The National Avowal: More than a Conventional Preamble to a Constitution…

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1. Introduction

The preambles to constitutions have never received extensive scholarly attention as compared to other objects of study. The scholarship focusing of constitutional law has largely regarded preambles as either brief introductory texts with some uncertain normative power or solemn introductions shedding light on the important points and claims of political communities (Ginsburg, Foti and Rockmore; Koubi). During scholarly discussions of the case law of various constitutional courts the normativity[1] of preambles comes up as a scholarly problem (see: Orgad; Popławska). That is, the study of preambles is certainly not a "terra incognita", but it has had only a secondary relevance for experts of constitutional law thus far.

However, – and this is the main thesis of this paper – preambles can reveal much more than anticipated on constitutionalism as such and the legal culture of a given country if they are studied with the proper methods. In other words, besides conventional methods of constitutional law (e.g. dogmatic text analysis or case-law method), novel approaches of legal theory may also refine our understanding of these brief attachments to constitutions. This paper illustrates this thesis by providing an in-depth analysis of the Preamble (The National Avowal) to the new Hungarian Constitution. Hopefully, as a secondary claim, this discussion may also contribute to the general understanding of preambles.

1.1. Two distinct worlds: the preamble of the "Constitution of 1989" vs. the National Avowal

Although the Hungarian constitution-maker had not enacted a new constitution in 1989, it substantially changed the content of the former Socialist constitution – Act No. 20. of 1949 – in order to create a proper constitutional framework for the transition to the new multi-party democracy. That being said, essential legal mechanisms and institutions had newly been introduced, inter alia, rules for general and local elections; mechanisms for division of powers among various institutions; guarantees for the independence of the judiciary; the establishment of a constitutional court and so on. In sum, the new text of the former constitution was an excellent starting point for the new Hungarian parliamentary republic.[2]

It is striking, especially if one considers the historical relevance of the new democratic constitution, that its preamble was only one sentence focusing on the transitory nature of the entire constitution. That is, it simply declared that the new constitution had been created and enacted "in order to facilitate the peaceful political transition to a constitutional state".[3] Only

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[1] Normativity can be approached from various conceptual points. This paper applies the concept of normativity in a „factual" sense: basically, here, normativity means the capacity of a legal rule to make people obey to that rule, that is, it is the ability of norm to influence people's behavior toward the aim of this norm. Obviously, the normativity of a rule can be dependent of various internal and external factors, from the legal technique to certain social preconditions. For more on normativity (see: Berta and Pavlakos).

[2] For a comprehensive overview, including the text of the renewed constitution and those of the most important new acts guaranteeing the basic mechanisms of democracy see: (Lamm) (with special regard to Géza Kilényi's introduction 5–34.).

[3] "In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby

the major features of the new socio-political setting was mentioned (multi-party system, parliamentary democracy and social market economy); neither value declarations, nor historical references were incorporated into the text – as was regularly the case in most of the constitutional preambles of other East-Central European post-Socialist countries.[4] It can be argued that this preamble attached to the "Constitution of 1989" neglected both the historical moment and the obvious post-transitory trends in East-Central Europe when phrasing an introduction to the new constitution. Therefore, due to its relatively neutral and value-free wording, it could not acquire a symbolic status and meaning in the following years during which the socio-political framework of the new democracy was established in intense and fierce internal debates.

In 2010, the overwhelming victory of the right-wing and populist party, FIDESZ Hungarian Civil Alliance, opened up the possibility for the enactment of a new constitution. Following less than one year of preparatory work, the Parliament enacted the new constitution, which it named the Basic Law, on April 18 2011 (for a general discussion of the post-2010 political and constitutional developments see: Kiss; Smuk). The new Basic Law (for a descriptive introduction see: Csink, Schanda and Varga) has been under a strong criticism since its inception; both constitutional law experts and the European institutions – mostly the Venice Commission of the Council of Europe – have questioned its overall spirit and certain specific provision.[5]

One of the major novelties of the Basic Law is the new preamble entitled the National Avowal. The National Avowal cannot intelligibly be compared to the former preamble, since it differs in both qualitative and quantitative terms. It is much longer; it contains numerous value declarations and historical references; its style is passionate, lofty and theatrical; and it has no transitory nature but rather it strives for a perennial status – that is, it aims to become an essential reference point of the new regime's political identity. Basically, the new preamble is a longer text emphasizing those historical, axiological, sociological and political points that were relevant in the eyes of the constitution-maker in 2011. In sum, the National Avowal is a completely new development in Hungarian constitutional thinking; therefore an in-depth and interdisciplinary analysis is indispensable for a comprehensive understanding of its nature.

Thus, this paper aims to contribute to the better understanding of the new Hungarian preamble through three novel approaches to legal philosophy. The speech act theory, theory of narratives, and law and emotions scholarship will be applied. These approaches converge at one point: they imply that law is more than a set of legal provisions; it is a component of a much broader – for instance social, political or cultural – reality. Therefore, this paper will also presuppose that a preamble is not only a provision of constitutional law strictly embedded in the "legal system" of constitutionalism, but also a text in a literal sense, being rooted in and attached to a much broader historico-political context. Therefore, the National Avowal will be discussed as a text in the following analysis, since this approach may reveal certain insights that remain hidden if conventional constitutional law methods are applied.

1. Speech act theory applied: arguments against the normativity of the National Avowal

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establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted."

[4] From the former-Socialist countries in East-Central Europe the Czech Republic, the Republic of Estonia, the Republic of Poland, the Republic of Lithuania, the Slovak Republic, and the Republic of Slovenia enacted new constitutions with longer and thoughtful preambles.

[5] See for instance: *Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary*, Opinion No. 614/2011, CDL-AD(2011)001; *Opinion on the New Constitution of Hungary*, Opinion No. 621/2011, CDL-AD(2011)016; *Opinion on the Fourth Amendment to the Fundamental Law*, Opinion No. 720/2013, CDL-AD(2013)012. As a summary of scholarly critiques see the studies on various fields of Hungarian constitutional law (see: Tóth).

The normativity of preambles has always been an evergreen question (see: Orgad). The first claim of this paper is that the question of normativity cannot convincingly be handled only by analyzing the relevant case-law of constitutional courts – although this approach is more than tempting due to its simplicity and conventionality. Since preambles give written utterance to the will of the constitution-maker, the application of certain insights from the philosophy of language would seem to be especially helpful. Chief amongst them is speech act theory[6] and its consequences.[7]

Speech act theory can be linked to the phenomenon of normativity in law. Besides other factors – for instance the moral embeddedness of a given provision, the state capacity to enforce law, or the economic rationality behind regulations etc. – effecting normativity of legal rules in general, the linguistic nature of a norm also has some impact when it is at least partially composed of speech acts. This approach seems to be even more suitable when such a provision like the National Avowal has to be analyzed, since this preamble has less direct legal relevance as compared to its literal layers.

As for normativity, the case of the National Avowal seems to be surprisingly simple at the first sight. The Basic Law even contains an article that deals with the normativity of the preamble. Article R (3), as a general rule of interpretation, sets forth that

> "The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution."

Thus, the National Avowal is one of those three points – besides the *telos* of constitution (*teleogical interpretation*), and the achievements of the so-called "historical constitution" (*quasi-historical interpretation*) – that have to be followed when interpreting a provision of the constitution. The National Avowal as a compulsory tool of interpretation in itself acquires normative power in cases when a contextual interpretation is needed.

In sum, the problem of normativity of the National Avowal seems to be settled by this provision. This strong link between the normative provisions of the constitution and the preamble may be surprising since it has no antecedents in the previous practice of the Constitutional Court, thus it may be argued that this approach is rather distant from the Hungarian constitutionalism; however it is not senseless at all. This solution guarantees that such an interpretation of constitution that may go contrary its "spirit" as specified in the National Avowal cannot prevail. Essentially, the constitution-maker closed a considerable option for creative and activist interpretation by the future constitutional justices trying to overstep the actual constitutional setting.

However – contrary to the earlier normative speculations based on Article R (3) – some insights of speech act theory suggest a much more refined understanding. Although Article R (3) declares that the National Avowal has to be applied as a tool of interpretation, the simple fact that this text is full of speech acts[8] makes this problem more complex.

Contemporary philosophy of language agrees that an utterance has three different – but also interrelated to a certain extent – characteristics: (i.) locutionary, (ii.) illocutionary and

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[6] Austin defines speech-acts in his seminal work: "(these utterances) A. do not 'describe' or 'report' or constate anything at all, are not 'true or false'; and B. the uttering of the sentence is, or is a part of, the doing of action, which again would not normally be described as saying something." One of his famous example is "I name this ship the Queen Elizabeth (…)" (Austin 5).

[7] On the applicability of speech-act theory with regard to written texts (see for instance: Skinner).

[8] For example: „We promise to preserve (…)"; „We commit to promoting and safeguarding (…)"; „We respect (…); „We do not recognise (…)"; „We agree (…)".

(iii.) perlocutionary dimensions.[9] For our discussion we have to focus on the illocutionary force in general, since – as it was mentioned above – it has a certain explanation value with respect to the problem of normativity. Basically, the illocutionary force of an utterance indicates to what extent it is able to produce some conventional effects with regard to the acts of people (Austin 108). The stronger the illocutionary force of an utterance, the better its capability to influence and alter reality.

It is argued in contemporary discourse – on the basis of the works of Austin and Searle – that the illocutionary force of an utterance is dependent on seven major factors.[10] That is, although a speech act always has a general illocutionary force – meaning that an utterance is capable of bringing about certain conventional consequences in human action, for instance, when someone says 'I promise', others will rely on this promise – many other external components shape its scope in a given situation. Obviously, these seven components designed for real utterances are not equally relevant in the case a written speech acts with special regard to "legal texts". Because legal provisions are products of a bureaucratic procedure that cannot be compared to the inherent diversity of real life; and their phrasing and style is much less sophisticated than a living language their linguistic nature is rather limited. Therefore, these components should be simplified to the peculiarities written constitutional texts including constitutional preambles. By this simplification, one may argue that the illocutionary force of a speech act in a legal text is largely dependent on three major factors. These are as follows.

(i.) The first point that should be assessed is the question how a speech act is linked to the general logical and linguistic framework of law. Does it contain such concepts that may have direct legal relevance? If so, the illocutionary force of a speech act in a legal text may be strong or stronger. (propositional content conditions)

(ii.) The second point to study is the historical context of the speech act. One may, with relevance, raise the question of in what kind of historical situation does the question of normativity come up. The historical context of a legal text may also influence the illocutionary force the speech acts embedded in it. (preparatory conditions I.)

(iii.) Lastly, one should also take into account the framework of the national legal culture. The question of how a given national legal culture approaches the normativity of preambles has an undeniable importance. If a national legal culture accepts the normativity of preambles in general (Orgad 726–731), it may enhance the illocutionary force of speech acts in a preamble. (preparatory conditions II.)

A complex assessment of these three factors may help us in answering the question of whether a preamble – if it is also composed of speech acts – has a certain normative power. In other words, these three points may contribute to the assessment whether the National Avowal has normative power in fact.

In the case of the National Avowal, the third component has to be discussed first. The attitude of Hungarian judges – irrespective of whether they are ordinary judges or constitutional court justices – is extremely text-positivist with respect to interpretation (Jakab and Hollán). They are generally reluctant to apply methods – for instance the teleogical approach or analogy – that may lead to an innovative interpretation.[11] Moreover, it is not too likely that this text-positivist approach will be changing in the short term, since the post-

[9] For a broader discussion of these terms (see: Austin. 94–107).

[10] See for more (Green). These seven factors are: 1. Illocutionary point; 2. Degree of strength of the illocutionary point; 3. Mode of achievement; 4. Propositional content conditions; 5. Preparatory conditions; 6. Sincerity conditions; 7. Degree of strength of sincerity conditions.

[11] Having studied extensively the patterns of Hungarian courts Ződi argues that "(…) there is no such as the »spirit of the rule what counts, and not the wording«. Hungarian law is textual, text-based, and text bound. The importance of precedents is growing in number, and if this is a sign of convergence, than there is a convergence. But the textual tradition of the civilian law is very strong, and the sophisticated ways of precedent handling, and reasoning is simply not present in Hungarian law." For more see: (Ződi).

transitory Hungarian legal culture also shows a strong commitment to the primacy of legal texts in interpretation. For instance, the Constitutional Court only relied on the former preamble in exceptional cases, and even then, the Court never used it as a starting point for a creative or activist interpretation (Vörös 23–25). Therefore, one can argue that this third condition is certainly not met.

The national legal culture has a strong text-positivist character, and the preamble to the constitution is certainly not regarded as a conventional helping hand when interpreting ambiguous provisions.

As for the second point, one seems to be unable to formulate such a solid conclusion as was the case with respect to the legal culture. The post-2011 political setting of constitutional law seems to be a situation where the constitution-maker (still in power following 2014) has had a clear and obvious intention to establish a new way of constitutional thinking, which is intended to be qualitatively different from that of the previous twenty-five years. Therefore, having introduced the new constitution, an activist approach in its interpretation would likely be unwelcome by the political sphere since it may harm political coherence of the new constitutional setting. Thus, this period seems to be unfavorable toward judicial activism. In addition, because of new rules for the selection of Constitutional Court justices[12] – making it possible to nominate them by a two-third majority in the Parliament, that is, without any interference of the opposition – only those may become constitutional justices that share the basic convictions of the government party. Thus, it may be supposed that the new constitutional justices will also be reluctant to adopt an activist approach. But, in general, it cannot be excluded that a creative and activist interpretation may appear in some cases. In sum, one cannot determine if criterion two of illocutionary force will or will not be met in the coming years.

Most of the terms included in the National Avowal openly contravene the first component linking legal illocution with "the legal nature" of concepts. Needless to say, because of the political mission of the text, this preamble is full of terms that were mostly borrowed from the vocabulary of either historical thinking[13] or political philosophy.[14] Therefore, they have no explicit legal reading or interpretation; that is, they cannot be relied on in a legal argumentation.

Perhaps one exception to be pointed out is those parts of the text that explain the manifold tasks of government and administration.[15] Here, the reader can find certain terms that are not absolutely unknown in legal vocabulary. However, there is no guarantee that these terms will be referred in constitutional interpretation just because they are part of the National Avowal. It is much more likely that the main tasks of government and administration will be discussed on the basis of specific provisions of the constitution or other acts.

All in all, the application of speech act theory – especially the components of illocutionary force – to the problem of National Avowal's normativity suggests that one can easily find various arguments against the normativity of the National Avowal. In light of these findings, Article R (3) requiring the application of the preamble as a compulsory tool of interpretation should be approached with both some caution and reservation. The main counter-argument to normativity of National Avowal that really weakens Article R (3) is the nature of the

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[12] Basic Law 24. § (8); Act CLI of 2011 on the Constitutional Court 6. § – 9. §.

[13] For example: "the role of Christianity in preserving nationhood", "various religious traditions"; "the diversity of European unity"; "the Holy Crown"; "1956 Revolution".

[14] For example: "nation"; "Hungarian political community"; "freedom"; "new democracy and constitutional order".

[15] "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."

Hungarian legal culture. As indicated above, Hungarian legal culture is extremely text-positivist. Therefore, it is very reluctant to rely on vague and broad terms having no clear legal relevance during interpretation: the National Avowal is full of these terms.

2. Creating a new constitutional narrative: the fall of the "invisible constitution"?

The role of preambles to constitutions is not only to influence the understanding of some constitutional provisions toward certain policy choices preferred by the constitution-maker. They also have a much broader social role. Since the seminal work of Cover (*Nomos and Narrative*) no one can seriously doubt that constitutions are also considerable contributions to those narratives by which a political community understands both itself and the outside world. That is, the text of a constitution – and especially the preamble – may have a strong impact in shaping public thinking on the fundamental questions of a political community. In addition, the narratives are very important when defining the meaning of certain constitutional law provisions before the courts. In the words of Cover:

> Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.
>
> In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse – to be supplied with history and destiny, beginning and end, explanation and purpose. (4–5).

In other words, narratives shape our understanding of legal provisions; perhaps, pure legal meaning does not exist at all, and legal provisions become publicly comprehensible with help of narratives. Moreover, narratives have partially been created, reinforced or discredited simultaneously by the acts of the legislator and constitution-maker. Thus, law and narratives mutually animate each other, thereby creating a normative world (*nomos*) and giving practical meaning to the technical rules.

This paper argues here that the National Avowal should be regarded as a symbol of the establishment of a new constitutional narrative trying to compete with the existing dominant one. Basically, its final aim is to alter, or at least refine, the popular understanding of constitutionalism against the preferences of the rightist and populist constitution-maker. From the very beginning of the political transition process in 1989, an influential narrative had emerged around the "Constitution of 1989". The main actor in this formation was the newly established Constitutional Court with special regard to its first president: László Sólyom, the prestigious civilist and expert on constitutional law. The Constitutional Court made sincere serious efforts in order to create a new "epic" – in the Coverian sense – through its seminal decisions from the very beginning of the transitory years.[16] In general, the main decisions of the first nine years stressed the overwhelming importance of human dignity and also emphasized the requirement of rule of law with special emphasis given to the formal requirements of legal procedures. Broadly speaking, this narrative – named as the "invisible constitution" many times (Sólyom 117–119) – had (i.) a universalistic and ahistorical nature and had been centered around (ii.) the idea of human dignity and freedom; (iii.) human rights; and (iv.) the concept of rule of law with special regard to legal certainty.[17] Its ahistorical features gained special relevance if one took into account the tradition of the historical

[16] See for example: 23/1990 (X. 31.) AB határozat (annulling death penalty on the basis of the value of human life and human dignity); 43/1995 (VI. 30) AB határozat (annulling some parts of the act on economic stability (Act XLVIII of 1995) introducing serious restrictions in the field of maternity and family allowances in order to improve the budgetary balance).

[17] For a representative summary of this narrative see: (Halmai-Tóth).

constitution being popular prior to WW I in the Hungarian legal culture (for an in-depth discussion see: Péter). The idea of an "invisible constitution" and the narrative animating it has had a broad and strong influence over both legal scholarship and legal education during the last twenty-five years.

The main personalities of the new FIDESZ government have never denied or hidden their objections to "liberal constitutionalism", that is, to the "epic" of the "invisible constitution". For instance, Tibor Navracsics, Minister of Justice and Public Administration at that time, has explicitly argued for the establishment of "a new political and institutional culture" to replace the previous one.[18] Hence comprehensive political support has swiftly emerged to back a new national constitutional vison and narrative. The National Avowal contains all the main components of this new narrative and it can be regarded as the flagship of this new line of thinking. This prominent place is guaranteed by its particular place in the Hungarian legal culture, as the preamble to the new Constitution. Having studied the National Avowal one may easily summarize the core elements of this national constitutional narrative: (i.) it is focused on the idea of the cultural nation and national solidarity;[19] (ii) it creates a non-neutral understanding of the national history;[20] (iii) it is also familiar to the concept of the so-called "historical constitution"[21] – whatsoever this term may mean –; and (iv) it also has a historical scope focused on national history.[22]

Thus, the coming years will be about the competition of these two narratives. One of them has strong roots within the legal profession, especially in the legal education and academia, while the other is supported by the official governmental constitutional spirit. Since there is no historical distance, but we all have been part of these developments, it is not possible to formulate any conclusion on the future outcome of this competition yet. However one essential question seems to be quite clear: is the will of the government enough in itself for creating and maintaining a new narrative even contrary to the well-established narrative of the legal profession and academia as such? Legal history suggests that the support of both legal profession and society are also indispensable for setting up a new constitutional narrative (Cover 31–32).

3. "Law and emotions" applied: the weight of historical frustrations

Having studied the National Avowal from the aspect of speech acts and narratives, there is still one important approach remaining. Although the relationship between law and emotions is an issue for continuous and stormy discussion, it can hardly be denied that preambles imply a sentimental reading in most cases. Contemporary law and emotions scholarship (Bandes, Maroney, Abrams and Keren, Bandes and Blumenthal) teaches us that emotions remain relevant for understanding law in general. A legal provision may affect the emotions of the people – just think of controversies raised by the gay marriage acts in North America and Western Europe. Emotions may also be the subject of legal regulation: certain sections of criminal law or hate-speech provisions may provide proper examples. Finally, emotions can even be the driving force behind legislation, as the stories of environmental protection acts illustrate.

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[18] See: fn.hir24.hu/itthon/2012/08/18/navracsics-solyom-rosszul-latja/.

[19] „We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture (…)"; „ (…) a sense of responsibility for every Hungarian (…)"

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

[21] „(…)we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation."

[22] „Our Fundamental Law shall be the basis of our legal order; it shall be an alliance among Hungarians of the past, present and future."

Additionally, as this body of scholarship has already pointed out, law as a general societal phenomenon can have an important role in managing collective emotions (Sajó 2011). As an insightful illustration, Sajó argued, when discussing the role of constitutional sentiments in the emergence of modern constitutionalism, that some of its major points (e.g. division of powers, due process, and protection of human rights) are also about the sophisticated management of collective fears from a tyrannical power (Sajó 1999, 1–47). This "management function" is even more apparent in the case of preambles, since by moving a public sentiment or public sentiments into the world of constitutionalism preambles provide public emotions with a special status. That is, preambles to constitutions pick up certain public sentiments from the societal world and move them to sphere of constitutionalism. And, this movement may have positive repercussions on these public sentiments, since it may contribute to the taming and neutralizing of the harshness of these sentiments. The sphere of constitutionalism seems to be rather neutral and predictable due to its internal logic, as compared to the busy, harsh and fast-changing world of public thinking. Thus, the "constitutionalization" of a public sentiment through a preamble may be an important contribution to rationalizing discourses and debates boosted by public sentiments.

A sentimental reading of the National Avowal suggests that historical frustrations had a considerable role in its phrasing. Some parts explicitly refer to these sentiments, such as, for example, the following paragraph:

> "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."

In addition, other historical references to the 20th century[23] also have this emotional dimension; all of them go back to the still widely-shared public conviction that the 20th century was blatantly unjust to Hungarians. Just to mention the main among many such moments: Hungary lost two-third of its territory following the Trianon Peace Treaty in 1920; it was occupied by German troops in March 1944 and, therefore, it fought in alliance with Germany until the end of World War II; and the establishment of a purely Stalinist regime started in 1949 and the revolution of 1956 fell due to the Soviet invasion.

The inclusion of these components, having an unambiguous emotional relevance, into the preamble may contribute to the taming and neutralizing of the frustration rooted in modern history. On the one hand, it has a clear message: the constitution-maker recognizes this frustration and sees its importance in the recent past of the Hungarian nation. On the other, this recognition in the introduction of the constitution may also open the possibility of a more rational, not strictly emotional discussion, since it provides some kind of very abstract and symbolical reward. In sum, it may make a contribution to neutralizing these strong public strong in the longer run.

Obviously, whether or not a preamble is the proper place for this emotion management is another question to be discussed. It can be argued that the appearance of collective frustrations in the National Avowal strengthens Bibó's insight into the general deformation of Central European political cultures (for more: Bibó *A kelet-európai* 212–227). Normally, the management of historical collective experiences and frustrations should never be a task of constitutionalism and constitutional law; it is certainly not a coincidence that most of the preambles of Western constitutions are almost free of any emotional references.[24] However, because of the underdeveloped civil culture, the improper functioning of public discourse and

[23] For ex.: „We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and the communist dictatorship."

[24] The Spanish and the Portuguese preamble to the constitution are manifest exceptions. It can be due to the fact that they were created following the fall of authoritarian regimes.

the overwhelming influence of the political sphere in East-Central Europe, these problems can only be handled with the help of a strong political impetus. And, this strong political "participation" in the public life of a society can create such unconventional documents as the National Avowal.

4. Conclusion

The main thesis of this paper – that preambles can reveal a lot about the national legal culture – is certainly supported by the findings. The various conceptual approaches employed pointed out, among many other things, that (i.) the normativity of the National Avowal is rather questionable, although the constitution-maker had a clear intention to provide it with strong authority; (ii.) the National Avowal symbolizes the birth a of a new constitutional narrative centered around the nation and national history; and lastly (iii.) one of the aims of the National Avowal is to provide a helping hand in managing historical frustration through moving them into the sphere of constitutionalism.

That is, the National Avowal is intended to be much more for the Hungarian legal culture than a conventional preamble for a Western country.[25] It has certain functions that are completely different from the ordinary tasks of a legal provision. Basically, besides its original function to provide a value-oriented introduction to the constitution, it is also strongly linked to public thinking. Namely, it is a political tool to influence the public discourse on those questions – such as the role of 20th century in the Hungarian history, the role of the nation in the contemporary world, and judging the crimes committed by the authoritarian regimes – that have been vehemently and fiercely debated since 1989.

In sum, the National Avowal is a perfect symbol of the fact that Hungarian public and its political thinking are still in a transitory phase from the first events of the October of 1989. Moreover, it also symbolizes that politics has an overdeveloped and artificial role in the Hungarian society – a deformation that had already been pointed out Bibó many decades earlier (Bibó *Eltorzult*). All in all, one may argue that the Hungarian public thinking is still struggling with controversies of the 20th century past and the National Avowal moves many of them to the sphere of constitutionalism. The coming years will decide whether it is either a successful means contributing to the socio-political consolidation or just another chapter in the continuous war of symbols generated and boosted by various wings of the Hungarian political and intellectual elite.

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[25] Cf. Horkay Hörcher argues that the National Avowal is strongly linked to 19th century romantic-nationalist poetry playing a crucial role in creating the modern Hungarian national identity. See: (Horkay Hörcher)

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