith in democracy.