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# The Central European history in constitutional preambles: state narrative and governance implications

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## ABSTRACT

The study deals with the historical narrative of the modern Central European constitutions. The earlier 20th century constitutions were also in some way responsive to historical changes, but in the post-1989 constitutions, the historical narrative has also acquired a strong legitimating function. This was partly related to the fact that several states gained state independence at the time. Another important aspect is the confrontation with the communist past. Typically the constitutional preambles deal with history. The normative nature of the preambles is disputed, but they can play an important role in the process of legal interpretation by constitutional courts. The most interesting in this respect is the Hungarian preamble adopted in 2011, which is both the longest and the most ideological in the Central European region. The ideological elements in the post-transitional constitutions has not weakened over time, but rather strengthened. This is particularly obvious in Hungarian constitutional development. However, a strong historical narrative can sometimes become counterproductive. This is especially true for states, where there is no co-decision consensus on the judgement of certain key historical events and thus an one-sided presentation of historical issues can also make it difficult for constitutions to fulfil their social integration function.

## KEYWORDS

Central Europe; constitution; history; narrative; state

## Introduction

There are many similarities in the state and constitutional development of the Central European nations. The Czechs, Hungarians and Poles used to have independent kingdoms in the Middle Ages,<sup>1,2</sup> though they gradually ceased in the early modern period. The Czech and Hungarian kingdoms became part of the Habsburgs' Central European Empire in 1526. These kingdoms retained within Habsburg Empire a separate state identity and a limited political autonomy (Hroch 1999). The Polish-Lithuanian Commonwealth, on the other hand, lost its state independence at the end of the 18th century and became a victim of the three neighbouring great powers; Austria, Prussia and Russia (Wandycz 2001). Slovaks, together with many other nationalities used to be the subjects of the medieval Hungarian Kingdom (Lipták 1999). Unlike Croats, however, they did not have

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any legal and territorial autonomy based on historical legal argumentation. The achievement of ethno-regional autonomy became the most important objective of the Slovak national movement in 1848, but its realization before 1918 was unsuccessful (Szarka 1995).

These nations regained state independence and sovereignty after the World War I, which, in the case of the Hungarians, was accompanied by significant territorial losses that still influence Hungarian identity and historical perceptions today. The Czechs and the Slovaks together created Czechoslovakia in 1918, which ceased to exist at the end of 1992. With this statehood the majority of the Czechs could identify more easily than the Slovakian minority (Kosatík 2021). However, their autonomy was first achieved in 1938. In March 1939, under German patronage, an independent Slovak state was born (Kamenec 1993). The latter existed until 1945, when it became part of Czechoslovakia again.

After 1945, all the Central European states became part of the so-called Eastern Communist Block, or colloquially, the “Peace Camp,” led by the Soviet Union. Only after 1989 did they manage to break away and regain their political autonomy and independence. This process was accompanied by democratic transformation and a new national renaissance of its own. In 2004, the whole region became part of the European Union.

### ***Main constitutional and legal issues related to history***

The period of the democratic transition of the social and political system in 1989/1990, raised the question of the past, or the issue of the continuity of the new system with the previous one in several dimensions or directions. Among the most sensitive issues was the problem of punishing crimes committed during the period of the Communist Party rule (Varga 2006). Justice was also hampered by the negotiated and compromised nature of the political transition, which almost everywhere took place after the agreement of the outgoing communist leaders and their democratic or nationalist opponents. In these matters, the principle of legal certainty and justice often confronted each other, and the question of the continuity of the legal system before and after 1989 arose (Varga 2012).

The second major and sensitive issue was the restitution of capitalism and the full or at least partial restitution of pre-socialist property relations. Each country realized this programme in different ways (Kozminski 1997). The natural restoration of the situation from the period before 1948 was typical only for Czechoslovakia (Kozák 2014). Hungary and Poland has realized this policy in a rather indirect form.

The third set of issues was the question of state citizenship. This was particularly sensitive in the Baltic republics of the former Soviet Union (Herzog 2012). These states realized the policy based on the continuity of the current Estonian and Latvian citizenship with the pre-war citizenship. It was very discriminative for the persons, whose parents and grandparents immigrated to these countries after 1945. The political and legal sensitivity of these measures was mainly related to their impact on specific persons and legal relations. The other countries in Central and Eastern Europe has preferred mainly the current residency and permanent address as a main aspect for citizenship (Dumbrava 2017).

The fourth dimension was related to the question of the old or new foundations for the construction of a new democratic (post-conquest) statehood, and to the relationship to one's own national constitutional and legal heritage, which was not equally mature

everywhere. This problem was admittedly general, but the answers to its dilemmas depended on the answers to the preceding specific problems of the transformation of the economy, law and politics. The present study will deal only with the latter issue, since the other questions are far beyond the scope of a single study and they have a very extensive literature. At the same time, this question is relatively easy to investigate, since the constitutional preambles are the main and crucial documents for analysing this issue.

The collapse of the regimes led by the communist parties encouraged the peoples of the region to redefine their past and reimagine their future. Therefore, the post-1989 years could be characterized by two – often – contradictory trends: a specific “national renaissance” and a strong Westernization imperative (Trócsányi 1995). This tendency was reflected in the constitutions and their preambles in the 1990s. The situation was further complicated by the fact that the constitutional history of the Central and Eastern European states was not impeccable before 1945, this applies also to the period before 1939, at least as far as Western trends, and expectations around 1990 were concerned.

The first half of the inter-war period saw a major wave of democratization in the region, with the introduction of democratic (universal, secret and equal) suffrage in most places. Several countries were moving to a parliamentary form of government, the abolition of the titles of hereditary nobility titles and the establishment of special constitutional courts in two countries (Austria and Czechoslovakia), which was a real novelty in Europe at the time (Trócsányi 1995). The problem was that the legislature’s intentions and the constitutions they adopted were often not in line with real socio-economic conditions. The process of new state building was not always an easy task. It is not surprising, therefore, that parliamentary systems that had won legitimacy in democratic elections soon fell into serious crisis (Trócsányi 1995).

The series of authoritarian coups and reverses began in Poland in 1926, where Józef Piłsudski took power and created the so-called “sanation system.” Its three main pillars were the loyal officers, bureaucrats and technocrats. In the Balkans, mostly the kings took the initiative, in the Baltic States the republican presidents. The power of the interim head of Hungarian state, Admiral Miklós Horthy, continued to grow and the process accelerated in the 1930s (Turbucz 2011). By the end of the 1930s, therefore, only Czechoslovakia was really functioning in a more or less normal democratic form (Trócsányi 1995).

For these reasons, most of the pre-war constitutions could not serve as a model for democratic constitution-making processes after 1989. In parallel, the new democratic regimes tried to distance themselves from their socialist predecessors. Therefore, Western constitutional models eventually served as the main model. Naturally, a few exceptions did exist. One such example was the new Czech constitution, which in some aspects was inspired by the Czechoslovak constitution of 1920.

### ***The place and role of preambles in the constitutional law***

A preamble is a general introductory text to a legal text in which the legislator (Constituent Body) indicates on whose behalf it speaks, what its motives are, what challenges the text it adopts seeks to address and what the fundamental values that have guided the drafting of the whole document are. In the constitutional preambles, it is thus possible to find the basic value orientation, the self-image and sometimes the ideals of the state and the political-legal system. A preamble can be seen mainly as a political

declaration, but it can also have a normative value, since it can act as an interpretative aid in the event of conflicts between constitutional values (Fekete 2019).

States can be divided into three groups according to the presence or absence of preambles. The first group includes those states that have no preamble at all. These are mostly European states having adopted their modern constitutions as early as the 19th century, such as the Benelux countries, the Scandinavian countries or the United Kingdom itself, which does not have a complex written (charter-like) constitution at all. Among the Eastern and Central European countries having adopted a constitution after 1989, Romania, for example, does not have a preamble. The second category includes states with constitutional preambles that are short and not very specific. This situation is typical of the majority of the Western European states having gained constitutional character in the 20<sup>th</sup> century. This includes, for example, France, Germany and Italy. The last category includes states with long and detailed preambles. Most of the states of Southern, Eastern and Central Europe fall into this category. The only exceptions are Bulgaria, Greece and Slovenia. The latter are likely to be classified in the middle category. Nevertheless, it cannot be said that there are two traditions in Europe in terms of preambles; one Eastern and one Western. What is rather decisive for the existence or absence of a preamble is when the constitution was adopted and what the constitutional traditions of each state are. Several countries prefer the preambles in their constitutions; other states do so less (Fekete 2019).

The revolutionary moment is usually more conducive to the adoption of meaningful and value-filled constitutions than a politically calm period. Countries in the 20<sup>th</sup> century having built state socialism also more often formulated their long-term objectives in a preamble than the liberal countries having become constitutional states in the 19<sup>th</sup> century. The length, detail and historical dimension of a preamble sometimes depends on whether it is a nascent state or a long-established state that has just adopted a new constitution. In such cases, it is usually not necessary to describe the circumstances of its birth, the objectives to be pursued and the new values (Fekete 2019). It is no coincidence that for a long time it was the Croatian constitution adopted in 1991 that had one of the longest preambles, since Croatia had just become an independent state then. The Croatian preamble therefore referred to almost all Croatian state and autonomous antecedents with exception of fascist statehood. Slovakia, Slovenia and, to some extent, the Czech Republic were in a similar situation in the early 1990s. For Hungary or Romania, on the contrary, this was not a pressing necessity, as their autonomous statehood had older roots. This was also true of Poland, with its long state tradition, but there was a need for a preamble in 1997 for other reasons. Rather, it was the break with the communist past, the incorporation of the *Invocatio Dei* advocated by the Catholic Church and the declaration of a new beginning that made a long preamble necessary (Fekete 2019).

The 2011 Hungarian constitution making occupies a special place in the historical narrative of preambles. The Hungarian statehood has a thousand-year tradition, though the country has not always been sovereign. Nevertheless, an independent state identity has always been strong in Hungary, so there was no need to adopt the longest preamble in Europe to reinforce it. However, the intention for a new political beginning was very strong among the right-wing winners of the 2010 elections. For the Christian-nationalist political forces that came to power at the time, however, the nationalist sense of history was always important (Fekete 2019; Horkay-Hörcher 2012).

Finally, it should not be forgotten that in 2011 the election winners tried to use certain historical references and interpretations to ideologically delegitimise their socialist and liberal political opponents (Jakab 2011). Paradoxically, this highly historicizing trend-change took place during a constitutional process having taken place after the EU accession.

### ***Relationship to the traditions of older statehood in the current Central European constitutions***

The current constitutions of the Central European countries were born in two different historical moments. The current Czech, Polish and Slovak constitutions are a product of the democratic transition after the collapse of the communist regimes in the former 'Eastern Block.' Naturally, these constitutions have been modified in the last three decades, but the text of their preambles and parallelly the dominant historical narratives did not change. Hungary is in a different situation, as the current Hungarian constitution was born in 2011, under the circumstances of the membership in the EU (from 2004) and in the post-crisis situation (see the financial and economic crisis in 2008). This post-integrational and post-crisis period was characterized by different types of political mentality.

The first Central European new democratic constitution was born in September 1992, in Slovakia. Czechoslovakia between 1990 and 1992 was still governed by the Socialist Constitution of 1960 and the Constitutional Law on the Czechoslovak Federation of 1968, which were amended a few times after 1989. The national (member states) constitutions were still being drafted, as was the new federal constitution. However, in the summer of 1992 the fate of the Federation was sealed. The two leaders who had won the elections in early summer, Czech Prime Minister Vaclav Klaus and Slovak Prime Minister Vladimír Mečiar, agreed then to end the common state peacefully.

This agreement accelerated the constitutional process in Slovakia and the new fundamental document was adapted on 1 September.<sup>3</sup> The text was already prepared for the conditions of independence. Although it drew heavily on Czechoslovak legal traditions, it did not mention the Czechoslovak state, not even once in the preamble. This was partly logical, since Slovakia was preparing to dismantle this state. This overshadowed the fact that the Slovak national, political and institutional emancipation owed so much to this state formation. In contrast to the founding constitutional fathers and mothers, they looked to the medieval past for inspiration. This is despite the fact that Great Moravia, which existed in the 9<sup>th</sup> century, was also a precursor of the Czechoslovak statehood (Gronský 2005).

The current Slovak preamble also named the two Slavic missionaries St. Cyril and St. Methodius being important not only for the Slovak culture and education, but for all Slavic nations. In addition, the preamble referred only in general terms to the political and cultural heritage of the Slovak ancestors and to their struggles for independent national existence and statehood. (See the text of constitution: *"We, the Slovak Nation, Bearing in mind the political and cultural heritage of our predecessors and the experience gained through centuries of struggle for our national existence and statehood, Mindful of the spiritual bequest of Cyril and Methodius ..."*).<sup>4</sup>

The attitude of the new Czech Constitution adopted in December 1992<sup>5</sup> towards the Czechoslovak statehood was more positive. This is not surprising, because the Czech

national consciousness (identity) looked upon the Czechoslovak state born in 1918 as a rebirth of its own old Czech state.

The historical narrative is in the beginning of the Czech constitutional preamble: *“We, the citizens of the Czech Republic in Bohemia, in Moravia, and in Silesia, At the time of the restoration of an independent Czech state, Faithful to all good traditions of the long-existing statehood of the lands of the Czech Crown, as well as of Czechoslovak statehood, Resolved to build, safeguard, and develop the Czech Republic in the spirit of the sanctity of human dignity and liberty, . . .”*<sup>6</sup>

The Czech preamble has not forgotten the old (pre-1918) Czech state traditions. It referred to this when it mentioned the countries of the Czech Crown. In the Middle Ages and early modern times, this term was used to designate parts of the Czech Crown. The Roman-German Emperor and Czech King Charles IV (from the Luxembourgian Dynasty) to St. Wenceslas offered this crown (Koudelka 2018). The specific list of these areas varied from time to time. In the 17<sup>th</sup> century, for example, it also included Lower and Upper Lausitz (Lusatia), now part of the German federal state. In the 18<sup>th</sup> century, most of Silesia was also lost, but the remaining Austrian Silesia has still remained part of the Czech Republic (Maršálek 2011). Indeed, Silesia is mentioned in the first line of the preamble, together with Bohemia and Moravia. However, this was less for historical reasons, than for specific political ones.

The period between 1990 and 1992 saw a revival of Moravian regionalism in the Czech Republic, with representatives of this movement entering the parliament in Prague. There, they wanted to ensure that the federal Czechoslovakia would be transformed to the tripartite Czech-Moravian-Slovak federation. The alternative plan was a transformation at least of the Czech part of the Czechoslovak federation into the Austrian style provincial (federal) state (Pernes 1996). This ambition has resonated during the Czech constitution making process in the autumn 1992. The Civic Democratic Party, together with the Communist Party, which had a relatively nationalistic programme argued against this project. The other parties from the constitutional coalition (namely the Christian Democrats and Social Democrats with strong electoral base in South Moravia) supported a more realistic compromise. While these political parties did not support the repartition (territorial division) of the country on a provincial (historic land) basis, which envisaged three autonomous territorial units (Bohemia, Moravia and Silesia), they were willing to make symbolic gestures towards regional sentiments. The three historical regions (lands) were therefore included in the first sentence of the preamble, as well as the Moravian and Silesian eagles in the large state coat of arms of the Czech Republic (the small coat of arms includes only the Czech lion, which has been part of the Czech royal heraldry since the Middle Ages) (Jirásek 2011; Koudelka 2018).

The Czech preamble clearly defined the moment when the constitution was drafted: at the time of the restoration of the Czech independence. In comparison, it was only looking to the past for inspiration at a general level. It mentioned two state formations by name. On the one hand, the old Czech monarchical statehood, covered by the concept of the Czech Crown, and on the other, the Czechoslovak statehood. The latter was unambiguously linked to the republican ideals, which was founded by the founders of the first Czechoslovak Republic, with President Tomáš Garrigue Masaryk at its head. It should be noted here that Czech public opinion has identified with the legacy of the Czechoslovak statehood right up to the present day (Maršálek 2011).



This is illustrated by the fact that the Czechs eventually retained the old Czechoslovak flag and still prefer to see 28<sup>th</sup> October, the day of the first proclamation of Czechoslovakia, as Independence Day, rather than 1<sup>st</sup> January, when the Czech Republic became independent in 1993. The list does not mention the Habsburg Monarchy, to which the Czechs were ambivalent, but it is also true that the concept of the Czech Crown existed at that time, since the Habsburgs were also the Czech kings, along with many other titles. The differentiation between the positive and negative heritage of the Czech old state traditions was bridged relatively elegantly by the Constituent Assembly (Czech National Council) with the declaration that the Czechs wanted to build on the good traditions of the former Czech statehood when the state was reborn in 1993 (Maršálek 2011).

This solution also avoided the need to define precisely the nature of the pre-democratic transition period at the constitutional level. In the Czech language, this period is relatively neutrally referred to as the 'period of lack of freedom.' This term is used to avoid clear-cut qualifiers such as totalitarianism, dictatorship or authoritarianism. This task can thus be left to historians. On the other hand, the legislator is thus not constrained from using only one temporal definition in the various partial laws confronting the legacy of the past. This applies to the various restitution laws as well as to the third (anti-communist) resistance laws. In this way, the deputies have given themselves a free hand (Kozák 2014).

The members of the Polish Parliament who adopted the Polish Constitution resolved this issue in a similar way. The Polish Constituent Assembly (the Sejm and the Senat elected in 1993) also defined the historic moment when it adopted (with some delay) the new constitution: *"Having regard for the existence and future of our Homeland, which recovered in 1989, the possibility of a sovereign and democratic determination of its fate, ..."*<sup>7</sup>

The Polish preamble also mentioned the former statehood. This was easy in the Polish context, because the Polish historical consciousness refers to the Polish state before the partitions (or more precisely the Polish-Lithuanian Commonwealth) as the First Republic. There, the nobility elected a king, who then held that position for the rest of his life. In the absence of feudal absolutism, the nobility retained representative bodies (the Sejm and the Sejmik) throughout the period. Poles regard the Second Republic as the Poland of 1918–1939 (Kallas 1999).

The period between World War II. and the democratic transition to the People's Republic is not counted, as if it were left out of Polish national history. The Polish state, which regained sovereignty in 1989, is considered the Third Republic. The constitutional preamble clearly confirmed these concepts. It has confirmed the main values of the post-transitional Polish state:

We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.

Moreover, the Polish preamble only recalled the history of the split in general terms. Rather, it focused on the achievements of the ancestors and the role of Christianity. The historical eras or examples that were not to be followed were dealt with in the following turn: *"Recalling the best traditions of the First and the Second Republic, Obligated to bequeath*



*to future generations all that is valuable from our over one thousand years' heritage, ...*" The constitution does not mention any year of historical significance other than 1989. Here the constituent also expressed gratitude to the ancestors: *"Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values, ..."*

Unlike the Czech and the Polish Constitutions, the Slovak preamble did not seek to define precisely the former state traditions and to highlight the so-called positive elements. In the Slovak case, it is the later developments that are more interesting from this point of view. They are an indirect indication of changes in the dominant historical narrative. Behind the historical and ideological narrative adopted in 1992, there was the then three-member constitutional coalition (Marušiak 2013). The decisive force of this coalition was the national populist Movement for a Democratic Slovakia, which was about to achieve independence and a major privatization. It was the party of Prime Minister Vladimír Mečiar. Through a minister, the pro-independence Slovak National Party was also part of the coalition. The post-communist Democratic Left Party supported the Mečiar Government from outside, but its MPs and experts played an important role in drafting the constitution (Marušiak 2013; Mészáros 2004).

The development of the aforementioned narrative was therefore linked to these groups. Despite the ideological diversity of the coalition, the narrative was not very complex and sensitive. Indeed, in the Slovak context, it could even be described as traditionalist. It was not at all touched by new approaches that had already appeared in historiography. The preamble's view of history and its values were particularly disturbing to the Hungarian minority parties, which accounted for 10% of the population. These parties therefore later sought to have the text of the preamble amended by the parliament. So far, they have not succeeded in doing so (Mészáros 2004).

The Slovak liberals, who were under-represented in the 1992 parliament, were also critical of the text of the preamble. The idea of a later amendment was not far from their minds. However, the traditionalist approach of the preamble was not far from the minds of the Slovak Christian Democrats in opposition, who did not vote for the text of the constitution for other reasons. The Slovak liberal, moderate Christian-conservative, Green ecologists and Hungarian minority forces, which were originally (1992–1998) in opposition, together with the left-wing democrats who had changed positions in the meantime, were only given the opportunity to change the constitution in 1998 after a major political victory in elections. However, after their electoral victory, they did not take the opportunity to change the text of the preamble (Marušiak 2013).

Independent Slovakia celebrated its 10<sup>th</sup> birthday on NaN Invalid Date . At that time, another political coalition was in power, having defeated the governing coalition led by Vladimír Mečiar in 1998 by a three-fifths majority. This also changed the country's foreign policy trends and Slovakia tried to catch up with its Euro-Atlantic integration backlog. This was achieved in 2004. In this context, the victorious politicians tried to reduce inter-ethnic tensions and to introduce a modern, integrative view of history into socio-political thinking. Slovakia became bluer, more open and more integrated than before.

These changes were reflected in the speech of the then Speaker of the Slovak Parliament Pavol Hrušovský. It was not his own work, but the work of a number of Slovak liberal, conservative and Christian intellectuals who helped him to formulate his ambitious speech (e.g. Ján Čarnogurský, František Mikloško, Peter Zajac, Milan Zemko

etc.). In his speech, the Speaker tried to redefine Slovak history and to change some of its main accents. The speech is still available on the Slovak Parliament's website. Obviously it does not have the legal and political force of the preamble, but it represents a much more modern and scientific approach than the preamble. Perhaps that is why it is still referred to in intellectual discourse. Obviously, one speech cannot change everything, but it has certainly pointed in positive directions. Nevertheless, it is worth quoting it here.

Address of the President of the National Council of the Slovak Republic Pavol Hrušovský on the 10<sup>th</sup> Anniversary of the Slovak Republic (1 January 2003) was later published in three languages. The Christian Democrat Hrušovský in this speech has talked about the face of his country. *"Like a man's face, a country's face also reflects the best society that creates it, its history and substance."* (Hrušovský 2003). He has raised several crucial moments in Slovak history. His concept from 2003 was more modern and more opened, than the narrative of the constitutional preamble from 1992.

The face of the country in which we live has some basic permanent features. The most important is the introduction of Christianity in the year 829. ... The face of our country has thus received a basic feature that has forever made it similar to the faces of other European nations. ... In the framework of Christianity, we later joined its Western traditions. ... (Hrušovský 2003).

Hrušovský's speech radically redefined the Slovak attitude to the heritage of the medieval Hungarian Kingdom. Maybe it was the most innovative part of this act.

The second distinctive feature in the face of the future Slovakia was the formation of the Hungarian Kingdom in the year 1000. Slovakia became part of the kingdom, which for nine hundred years molded the history of Central Europe. ... Slovakia was not the object but the subject of the history of the Hungarian Kingdom. ... We were part of an empire ruled by such important sovereigns as St. Stephen, Charles Robert, Matheus Corvinus and Maria Theresa. They were also our kings and monarchs and Slovakia prospered under their rule. ... In the first half of the 19th century as part of the formation of modern political Central European nations, the modern Slovak nation also started to emerge. (Hrušovský 2003).

The sensitive problem of this process was the "Magyarization," which has made the Slovak nation building in the second half of the 19<sup>th</sup> century hard. The territorial autonomy became the main objective of the Slovaks in Hungary. This process led to the decreasing of the Slovak loyalty to the Hungarian statehood. The Czechoslovak statehood became the new alternative for Slovaks.

The formation of Central European states, among them Czechoslovakia, is another unique feature in the face of Slovakia. In the year 1918 and later, a large segment of the population of our country welcomed the constitution of Czechoslovakia. ... Slovakia received its name and territory, and that since 1918 the Slovaks could develop in the milieu of a democratic state which created space for the formation of the Slovak governmental, educational and cultural institutions. (Hrušovský 2003).

The speech referred to several subsequent specific historical events. These included the creation of the independent Slovak State (1939–1945), which was accepted by the majority of the population at the time. However, the speech did not deny the neuralgic points of this state. First, there was the disenfranchisement of the Slovak Jews and their deportation to death camps in the occupied Poland. He also criticized collaboration with the Germans. He then highlighted the importance of the anti-fascist Slovak national

uprising, but also mentioned its civil war overtones. After 1945, he also highlighted the expulsion of the Germans, deportations to the Gulag and the insults to the Hungarian minority. He positively recalled the 1946 elections, which were won by the democrats in Slovakia, but then a communist dictatorship was established. The speech was very critical of this period. It was here that the lack of left-wing advisers in the author's guard was the most noticeable. On the contrary, November 1989, when the previous regime fell, was very much highlighted. He also dealt briefly with the transition in Slovakia, and highlighted in particular the elections of 1998 and 2002, from which the coalition of that time derived its legitimacy (Hrušovský 2003).

The most significant changes took place in the Hungarian preambles. The preamble of the constitutional text adopted in 1989 only dealt with the aims of the political transition at the time. The preamble laconically mentioned that the peaceful transition aimed at the rule of law, political pluralism, parliamentary democracy and a social market economy. Historical antecedents and issues were not addressed. It should be remembered that the text adopted at the time was seen by many as a provisional constitution, reflecting the minimalist consensus available at the time (Jakab 2011).

The situation was very different in 2011. The constitutional change was made possible by the Fidesz-KDNP's impressive victory in the elections in 2010. Before the elections, there was no talk of a new constitution, but Viktor Orbán, sensing a major turnaround, raised the issue between the two rounds of the elections. After the victory, the process of creating a new constitution began, and it was a multi-pronged process. The then member of European Parliament, József Szájer and the then member of Hungarian Parliament, Gergely Gulyás, who is now a minister, drafted the final text (Ablonczy 2011).

The text of the finally adopted draft proved to be more conservative than many had expected. Although the idea that had emerged in the meantime of several fundamental laws and a terse core constitution did not materialize, the adopted text tries to give the impression that it is not a homogeneous work. For example, each of the large sections is renumbered and each numbering is in a different form (e.g. Arabic numerals, Roman numerals, letters, etc.).

The document is not titled Constitution, but the Fundamental Law of Hungary (Schweitzer 2016). It starts with a motto asking for God's blessing, followed by the longest preamble in Europe, which is 469 words long. The official name of the preamble is the National Avowal (or National Creed), which, according to the Hungarian philosopher Ferenc Hörcher-Horkay, was taken from the Hungarian Protestant (Calvinist) tradition and transferred to the Constitution. This tradition has always influenced the Hungarian political thought and public discourse. However, the document does not contain the postulates of the Reformation, but rather serves as a summary of the principles of the Hungarian political confession or religion (Horkay-Hörcher 2012).

Linked to this, however, there is the ideological one-sidedness of the whole preamble. Legal experts of different persuasions agree that the document is clearly dominated by national conservative values. The text largely ignores the liberal and socialist political traditions. Indeed, the latter were given a negative connotation by a later constitutional amendment. To this day, this fact makes it difficult for the constitution to fulfil its integrating function in society (Jakab 2011).

One of the characteristics of the Hungarian Fundamental Law is its transcendental self-definition.

Our Fundamental Law shall be the basis of our legal order; it shall be an alliance among Hungarians of the past, present and future. It is a living framework which expresses the nation's will and the form in which we want to live.<sup>8</sup>

In it, the constitutional authority has tried to formulate the essence of the document in a way that transcends generations. It could be said that it succeeded better in capturing vertical (inter-generation) integration than horizontal integration between living citizens with different ideological backgrounds.

The text just quoted was amended by the fourth constitutional amendment. It was originally about the contract between the generations, which might remind the reader of the social contract theories of the 17<sup>th</sup> and 18<sup>th</sup> centuries (see the concepts of Thoma Hobbes, John Locke, Jean-Jacques Rousseau). This was replaced in 2013 by the word alliance (in Hungarian language stay closer: covenant), which is more reminiscent of the biblical text.

The constitutional text also includes a self-defining sentence at the end:

We, the Members of the National Assembly elected on 25 April 2010, being aware of our responsibility before God and man and in exercise of our constituent power, hereby adopt this to be the first unified Fundamental Law of Hungary.

The constitutional power here is somewhat imprecise, because the first written constitution in Hungary was written in 1919 during the 133-day radical socialist experiment. The Hungarian communists adopted the second written constitution in 1949, based on the 1936 Soviet (Stalinist) constitutional model.

The preamble addressed the historical issues directly at the beginning. Later, it returned to history twice more, in the course of other issues and contexts.

We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago. We are proud of our forebears who fought for the survival, freedom and independence of our country. We are proud of the outstanding intellectual achievements of the Hungarian people. We are proud that our nation has over the centuries defended Europe in a series of struggles and enriched Europe's common values with its talent and diligence.

First, it tried to clarify the roots of Hungarian statehood and the historical achievements of the Hungarian nation. In this section, the first three concrete historical events are mentioned – the foundation of the Hungarian state under the reign of St. Stephen, in general form the struggles for survival, freedom and independence and the defence of Europe. Although it is not specifically mentioned, this would probably be the defence against the Osman Turks, which is deeply embedded in the historical memory of the Hungarian and the neighbouring peoples.

It is interesting that the preamble mentions only one of the Hungarian struggles for freedom: the revolution of 1956. However, the latter was done at a later point in the preamble and in a different, modern context:

We do not recognise the suspension of our historic constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and the communist dictatorship. We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; we therefore proclaim it to be invalid. We agree with the Members of the first free National Assembly, which proclaimed as its first decision that our current liberty was born of our 1956

Revolution. We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected organ of popular representation was formed. We shall consider this date to be the beginning of our country's new democracy and constitutional order. We hold that after the decades of the twentieth century, which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal.

In this section, the constitutional authority has attempted to define precisely which 20<sup>th</sup> century dictatorial regimes it does not consider legitimate and, consequently, which period it considers dictatorial (periods without freedom). The problem lies in the attempt to be precise and to be too specific. This period without freedom, (NaN Invalid Date –NaN Invalid Date) also includes the coalition period after World War II, when serious democratic social changes took place. In 1946, the monarchy was abolished and the Second Hungarian Republic was proclaimed. However, this also includes the period of democratic transition that was made possible by the Soviet 'Perestroika'. The 1949 communist constitution was replaced by a modern democratic text in October 1989, but the official number of constitution was Act No. XX from 1949. The two current governing conservative parties were also involved in the process of total democratization of constitutional text without the change of its number in 1989. The rather loose and malleable wording used in the Czech and the Polish Constitutions is certainly preferable to such a precise designation. A short constitutional text can hardly reflect the complexity of history and can avoid political voluntarism.

The difficulty was reflected in the text of the constitution. In line with the Hungarian legislative tradition, it stated at the end (between closing and miscellaneous provisions) of the text which paragraph of the existing legislation it would base the new constitution on:

1. The Fundamental Law of Hungary shall enter into force on 1 January 2012. 2. This Fundamental Law shall be adopted by the National Assembly pursuant to sections 19 (3) a) and 24 (3) of Act XX of 1949.

A reference to the historic constitution has already appeared in this text. In the history of the Hungarian Constitutional Law, this term is used to refer to the pre-1945 civic (previously feudal) constitutional system. The historical constitution is essentially a formal legal concept and institution. Its construction is similar in many respects to the unwritten British Constitution. Thus, with two communist exceptions (1919 and 1949), the corpus of the Hungarian Constitution did not consist of a single charter-like document, but of fundamental laws adopted in different periods, with different legislative levels and themes (Egyed 1943; Schweitzer 2016). The written legal corpus was further supplemented by legal customs and the views of eminent legal scholars, who often referred to the Hungarian legal genius and drew parallels between the British and the Hungarian legal developments (Szente 2011).

The liberal constitution of 1848 was not a single document either, but a package of laws passed by parliament in March and sanctioned by the king in April. These dealt with the relationship between government and parliament, suffrage, national symbols, etc. After the end of neo-absolutism (headed by Alexander Bach in Vienna), the provisional period (1860–1867) and the Austro-Hungarian Compromise in 1867, this construction returned, and remained in force with certain changes until 1945. The period of the historical constitution finally came to a symbolic end with the proclamation of the

Second Hungarian Republic in February 1946. Law I of 1946 was not only a declaration, but also a provisional written constitution including the part about human rights and state organization (Schweitzer 2016).

For a long time it seemed like outdated, until the constitutional authority tried to revive it in 2011. The National Avowal has declared:

We honour the achievements of our historic constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation. We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State.

The problem is that the concept of a chartered constitution, such as the 2011 Fundamental Law, and a revitalized unwritten, historical constitution can hardly coexist in parallel, because they can easily come into conflict. Some legal scholars (Gábor Schweitzer, András Zs. Varga) call this situation "hybrid constitutionalism." In such a case, of course, the question of primacy and real legal force always arises. For this reason, it is not surprising that the historical constitution is currently one of the greatest challenges facing the Constitutional Court and the constitutional lawyers (Rixer, 2018).

The constitution-makers, by the way, implicitly consider the Fundamental Law as the basis, but at the same time try to place it within a broader constitutional framework. Article R of the normative constitutional text provides the link between the two:

Article R) (1) The Fundamental Law shall be the foundation of the legal system of Hungary. (2) The Fundamental Law and the laws shall be binding on everyone. (3) The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historic constitution. (4) The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State.

The last 4<sup>th</sup> sentence was only added later by an amendment to the Fundamental Law, originally it was not included in the Constitution in 2011. Its emergence is linked to the sharp and radical conservative tendencies of recent years, of which the Hungarian Government is one of the leaders. A new term appeared in the constitutional text as early as 2011, which had no precedent in the past: the achievements of the historical constitution. The interpretation of this concept is now partly the concern of the Constitutional Court. The preamble to the Constitution does not provide much guidance. The situation would have been much simpler if the Parliament of the time had mentioned the civic (bourgeois) liberal revolution of 1848 in addition to the 1956 revolution, because 1848 can be seen as the beginning of the modern Hungarian constitutional state.

It was not yet included in the original text of the Fundamental Law, but the first amendment of Fundamental Law adapted at the end of 2011 already included Article U), which sought to condemn the period dominated by the Communist Party. After the Constitutional Court rejected the constitutional amendments disguised as transitional and implementing provisions on formal grounds in 2012, the Hungarian Parliament officially incorporated them into the Fundamental Law in 2013 through the Fourth Amendment.

The highly ideological Article U is one of the longest articles in the Fundamental Law. It seeks to criminalize the Communist Party ruling the state between 1949 and 1989 in the following way:

Article U) (1) The state structure based on the rule of law, established in accordance with the will of the nation through the first free elections held in 1990, and the previous communist dictatorship are incompatible. The Hungarian Socialist Workers' Party and its legal predecessors and the other political organisations established to serve them in the spirit of communist ideology were criminal organisations, and their leaders shall have responsibility without statute of limitations for: a) maintaining and directing an oppressive regime, violating the law and betraying the nation; b) thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II; c) establishing a legal order built on the exclusive exercise of power and unlawfulness . . .

The parliamentary majority listed the crimes of the communist regime in nine points. All this had legal consequences in the field of criminal law and the pensional and social legislation concerning the leaders of the communist dictatorship. The most important criminal law provision was the following:

(6) Serious criminal offences laid down in an Act which were committed against Hungary or persons under the communist dictatorship in the name or in the interest of, or in agreement with the party-state and which were left unprosecuted for political reasons by ignoring the Act on criminal law in force at the time of commission, shall not be considered as time-barred.

This article created a legal basis for criminal proceedings – which had already been launched – against the still alive symbolic representatives of the János Kádár regime (1956–1989). One of these was Béla Biszku, who had been the Minister of the Interior after 1956 and was still alive in 2013.

The constitutional text also made an important gesture of condemnation towards successor organizations: *“Political organisations that gained legal recognition during the democratic transition as legal successors of the Hungarian Socialist Workers’ Party continue to share the responsibility of their predecessors as beneficiaries of their unlawfully accumulated assets.”*

Such a specific condemnation of the Communist Party in power before 1989 with such concrete consequences is unusual in the new Central and Eastern European constitutional context. True, in Hungary too, this was only done more than 20 years after the collapse of communist regime. Hungary thus broke with the post-1989 concept of the continuity of law, which had been developed by the then Constitutional Court in 1990s.

The new Hungarian constitutional text is pervaded by archaic language. This trend has gradually strengthened over time and has now reached the public administration. The name of the *Supreme Court* was already changed in 2011 to *Curia*. This was the name of the body at the top of the court system in prewar Hungary. In addition, the latest constitutional amendment in 2022 returned to the term having been used for the office of government commissioners in regional state administration. The government commissioner is the official appointed by the prime minister to represent the central government and the head of the regional state administration in the 19 Hungarian counties and Budapest. The government commissioners use currently the title *főispán* in Hungarian.<sup>9</sup> This title is very traditional in the Hungarian administrative terminology and in the past, they represented the kings in the counties.<sup>10</sup> For a long time, this position was an equivalent of the French prefect institution in the Hungarian administration.



## Conclusions

Each new Central European constitution has reflected the historical issues in the constitutional text. However, the degree and intensity of reflection varies. Constitutions adopted during the democratic transition period (1989–1997) tended to be rather restrained and only attempted to formulate their message in general terms. They focused mainly on the rebirth of their democratic, independent and sovereign statehood. Their assessment or condemnation of the past between 1945 and 1989 was also moderate.

The Slovak constitution did not deal with it at all, the Czech one only in general terms, when it spoke of the positive traditions of the previous statehood. The preamble of the Polish Constitution was more specific, but there, too, the condemnation of the communist past was only apparent from the general condemnation of the offending regimes and periods. The period of the Polish People's Republic was not mentioned among the positive state traditions. The Hungarian Fundamental Law is in all respects much more detailed and ideological than the Slovak, Czech and Polish constitutions. This may seem paradoxical, especially in the light of the decades that have passed, but it is also understandable, because the whole text served to legitimize the new regime. This was no different after 1990, but then there was a considerable political balance among the significant political forces.

Though, the other Visegrad countries have also dealt with confronting the past, however, it has generally been manifested in lower legal forms (mainly restitution, compensation and laws condemning the anti-democratic past). The concrete regulation of this issue on the constitutional level in Hungary is unique.

It is difficult to judge whether the Hungarian Fundamental Law is a new trend or an isolated case. It is difficult because a new constitution has not been adapted elsewhere. This also means that the Czech, Polish and Slovak constitutions have an even stronger sense of their original identity, which is strongly linked to the post-transition and pre-integration era (1989–2004). Of course, these constitutions have also been modified over time, but not in such a profound way as the new Hungarian constitutional text. Otherwise, trends elsewhere also show a strong conservative character, but they may also vary in intensity.

The further question is how far a clear historical narrative can burden a constitutional text, what practical consequences it can have and how far it can fulfil its integrative function. For the time being, the Hungarian Fundamental Law does not seem to have been entirely successful in the latter two respects, but it is also true that the majority of society has not been particularly bothered by this divisive narrative. A larger and longer historical perspective is probably needed to assess this issue.

Too strong representation of history in constitutions can sometimes be counterproductive. A constitution is a legal document where every word carries weight and meaning. For this reason, it is advisable to be careful with the text. Uncertain and controversial wording may generate debates in the future that no one had thought of at the time of the drafting of the constitution. Too many one-sided historical references may ultimately make it difficult for constitutions to be accepted by society and to fulfil their integrative function.

## Notes

1. "Project no. TKP2021-NKTA-51 has been implemented with the support provided by the Ministry of Culture and Innovation of Hungary from the National Research, Development and Innovation Fund, financed under the TKP2021-NKTA funding scheme."
2. The Bohemian Kingdom e.g. used to be before 1804 a part of the Holy Roman Empire. The Bohemian king was one of the seven electors of Emperor (Kaiser).
3. This document was adopted by the Slovak National Council, which was the Parliament of the Slovak Republic as a member state of the federal Czechoslovakia.
4. See the official translation of Slovak Constitution <https://www.nrsr.sk/web/Static/en-US/NRSR/Constitution%20of%20the%20Slovak%20Republic%202023.pdf>
5. This document was adopted by the Czech National Council, which was the Parliament of the Czech Republic as a member state of the federal Czechoslovakia.
6. About official translation see <https://www.psp.cz/en/docs/laws/1993/1.html>
7. The official text of translation see <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>
8. About official translation see <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>
9. The word '*ispán*' comes from the Slovak *pan* (lord) meaning *comes* (count) in Latin. '*Fő*' means major in Hungarian, thus '*főispán*' is heading a county as an appointed official.
10. The '*vicispán*' was the representative of regional local government of clergy, nobility, gentry and free royal cities. The '*vicispán*' was an elected post.

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