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The Proclamation of the Hungarian Republic in 1946

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Summary

The paper is dealing with the constitutional and historical importance of Act I. of 1946. In 1946 Hungary has changed its form of government. The passage of Act I of 1946 has defined Hungary's form of government as a republic. In addition to the creation of a republic, the legislation provided powers for the president of the Hungarian Republic. Moreover, the Preamble of Act I. of 1946 was the first document in the Hungarian constitutional history which summarized and declared the most important natural and inalienable rights of the citizens.

Streszczenie

Proklamacja Republiki Węgierskiej z 1946 r.

Artykuł dotyczy konstytucyjnego i historycznego znaczenia Ustawy no. I z 1946 r. W 1946 r. Węgry dokonały zmiany formy rządu. Przepisy ustawy no. I z 1946 r. określiły węgierską formę rządu jako republikę. Oprócz utworzenia republiki ustawa przyznała władzę prezydentowi Republiki Węgierskiej. Ponadto preambuła ustawy no. I z 1946 r. była pierwszym dokumentem w węgierskiej historii konstytucyjnej, podsumowującym i deklarującym najważniejsze naturalne i niezbywalne prawa obywateli.

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I.

During the post-second world war years, many countries has changed their form of government. In the South European region, including the Balkans – except Greece – monarchies were abolished. The People's Republic was proclaimed in Yugoslavia on November 29, 1945; in Albania on January 11, 1946; in Bulgaria on September 15, 1946; and in Romania on December 30, 1947². The passage of Act I of 1946 on the form of government of Hungary, breaking with the long-standing monarchistic traditions, fitted this pattern defining Hungary's form of government as a republic.

Prior to the adoption of Act I of 1946 on the form of government, Hungary was a monarchy, although the throne had been vacant for decades. At the end of World War I, on November 13, 1918, Charles the Fourth (1887–1922) renounced participation in state affairs (although he never formally abdicated) and announced that he would acknowledge the decision on Hungary's future form of government. Three days later, on November 16, 1918, the Hungarian People's Republic was proclaimed, and on January 19, 1919, Count Mihály Károlyi (1875–1955) was elected as the provisional president of the People's Republic of Hungary. During the period of the Hungarian Soviet Republic from March 21 through August 1, 1919, the duties of the head of state were performed by the Revolutionary Governing Council (*Forradalmi Kormányzótanács*).

After the downfall of the democratic and socialist revolutions of 1918/1919, the successive political regimes were national-conservative and aimed to restore the constitutional continuity of the pre-war era. Act XLVII of 1921 maintained the ancient form of government of Hungary as kingdom, and it declared the dethronement of Charles the Fourth and the Habsburg Dynasty. The functions of the head of state, however, had to be taken care of. Act I of 1920 on the restoration of constitutionality and on the exercise of the main state powers provided that until the final settlement of the status of head of state, the National Assembly would elect a regent (in another word: governor).

² L. Hubai, *Viták és álláspontok a II. Magyar Köztársaságról*. "Múltunk" 2005 no. 2, p. 216.

According to the intention of the legislator, until such time as the exercise of the powers of the head of state is permanently settled, such functions shall be discharged, in a provisional manner, by the regent. It was under this legislation that Admiral Miklós Horthy (1868–1957) was elected regent of Hungary on March 1, 1920; he served in this position until October 16, 1944. The regent operated as a *de facto* head of state for almost 25 years in a kingless kingdom.

The ambiguity concerning the form of government unsettled even contemporary legal scholars, as one can see, e.g. in a textbook written by Ferenc Faluhelyi, a professor of law at the University of Pécs, entitled “Public Law of Hungary”, published in 1926. In respect of the form of government, the author made a reference to Act XLVII of 1921 that had maintained the ancient form of government of Hungary as kingdom, however, the functions of the head of state to be taken care of by a regent (i.e. governor) under Act I of 1920 were significantly restricted *vis-à-vis* the powers of a king, as the regent is considered merely the head of the executive branch. Consequently, Hungary’s form of government “*de facto* today is similar to the republican form of governments”³. Professor Faluhelyi basically distinguishes between the “*de jure*” and “*de facto*” forms of government by identifying the former with a kingdom and the latter with a republic.

Miklós Horthy as the head of state resigned on October 16, 1944 after an unsuccessful attempt to withdraw Hungary from the war, and he entrusted the leader of the Arrow Cross Party, Ferenc Szálasi (1897–1946), an ardent supporter of alliance with Nazi Germany, to form a government. While in Western Hungary and in the capital city the Arrow Cross Government stayed in power, in the middle section and Eastern regions of the country Soviet troops defeated the Nazis. Consequently, by the end of 1944, in the regions liberated from Nazi occupation, a new system of authority was put in place, during the course of which delegates to the Provisional National Assembly were also elected.

II.

The Provisional National Assembly (*Ideiglenes Nemzetgyűlés*) sat in Debrecen on December 21–22, 1944 and in Budapest in mid-September of 1945 and

³ F. Faluhelyi, *Magyarország közigazg.*, vol. II, Pécs 1926, p. 6.

passed important legal and political resolutions: a resolution on sovereignty, provided for the provisional exercise of the rights of the head of state, elected the members of the Provisional National Government, and gave authorization to the government to conclude an armistice agreement.

Under Act I of 1945, the Provisional National Assembly declared itself as the sole representative of state sovereignty. However, the legislation left untouched the issue of the form of government, therefore it put in place transitional solutions. Under Act III of 1945, a three-member strong National High Council (*Nemzeti Főtanács*) was established with a view to exercise the powers of the head of state. The post of the president of the National High Council was filled by Béla Zsedényi (1894–1955), a professor of law, from January 26, 1945 to December 7, 1945, hence, he can be considered as the *de facto* head of state of Hungary.

Albeit no decision was taken on the form of government, the “royal” attribute was deleted from the designation of the Hungarian government leaving no doubt as to the direction of changes. Certain powers, such as the election of the Provisional National Government and the members of this government, were assigned to the Political Committee consisting of the delegates of the political parties that considered itself as a small national assembly while the Political Committee in many respects was a substitute for the Provisional National Assembly not meeting from December 23, 1944 to September 5, 1945.

The Provisional National Assembly adopted a new suffrage law in September of 1945 (Act VIII of 1945). National Assembly elections followed in November of the same year. The multi-party National Assembly, as the sole representative of Hungarian state sovereignty, passed Act XI of 1945 on the provisional exercise of state powers. The Act authorized the National Assembly, as the sole representative of Hungarian state sovereignty, to establish the constitution and the form of government of Hungary. Under this authorization was a bill tabled on Hungary’s form of government on January 24, 1946.

III.

The governing coalition, formed by four parties – the Independent Smallholders, Agrarian Workers and Civic Party, the Hungarian Communist Par-

ty, the Social Democratic Party of Hungary and the National Peasant Party (*Független Kisgazda –, Földmunkás-és Polgári Párt, Magyar Kommunista Párt, Magyarországi Szociáldemokrata Párt, Nemzeti Parasztpárt*) – were in agreement on the introduction of a Republican state model. There was disagreement among the parties concerning certain details such as the status of the president of the republic and his powers; the bill tabled, however, contained a compromise of the parties. Although the majority of the delegates of the Independent Smallholders Party, which was the largest party within the coalition, were in agreement as to the requirement of transition to a republican form of government in early 1946, even senior Smallholder politicians opted for it for pragmatic reasons rather than from a sincere political conviction. This sentiment was expressed by Béla Varga (1903–1995), catholic priest, member of the National Assembly as well as the National High Council who delivered the following remarks at a Smallholders Party panel on the issue of the form of government: although he was a royalist by upbringing, recognizing Hungary's current situation and evolution of its future, he chose to support the republican state and asks his fellow party members to act likewise⁴. In the ranks of Smallholders Party delegates there were some who were ardent republicans suggesting that a referendum be taken on the issue on the form of government, but only after the occupying troops shall have left the country. Such a proposal was raised by Vince Nagy (1886–1965), who, during the civil democratic revolution of 1918/1919, i.e. during the First Republic, served first as a Secretary of State of the Prime Minister, later as Minister of the Interior⁵. The position of the Smallholders must have been influenced by the governments of Great Britain and the United States who informed them that they would refrain from making comments on Hungary's proclamation of a republic⁶.

⁴ F. Nagy, *Küzdelem a vasfüggöny mögött*, vol. I, Budapest 1990, p. 227.

⁵ V. Nagy, *Októbertől októberig*, Budapest 1991, p. 363.

⁶ F. Nagy, *Küzdelem...*, p. 228.

IV.

The presenter of the bill on the form of government of Hungary to the national assembly, Dezső Sulyok (1897–1965), argued with rich historical parables, in favor of the adoption of the bill on January 30, 1946. In his argument supporting shift to a republican state model, he explained that such a move would clearly demonstrate Hungary's commitment to democracy, and he added, I quote "we did not only close the door on the past, but we walled it in". We are Democrats, argued Sulyok, and we have no intention to be anything else but Democrats⁷. In the general discussion of the bill only nine delegates participated, with a significant majority in favor of the bill.

Few opposed openly the introduction of a republican state model. Cardinal József Mindszenty (1892–1975), the Prince Primate of Hungary was one of those few. In a letter dated December 31, 1945, addressed to the Prime Minister Zoltán Tildy (1889–1961) he wrote that in view of the wide ranging tasks involved for rebuilding the country, he found the issue of changing the form of government untimely⁸. In another letter dated February 1, 1946, addressed to the Prime Minister and the president of the National Assembly he argued that the discussion of the bill took place under foreign occupation, without consultation with the Hungarian people, in a restrictive manner whereby the freedom of speech of the delegates was limited⁹. Prior to the restoration of sovereignty, even the mere suggestion of the change of the form of government was unacceptable for Cardinal Mindszenty. In his memoirs he noted resignedly that he could not deliver any changes, similar to protests from different parts of the country that were to no avail¹⁰.

When the bill was debated in the National Assembly, on January 30–31, 1946, the only clear opposition to the bill was voiced by Margit Schlachta (1884–1974), who had no party affiliation. She found the bill untimely, and argued that none of the party platforms contained any reference to change in the form of government. She also raised the idea to cast a conscience vote on

⁷ Az 1945. november hó 29-ére összehívott Nemzetgyűlés naplója, vol. I, Budapest 1946, p. 256.

⁸ The letter is available: Mindszenty József vétője a köztársaság behozatala ellen, <http://regnumportal.hu/regnum2/node/177> (10.11.2017).

⁹ Ibidem.

¹⁰ J. Mindszenty, *Emlékirataim*, Budapest 1989, p. 106.

the bill¹¹. All of her proposals were rejected by the National Assembly. Sándor Eckhardt (1890–1969) speaking on behalf of the Democratic People's Party (*Demokrata Néppárt*) having two seats in the Assembly proposed to hold a referendum on the form of government instead of deciding it by the National Assembly, i. e. a legislative body, although he allegedly supported the Republican state model. He also raised that an independent judicial body, a constitutional court should safeguard the enforcement of natural and inalienable rights mentioned in the Preamble of the bill¹². The constitutional court, however, was not set up in Hungary till 1989.

Act I of 1946 passed finally with a huge majority creating a state model that best reflected the will and interests of the nation which was nothing else than a republican state form; for and on behalf of the “Hungarian people” considered as the sole source and holder of state power. The reasoning part of the bill pointed out that the republic as an institution is not contrary to “the properly perceived organic development”, and, at the same time complies with the will of the National Assembly representing the nation. The reasoning also noted that the introduction of the republic was driven also by foreign policy considerations.

The Preamble of Act I. of 1946 was the first document in Hungarian constitutional history to summarize and declare the most important natural and inalienable rights of the citizens that the Hungarian state ensures to its citizens, on a non-discriminatory basis, “within the framework of a democratic state order”.

The rights mentioned in the Preamble included, among others, the right to personal freedom, the right to human life free from deprivation, the free expression of thought and opinion, the free exercise of religion, the right of association and assembly, right to property and personal security, the right to work and a decent human livelihood, the right to education and the right to participate in the governance of the state and local governments. According to legal scholarship of the time, with the declaration of human rights Act I of 1946 did not create any new right; it only solemnly proclaimed all that had existed in Hungary for a long time as valid right in different legislations.

¹¹ *Az 1945. november...*, pp. 297–314.

¹² *Ibidem*, pp. 288–289.

The declaration might have made a false impression towards the rest of the world suggesting that Hungary had only now attained its cultural development allowing to declare these human rights¹³.

V.

In addition to the creation of a republic, the legislation provided for the office and the powers of the president of the republic. The president of the republic is to be elected, by acclamation, by the national assembly, for a term of four years; with powers similar to the powers of the president of a parliamentary republic.

The explanatory part of the bill pointed out that all such powers that resulted from the nature and legal significance of the head of state had been granted to the president of the republic: 1) the president of the republic shall represent the Hungarian state, and 2) the president shall be the depository of the executive branch through the relevant responsible ministry. He had the power to appoint the prime minister after hearing the relevant committee of the national assembly, and he had the authority to appoint and dismiss the members of government pursuant to the prime minister's proposal.

The president had more modest powers concerning the legislative branch: 1) had no. absolute veto power, he could return any act once only to the national assembly for "re-consideration" prior to its promulgation, and 2) for the declaration of war and the declaration of peace the president needed to obtain the prior consent of the National Assembly. He had a limited power of pardon, as the president did not have the power to grant general clemency and could neither grant clemency to any government minister who had been indicted or sentenced.

According to legal scholarship of the time, the powers and responsibilities of the president of the republic were similar to those of the king or the regent, still, they were narrower, as the president of the republic could not exercise the right of royal assent and the right to confer nobility nor the right of supreme patronage. Further, the authority of the president of the republic

¹³ I. Csekey, *Magyarország alkotmánya*, 1947, MTA Könyvtára Kézirattára, Ms 4711/1–3, p. 51.

was more limited than the king's with respect to the national assembly and the exercise of executive powers¹⁴.

With the promulgation of Act I. of 1946, all regulations concerning the discontinued monarchy and regency became null and void.

Act I of 1946 was viewed by contemporary legal science as “skeleton charter of a new constitution”, with many provisions reminiscent of “written Western constitutions”. The legislator clearly expressed that Hungary stepped back from the concept of historical (unwritten) constitution. The repeal of the regulations relating to the monarchy, as well as regency suggests that the Act intended to break away from such elements as the doctrine of the holy crown, which served as a legitimacy of the monarchy.

Within the context of the passage of Act I of 1946, a president of the republic needed to be also elected. But who shall it be? Different ideas emerged: Some suggested Mihály Károlyi, president of the republic during the 1918/1919 civil democratic revolutions who had just returned to Hungary at the time after 25 years in exile. This idea received little support within the coalition government. In his memoirs Mihály Károlyi received the news with a sigh of relief that someone else was elected president of the republic¹⁵. His wife's diary, however, revealed that in addition to feeling relieved he was somewhat offended also for not being elected. “We felt utterly relieved [...]. It hurt Mihály, of course – as the ingratitude of our fellow Hungarians revealed itself as rough as possible. He finds consolation in thinking how little he could have done had he been elected”¹⁶. As a moral reward, however, with the adoption of Act II of 1946 Mihály Károlyi's unmistakable merits were codified for everlasting time acknowledging his role in “the implementation of a democratic state system, to bring to triumph the eternally valid ideas of liberty, equality and humanity”.

Senior politicians of the leading party of the coalition, the Smallholders' Party, could reasonably aspire for the position of president of the republic. Two of them had good chances: Prime Minister Zoltán Tildy and Ferenc Nagy (1903–1979), the president of the National Assembly. The majority of the

¹⁴ A. Csizmadia, *Magyar alkotmányjog*, Csizmadia Andor jogakadémiai ny. r. tanár [...] előadásai az 1947/48. tanév II. félévében. Budapest 1948, p. 62.

¹⁵ M. Károlyi, *Hit, illúziók nélkül*, Budapest 1977, pp. 374–375.

¹⁶ M. Károlyi, *Együtt a száműzetésben*, Budapest 1978, p. 429.

Smallholders Party members supported Ferenc Nagy. However, other parties in the coalition, the communists and the social democrats favored the nomination of Zoltán Tildy. So finally he was elected, by acclamation, to be the President of the Hungarian Republic upon the adoption of Act I of 1946. Ferenc Nagy became Prime Minister.

The memoirs of Mátyás Rákosi (1892–1970), Secretary General of the Hungarian Communist Party and Minister of State of the Tildy government bear witness to the confidence the Communist Party had in Zoltán Tildy. “Tildy was more convenient for the Communist Party, as in all controversial issues he accepted our position and we were hopeful that that this would continue to be the case in the future.”¹⁷

After the election of Zoltán Tildy to the presidency of the republic, Ferenc Nagy took over the position of prime minister (in office: February 4, 1946–May 31, 1947). Béla Varga became president of the National Assembly (in office: February 7, 1946–July 3, 1947). Zoltán Tildy was forced to resign prior to the end of his term on July 31, 1948, because of his son-in-law’s arrest on fabricated accusations of treason and espionage. The son-in-law, Viktor Csornoki (1919–1948), ambassador to Egypt, was successively sentenced to death and executed. Tildy spent eight years after his resignation in house arrest.

VI.

Contemporary legal scholarship was well aware of the paramount importance of Act I of 1946, as expressed by Professor István Csekey in 1947: “Not even during ten centuries has such a significant constitutional act been drafted as Act I of 1946 on the form of government of Hungary”¹⁸.

Two years later, in the Autumn of 1948, during the communist takeover, Minister of Justice, István Ries had the following to say: Hungary will need a new constitutional act “because Act I of 1946 has been superseded”¹⁹. According to a leading contemporary expert on constitutional law with strong communist commitments, Act I of 1946 in its own time meant the victory of the

¹⁷ M. Rákosi, *Visszaemlékezések 1940–1956*, vol. I. Budapest 1997, p. 236.

¹⁸ I. Csekey, *Magyarország...*, p. 16.

¹⁹ I. Ries, *Jog és állam*, “Jogtudományi Közlöny” 1948. október 20. p. 326.

progressive forces of the people's democracy over reactionaries: "It was a historic milestone in Hungarian development". Not only is it surpassed by now, it is also too little, as our next task is to create the constitution of the people's democracy²⁰. These summary evaluations are a clear indication as to the intended repeal of Act I of 1946 which in fact happened with the adoption of Act XX of 1949 on the constitution of the Hungarian People's Republic. This, however, does not change the fact that Act I of 1946 declaring the natural and inalienable rights of the citizens and the republican form of state is a reputable piece of legislation in the constitutional history of Hungary following republican and civil democratic traditions.

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²⁰ J. Beér, *Magyar közjog*, "Jogtudományi Közlöny" 1948. október 20. pp. 335–336.