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Historical Development of the Constitutional Social Rights in the Hungarian Constitutional System in the 20th Century

András Téglási*

Abstract

The paper introduces the emergence, development of the constitutional social rights, and gives a historical overview to these rights in the 20th century. The aim of the paper is to show when the social idea and the appearance of social rights in the constitution began in the Hungarian constitutional system. However, according to the Hungarian legal literature, the first constitutional declaration of social rights in Hungary took place with the adoption of the 1949 constitution (Act XX of 1949), but as a result of my research I will show that in fact social provisions can be found in Article 6 of the so-called final Constitution of the Hungarian Soviet Republic. The paper shows how social provisions appeared in the so-called minor constitution of 1946, and then describes the social law provisions of the socialist constitution of 1949. The paper also shows how the social provisions of the 1949 Hungarian People's Republic Constitution changed between 1949 and 1989, and then describes in detail the changes in the social provisions of the Hungarian Constitution as a result of the political transition in 1989. The paper concludes with a description of the historical development of social rights in the 1989 constitution of the Hungarian People's Republic, without going into the new Fundamental Law in force in 2012.

Keywords: social rights; constitution; right to social security; historical overview; Hungarian constitution; socialist constitution; Hungary.

Although according to the Hungarian legal literature, the first constitutional declaration of social rights in Hungary took place with the adoption of the 1949 Constitution, i.e. Act XX of 1949., already in Article 6 of the so-called final constitution of the Hungarian Soviet Republic we can find social provisions: "(...)Those who are unable to work, and those who want to work but for whom the state cannot provide work, are kept by the state".¹ Whatever we may think of certain political regimes or of this source of law of the Hungarian Soviet Republic, dogmatically or otherwise, the social idea did not enter Hungarian constitutionalism or constitutional thinking in 1949, and I therefore consider it absolutely justified to mention it.

1. Preamble to Act I of 1946 ("the minor constitution") – the right to human life without deprivation

In its preamble, Act I of 1946 on the Form of Government of Hungary, i.e. the "minor constitution" proclaiming the repub-

lic, for the first time in the history of the Hungarian constitution, enshrined - under the influence of the concept of natural law - the principle of respect for human rights, among which we can find - as a natural and inalienable right of citizens - the right to human life without deprivation.² In line with the Preamble, no citizen may be deprived of these rights without due process of law, and the Hungarian State shall guarantee these rights to all its citizens equally and without discrimination of any kind, within the framework of the democratic system of the State.

However, the enforceability of this right - and the other rights listed in the preamble - was already concerned during the negotiation of the bill³ and in the contemporary legal literature⁴ and I could not find any reference to its specific content.⁵ Although Act X of 1946 was enacted to protect these rights in criminal law, there is hardly any known

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¹ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2580.

² The original text of the proposal contained the words "freedom from oppression, fear and deprivation", but the National Assembly's Committee on Constitutional and Public Law amended the fourth paragraph of the preamble (also), where the words "the right to a human life free from oppression, fear and deprivation" were added after the word "in particular", and the words "exemption from oppression, fear and deprivation" were deleted from the original text.

³ The minutes of the National Assembly shows that, while MEPs welcomed and endorsed the enactment of the Citizens' Rights Act, MEP László Rajk, for example, also stressed that the mere declaration of rights, even in the most solemn form, does not mean that these rights are implemented. As a first example, Rajk took the right to a life free from deprivation to a decent livelihood, which he said was "much easier to declare than to implement". Delivered at the 11th session of the National Assembly on 30 January 1946. In: *Journal of the National Assembly convened on 29 November 1945*. Authentic Edition, vol. I, Sessions 1-30 (29 November 1945 - 9 May 1948), p. 273-274.

⁴ From Gábor Schweitzer's study on Article I of Act I of 1946 we learn that Professor János Beér already at that time drew attention to the fact that the detailed rules of civil rights are laid down in special norms, although no new democratic legislation had been adopted at that time with regard to most of the rights; however, the "state of people's democracy" could not be satisfied with the formal guarantee of civil rights, since the state also had to ensure that citizens have the opportunity to fully exercise their civil rights. BEÉR, J., *A Magyar Köztársaság alkotmánya*. Budapest, 1948, p. 23, 25. In: SCHWEITZER, G., *A magyar királyi köztársaságtól a magyar köztársaságig – Az 1946. évi I. tc. visszhangja a korabeli közigazgatási irodalomban*. In: *Acta Humana*, vol. 5, Nr. 1, 2017, p. 27-38.

⁵ For a detailed description of the freedoms declared in Article I of Act I of 1946 and the legal content of each of the basic or freedoms - from the public law literature of the time - see the work of Vilmos Szontagh (see SZONTAGH, V., *Az alkotmányjog elemei. Vezérfonal a munkástanfolyam hallgatói számára*).

court judgment in which anyone has been convicted on this basis.⁶

It is interesting that the right to human life without deprivation was the one among the economic and social rights, which right was specifically mentioned in the parliamentary debate on the bill⁷ that abolished the Administrative Court in 1949 “*with the stroke of a pen*”.⁸

One of the, rather disingenuous, explanations given for the abolition of the Administrative Court was the unenforceability of social and economic rights through the courts.⁹ In comparison, the real reason for the abolition of the Court - as Professor András Patyi points out - was rather the opposite, i.e., the intention to establish a fundamental right jurisprudence, the enforcement of human rights beyond the substantive law.

According to the “*plenary agreement*”¹⁰ adopted at the Court’s plenary session on 17 February 1947, the legislation containing a provision contrary to or inconsistent with the provisions guaranteeing the natural and inalienable rights of man, as listed in the introductory part of the 1946 “*minor constitution*”, will not be applied.¹¹

The general lesson to be drawn from all this, also with regard to the constitutional regulation of social rights, is that the reason why a constitution should not be filled with mere declarations, ornaments and “*rights*” guaranteeing unenforceable promises is that it could easily undermine public confidence in the fundamental rights protection bodies, which otherwise adequately guarantee the real and enforceable exercise of fundamental rights.

2. Social rights in the 1949 Constitution of the People’s Republic - until 1972

In Hungary social security gained more attention after the Second World War.¹²

The Soviet Constitution of 1936 had a decisive influence on the entire constitution-making process in Eastern Europe after 1947, including Act XX of 1949,¹³ thus has also influenced constitutional thinking on social rights and social security.¹⁴ The Soviet constitution declared the right to work, the right to remuneration commensurate with the quantity and quality of work done, the right to work seven hours a day, the right to rest, holidays, paid leave, the right to old age, sickness and disability insurance, and the right to free medical care.¹⁵ The institutional guarantee of social rights was based on the extensive development of social insurance at public expense.¹⁶

Article 120 of the Soviet Constitution stated that the citizens of the Soviet Union have the right to financial security in old age and in case of sickness or disability; this right is guaranteed by the comprehensive development of social insurance for workers and employees at state expense, by providing free medical assistance to workers, through a network of sanatoria made available to workers.¹⁷

The Hungarian Constitution in force between 1949 and 1972 still treated the two major areas of social rights – health and livelihood protection – together, but these have since been separated.¹⁸

Debrecen, 1947, p. 29, cited by SCHWEITZER, G., A magyar királyi köztársaságtól a magyar köztársaságig – Az 1946. évi I. tc. visszhangja a korabeli közjogi irodalomban. In: *Acta Humana*, vol. 5, Nr. 1, 2017, p. 27–38.)

However, Professor Szontagh, under the heading Right to work and to a decent human life (free from want), referred only to the right to work, saying, “*This fundamental right flows from the provisions which, with the help of public authority, seek to give everyone a job and to ensure that workers receive the remuneration due for their work.*”.

⁶ Kinga Zakariás sees the right to a decent human livelihood, codified in the preamble of the Republic Act, as a manifestation of the concept of human dignity, adding that in practice this right was not institutionally protected, i.e. placed under the legal protection of an independent court, until the regime change. ZAKARIÁS, K., SZIRBIK, M., 54. § Az élethez és emberi méltósághoz való jog. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 1900. The concept of dignity is sometimes used in a very wide sense, as to include the whole personality. In Germany, the general personality right is derived from human dignity contained in art. 1 (1) of the Constitution: ‘Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.’ BUBALO, L., MASLO ČERKIĆ, Š., Protection of the Right to Honor and Reputation – A Historical Overview. In: *Journal on European History of Law*, vol. 13, no. 1, 2022, p. 24, footnote 47.

⁷ See Act II of 1949.

⁸ To quote Mátyás Vészyás MEP. “*Instead, it was with regret that I read this bill, which abolishes with a stroke of a pen an institution which weight and importance we who fight and struggle for respect for human rights cannot ignore.*” Speech delivered at the 95th session of the National Assembly, 13 January 1949, In: *Minutes of the National Assembly convened on 16 September 1947*. Authentic Edition, Vol. 5, Sessions 91-113 (14 XII 1948 - 12 IV 1949), p. 195.

⁹ During the debate on the bill on the abolition of the Administrative Court, MEP Endre Tóth argued in favour of the proposal, primarily on the grounds that “*with the emergence of the socialist social order [...] social and economic rights come to the fore*”, but in his view it is questionable whether the administrative court of the civil legal order can cope with this task. According to Tóth, “*it would be naïve to believe that the administrative court can cope with state power if its system is inherently opposed to human rights. It is hardly conceivable that a complaint could be brought before an administrative court, for example, for violation of human life free from deprivation or violation of the right to work.*” (Author’s emphasis.) Delivered at the 95th session of the National Assembly, 13 January 1949, In: *Minutes of the National Assembly convened on 16 September 1947*. Authentic Edition, Vol. 5, Sessions 91-113 (14 XII 1948 - 12 IV 1949), p. 193.

¹⁰ Position of the Administrative Court in defence of human rights. cited by: PATYI, A., *Közigazgatás – alkotmány – bírászkodás*. Győr, 2011, p. 99, footnote 29.

¹¹ PATYI, A., *Közigazgatás – alkotmány – bírászkodás*. Győr, 2011, p. 98-99.

¹² By 1959, 72% of the Hungarian population were part of the social security system. JULESZ, M., The Legal History of Gratitude Payments to Physicians in Hungary. In: *Journal on European History of Law*, vol. 9, no. 1, 2018, p. 150.

¹³ TAKÁCS, A., Szociális jogok. In: HALMAI, G., TÓTH G. (ed.), *Emberi jogok*. Budapest, 2003, p. 799.

¹⁴ KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybíróági Szemle*, vol. 3, Nr. 2, 2012, p. 110.

¹⁵ TAKÁCS, A., Szociális jogok. In HALMAI, G.—TÓTH G. (ed.), *Emberi jogok*. Budapest, 2003. p. 799.

¹⁶ Ibid. p. 799.

¹⁷ <http://www.verfassungen.net/su/udssr36-index.htm>, KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybíróági Szemle*, vol. 3, Nr. 2, 2012. pp. 110-111.

¹⁸ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2580.

In keeping with the constitutional traditions of state socialism, economic, social and cultural rights were at the top of Chapter VIII, which defined citizens' rights and obligations, stressing the primacy of these rights over civil and political rights.¹⁹

Despite the fact that in the chapter on the rights and duties of citizens, then numbered Chapter VIII, second-generation rights, were placed before civil and political rights,²⁰ Article 47 of the Constitution²¹ did not confer any substantive right to benefits, but only laid down the obligation of the state in this respect, and not in relation to citizens, but only in relation to workers, understood as a narrower category.²² Thus, the Constitution merely established the state's obligation to maintain institutions, rather than social rights.

At the same time, it does not use the term "*social security*", but instead focuses on the operation of social security as an institutional system.²³

3. The text of the Constitution in force from 1972 to 1989

The promulgated text of preamble of Act XX of 1949 on the Constitution of the Hungarian People's Republic did not contain any reference to social issues. Act XX of 1949 on the Constitution of the Hungarian People's Republic was comprehensively amended by Act I of 1972 and promulgated in a uniform structure. Text of the Act I of 1972, as amended and promulgated in its consolidated form, which, unusually, also rewrote the text of the preamble, referred in a short half-sentence in its amended preamble to the fact that state power serves, among other things, the welfare of the people.

With the comprehensive amendment of the Constitution by Act I of 1972²⁴ the protection of social and health rights was separated, and from then on the right to social and health benefits appeared separately in the Constitution.²⁵ Social care were provided for in Article 58 of the Constitution, paragraph (1) of which proclaimed that "*citizens of the Hungarian People's Republic have the right to material benefits in case of old age, sickness and incapacity for work*", which, according to paragraph (2), were provided by the state "*within the framework of social insurance and through the system of social institutions*".²⁶ This formulation therefore still did not use the term "*social security*", but instead focused on the operation of social security as an institutional system, but it already included a list of typical life situations in which the state had a role to play.

Paragraph(1) of Article 58 laid down only the right to financial (i.e. material, cash) benefits, which were only available to citizens of the socialist homeland, and only in respect of their specific condition (old age, sickness, incapacity for work).²⁷ In this context, Gábor Juhász draws attention to the taxative list of beneficiaries, on the one hand, and to the fact that the expression "*they have the right to material benefits*" did not provide any guidance as to the constitutional extent of the benefits.²⁸ Paragraph (2) of Article 58 of the Constitution defined the State, i.e., the People's Republic of Hungary, as the obligated party for the fulfilment of rights, and the object of the obligation was the operation of the social security system and other, not more specifically defined social institutions,²⁹ in other words, the constitutional text in force until 23rd October 1989 only laid down the obligation of the state to fulfil its duties, but not how to do so; moreover, there was no right that could be considered fundamental

¹⁹ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

²⁰ In the Constitution it was thus indicated that social rights are logically a prerequisite for freedoms and therefore more important than freedoms, since it does not matter to someone who is starving whether, for example, the press is free.

²¹ "Article 47 (1) *The Hungarian People's Republic shall protect the health of workers and assist workers in the event of their incapacity for work.*
(2) *The Hungarian People's Republic shall achieve this protection and assistance by means of extensive social insurance and the organisation of medical care.*"

Gábor Juhász draws attention to the paradox that, by replacing the term "*workers*" with "*citizens*" or even "*all*", this text, which was written under the harshest communist dictatorship, could also be included in the constitution of a market-oriented state that is averse to the guarantee of fundamental social rights.

JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

²² JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2580.

²³ From the 1950s the socialist state on the economic basis of the principles of socialism and society ownership was being formed. The care of the socialist state covered services to the workers in the case of sickness, which the state furnished to the worker from the national income, irrespective of the amount and quality of the work done, for the purpose of providing livelihood. HOMICSKÓ, Á. O., The History of the Hungarian Social Security Regulation until the Present Day. In: *Journal on European History of Law*, vol. 10, No. 1, 2019, p. 130. About historical and legal point of view on the formation of the special legal status of women in the field of labour law and social security law during the 20th century in Slovakia see: LACLAVÍKOVÁ, M., OLŠOVSKÁ, A., Besondere Arbeitsbedingungen von Frauen im Hinblick auf den Schutz vom Wert der Mutterschaft auf dem Gebiet der Slowakei – Vergangenheit vs. Gegenwart. In: *Journal on European History of Law*, vol. 7, no. 1, 2016, pp. 140-145.

²⁴ Act I of 1972 amending Act XX of 1949 and on the unified text of the Constitution of the Hungarian People's Republic.

²⁵ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2580.

²⁶ Ibid. p. 2580.

²⁷ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

²⁸ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 313., footnote 10.; JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In: JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2580.

²⁹ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

to enforce compliance with the obligation.³⁰ Furthermore, by neglecting respect for civil and political rights, social rights could not have been enforced even if they had been more concrete.³¹

While by placing them within the Constitution the regime sought to emphasize the primacy of social rights over traditional human rights (civil and political), the constitutional arrangements effectively gave the government a free hand in the design of the social welfare system.³² The freedoms claimed to be of secondary importance, “to be exercised in the interests of socialist society”, did not exist in reality.³³ Their absence has also virtualized the social rights proclaimed on their account, since without the exercise of freedoms, social rights remain unenforceable, even at the theoretical level.³⁴

Act XX of 1949 originally stated that the state “shall protect the health of workers and assist workers in the event of their incapacity for work; this protection and assistance shall be achieved by means of extensive social insurance and the organisation of medical care.”³⁵

The Constitutional Council, set up in 1983 and operating from 1984-1989³⁶ – in its Decision No 3/1988³⁷ declared “unlawful” and “therefore unconstitutional” the provision of the Council of Ministers’ Regulation implementing the social security law then in force³⁸, which suspended the payment of pension and accident benefits for stays abroad exceeding 90 days.³⁹ The Council referred to paragraphs (1) and (2) of Article 58 of Act XX of 1949 on the Constitution of the Hungarian People’s Republic, according to which citizens of the Hungarian People’s Republic have the right to material benefits in case of old age, sickness and incapacity for work, which are provided by the state within the framework of social security. The Council pointed out that entitlement to social security benefits as

a fundamental right of citizens is derived from the provisions of paragraph (3) of Article 54 of the Constitution⁴⁰ therefore, in accordance with the provisions of Article 5 (j) of Act XI of 1987 on Legislation⁴¹ – was regulated by Act II of 1975. The Constitutional Council has stated that “[i]f the statutory conditions are fulfilled, the citizens concerned have a subjective right to a pension, which is also a fundamental right of citizens”; the Council of Ministers exceeded the statutory powers conferred on it when it provided that the payment of the pension and accident pension of a person temporarily abroad with a valid passport must be suspended for a period exceeding 90 days and that payment of all or part of the pension may be made only in reasonable cases, subject to authorisation by the Head of the Directorate-General for Social Security. In its decision, the Council therefore suspended the implementation of the unconstitutional provision and called on the President of the Council of Ministers to ensure that the unconstitutionality was removed and that the provision in question was repealed by 1 January 1989.

4. The 1989 comprehensive constitutional reform

In socialist countries, most of the means of production were state-owned. On this basis, the economy was almost entirely based on distribution by the state. Employers’ rights were exercised almost exclusively by the state. The boundaries between incomes from work were blurred.⁴² The privatisation of property in the wake of constitutional change has brought the concept of social rights back to its classical interpretation.⁴³ However, the situation in these countries was (also) complicated by the fact that their previous constitutions were quite generous in the way they formulated social rights.⁴⁴ They could do this

³⁰ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009. p. 2580.

³¹ Ibid. p. 2580.

³² KURON, J., Válaszúton. In: *Esély*, vol. 5, Nr. 3, 1994, p. 3–18.

Find: www.esely.org/kiadvanyok/1994_3/jacek.pdf, (Last accessed 12 January 2024);

cited in: FERGE, Zs., Szabadság és biztonság. In: *Esély*, vol. 5, Nr. 3, 1994, p. 3–24.

http://www.esely.org/kiadvanyok/1994_5/ferge.pdf (last accessed 12 January 2024);

cited in: JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

³³ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 5.

³⁴ Ibid. p. 5–6.

³⁵ Article 47 of Act XX of 1949, KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybírószági Szemle*, vol. 3, Nr. 2, 2012. p. 111.

³⁶ PETRÉTEI, J.: *Magyarország alkotmányjoga II. Államszervezet*. Pécs, 2014. p. 194. József Petréttei points out here that the Constitutional Council could not fulfil its task in substance, as the rules on its composition, powers, and procedure for presenting its proposals were set up in accordance with the peculiarities of the political-power structure and constitutional construction of the time (one-party system, concentration of power, parliamentary supremacy, the so-called “socialist conception of fundamental rights”).

³⁷ Resolution No 3/1988. of the Constitutional Council of the Hungarian Parliament.

Source: HOLLÓ, A., *Az Alkotmányjogi Tanács tevékenysége 1984–1989. (Szervezet és működés a dokumentumok tükrében)*. Budapest, 1992.

³⁸ See Act II of 1975 on social insurance.

³⁹ See paragraph (1) and (2) of Article 210 of Decree No 17/1975. (VI.14.) MT (Minisztertanács, Council of Ministers) on the implementation of Act II of 1975 on social insurance.

⁴⁰ According to this, “In the Hungarian People’s Republic, the law lays down the rules governing the fundamental rights and duties of citizens.”

⁴¹ Accordingly, “Article 5 Among the fundamental rights and duties of citizens, the following shall be regulated by law in particular (...)

j) health care and social security (...).”

⁴² SÁRI, J. – SOMODY, B., *Alapjogok. Alkotmánytan II.* Budapest, 2008, p. 256.

⁴³ Ibid. p. 256.

⁴⁴ Ibid. p. 256.

because there were no guarantees of rights.⁴⁵ But in the new situation, as with fundamental rights in general, social rights could not remain at the level of a mere declaration.⁴⁶ This is one of the reasons why the constitutions of today's Central European countries, like Hungary's 1989 Constitution, have often defined themselves not as social states, but by reference to a social market economy.⁴⁷ However, according to the interpretation of the Hungarian Constitutional Court, social rights could not be directly derived from the concept of a social market economy.⁴⁸

Political change has involved transforming constitutional institutions, ensuring fundamental civil rights, and creating the conditions for a market economy based on private property.⁴⁹ Whether one or the other set of regime-changing objectives is taken as the basis, the "*main line of attack*" has been the formerly one-party state.⁵⁰

The constitution of the democratic transition has changed the order of fundamental rights.⁵¹ Whereas in the previous legislation, the provisions proclaiming economic, social and cultural rights were placed at the beginning of the chapter on citizens' fundamental rights, followed by a list of civil and political rights, the new legislation, intended for the period of democratisation and economic transition, reversed this order, placing economic, social and cultural rights at the end of the chapter. The numbering (Articles 70/B to 70/E) suggests that these issues were relegated to the background during the round table negotiations and that the provisions relating to them, which in some cases were very vague, were only included at the last minute.

The preamble to the 1949 Constitution, as a result of the constitutional reform implemented by Act XXXI of 1989, stated that the amended Constitution was adopted to facilitate a peaceful political transition to a multi-party system, parliamentary democracy and a constitutional state based on the rule of law, with a social market economy.

The comprehensive reform of the Constitution in 1989 changed the order in which fundamental rights are listed.⁵²

Whereas in the previous legislation the provisions proclaiming economic, social and cultural rights were placed at the beginning of the chapter on citizens' fundamental rights, and civil and political rights were listed after them in the Constitution, the new constitutional provisions institutionalising the democratic transition reversed this order, placing economic, social and cultural rights at the end of the chapter.⁵³ Although this solution does not formally create a hierarchical relationship between the two generations of human rights within the Constitution, it implicitly sends a message of the subordination of economic and social rights.⁵⁴

In its text, introduced by Act XXXI of 1989 amending the Constitution, the right to social security was not included in the usual way in constitutions, by inserting provisions restricting the interpretation of the proclaimed rights as fundamental rights, but by the generality and elevation of international declarations.⁵⁵ According to Gábor Juhász, this has made the Constitutional Court's task of defining the content of the right to social security more difficult, i.e., the provisions of international law use the concept of "social security" in a different dimension, in terms of the relationship between countries at very different levels of economic development.⁵⁶

Gábor Juhász considers it paradoxical that the 1989 constitutional text broadened the scope of interpretation of social security - including the possibility of its recognition as a subjective right - precisely in the period of transition to a market economy.⁵⁷ This is supported by a much earlier study by Péter Schmidt, written in 1979, that social rights were only narrowly and peripherally regulated in civil constitutions, and to guarantee these rights by state means, alien to a capitalist society based on private property.⁵⁸

Despite the potential threat to freedom, the Hungarian Constitution from 1989 - like all post-socialist constitutions - contained a substantial catalogue of social rights.⁵⁹

The future of the so-called "*red rights*" was the most intensely debated issue during the Round Table negotiations, with rep-

⁴⁵ Ibid. p. 256.

⁴⁶ Ibid. p. 256.

⁴⁷ Ibid. p. 256.

⁴⁸ Ibid. p. 256.

⁴⁹ SÁRI, J., A szociális jogok és a szociális állam. In: *Jogtudományi Közöny*, vol. 52, Nr. 5, 1997, p. 219.

⁵⁰ Ibid. p. 219.

⁵¹ Act XXXI of 1989 which virtually rewrote the previous Constitution and as the foundation of the change in the political system created a democratic, state-of-the-law framework in Hungary in public law. CSERVÁK, CS. – FARKAS, GY. T., Development of the Nationality Law in Hungary. In: *Journal on European History of Law*, vol. 11, no. 1, 2020, p. 148.

⁵² JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2583.

⁵³ Ibid. p. 2583.; JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 6. This regulatory characteristic is not specific only to Hungary, i.e., the constitutions of socialist countries almost without exception placed economic, social and cultural rights at the top of the list of citizens' rights, on the assumption that these rights are prior to all other rights, because they often provide, among other things, the material guarantees of other citizens' rights.

SCHMIDT, P., A gazdasági, szociális, kulturális jogok természetéről. In: *Jogtudományi Közöny*, vol. 34, Nr. 11, 1979, p. 705.

⁵⁴ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2583.

⁵⁵ Ibid. p. 2581.

⁵⁶ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 7.

⁵⁷ JUHÁSZ, G., 70/E. § [A szociális biztonsághoz való jog]. In JAKAB, A. (Ed.), *Az Alkotmány kommentárja*. Budapest, 2009, p. 2581.

⁵⁸ SCHMIDT, P., A gazdasági, szociális, kulturális jogok természetéről. In: *Jogtudományi Közöny*, vol. 34, Nr. 11, 1979, p. 705.

⁵⁹ KÜPPER, H., A szocialista maradványok szerepe a magyar alkotmányban. In: *Fundamentum*, vol. 11, Nr. 4, 2007, p. 54.

representatives of social organisations and the former state party, supported by public opinion, coming out on top.⁶⁰ The Round Table debate focused on the question of whether to maintain social rights.⁶¹ When this question was answered in the affirmative, little attention was paid to the “how”.⁶² As a consequence, most of the social rights in the Constitution from 1989 onwards were in socialist form.⁶³ According to Herbert Küpper, the socialist formulation of basic social rights (“*in the socialist guise*”) contains a certain freedom-limiting potential, i.e., it does not actually confer rights on citizens, but on the contrary, limits their rights.⁶⁴ Küpper sees this as a typical example of the “*cynicism of socialist constitutions*”, i.e., that state interference in the lives of citizens is declared as a subjective right of the same citizens.⁶⁵

Küpper points out that the 1989 Constitution contains a number of social rights in the traditional socialist form: the right to health (Article 70/D), social security (Article 70/E), education (Article 70/F) and a healthy environment (Article 18).⁶⁶ In 1989, a constitutional amendment softened the right to work and the social standards for work relations (Article 70/B) by combining them with liberal rights such as the right to choose one’s occupation.⁶⁷ Since then, in Article 70/B, the right to individual freedom has enjoyed a stronger position than the right to state intervention.⁶⁸

As a result of the constitutional activity of 1988/89, the previous legislation, which had institutionalised only the positive side of social rights, became dual in nature: in the renewed

constitution of the rule of law, for example, the right to work contains both the characteristics of classical rights and those of participation rights.⁶⁹ The constitutional reform of 1989 was a real breakthrough, with the proclamation of the right to free choice of work and occupation, the right to strike and the recognition of trade union rights.⁷⁰ In addition to these necessarily positive changes, the fact that paragraph (1) of Article 70/B of the Constitution proclaims the right to work in general terms, without any reference to its relativity, seems to be a cause for concern, because of the excessive inflation of the expectations of the public seeking rights.⁷¹

The comprehensive constitutional reform in 1989 had mixed results as regards the regulation of social rights.⁷² In the area of constitutional labour law, the incorporation to the constitution of the elements guaranteeing freedoms has filled the gaps important for the transition to the rule of law, and - albeit with rather specific wording, which in places makes interpretation particularly difficult - the scope of the state’s social commitments has been institutionalised.⁷³ However, there were problems with the imprecision of the wording, which was not in keeping with the national constitution, and the lack of clarity about the relationship between the various social provisions.⁷⁴

Gábor Kardos points out that the Constitution did not separate civil and political rights from economic, social and cultural service rights, and did not distinguish between them in terms of legal enforcement.⁷⁵ Kardos points out that the wording of economic, social and cultural services rights closely follows the

⁶⁰ Ibid. p. 54.

⁶¹ Ibid. p. 54.

⁶² Ibid. p. 54.

⁶³ Ibid. p. 54.

⁶⁴ Küpper supports this by pointing out that in the typical socialist formulation of social rights, as in the early Soviet constitutions, the first section establishes a subjective right (e.g. “*Everyone has the right to work*”) and the subsequent sections list the state institutions responsible for implementing the first section (e.g. “*The state shall enforce this right through the planned development of the productive forces of the national economy and the administration of labour based on economic plans*”). The problem arises because of the second part of the section, i.e., the responsibility for the realisation of the right lies with the state, which means that the holders of the right do not have the choice of whether, when, how and to what extent they exercise their right. According to Küpper, the examples cited thus clearly show that, in particular, there is no guarantee that negative freedom - an essential element of classical liberal freedom - will be guaranteed, that the holders of the right will not be able to decide whether they want to work at all, but will be subject to a labour administration controlled by the state, which in practice means an obligation to work. As a result, the first section appears to contain only a subjective right, but if the whole section is taken into account, it actually empowers the state to intervene in the lives of citizens. Therefore, social rights in the socialist formulation are not rights at all, but in fact a mandate for state intervention. KÜPPER, H., A szocialista maradványok szerepe a magyar alkotmányban. In: *Fundamentum*, vol. 11, Nr. 4, 2007, p. 54-56.

⁶⁵ KÜPPER, H., A szocialista maradványok szerepe a magyar alkotmányban. In: *Fundamentum*, vol. 11, Nr. 4, 2007, p. 54.

⁶⁶ Ibid. p. 54.

⁶⁷ Ibid. p. 54.

⁶⁸ Ibid. p. 54. According to Gábor Juhász, the numbering (Articles 70/B-E) suggests that these issues were pushed into the background during the round table negotiations, and the provisions on them - in some cases very vague - were only included at the last minute. Both solutions suggest that economic, social and cultural rights were of secondary importance in the constitutional reform. The fact that two competing provisions on social benefits were included in the text of the Constitution finally adopted showed signs of scrambling. Article 17, among the General Provisions, laid down the state’s obligation to care for the needy, while Article 70/E spoke of the right of Hungarian citizens to social security. JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 6.

⁶⁹ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 312.

⁷⁰ Ibid. p. 312.

⁷¹ Ibid. p. 312.

⁷² Ibid. p. 311.

⁷³ Ibid. p. 311.

⁷⁴ Ibid. p. 311.

⁷⁵ Similar to the Italian Constitution, for example, although there are significant differences in the wording and content of the rights. KARDOS, G., A szociális jogok jogi kikényszerítésének lehetőségei. In: *Esély*, vol. 7, Nr. 6, 1996, p. 24-25.

wording of the International Covenant on Economic, Social and Cultural Rights, with the very significant difference that in the Constitution they are formulated as subjective rights, while in the Covenant - as already mentioned - the level of state commitment is highly relativized (*"recognize"*, *"promote"*, etc.), making individual enforcement based on the latter highly problematic, according to Kardos.⁷⁶

The provisions of the '89 Constitution on social rights in the narrower sense - access to goods, hence redistributive, the right to health and social security - are superficial and (perhaps because of this) embarrassingly generous compared to other countries.⁷⁷ A comparison with the situation before 1989 leads to interesting results here too. Paradoxically, the generosity of constitutional provisions can be seen less as a legacy of state socialism than as a consequence of the 1989 constitutional reform.⁷⁸ In other words, the social promises, which could be interpreted in an expansive way, were introduced into the text of the Constitution at a time when the constitutional goal was no longer socialism, but the construction of a market economy, even if it was called social.⁷⁹

The comprehensive amendment of the Constitution in 1989 remedied an important shortcoming by introducing provisions ensuring the negative (freedom) side of social rights, which are essentially part of constitutional labour law.⁸⁰ However, the text adopted at the time contained a number of ambiguities that make it difficult to interpret.⁸¹ The fact that there are two different provisions on social protection, defining both the beneficiaries and the scope of entitlements, indicates a drafting problem.⁸² While Article 17 provides for an extensive *"obligation to provide social care"* for those in need (i.e., not only citizens), Article 70/E proclaims the unspecified *"right to social security"* of Hungarian citizens.⁸³

From the former, the fundamental right to benefits hardly seemed to be deducible, the state's task was only to provide for the needy through *"extensive social measures"*.⁸⁴ It was not possible to draw any firm conclusions on the nature or content of the measures.⁸⁵ At the same time, Article 70/E formally proclaimed the right to social security, although only for Hungarian citizens, and at first reading it also defined the content (the provision of the means of subsistence) and the means of its implementation (social security and the system of social institutions).⁸⁶

The wording of Article 70/D and Article 70/E reflects the idealism of international documents, as opposed to the pragmatism of nation-state constitutions - without the restraining effect of the weakly tuned enforcement mechanism of international conventions.⁸⁷ This is particularly striking in the case of Article 70/D, where the constitutional declaration is no longer the right to health protection, but *"the right to the highest attainable standard of physical and mental health"*. The wording of Article 70/E is also undifferentiated.⁸⁸

According to Gábor Juhász, since there is no indication that the right to social security proclaimed in the Constitution is actually given substance by the legislator, the mere grammatical interpretation implies some kind of subjective right to which all citizens are entitled.⁸⁹ The relativity of this right was pointed out by the Constitutional Court, which members, however, seem to be seriously divided on the interpretation of Article 70/E.⁹⁰

Act XX of 1949 underwent significant changes in 1989 (Act XXXI of 1989) and 1990 (Act XL of 1990).⁹¹

The amendment to the Constitution of 19th June 1990, adopted by the new, freely elected Parliament, already rewrote the Constitution in 50 sections, and a large number of minor amendments were made later.⁹² These two amendments com-

⁷⁶ Ibid. p. 25.

⁷⁷ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 312.

⁷⁸ Ibid. p. 312.

⁷⁹ Ibid. p. 312.

⁸⁰ Ibid. p. 313.

⁸¹ Ibid. p. 313.

⁸² JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 313.

⁸³ Ibid., p. 313.

⁸⁴ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 7.

⁸⁵ Ibid. p. 7.

⁸⁶ Ibid. p. 7.

⁸⁷ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 313.

⁸⁸ Ibid. p. 313.

⁸⁹ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 313. In comparison, in my view, the reference to this would have been superfluous, since paragraph (2) of Article 8 stated in general, for all fundamental rights, that the rules on fundamental rights (and duties) are laid down by law. This, in my reading, means that fundamental rights are given substance by the legislature, so any specific reference to the right to social security being given substance by the legislature would have been superfluous.

⁹⁰ JUHÁSZ, G., Gazdasági globalizáció, a jóléti államok modernizációja és a szociális jogok alkotmányos védelme. In: *Állam- és Jogtudomány*, vol. 50, Nr. 3, 2009, p. 313.

⁹¹ KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybírói Szemle*, vol. 3, Nr. 2, 2012, p. 111.

⁹² Ibid. p. 111.

pletely transformed the formerly socialist constitution into a constitution based on the rule of law, majority democracy, respect for human rights, an autonomous civil society and a market economy.⁹³

There remained, however, provisions that were not amended, but were essentially the same as the socialist wording until the entry into force of the Fundamental Law.⁹⁴

The Constitution contains a number of provisions⁹⁵ contained social rights in socialist form: to health (Article 70/D), to social security (Article 70/E)⁹⁶, the right to education (Article 70/F) and the right to a healthy environment (Article 18).⁹⁷

Paragraph (1) of Article 70/E of the Constitution created a “social security” for the provision of the means of subsistence in the event of individual disasters - old age, sickness, disability, etc. - occurring or expected to occur unexpectedly or naturally over time in the world of work.⁹⁸ Paragraph (2) of Article 70/E of the Constitution stated that the Republic of Hungary shall implement the right to benefits, inter alia, through social security.⁹⁹ It follows that the Constitution considered the organisation and maintenance of social security to be a state responsibility,¹⁰⁰ and - although it did not say so, but accord-

ing to János Sári, it can be interpreted in this way in line with the Social Charter - the Constitution considered the right to social security as a constitutional right.¹⁰¹ These cases of social security are basically linked by the Constitution to the social security system.¹⁰²

According to paragraph (4) of Article 8 of the Constitution, the right to social security was one of those constitutional rights whose exercise could not be suspended or restricted even in the event of an exceptional legal order (state of emergency, state of emergency or emergency situation).¹⁰³ According to paragraph (4) of Article 8 of the Constitution, in times of emergency, state of emergency or state of danger, the exercise of fundamental rights may be suspended or restricted, with the exception of the fundamental rights laid down in Articles 54-56, paragraphs (2)-(4) of Article 57, Article 60, Articles 66-69 and Article 70/E. In this way, the legislation gave the impression that Article 70/E had a special place in the Constitution.¹⁰⁴ However it soon became clear that this was not the case, as the Constitutional Court did not declare any content in paragraph (4) of Article 8 that would have given special protection to the rights listed therein, including social security.¹⁰⁵

⁹³ Ibid. p. 111.

⁹⁴ KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybíróági Szemle*, vol. 3, Nr. 2, 2012, p. 112.

⁹⁵ From 26 April 1972, the right to benefits was included in Act XX of 1949:

“Article 58 (1) Citizens of the Hungarian People’s Republic shall have the right to material benefits in the event of old age, sickness and incapacity for work.

(2) The Hungarian People’s Republic shall ensure the right to material benefits within the framework of social insurance and through the system of social institutions.”

KLICSU, L., Az Alaptörvény és a szociális biztonság. In: *Alkotmánybíróági Szemle*, vol. 3, Nr. 2, 2012, p. 112.

⁹⁶ “Section 70/E (1) Citizens of the Republic of Hungary shall have the right to social security; in the event of old age, sickness, disability, widowhood, orphanhood and unemployment through no fault of their own, they shall be entitled to the benefits necessary for their subsistence.

(2) The Republic of Hungary shall realize the right to benefits through social insurance and the system of social institutions.”

⁹⁷ KÜPPER, H., A szocialista maradványok szerepe a magyar alkotmányban. In: *Fundamentum*, vol. 11, Nr. 4, 2007, p. 53-60.

⁹⁸ SÁRI, J. – SOMODY, B., *Alapjogok. Alkotmánytan II.* Budapest, 2008, p. 265.

⁹⁹ Ibid. p. 265.

¹⁰⁰ Ibid. p. 265.

¹⁰¹ SÁRI (2005), p. 237.

¹⁰² SÁRI (2005), p. 237.

¹⁰³ JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 7.

¹⁰⁴ Ibid. p. 7.

¹⁰⁵ “Commentary to Act XX of 1949 on the Constitution of the Republic of Hungary” Complex DVD Law Library [as of 31 December 2007] § 8. subsection 1.4; cited: JUHÁSZ, G., Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. In: *Esély*, vol. 26, Nr. 1, 2015, p. 7.