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Krisztina Osvát and Szabolcs Osvát



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ANU COLLEGE OF ARTS & SOCIAL SCIENCES

ANU Centre for European Studies
ANU College of Arts and Social Sciences
1 Liversidge Street, Building 67C
Australian National University
Canberra ACT 0200
Australia
W: <http://ces.anu.edu.au/>
F: +61 2 6125 9976

Hungary's 2011 Constitution: Key Features and Political Background

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Abstract

This paper provides a brief analysis of Hungary's new 2011 Constitution. It highlights the most important and most widely debated provisions and focuses particularly on the Constitution's novelties, such as economic constitutionality and the proposed extra vote for voters with children. The study also discusses the political situation in Hungary in which the preparation and the adoption of the new basic law took place. A young Government with a two-thirds majority in the Parliament has ambitious plans to strengthen the country. Political discussions on the draft Constitution exaggerated political divisions, but the adoption of the new Constitution is not likely to overshadow the current Hungarian Presidency of the European Union. From the perspective of political science, the paper addresses two interesting questions. What are the democratic limits to which a Government can make use of a parliamentary majority of more than two-thirds? Did the Hungarian Government exceed those limits, or is the perception that democratic rules have been infringed merely a ruse created by opposition minority parties?

1. Introduction

The Hungarian Constitution that was adopted originally in 1949 and amended by the last non-freely elected national assembly in 1989 began with a sentence referring to the temporary nature of the document stating that its purpose was to facilitate the peaceful political transition to a constitutional state, establish a multiparty system, parliamentary democracy and a social market economy until the country's new Constitution is adopted.¹ It is not a coincidence that the adoption of a new Constitution has been on the agenda in every parliamentary cycle since the political transition. Between 1994 and 1998, during a socialist-liberal cabinet, a separate committee was dealing with it. Then in 2000 the idea of simply changing the year in the title of the Constitution came up because the ruling central-right Government preferred to eliminate this reference to the country's Communist past.

¹ The official English version of the preamble reads: 'For the purpose of facilitating the peaceful political transition into a state under the rule of law attaining a multi-party system, parliamentary democracy and social market economy, the Parliament adopts – until the adoption of the new Constitution of Hungary – the text of the Constitution of Hungary as follows:...'.

As leader of the conservative opposition party FIDESZ, current Prime Minister Viktor Orbán said during a conversation in autumn 2009 that he ‘does not respect, but honours’ the 1949 Constitution. He made it clear in his speeches, interviews, and also in press conferences throughout the 2010 election campaign that a new Constitution should be adopted without subverting the standing public legal system. Between the two rounds of parliamentary elections in April 2010, the current opposition parties recurrently voiced their opinion that the new Government would replace the Constitution in case of a two-thirds support. Nevertheless, voters did give the then opposition parties their votes in the second round, and the now-governing parties received over two-thirds support from voters. During the 2010 election, four out of five votes were cast against the then governing party, and against the ‘existing conditions’. In this situation, it was not surprising that Prime Minister Orbán, winning a constitutional super majority and a mandate to govern, announced that the new Parliament intended to adopt a new Constitution, without disrupting the current system of public law.

The Hungarian President signed the text of the basic law² on 25 April 2011, one week after the final voting in Parliament on 18 April. The new Constitution will be effective from 1 January 2012. It mentions a number of ‘super majority laws’, which require the support of a two-thirds majority in Parliament.³ They are scheduled to be adopted before the end of 2011. The most heated debates are expected in connection with the new election and local governmental laws.

2. Hungarian constitutional history in a nutshell

Until the 20th century, the public law system of Hungary was based on historical legal precedent, a so-called historical Constitution. The rules pertaining to the composition of the state, the relation between individuals and the public authority, as well as to the social-economic structure were not incorporated into a single code. The first attempt to create a constitutional charter was made during the short-lived Hungarian Soviet Republic after World War I. After World War II an important step towards a constitutional charter was Act I of 1946 on the state form of Hungary, although it only covered issues related to the organisation of the state. The seizure of power by the Communist Party led to the adoption of Act XX of 1949, the country’s first

² ‘Magyarország Alaptörvénye’ [Hungary’s Basic Law], *Magyar Közlöny* [Hungarian Gazette, the official journal of the Republic of Hungary] 43 (25 April 2011).

³ The two-thirds super majority and the laws falling into this category are a curiosity of the Hungarian political system. The origin of this notion goes back to the formative years of the new democracy in the early 1990s. The major governing party (the central-right MDF) and the major opposition party (the liberal SZDSZ) concluded a pact on this issue which in its codified version became an integral part of the political system.

constitutional charter, which was inspired by the Soviet Union's Constitution of 1936. The Constitution of the People's Republic provided the basis for the planned economy, promoted the unity of power, and up to 1989 it served the totalitarian system in Hungary. There was a comprehensive amendment of the Constitution in 1972, which made cautious concessions towards reform of the Socialist economic system, but within the limits of the single party system.

Following the fall of Communism, the transition of the political regime took place through negotiations. The National Roundtable was formed in June 1989, where the representatives of the Opposition Roundtable, the MSZMP (the former state party) and the third side (civil organisations) concluded political agreements to prepare free elections and the foundations of a democratic system. As a result, the republic was promulgated by Act XXXI of 1989, which gave new substance to the Constitution by declaring that the 'Republic of Hungary is an independent and democratic state under the rule of law'. As interpreted by the Constitutional Court: 'with the amendment of the Constitution promulgated on 23 October 1989 a new Constitution was practically put into force, introducing a new quality of the state, the law and the political system, remarkably different from the previous structures'.⁴

Following free elections in 1990 the biggest governing party (the central-right MDF) and the biggest opposition party (the liberal SZDSZ) concluded an agreement that resulted in Act XL of 1990, which provided for more detailed rules concerning the form of the Government. It introduced the institution of constructive vote of no-confidence and the election of the President of the Republic by the Parliament for the purpose of consolidating the parliamentary system. Through the abolition of laws of constitutional power, it also expanded the scope of action of the governing parties in the parliament.⁵

In 1989-90 – despite the new content – the Constitution was only amended. Formally it retained the old date of 1949 in its title. At the time of the transition the elaborate normative text of the Constitution was not considered to be final, as it is referred to in the preamble of the Constitution itself: the parliament adopts the text of the existing Constitution until the adoption of the new Constitution of Hungary. In view of the above provision, the adoption of a new Constitution has emerged in every parliamentary cycle during the recent two decades. However, due to the absence of the necessary political compromise no new Constitution was adopted. Even during 1994-1998, when the governing coalition possessed the two-thirds majority required for

⁴ Decision 11/1992. (III. 5.) AB (Constitutional Court).

⁵ Barna Mezei (ed.) *Magyar alkotmánytörténet*. [Hungarian Constitutional History], (Budapest: Osiris Kiadó, 2003) p.516.

the adoption of a new Constitution, there was no agreement between the governing parties in this respect.

3. Authorisation

There are three main methods to adopt a new national Constitution. One is to establish a separate national assembly with the sole duty of the adoption of the Constitution. Another possible solution, the one followed by Hungary, is that the Legislative prepares and adopts the Constitution with a qualified majority. The third, theoretical, possibility is that the intended Constitution is confirmed by a country's electorate, by way of a referendum.⁶

Related to the new Constitution, a heated debate developed in Hungary about the question whether the Parliament had the authority to adopt it. Since the earlier Constitution may have been amended with the support of two-thirds of all members of Parliament, this is, in public law, also true for the adoption of a new Constitution, even if this implies a comprehensive rewriting of the text. Political authorisation for the creation of a new Constitution was signalled by the prevailing sentiments expressed in protests against the previous Government and the two-thirds majority that the currently governing parties obtained during the 2010 elections. The current opposition parties primarily questioned whether the current Government had the authority, because, due to the new power relations in parliament, it was obvious that they were not in a position to gain any concessions from the Government in return for their support for constitutional change. Parliament was therefore able to adopt a new Constitution without the support of the opposition. It is true that during 1994-1998, the then socialist-liberal cabinet practically intended to provide a right of veto to the opposition over the adoption of the Constitution, but this was due to a lack of political authorisation. The constitutional majority at that time was the result of an unexpected coalition between post-communists and liberals (so far characterised by anticommunism), assembled after the 1994 elections.⁷

The question whether a national referendum was necessary to create the new Constitution is also connected to the debate over authorisation. Confirmation of the Constitution by referendum primarily takes place after great public law transitions or revolutions, when there is no continuity with the former regime. If constitutional continuity is unaffected, and the adoption of the new Constitution takes place on the basis of the authorisation provided by the previous

⁶ Lóránt Csink: 'Alkotmányjog' (Constitutional Law), Novissima Kiadó Bt. (Publisher), Budapest 2010, 180 p

⁷ Nézőpont Intézet (Hungarian research institute) 'A new Constitution for Hungary' (18 April 2011), Authorisation p.2.

Constitution and in accordance with its procedural rules, then the Parliament (or the national assembly) holds sufficient legitimacy to adopt the Constitution. For that reason it is not absolutely necessary to hold a referendum to legitimise the new Constitution.

Both the current and the previous basic laws prohibit a referendum to amend the Constitution. Hence, in a legal sense, a separate process would have been necessary before a referendum could have been held. The demand of the socialists for a referendum was weakened by the fact that the requirement of holding a referendum about the new Constitution had been removed from the Constitution that was at that time effective, thanks to an MSZP (Socialist Party) proposal in the 1990s.

Furthermore, the current governing parties were concerned that a referendum would not be about the text of the Constitution, but about other symbolic questions – similarly, for example, to the French or Dutch national referendums in 2005 about the European Constitutional Treaty. Therefore, they preferred a so called ‘national consultation’, under which voters were asked to complete a questionnaire with 13 questions. In spite of the short deadline, 12 percent of voters returned it. This national consultation may have been appropriate for asking preliminary opinions and for gauging and increasing popular opinion about the Constitution’s case, but not for a confirmation. Thus, it is possible that the new Constitution will be a topic for further discussion during the next elections in 2014.

4. Preparing a new Constitution

One and a half months after the newly elected Parliament was convened, an *ad hoc* committee was set up on 28 June 2010 by the Parliament to prepare the new Constitution. Therefore, ten months of political consultations had taken place before the adoption of the new Constitution. The public acceptance, as well as the quality and particularly the future public faith in the new Constitution will provide an answer to the question whether the 10 months of preparation will have been sufficient. In an international perspective, 10 months cannot at all be considered short. The German fundamental law that serves as an example for the Hungarian constitutional setting was created by the parliamentary council in eight months and it has been in force since 23 May 1949. In France, De Gaulle had only six months in 1958 to draw up the Constitution of the Fifth Republic that has been functioning well ever since.

In Hungary, there was enough time to work out the draft text taking into account all possible feedback. Nevertheless, the project still raised political tensions. Among the opposition parties, the Socialist MSZP party and the liberal Politics Can Be Different (LMP) party ceased to participate in the work of the committee preparing the new Constitution at the end of October

2010, while the right-wing Jobbik (Farther Right or Better Right) party left the committee in mid-November 2010. The left- and right-wing opposition parties filed out of the committee for very different reasons. MSZP and LMP left the committee as a political response to limitations imposed on the competencies of the Constitutional Court, while Jobbik considered it unreasonable to continue its participation because of insurmountable conceptual differences with the ruling party alliance. Consequently, both MSZP and LMP ceased cooperation due to an 'external' political cause independent from the work of the committee. In contrast, Jobbik represented a constitutional approach conceptually different from the one presented in the draft, and it envisaged a fundamentally different constitutional system.

The preparation committee requested parliamentary groups of every party and every independent Member of Parliament to submit a draft Constitution. Hence, while all had a formal opportunity to submit a proposal, such drafts were only received from the governing party alliance and independent MP Katalin Szili (former Socialist speaker of the parliament during 2002-2010). Opposition parties did not participate in the process of creating a new Constitution. The ruling central right coalition maintained that the opposition – by subordinating the drafting of the Constitution to party interests – effectively decided that it would not make use of the mandate that they had been given by their voters, and therefore would not take part in the development of the new fundamental law of Hungary to any significant extent. Naturally, in legal terms it is at a party's discretion whether it wishes to participate in the process towards a new Constitution or not.

To broaden the consultation process, the preparation committee contacted all office holders under the public law, the national associations of the national and ethnic minorities, the national interest groups of the local governments, the Institute of Legal Studies of the Hungarian Academy of Sciences, and also the departments of constitutional law of all state universities, the churches and private foundations. In June 2010, parallel to the operations of the committee, the Prime Minister invited six acknowledged experts to form a consulting body to work with him in order to assist in elaborating the concept of the new Constitution.⁸

In the course of this consultation process, Hungarian citizens had been primarily concerned with social and economic issues of everyday life, the issues that directly affected them as voters. All Hungarian citizens entitled to vote – eight million people – were sent a questionnaire that asked them to answer 12 or 13 questions concerning the details of the

⁸ MTI (Hungarian News Agency): 'Nemzeti konzultációs testület jött létre az új alkotmány előkészítéséhez' [National Consultation Body established to prepare new Constitution] (4 February 2011) on <http://mti.hu>

Constitution. The questionnaire had 12 specific questions and an open-ended question that offered citizens an opportunity to elaborate on other related issues. The questions mainly focused on social and economic issues regarding every-day life, issues that affected voters directly. The national consultation provided an adequate framework for the voters to express their opinions and for the constitutional consultation process to take account of the views of voters. More than 920,000 citizens completed and returned these questionnaires, demonstrating a reasonably successful public consultation process.⁹

In addition, the Hungarian Minister of Public Administration and Justice asked for the opinion of the Venice Commission that operates adjacent to the Council of Europe on the competences of the Constitutional Court and on the protection of fundamental rights. Taking account of the opinion of the Venice Commission, as well as the limited parliamentary debates, and opinions received from Hungarian citizens, the governing parties submitted several amendments to the original draft Constitution which were put to the vote in Parliament on 11 April 2011. There were no major changes to the structure of the Constitution. The new Constitution follows the old model but is designed in a way that combines the achievements of the historic past with the current challenges of the 21st century. Besides paying due attention to traditions, it also includes the responsibilities of future generations.

5. Symbolic questions

The adoption of a new Constitution is of both symbolic and practical significance. It is symbolic because in a democratic state under the rule of law it would over time have been increasingly difficult to substantiate why the birth of the Constitution dates back to the period of Communist dictatorship. The new Constitution is expected to represent the cohesion of the nation. It reflects the heritage of the nation's past and its most important moments, the objectives of the present and the values that can be grounds for future activities of the state. As a member state of the European Union (EU), Hungary accepts and represents the values of civilised nations and there is an explicit reference in the new Constitution to the tasks derived from Hungary's EU membership.¹⁰ The parliament adopted the new Constitution in accordance with unambiguous procedural rules and in compliance with constitutional requirements and international practice.

⁹ MTI (Hungarian News Agency): 'Az emberek tizenegy százaléka mondott véleményt az alkotmányozásról' [11% expressed opinion on new Constitution] (3 April 2011) on <http://origo.hu>

¹⁰ Article E, section (2).

The new basic law in many ways reflects conservative values. The reference to God at the beginning of the preamble¹¹ is a quote from the first paragraph of the Hungarian National Anthem. Another example is that the preamble refers to the Holy Crown that embodies the unity of the nation¹², the role of Christianity in maintaining the nation and the respect for other religious traditions.¹³ The reference to Christianity in the Constitution does not express religious or belief-related convictions, but is rather the acknowledgement of the importance of Christianity in Hungarian history. This is inseparable from Hungarian statehood and from the survival of the nation. References to Christianity or God are not uncommon in Constitutions of other European countries. The Constitutions of Germany, Poland, Greece and Ireland also contain such references. Such a mention affects neither the fundamental right of freedom of religion of individuals in any respect, nor the neutrality of belief of the State. The Holy Crown does not merit mention as a sacred object either, rather as the symbol of autonomous statehood throughout centuries. Under the traditions of Hungarian public law, the Holy Crown is not a royalist symbol. The preamble of a previous draft Constitution prepared by the Socialist-Liberal majority in the parliamentary term during 1994-1998 also referred to the Holy Crown.

As an important symbolic gesture, crimes committed against humanity during the periods of National Socialism and Communism in Hungary shall never become void.¹⁴ In addition, the text attempts to modernise the basic law. The list of fundamental rights mainly relies on the EU Charter of Fundamental Rights, contains several resolutions of the Constitutional Court from the past two decades and a number of third-generation rights. The provisions ensure that Hungary takes specific action to protect women, children, the elderly and the disabled.¹⁵ Hungary's respect and commitment towards future generations, towards vulnerable groups, minorities, furthermore to cultural and religious diversity is also emphasised.

6. Content changes

The Hungarian system of public law remains mostly unchanged. Neither the republican form of government nor parliamentarianism is brought into question. Interesting to note is that according to Article A the official name of the country will simply be Hungary instead of the Republic of

¹¹ *Invocatio*: 'God, bless Hungarians!' (starting line of the national anthem).

¹² 'We respect the achievements of our historic constitution and the Holy Crown, which embodies the continuity of the Hungarian constitutional state and the unity of the nation.'

¹³ 'We recognise the role of Christianity in preserving our nationhood. Likewise we appreciate the different religious traditions of our country.'

¹⁴ 'We reject the applicability of statute of limitations to the inhuman crimes committed against the Hungarian nation and its citizens during the reign of the national socialist and the communist regimes.'

¹⁵ Article XV, section (5).

Hungary. However, the main points of the network between the Parliament and the Government as the question of political liability remain unchanged. Similarly, the new Constitution does not bring any relevant changes to the role of the President of the Republic.

- Constitutional judiciary

Changes aimed to strengthen the role of Parliament (for example, the direct election of the President of the Constitutional Court by the National Assembly), diminish the opportunities for national referendums (*i.e.* restoration of rules valid until 1997) and improve the chances of effective Government. For example, the limitations of the Constitutional Court's powers, adopted in autumn 2010, remain valid. However, the effect of modifications is not always one-directional. For instance, increasing the mandate of members of the Constitutional Court from 9 to 12 years strengthens their independence.¹⁶

The Constitutional Court – the most debated and politically overheated issue of the whole process – is the most important safeguard of the protection of the Constitution. This does not mean that no changes are needed regarding its competences. The aim of reconsidering the Constitutional Court's competencies is to ensure that the confidence of citizens in the legal system increases.

There is a difference in how the new Constitution perceives the state of the legal system, compared with the legal system used during the transition period, when the new Republic inherited the law of a totalitarian regime. In 1989, *actio popularis* (national popular initiative) was adopted as an important safeguard, under which anyone could initiate proceedings at the Constitutional Court, without proving a legal interest. This helped the Constitutional Court to commence an all-encompassing revision of the Hungarian legal system. However, the maintenance of a petitioning competence based on *actio popularis* is now unsubstantiated in the new Constitution, something which the Constitutional Court has pointed out in a communication regarding the constitutional process.

The previous Constitution expanded the right of the Constitutional Court to previous (*ex ante*) normative review, and it also refined the competencies of the Constitutional Court by strengthening the constitutional complaint, akin to the German system. In lieu of this, the new Constitution wishes to strengthen the constitutional review competence of the Constitutional Court, in order to facilitate effective protection in case of infringement of individual fundamental rights.

¹⁶ Article 24, section (4).

The 2010 restriction of the competencies of the Constitutional Court in case of budgetary questions was introduced because of the then extraordinary economic situation. Thus, the competencies of the Constitutional Court are restricted, but only as long as the level of state debt exceeds a specified level. The draft text was more explicit in providing that the Court shall have the final review jurisdiction over fiscal, economic and tax matters: ‘Only if the petition refers exclusively to the right to life and human dignity; the right to the protection of personal data; the right to freedom of thought, conscience, and religion; or the right connected to the Hungarian citizenship.’¹⁷ In preliminary normative review there will be no limitations of the Constitutional Court’s competence on budget matters.

- Economic constitutionality

An important new feature in the basic law includes significant provisions in relation to public finance. The law states that public debt will be a maximum of 50 percent of GDP. It also ensured a right of veto for the Budgetary Council when adopting the budget of the central Government. Cutting public debt is one of the main goals of the Hungarian Government. Public debt is currently over 80 percent of GDP, which is perceived to be an enormous burden on the Hungarian economy. The Constitution defines the property of the State and local governments as national assets, and accordingly it stipulates that these assets need to be well-managed. Therefore, it also pays particular attention to natural resources and sustainability.

A remarkable novelty is that the chapter on public finances creates a constitutional framework for the management of public funds. Parliament may only adopt laws on the state budget, which do not result in an increase in the level of debt¹⁸ except, ‘... during a period of special legal circumstances to the extent required to alleviate the condition leading to the introduction of special measures, and in case of the continued and significant decline of the national economy’.¹⁹ By continuously reducing public debt, a public debt to GDP ratio of 50 percent is expected to be reached within a decade. State budgets to be adopted later should guarantee that the ratio does not exceed 50 percent of the GDP of the previous year. The Budgetary Council will be able to veto a state budget²⁰ when it threatens to exceed this target. For transparency, the state budget may only finance (or pay under contract) organisations with transparent ownership structures and transparent activities with regard to public funds.

¹⁷ Draft Article 24, section (4). The text quoted above does not appear in the final official version.

¹⁸ Article 36, section (4). As long as the debt-to-GDP ratio is over 50 percent, laws on the central budget have to provide for the reduction of public debt.

¹⁹ Article 36, section (5).

²⁰ Article 44, section (3).

7. Other issues in the Constitution

- Marriage and family

The constitutional rules regarding marriage remain unchanged. The wording of the new text squarely disassociates the definition of marriage and family. ‘Hungary protects the institution of marriage between man and woman, a matrimonial relationship voluntarily established, as well as the family as the basis for the survival of the nation.’²¹ The new Constitution recognises marriage as the union of a man and woman as is also the case in several other EU member states (*e.g.* Poland, Latvia, Lithuania and Bulgaria). In accordance with its 1995 decision (confirmed in 2007 and in 2008) the Hungarian Constitutional Court does not make marriage of same-sex couples possible. This regulation does not affect the registered partnership, in legal effects greatly similar to those of marriage, which is available for same-sex couples.

The Constitution provides the same level of protection for all families. There is purposely no definition of the family in the new Constitution, as it includes single-parent families and co-habiting couples. All single-parent families or co-habiting couples will therefore enjoy the same protection and they will not be discriminated against.

- Foetus

The Constitution states unequivocally that everyone shall have the right to life and human dignity as basic fundamental rights, and that the life of the foetus shall be protected from the moment of conception.²² There is no mention in the text of amending the law on abortion in any way whatsoever. In fact, in February 2011, the governing parties agreed to guarantee that they would only adopt a Constitution which does not result in the amendment of the 1992 law on the protection of foetal life. Contrary to misleading statements concerning this matter, there are no plans to amend the law on abortion. The text of the Constitution does not point in this direction either.

By declaring protection of the life of the foetus, the new Constitution confirms the case law of the Constitutional Court over the course of the last two decades. This already recognises assertion of the life of the foetus as a goal of the State at constitutional level. In practice, this makes it a task of the State to use incentives to create an environment in which the decision to have and raise children is encouraged, in respect of *e.g.* medical assistance, and pregnancy and

²¹ Article L, section (1).

²² Article II.

abortion counselling. In addition, the family tax system introduced in 2011 provides tax relief for families. The text of the Constitution does not introduce a ban on abortion.

- National minorities

The new Constitution declares that nationalities (*i.e.* persons with Hungarian citizenship but belonging to national or ethnic groups other than Hungarian, formerly referred to as national and ethnic minorities) living in Hungary shall be seen as constituent parts of the Hungarian State and part of the Hungarian political community. The text clearly indicates that national minority communities, among others, have the rights to freely declare their identity, to use their mother tongue, to foster their culture. Furthermore, the Constitution guarantees the right to collective participation in public affairs, and the representation of nationalities on the local and national level and anchoring all rights they have obtained already.²³

- Hungarians living outside Hungary

The declaration in the Constitution that Hungary bears responsibility for the destiny of Hungarians living outside its borders was also found in the previous Constitution. Therefore, this sentence of Article D does not bring any new element to the new Constitution just follows the earlier approach: ‘Motivated by the ideal of a unified Hungarian nation, Hungary shall bear a sense of responsibility for the destiny of Hungarians living outside her borders, shall promote their survival and development, and will continue to support their efforts to preserve their Hungarian culture, and foster their cooperation with each other and with Hungary.’ The Constitution continues to declare that Hungary respects the freedom and cultures of other peoples, and will strive to cooperate with all nations of the world.

- Voting rights

The new Constitution only declares the right to vote of Hungarian citizens in general.²⁴ It does not decide on the question of voting rights for Hungarian citizens not living in Hungary, adding that every other rule and restraint shall be defined at the adoption of the super majority law on the right to vote.

- Extra vote for voters with children

²³ Article XXIX, sections (1) (2).

²⁴ Article XXIII, section (1).

The national consultation process triggered public debate about whether parents should be given an extra vote on behalf of their children. A proposal on the matter had indeed been included in the draft text of the Constitution, but this idea was withdrawn at a later stage. As only 25 percent of the returned questionnaires supported this idea, it was publicly announced that it would not become part of the Constitution. So the new Constitution does not grant voting rights to the parent of a minor on behalf of his/her child. Nevertheless, the draft Constitution contained until the very last moment a novelty provision: 'It cannot be considered an infringement of equal voting rights if a super majority law provides an additional vote for mothers in families with minor children, or as provided by law, another person may be entitled to an additional vote.'²⁵

- **Ombudsman**

The institution of the Ombudsman will remain an independent state agency. However, the new Constitution abolishes the current ombudsman system and places all related matters under the control of a single Ombudsman, and several deputies. This single Ombudsman (commissioner) will focus on two main areas: protecting the rights of national minorities and the interests of future generations. The Parliamentary Commissioner for Fundamental Rights will be working in a division of labour with his/her deputies.²⁶ Every Hungarian citizen will be entitled to initiate proceedings before the Parliamentary Commissioner. This new system would provide a higher and more consistent, unified protection of law.

8. Counterarguments, internal political insight

No doubt, the new Hungarian Constitution approved by Parliament on 18 April 2011 is a milestone in the 'national revolution' undertaken by Prime Minister Orbán. But the Opposition Parties did not take part in the constitutionalisation process. They had political reasons to quit the preparatory committee and not submit their drafts of the new Constitution to Parliament. Those parties mainly criticised the whole procedure rather than contribute constructively through draft text. They attacked rather harshly the National Credo, the symbolic preamble of the Constitution. The arguments they expressed during the overheated debates about the new Constitution suggest that their interest was in exciting internal political tensions in Hungary. Critics say that the new Constitution was rushed through Parliament by the ruling party alliance, threatens basic civil rights and is aimed at cementing the power of Prime Minister Orbán.

²⁵ Draft Article XXI, section (2). The sentence did not appear in the final version.

²⁶ Article 30, sections (1)-(5).

Opponents of the new Constitution also argued that it recycles 19th century ideas that are a danger to the country. In their view this Constitution is the brainchild of the Government that legally holds power in Hungary, but it expresses the dictatorship of a parliamentary majority. They argued that it is an anachronism and they evoked a 19th century thinker, de Tocqueville, to substantiate that the dictatorship of the majority is a real danger to Hungarian society. In their view, this majority confuses 'people' and 'nation' and sacrifices both on the altar of conflict between internal powers. The majority views the state (the common interest) as a construct that can be imposed from above on the whole community of citizens. Arguably, this construct breaks with European traditions and creates conditions for authoritarian politics.²⁷

Some civil rights activists were also alarmed by the legal content of the new Constitution. Their biggest concern is the reduced role of the Constitutional Court, the final arbiter of legal matters. Another point of looming confrontation is the thorny issue of voting rights for the roughly 2.5 million ethnic Hungarians living beyond the borders. The preamble of the new Constitution speaks of the 'ideal of unified Hungarian nation'. The next logical step in this process would be to allow the diaspora to participate in Hungarian elections; a move that may skew the country's voting arithmetic towards the patriotic Right of the political spectrum, which could possibly enhance tensions with neighbouring states. Civil rights activists also predicted that the new Constitution may raise tensions with the EU which in turn could overshadow Hungary's EU presidency during the first half of 2011.²⁸

The landslide victory of the ruling Central-Right party alliance in April 2010 enables it to undertake profound changes in Hungary and particularly in its legal system. The parliamentary two-thirds super majority and the strong Government are legitimate. Their active and ambitious strategy is to use the solid political power to introduce changes which have been inconceivable in the short history of the democratic republic since the political transformation of the late-1980s and 1990. They often flex their muscles as a brutal tactic to achieve quick and spectacular results in the political arena. This also appeared to be an effective method of maintaining the high level public support they had enjoyed when they had swept away the weak Socialist minority Government in 2010.

The parties of the opposition may dislike the subjugated position which deprives them of a substantial say in the issues and minimises their influence in the Parliament. They have to play a role which is often described in Hungary as parliamentary decoration. This is what makes them

²⁷ Róbert Friss, 'Orbán's Constitution, a dangerous anachronism', *Népszabadság* [Hungarian Daily] (19 April 2011).

²⁸ Imre Karacs, 'Hungary's constitutional bid gives eurocrats jitters', *The Australian* (11 April 2011).

react sensitively when the governmental machinery is put in motion and it makes them quite vocal and opposed to almost anything that the Government proposes or does. Their tactics are that of the smaller brother who might be mischievous, sometimes even nasty, but who will heartbreakingly complain to the parents when confrontation threatens with the stronger brother.

One cannot, of course, exclude the possibility that the smaller brother is right and tries to reveal a wrongdoing. This game is not restricted to the Hungarian stage since complaints and counterarguments frequently come from abroad. However, the argument that the internal political struggle undermines the country's EU Presidency during the first half of 2011 appears to be exaggerated, especially in relation to the constitutional debate. In fact, the new media law created a much bigger international political upheaval and media brouhaha right before the start of Hungary's EU Presidency. So, the one-year-old Government and its parliamentary background are legitimately empowered to take resolute measures to strengthen the country and eventually transform it as they see fit. At the same time they have to experience the internal and sometimes international protests which demonstrate that even a super majority's power is limited.

It is interesting to see how each player tries to reach or extend his limits. This is not a problem as long as all players respect the written and unwritten rules of a democratic political system. It is nonsense to say that a two-thirds super majority is *per se* undemocratic, as the opposition parties often tend to argue. Not to mention the active contribution and responsibility of the previous Socialist Government and its liberal supporters in creating this super majority. On the other hand, it would have looked much better if the ruling party alliance had not leaned exclusively on its super majority and if the new Constitution had been prepared and adopted with the active contribution of other political parties. This would have been much closer to the ideal of a national consensus.

It is also of interest to elaborate a little bit on the hidden dangers of a super majority. A super majority is an authorisation of the Government, but at the same time it puts a great responsibility on the Government. The ruling party alliance and the Government are aware of this responsibility. They seek to keep the country in a constant political motion with (pro)active but in some cases debatable initiatives. This overwhelming strategy worked very well in the beginning while the opposition parties quarrelled with each other and did not even attempt to provide a positive alternative for the voters. The ruling party alliance is still in the lead but their popularity has sharply decreased. The ruling coalition parties obviously have to find a balance between the active strategy and the political methods or style they exercise. If they don't, and if they go too far and start to misuse the super majority in order to actively and effectively

transform the country, it may backfire. Voters can turn away from them if they do not like the way the ruling coalition uses the super majority. This has not happened so far, definitely not in the constitutional debate. But it might occur in the future and, if so, it will unequivocally signal that the unwritten democratic limits have been exceeded.

9. Conclusion

Political science is an interesting discipline. It is almost impossible to say what is true and what is not. Moreover, different things can be true at the same time and they might contradict each other. Some sources, close to the Government, maintain that Hungarian people like the new Constitution. According to the regular national surveys of the Hungarian research institute Nézőpont Intézet based on the opinion of 1000 people, between 50-60 percent of Hungarians considered it necessary for the country to adopt a new Constitution following the 2010 elections. The only month when support for a new Constitution declined to less than 50 percent was December 2010 (47 percent). In early April 2011, six out of ten respondents said that the Constitution-making was necessary.

The new Constitution has good chances to be popular. Half of those (51 percent) who indicated their intention to participate in a referendum (62 percent) would vote for the new Constitution. Substantive issues of the Constitution are supported by 60-80 percent of respondents.²⁹ This positive approach definitely suits a dynamic Government better. It also appears to justify the efforts which Hungarians have had to make to overcome economic and fiscal difficulties particularly since the new Government came to power in 2010. However, national unity on, or a high degree of support for the Constitution is not only a matter of political interpretations and it gives hope for the future that the Constitution shall not remain a dead letter and subject of frequent political changes.

An obvious closing remark is to try to define the common denominator of the divided Hungarian politics. Hungary was the only country in Central and Eastern Europe that did not formally adopt a new Constitution upon gaining independence from the Soviet bloc in 1989. The Hungarian Parliament therefore was committed to create and adopt a new Constitution. Both society and political parties unanimously support the most important substantial elements of the new Constitution, such as maintaining the form of the State and of the Government, retaining the values of the rule of law and democracy, respecting and effectively protecting human rights. Various issues, such as the system of protecting the Constitution and the fundamental rights as

²⁹ Nézőpont Intézet (Hungarian research institute), 'A new Constitution for Hungary' (18 April 2011), Public opinion p.4.

well as the related overview of the Constitutional Court's competencies, have been put into the focus of professional and political discussions. The constitutionality of the economy, whether the national Constitution can offer safeguards against economic crises also raised tensions.

As a result of all this, Hungary received its 2011 Easter Constitution from the ruling central-right alliance of political parties after a flurry of discussion between Government and opposition parties. Nevertheless, this does not prejudge the Constitution's future. There are fair chances that the constitutionalisation process will be a national success story. The next step will be to revise a number of laws that require a two-thirds super majority in Parliament before the end of the year. It remains to be seen whether the ruling party alliance is able to grasp this historic opportunity for the benefit of the whole country.