

# A Quarter of a Century on the Path of Popular Democratic Constitutional Development (1949-1974)

by

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In the Hungarian People's Republic the popular democratic Constitution of August 18, 1949, is, with a number of amendments, still in force. The most important of these amendments is the one promulgated as Act I of 1972, which at the same time is a restatement of the Constitution of 1949. The present study, on reviewing constitutional development, focusses its attention on the amendments introduced by Act I of 1972, and the enforcement of these amendments. In the first part of the study the author throws a light on the circumstances which have permitted of giving expression to the changes in the field of constitutional law, changes which have been brought about by the termination of the initial phase of the socialist metamorphosis of the country. Unlike the other popular democratic countries Hungary could content herself with the amendment of her Constitution: there was no need for the introduction of a wholly new charter. In Part II the author surveys the development of the provisions of the Constitution in so far as these give expression to the fundamental institutions of the *régime*, i. e. the development of the provisions of the Constitution on the State, the political and social mechanism of the wielding of the sovereign power, the governmental functions, etc. Part III deals with the changes in the fundamental institutions of the political organism, i. e. the development of the constitutional foundations of the Legislature, the government, the agencies of local representation and administration, the organization of the Judicature and of that of the Procurator's Office. Part IV discusses the development of constitutional law as far as the rights and duties of the citizens are concerned.

The popular democratic Constitution of Hungary has come into being by the relatively peaceful way of transition to socialism, we may even say, by parliamentary methods. Development tending towards socialism unfolded itself by making use of the institutions of the earlier constitution, partly within the framework of this constitution. A peculiarity of the transition was the establishment of new solutions to the gradual exclusion of others. I. e. the new elements of constitutional law had in the first place been determined by the domestic experiences of post-war development, the example of the institutions of the friendly popular democracies, and before all of those of the socialist Soviet Union. It would, however, be an error to ignore that by the side of the parallel-running of old and new traditions of necessity exerted a strong influence on the legal form of the one or the other institution of political or constitutional law, and even more so on the practical operation of the new institutions, on the taking shape of their actual social role.

The institutions of Hungarian constitutional law have preserved a large number of traditional traits. These partly are attached to our revolutionary traditions, partly are associated with technical elements of political work and legal culture

which in a certain sense show indifference to the various social systems. In certain cases the observation may be made that in the period of stabilization traditional elements come to life again which else in the period of transition progressing at a rapid rate has been thrust to the background or thrown into the shade. Tendencies of this kind do not in all cases stand for the reversal of development or the revival of the reactionary remnants of the historical past. Still it cannot be denied that for want of a proper historical appraisal even this danger may become imminent.

Slowly the time will come when in the most political branch of law, viz. constitutional law, on the ground of the necessary distance of history the institutions of the historical Hungarian constitution and the experiences of the historical path of transition to socialism may be confronted. In the present analysis of the constitutional development of the past quarter of a century we must bear this in mind as well, still in the first place we are going to keep before us the Constitution approved in 1949, its last general amendment and restatement by Act I of 1972, and the practical enforcement of the said amendment.

## I

Act I of 1972 has brought into harmony the wording of the Constitution and the socialist metamorphosis of the country during the past quarter of a century. I. e. the recent general amendment of the Constitution bears testimony to the new historical situation, viz. that Hungarian society has surpassed the initial phase of the building of socialism, called into existence the fundamental institutions of a socialist order or society and is now engaged in completing building up socialism. Simultaneously with the approval of the amendment of the Constitution it has been specially emphasized that no new constitution was required for laying down this fact. Together with the general amendment the Act XX of 1949 is still in force, as the fundamental law or Constitution of the country.

As is known in the majority of the popular democracies things have taken a different course. In general they have set aside the popular democratic constitution of an earlier date and closed the initial phase of building socialism, a historical phase which still strongly bore the stamps of the transition from capitalism to socialism in all fields of social establishment, i. e. in politics and also in economy, social and cultural relations<sup>1</sup> with a new constitution so to say laying down the programme of further development as well.

First of all we shall have to get a closer view of the reasons why Hungary has not adopted this course. Why was Hungary content with the modification of the earlier

<sup>1</sup> More or less as a reminder we would mention that Czechoslovakia enacted her constitution closing down the initial phase of the building of socialism in 1960, Yugoslavia followed suit in 1963, the German Democratic Republic in 1968. Bulgaria has enacted her constitution closing this phase and still in force in 1971.

instrument instead of elaborating a new constitution? This departure from the common course deserves attention the more so because the knowledge of the reasons in the background might be useful for the proper valuation of the specific traits of Hungarian constitutional development. Examining the causes of this departure first of all the chronological data should be recalled. But in this case, chronology has a special importance, it could even be said, an importance of principle.

Before all it should be remembered that with the enactment of the Constitution of 1949 Hungary was the last of the popular democracies to introduce a new constitution. Yugoslavia enacted her first popular democratic constitution as early as 1946, Bulgaria followed suit in 1947. Rumania and Czechoslovakia too preceded Hungary with their new constitutions enacted in 1948. Poland may perhaps be the only exception where although in 1947 a what may be termed incomplete constitution had been introduced defining the central organs holding the sovereign power, a complete constitutional charter was adopted only in 1952. Still, in all likelihood it is by no means accidental that even today Poland is the only of the popular democracies here enumerated where the written constitution does not reflect the changes the country has undergone during the last twenty years. Actually in Poland the amendment of the constitution, or the introduction of an entirely new constitution is under study. It is hardly possible to predict which course will eventually be taken. In any case if Poland followed Hungary's lead the argumentation relying on the chronological sequence would be reinforced.

The relatively short intervals between the enactment of the particular constitutions may become of fundamental importance if it is remembered that it was during the first years following upon the Second World War, i. e. between 1946 and 1949, that, to use a metaphore, the political lines of forces of international relations became settled and consolidated. Today the statement may be advanced that, on the one hand, owing to the developments in international relations, or more precisely, owing to the consolidation of the East European position of the Soviet Union, and, on the other, on the ground of experiences gained in the internal development of certain Eastern and South-Eastern European countries the recognition matured that transition to socialism could take place also by entering the relatively peaceful path of popular democratic development. Simultaneously the thesis received general recognition that the popular democratic socialist state could be conceived as a specific variant of the dictatorship of the proletariat by the side of the other variant of this dictatorship, namely, the Soviet socialist state. And it is at this point that we meet a speciality of the Hungarian constitution of 1949. Of all popular democratic constitutions it was the Hungarian where this recognition was put into words. In other words: of all popular democratic constitutions the Hungarian was the first to be drafted and approved consciously as a socialist constitution, as the constitution of the dictatorship of the proletariat.

At the first glance the statement that in the popular democratic constitutions introduced earlier the conscious formulation of the dictatorship of the proletariat as

well as of the socialist programme was missing may sound somewhat surprising. And this is what has to be concluded beyond doubt from an analysis of the wordings of the several constitutions. As regards e.g. the character of the state power, the early popular democratic constitutions mostly use the general term of people's power and on this basis generally define such a "plebeian" democracy within the framework of which a sufficiently loose interpretation of the provisions of the constitution would even permit the accommodation of the institutions of the proletarian state *in statu nascendi*. As regards the objective of socialism (e.g. the termination of exploitation) for these an extensive social programme has been substituted which may become the stepping stone for a socialist metamorphosis. Among the constitutional provisions affecting the system of the political mechanism the definition of the leading role of the working class or the Marxist-Leninist party is wanting. The list may yet be continued still what has been said so far may suffice to confirm that in the early popular democratic constitutions the essential characteristics of socialist metamorphosis remained obscured. On the other hand it cannot be argued that these constitutions, as typical instruments of a period of transition, opened relatively wide vistas for a metamorphosis of the society and placed no obstacles at all in the way of laying the foundations of socialism within their framework. This may perhaps account for the fact that in general with few amendments these constitutions remained in operation throughout the initial phase of the building of socialism.<sup>2</sup>

It seems to be worth while to subject the specific traits of the Hungarian Constitution of 1949 to a special analysis notably the traits which are accounted for by the express intention of the Constitution to emphasize the decidedly socialist trend of the metamorphosis of society and the unequivocally socialist character of the new sovereign power come into being in the course of development following upon the Second World War. This explains in the first place the incorporation of a number of provisions of a programme-like character in the Constitution in its chapters on the political and economic traits of the arrangements of society, the institutions of the political organization, and the definition of the rights and obligations of the citizens. These theses of the Constitution passed over to practice only by way of current legislation, during a number of years. Incidentally the introduction of these provisions into practice in many cases reacted on the Constitution itself. (Either the Constitution was amended, or the construction given to the relevant provisions of the Constitution underwent a modification.) Therefore, as we shall demonstrate in detail later on, the development of the Hungarian constitution during the latter quarter of a century on the whole coincides with the process of translating the Constitution of 1949 into practice. For that matter in the following we shall point out the few constitutional theses of a programme-like character which to this day have not been in-

<sup>2</sup> As is known there is but a single exception. Notably in Rumania the constitution of 1948 was replaced by a new constitution in 1952. The analysis of the special circumstances associated with the introduction of a new constitution may be omitted here, as these have no bearing on the general trend outlined here.

roduced into practice or which permit translation into practice only with the corrections adopted in the recent amendment of the Constitution.

What has been set forth so far may perhaps explain why the present restated Constitution, beyond declaring that the Constitution as it stands has as its goal the complete building up of socialism, is almost completely void of programmatic provisions. In the drafting stage of the amendment of the Constitution the question was specially studied whether or not it was justified to incorporate theses of the nature of programmes in the Constitution, and if so, to what extent. An attempt to answer the question will again go beyond constitutional development in Hungary and bring us to problems of principles of a more or less general nature. As is known, at least in point of principle, the socialist constitutions have as their aim the consolidation of the fundamental institutions of a society growing and changing on the grounds of a long-term, scientifically conceived programme. The constitution itself is the fundamental law of a period of a certain length. Justly the question may therefore be asked, where the line should be drawn between the constitution and a long-term political programme.

Since the constitution itself has to come up to expectations of a dual nature, there is hardly a straightforward answer to this question. Public opinion before all wants to discover a solemn instrument embodying the political concepts of a definite period. On the other hand it stands to reason that the constitution is in the first place a legislative act, a legal instrument, part and parcel of the legal system of a country, and in this sense it has to give expression to an effective and operative law. If we consider the constitution from this aspect, we shall have to bear in mind that the constitution, like the law in general, has mainly a stabilizing function and is a relatively unwieldy tool for giving expression to large-scale movements in progress in the society of a country. The problems arising from this dual character of the constitution stand out in extremely sharp contours in certain phases of socialist development. In the first place we have in mind periods of explicit transition when the demolition of what exists, the promotion of the establishment of new conditions are in the fore, rather than the stabilization or preservation of what exists. In periods of this kind it is a fairly general symptom that the constitution is conceived as a specific political programme, whereas little or no stress is laid on its legal character. Thus e. g. the first socialist constitution, the constitution of Soviet Russia of 1918, was before all conceived as a "plan of work", whose principal function was to mould the soviets spontaneously come into being and presenting a large number of variants into a uniform political organization. The Soviet constitution of 1924 integrated the Soviet republics formed in the meantime and displaying many specific traits into a unity, and in this way laid the foundations of the political organization of the Soviet Union built upon uniform principles. If now the latest popular democratic constitutions are made subject to a study considerable differences will come to light in them. In some of them so-called programme-like provisions are in insignificant numbers, whereas in others announcements of programmes still abound.

All this considered it appears as if the solution recently adopted in the course of constitutional development in Hungary, when prominence has been given to the legal aspects of the constitution, in a certain sense again meant a landmark. It is an indication of that in the socialist constitutional evolution, too, a phase has been entered where the primary function of the constitution is the stabilization and preservation of institutions once established. A manifestation of this trend is e. g. the coming into prominence of the idea of a control of constitutionality in most of the socialist countries. The idea has been given expression even in the constitutions themselves.

What has been set forth so far may perhaps contribute to the description of the most general traits of Hungarian constitutional development and at the same time explain the reasons why in Hungary – relying on the not yet exhausted reserves of the Constitution of 1949 – the tasks to constitutionalize the institutions of the present phase of development have been solved by an amendment rather than drawing up a new constitution.

## II

1. In the socialist constitutions the provisions destined to give expression to, and define, the fundamental institutions and main traits of the whole social system of a given state occupy a peculiar position. Until of late there were lively debates going on in socialist legal literature on the character and functions of these provisions. The positions taken in these debates to some extent exert an influence on the trends manifested by the relevant sections or chapters of the socialist constitutions. Therefore, if even by way of reference, the question has to be tackled also on studying Hungarian constitutional development.

According to certain extreme doctrines the theses of the constitution in question are not rules of law. They rather amount to a political programme. Or if their legal character has been acknowledged, there is an identity between them and the preamble of the constitution or the declarations preceding statutory texts of the constitutions. Accordingly for the purpose of jurisprudential appraisal it is a matter of indifference whether the theses in question are promulgated in a declarative form, or clad in a legal form in a somewhat stricter sense of the term are enacted among the articles of the constitution. In the last resort it appears as if these doctrines are sponsored by the constitutions themselves, which on the whole incorporate large numbers of norms of the programme-type in the chapters called to bring under regulation the fundamental institutions of the arrangements of society.

The representatives of the other extreme position believe that the vigorous political charge of the constitutional provisions relating to the arrangements of society may be ignored. The holders of this position consider the provisions in question simply fundamental principles of law which have been transferred to the constitution from the body of provisions of other branches of law, such as civil law, labour law, etc. Consequently apart from very few exceptions these provisions are not recognized as

such belonging to the subject-matter of constitutional law. On this understanding the theses of the constitution in question can be analysed only in conjunction with the provisions of the relevant branches of law, as principles influencing their interpretation and practical application. It is of interest to note that the holders of this opinion in many cases insist on the extension of the scope of regulation embraced by the constitution. Irrespective of the political significance of the particular institutions of law they would have the theses of all branches of law of the most general validity incorporated into the constitution.<sup>3</sup>

Although the holders of both positions have remarkable observations, still on the whole owing to their strong exaggerations these two extreme doctrines should be set aside. The rules of the socialist constitutions referring to the arrangements of society have to be conceived as the primary legal expression of political opinions dominant in the given country. Even when there is only a single political party, under the conditions of the socialist state it is of extreme importance that from time to time, at least in the periods of constitutional legislation, the political ideas affecting social institutions of special significance should be given a precise and legally exact formulation. These as such influence directly the activities of all political organizations, irrespective of whether or not these activities have been brought under legal regulation. These imply the political activities e.g. of the parties, popular fronts, and also those of several social organizations which although they are not primarily political organizations, still have a remarkable political role, such as e.g. the trade unions or the associations of cooperatives. As a matter of course these constitutional theses directly exert an influence on the operations of all legislative and law applying state organs as well. Justly therefore the statement may be made that the constitutional provisions relating to the arrangements of society may be conceived so to say as direct transmissions between politics and the legal system as a whole. The provisions undoubtedly have an influence on both the interpretation and the application of the law. In the first place, however, these provisions of the constitution act through legislation on the formulation of the norms of the most heterogeneous branches of the law. Thus they appear with a dual physiognomy. They become part and parcel of the body of provisions of the various branches of law carrying into effect the particular theses of the constitution, without, however, forfeiting their character of constitutional law.

It is another question, which fields and types of social relations have been brought under regulation by the theses of the socialist constitutions defining the fundamental institutions of the social arrangements. In this question the positions taken in the literature of socialist political law are at least as divergent as the concrete

<sup>3</sup> For the debates on the relative provisions of the socialist constitutions see KOVÁCS, I.: *A szocialista alkotmányfejlődés új elemei* (New elements in the evolutions of socialist constitutions). Budapest, 1962. pp. 348 et seq.

solutions applied by the particular socialist constitutions. The scope of regulation of the particular constitutions are in general defined by the social and historical conditions of the given socialist country. In literature on political or constitutional law yet other factors have a word to say. These factors, too, increase the number of variants. The two extreme positions and methods of regulation can, however, be confronted even here according to whether the constitution has been conceived as the fundamental law of "society as a whole" or that of the state machinery.<sup>4</sup> Momentous consequences are attached to this contraposition as regards both the delimitation of the social relations brought under regulation by the constitution and the regulating methods adopted by the constitution. It cannot be denied that this contraposition is to a certain degree artificial. As a matter of fact in principle every socialist constitution is the fundamental law of the state and in this sense a provision of law. Consequently in the first place and before all it has to embrace such fields as call for a legal regulation. On this understanding every socialist constitution will become the fundamental law of the state machinery as a whole and of the legal system. On the other hand every socialist constitution from the moment of the enactment of the first Soviet constitution is the constitution of society in the sense that it gives expression to the most vital institutions of society. The ratios of the "state" and "non-state" (in the narrower sense social) elements in the constitution is yet another question.

Thus for example the statement may be advanced that the Soviet constitution of 1936 and the constitutions formed on its influence have primarily in view the elements of the governmental mechanism and give prominence to this mechanism. The elements of the mechanism of society have also been formulated first of all in so far as these are relevant for the governmental mechanism, i.e. the social mechanism has been approached from the side of the governmental mechanism.

This course had its objective causes. The Soviet constitution of 1936 essentially has its roots in the second part of the constitution of 1924, i.e. the chapter defining the organization of the federal state. In addition the scope of regulation of the constitution was in general influenced by the circumstance that in the given phase of Soviet development (in and about 1936) the character of the soviets and even more the ideas formed of the character of the soviets, were in a state of transformation. Earlier the soviets were conceived as state organs also uniting the organizations of the social mechanism. In practice already in the phase following upon the termination of the Civil War the formation of the system of social organizations independent

<sup>4</sup>) The "social" or "state" fundamental law character of the socialist constitutions was extensively debated on in an international conference on constitutional law organized in Szeged, in December 1964. Cf. *A szocialista alkotmányok fejlődése* (Development of the socialist constitutions). Budapest, 1966. pp. 110 et seq. Incidentally the problem has since been brought forward on several occasions. Thus among others it was discussed in recent Soviet literature in connexion with the drafting stage of the new Soviet Constitution. Cf. КОТОК, В. Ф. — ФАРБЕРОВ, Н. П.: Конституция СССР — развивающийся основной закон общества и государства (Kotok, V. F. — Farberov, N. P.: The Constitution of the USSR — developing fundamental law of society and state). *Sovietskoe Gosudarstvo i Pravo*, 6/1973. p. 3.

of the soviets set in. However, as far as the organization was concerned the consequences of this metamorphosis were drawn first by the constitution of 1936, when it segregated the systems of the state and the social organs.<sup>5</sup> As regards the early popular democratic constitutions or the popular democratic constitutions promulgated in the first phase of building socialism (herein included all popular democratic constitutions until 1952), beyond the direct impact of the Soviet constitution of 1936, the prominent position of the state mechanism was reinforced by the circumstance that in popular democracies in this phase of their history the place and role of the social mechanism were still unsettled. Incidentally even these constitutions contained elements which pointed beyond the state mechanism. They mostly recorded the most comprehensive organizations of the social mechanism and distinguished these from associations serving private ends. Some of these constitutions formulated certain general organizational and operational principles (such as e.g. socialist democratism, democratic centralism) as fundamental principles equally valid for both the state and social mechanism. Nor can we ignore that when these constitutions formulated the functions of the given socialist state, in reality a "wider meaning" was given to the notion of the state. By "state or public" in this wider sense also the organizations of the social mechanism in the service of public ends were understood.

It cannot be argued, however, that the giving of a proper definition of the social elements was often hampered by the unsettled nature of theoretical problems associated with the appraisal of the character of the constitution as a fundamental law. These problems even today hinder the precise delimitation of the scope of regulation of the socialist constitutions, and often even the appropriate legal valuation of the constitutions or of part of their provisions. All this has also to be taken into consideration at the appraisal of the trend characteristic of the recent social constitutions, viz. that as compared to earlier constitutions the elements of the social mechanism have been taken up within a by far wider sphere in the scope of regulation. In all likelihood the unsettled nature of the relevant theoretical problems may account for the exaggerations frequently encountered in this field. Often the boundary lines between constitution and the political programme are blurred; the constitution is vigorously approximated to the party programme, a circumstance which is apt for jeopardizing its legal character.

The difficulties arising from unsolved, or at least not properly cleared, theoretical questions are even increased by the circumstance that among the theses of the socialist constitutions governing social arrangements there are in fact such as are void of any direct legal effects. These theses or provisions so to say declare social and historical facts in being, give expression to the characteristics of some of the fields of social relations, whereas the translation into reality of none of the social facts so expressed relies on the constitution. As such qualify among others the provisions

<sup>5</sup> For the details of the development of the relations of the soviets and the social organs in the various phases of the development of the Soviet State see Kovács, I.: *Az első szovjet alkotmányról* (On the first Soviet constitution). *Magyar Tudomány*, 11–12/1957. pp. 502 et seq.

relating to the leading role of the party. In the political system of socialism the leading role of the party prevails even independently of any constitutional provision. According to the Leninist principles the leading role of the party becomes a reality by way of social methods. A provision of law which would buttress up the recognition of the leading role of the party (in relation to the governmental agencies, the citizens and their organizations) with sanctions of state and law would even be impossible. Consequently the constitutional thesis declaring the leading role of the party cannot be construed so as to provide a ground for state coercion in order to ensure the leading role in question. In the same way theses of the constitution in general relating to the functions of certain social organs, their participation in governmental work, cooperation in the discharge of functions of public interest have to be qualified as statements of social or historical facts. This applies e.g. to provisions giving expression to the position occupied by the popular fronts as mass movements in the political mechanism, and so also to those defining the role and functions of the trade unions.

It is not even unlikely that in a socialist constitution rules are taken up which in the first place should be valued as moral norms rather than provisions of law. This is valid e.g. for part of the provisions defining the duties of citizens. A provision of this kind is the one which declares that every citizen is bound to do work according to his abilities. As is known in Hungary, and in general in the majority of the socialist countries, there is no general obligation to work provided by the law.

Between the two extremes of the fundamental law accepted in the "state or public" and the "social" sense there is of course a wide gamut of intermediate solutions. If we want to find a place for the Hungarian Constitution of 1949 (in particular for its provisions on the social arrangements) on this gamut, we may say that this constitutional charter is by far closer to the type of a fundamental law in the "state" or "public" sense. This circumstance has affected even the amendments introduced under Act I of 1972. First, in a certain sense circumscribed the scope within which "non-state" elements could be incorporated and the extent to which the social elements could be expanded, and, secondly, it prevented the legal character of the constitution from being dissolved in a long-range political programme. The new chapter on the social order, beyond the expression of the character of the state and the most important principles of the political set-up (the combination of the representative system and the elements of direct democracy), with due consideration to the whole network of social organizations defines the basic institutions and the most striking peculiarities of the political system. The amendment in an unambiguous and clear-cut form defines the place of the social organizations in the political system of the Hungarian People's Republic without, however, bringing under legal regulation their internal organization and functions as a whole. On the other hand as compared to the earlier text of the constitution, the restatement in a by far more differentiated manner defines the aims of general interest of political activity whose achievement is the common function of the state and social organs.

On the ground of what has been set forth the question may now be answered, what type of social relations the chapter of the constitution on the social order has brought under regulation. It could be said that the subject of regulation of this chapter comes in its totality within the field of political relations.<sup>6</sup> On the one part it expresses the institutional side of the political relations (the type and character of the state, the most prominent state and social organizational forms of the political arrangement), and on the other, approaching from the external and internal functions of the body politic, it defines the principal traits of the international relations of the state, its economic organizational, cultural educative functions. At the expense of a slight simplification we may even say that it sets the fundamental goals of the foreign policy, economic, cultural and social policy of the state.

The recent amendment of the constitution, which adjusted the wording of the Constitution so as to be in agreement with the consequences of the social metamorphosis of close to a quarter of a century, has so to say modified the two chapters on the fundamental institutions of the social arrangements nearly in all their details. The amendment has brought about changes even in the structure of the Constitution. The amended wording of the Constitution has not only extended the field of the provisions earlier split into two chapters (viz. on the political system and the social and economic arrangements) but consolidated them into a single chapter. For that matter the structural set-up has obviously been recommended by the recognition also that the provisions concerning the social arrangements are of a uniform type and on the whole define social relations coming within the scope of political relations.

2. First of all the development of the theses defining the character of the state, the class content of the state power have to be examined. What has changed and what has remained since 1949? The state was in 1949 the dictatorship of the proletariat, and has remained it to this day. The leading role of the working class prevailed at that time, and prevails today. Owing to the large-sized regrouping of society, however, the weight and role of the different classes and layers of society in the exercise of political power have changed considerably.

The Constitution of 1949, as an achievement, declared that "Hungary is a People's Republic."<sup>7</sup> "The Hungarian People's Republic is the state of the workers

<sup>6</sup> The political relations occupy a peculiar, yet precisely defined position in the hierarchical order of the various types of social relations. The analysis of the question, and even a cursory presentation of it, are outside the scope of the present study. Incidentally recent literature on the theory of state and law deal with the question from several aspects. In particular see SZABÓ, I.: *A jogelmélet alapjai* (Fundamentals of the theory of law). Budapest, 1971. pp. 41 et seq., 73 et seq.

<sup>7</sup> The amendment of the Constitution has left this designation of the character of the State unchanged. On the other hand, exactly in order to produce evidence of the development since the enactment of the Constitution specially declares that the "Hungarian People's Republic is a socialist state". As is known the designation of people's republic is not general anymore in the European popular democracies. Czechoslovakia has in her constitution of 1960 taken up the designation of "socialist republic". So has done Yugoslavia in her constitution of 1963, Rumania in hers of 1965. The German Democratic Republic in her constitution of 1968 has preserved the name of German Democratic Republic. § 1 of the constitution, however, separately declares that "The German Democratic Republic is a socialist state of the German nation". The constitution of Bulgaria of 1971 has retained the earlier designation of People's Republic with the addition that the People's Republic of Bulgaria is the socialist state of the working people of towns and country. (§ 1).

and working peasants.” (§§ 1 and 2 of the Constitution of 1949.) No special mention was made of the intelligentsia, or in general of the middle layers of society. Nevertheless the Constitution, reckoned with these too as the basis of power, namely, in point of principle, declared that “In the Hungarian People’s Republic all power belongs to the working people.” At the time of the introduction of the Constitution of 1949, however, this thesis had a double meaning. First, it gave expression to the wide alliance character of the dictatorship of the proletariat, a dictatorship embracing all layers of the working people. Secondly, making use of an “*a contrario*” argumentation, the constitutional thesis permitted the interpretation that the “non-working people”, the exploiters, had no share in the political power even if otherwise they retained formally their franchise.

Essentially this constitutional thesis was the legal basis of a number of political and economic restrictions which in the initial, transitional phase of the building of socialism had been introduced against the members of the exploiting classes. Identically the Constitution specially referred to the possibility of such restrictions also at other places, e.g. in the theses defining the economic policy of the state, or certain civic rights. (We shall revert to these on analysing the development of the relevant theses of the Constitution.) The amended constitution uses a wholly new formula, a formula more differentiated than the earlier, for the definition of the character of the state power. According to the new thesis of the Constitution the leading class of society is “the working class which exercises power in alliance with the peasantry rallied in cooperatives, together with the intelligentsia and all other working layers of society.” This new formula before all indicates the changes that have taken place in the composition and the numerical ratio of the peasantry. In 1949 55 per cent of the earning population belonged to the peasantry, by 1972 this ratio has dropped to a bare twenty per cent. The overwhelming majority of the peasantry does its work in agricultural cooperatives. Actually about 95 per cent of the country’s arable land under cultivation belongs to the socialist sector, where of 80 per cent is land cultivated by agricultural cooperatives and fifteen per cent tilled by state farms. As a matter of fact the change that has taken place in the numeric increase of the intelligentsia is at least of similar importance.

In the amended wording of the Constitution even theses preserved unchanged have gained new contents. So e.g. the thesis that “all power belongs to the working people”, after the liquidation of the exploiters as a class (to which there is a special reference also in § 6 of the Constitution) today in a clear-cut form expresses that in principle every member of society may take part in the exercise of political power with equal rights and equal chances: there is not a layer of society which would be subject to restrictions on the ground of affiliation to a definite class.

3. The provisions of the Constitution relating to the organization of the political power and its mechanism testify to a remarkable development. The Constitution of 1949, in its chapters on the arrangements of society, merely laid down the representative foundations of the body politic. It gave expression to the institutions of

direct democracy attached to the local agencies of the sovereign power, whereas on regulating the fundamental civic rights it referred within the framework of the right of association to the social organizations of the political mechanism, so e.g. to the party of the working class, the popular front, the trade unions.

This method of regulation, too, reflected the actual political conditions of the given period. At the time of the approval of the Constitution there still were a number of political parties. These were though not parties of the opposition, moreover these parties expressly recognized the leading role of the workers' party in politics. There remained, however, the question of the outlook of these parties. Should they continue their life as autonomous social organizations, so to say as organs transmitting the policy and the ideas of the working class party to the various layers of society? Should they display activities within the framework of the popular front? Or should they without proclaiming their formal dissolution *de facto* discontinue their operations? Practically this was what eventually happened. It is a historical and social fact today, that no political party other than the Marxist-Leninist party of the working class exists in Hungary. This is the *de facto* situation. There is no provision of law, however, which would lay an embargo on the operation of another political party. In like way the leading role of the working class party has to be accepted as a historically developed fact of Hungarian society. "The Marxist-Leninist party of the working class is the leading force of society", states § 3 of the restated Constitution.<sup>8</sup>

The position of the popular front under constitutional law has developed to what it is at present in a more or less peculiar form. Before the establishment of the dictatorship of the proletariat the popular front essentially functioned as the loose coalitional framework of the political parties. After the consolidation of the power of the working class the fate of the popular front was in the balance. It was even doubted whether the new mechanism of the political power *in statu nascendi* was in need of the popular front at all. And if so, what form of operation should the popular front choose? Was it sufficient that it operated only during the electoral campaign for the

<sup>8</sup> Even today the leading role of the Hungarian Socialist Workers' Party relies on the principles which following upon the reorganization of the party in the autumn of 1956 the leading organs of the party have by keeping the Leninist norms of leadership before them worked out. "Every organization and member of the party shall courageously take a stand against any attempts at the revival of the earlier sectarian, antidemocratic methods of leadership. The Hungarian Socialist Workers' Party is intent on breaking away decidedly from the old, noxious practice as well which so far was characteristic of the relations of the Party to the state organs and other social agencies. The Party does guarantee its political and ideological leading role in the activities of the state organs and in other social organs of the working people by a correct formulation of the objectives and tasks, by recommendations serving the rise of the working people and the country and not by instructions, by resolutions pronounced as binding ..." The resolution of the Provisional Central Committee of the Hungarian Socialist Workers' Party of December 5, 1956: *A Magyar Szocialista Munkáspárt határozatai és dokumentumai (1956-1962)* (Resolutions and documents of the Hungarian Socialist Workers' Party [1956-1962]). Kossuth Kiadó, Budapest, 1964. p. 21. "A question closely associated with the building of the Party is the practical enforcement of the principle that in Hungary except for party functions any public post, be it social or political, be it the lowest or the highest assignment, may be filled also by non-party persons." Resolutions of the national conference of the Hungarian Socialist Workers' Party, June 27-29, 1957, *ibid.* p. 66.

discharge of functions associated with the elections? Or on the contrary: should it be turned into a quasi-party organization with independent membership, and strong local and territorial branches, i.e. into the “party of non-party men?” Or should it become the federation of social associations? In this case its direct contact with the masses would cease and all that remained would be to coordinate the operations of other organizations maintaining direct contact with the masses. It should be noted that these variants were by no means excogitated artificial variants. All of these variants existed in the one or the other of the popular democracies in the one or the other phase of their development.

The Constitution of 1949 eventually defined the Hungarian Patriotic People's Front as the federation of social associations and it was on this consideration that the Constitution placed the Front under the control of the provisions governing the right of association. In this form, however, the People's Front did not operate at all.<sup>9</sup> Its actual framework of operation has developed through several transitional stages. Actually the Hungarian Patriotic People's Front is a social mass movement embracing the broadest layers of society, which though void of a recorded membership has strong continuously operating local organizations in general elected by the population in assemblies and indirectly formed, in like way permanently operating territorial and central organs. These organs may even take actions of their own, still they cooperate in the election of the representative organs and then in their operations. It is on this understanding that the restatement of the Constitution has defined the position and role of the Hungarian Patriotic People's Front among the fundamental political institutions of the social order.<sup>10</sup>

<sup>9</sup> It is worth while to note that within the Party of the Hungarian Working People doctrines have been formulated according to which in the political mechanism of the popular democracy developed to a dictatorship of the proletariat there is no place of the People's Front, or if not so, it has a *raison d'être* only for a brief period of transition. “The *People's Front* is necessary in the present phase of development, still it is a formation of a transient character, which in the period of transition is the intermediate step from the bourgeois democratic multi-party system to the single-party system of the dictatorship of the proletariat. The People's Front is the transmission... (in a period) when our proletarian state has not yet transgressed or shed the bourgeois democratic relics altogether” stated József Révai hardly a few days after the formation of the new type People's Front, on March 5, 1949. (The archives of the Institute of Party History 1, 1–39) quoted by SÁGVÁRI, Á.: *Népfront és koalíció Magyarországon 1946–1948* (People's Front and coalition in Hungary, 1946–1948). Budapest, 1967. p. 305. Incidentally the official position taken by the Party did not agree with this. The study published in the periodical of party greets the People's Front as the organization “guaranteeing the cooperation and the uniform leadership of the parties and mass organizations of the working classes” which may have important function for a long time. MÓD, A.: *Az új Függetlenségi Népfront* (The new People's Front of Independence). Társadalmi Szemle, 2/1949, p. 104.

<sup>10</sup> Today we may speak of the Patriotic People's Front as the peculiar form of expression of national unity which irrespective of social position, occupation or opinion unites the citizens sponsoring the objectives of the People's Front and are desirous to take part in its activities. “The Patriotic People's Front unites the forces of society for the complete building up of socialism, the solution of political, economic, cultural problems, cooperates in the election and operations of the organs of popular representation” (§ 4 [2] of the Constitution). As a matter of fact there is copious special literature dealing with the activities, development, functions of the People's Front and so also with the position it occupies in the political mechanism. For details of the constitutional aspects of the question as well see HALÁSZ, J.: *A Hazafias Népfront-mozgalom társadalmunk politikai rendszerében* (The movement of the Patriotic People's Front in the political system of Hungarian society). Allam és Igazgatás, 6/1972. pp. 481–494.

The amendment of the Constitution has taken up the trade unions also among the fundamental institutions of the political system. The Constitution, in its restated form, indicates that the trade unions discharge a duality of functions. First, they have what may be termed general functions in that by serving the interests of the community as a whole they take part in socialist construction work, safeguard and reinforce the power of the people. Secondly, within the sphere of their special functions they serve group interests, i. e. safeguard and represent the interests of their members, of the working people. The earlier wording to the Constitution laid stress only on the functions first mentioned, i. e. general set of functions of the trade unions. This formulation of the functions of the trade unions was meant to give expression to the doctrine that the trade unions could not have any functions of safeguarding interests against the socialist state embodying the power of the working people. This doctrine turned the trade unions into agencies which as their primary function transmitted the policy of the workers' party to the various layers of the wage and salary earning population. The reform of economic management introduced during the latter years, which has given prominence to the economy of production and in this connexion to the increase of the independence and higher degree of responsibility of the particular enterprises or institutions, has at the same time resulted in a greater stress on the set of functions of the trade unions implying the safeguard of the interests of their membership. Simultaneously the doctrine has been given form expressing that the trade unions cannot be considered mere agencies of transmitting policy, but organs autonomously responsible for the shaping of a policy serving the interests of the working class.<sup>11</sup>

The recent amendment of the Constitution has without changes maintained the thesis making the representative organs elected by the population the fundamental organizational form of the exercise of the sovereign power. In addition,

<sup>11</sup> As regards the functions of the trade unions the amendment of the Constitution has given a firm form to a situation already established in the practice of society of late years. Among others this is borne out by the documents of the Xth Congress of the Party. "Although the socialist state, the laws and collective agreements guarantee the rights of the working people, still the experiences of the party prove that by themselves these are not sufficient. . . Under socialist conditions of society it is necessary also that the trade unions safeguard the rights of the working collectives, of single persons, and take a stand for their daily interests. In this way the trade unions of the working class now holding power have to discharge a dual function. First, the safeguard of the all-social interests, secondly, the safeguard of the interests of the members of the trade unions and of the individual workers. (KÁDÁR, J.: *A Központi Bizottság beszámolója. A Magyar Szocialista Munkáspárt X. Kongresszusa jegyzőkönyve* (Report of the Central Committee. Proceedings of the Xth Congress of the Hungarian Socialist Workers' Party). Budapest, 1971. pp. 108–109. The XXIInd Congress of the Trade Unions analyzed this extremely complex structure of interests, within which the socialist trade unions operated, from several aspects. "Under socialist conditions it is the condition of a balanced development of society that the interest of society should be reconciled to the interests of various groups and of individuals." The Congress specially expressed that for the successful performance of the dual, i. e. safeguarding and general, functions of the trade unions the recognition "that the function of the trade unions is not only the transmission of the policy of the revolutionary workers' party to the working masses, but also their active participation in the moulding of policy. It is only in this way that the trade unions can unfold their social activities: the safeguard of the interests of the membership", was of decisive importance. (Cf. *A Magyar Szakszervezetek XXII. Kongresszusa. 1971. máj. 4–8. Rövidített jegyzőkönyv* [The XXIInd Congress of the Hungarian trade unions, May 4–8, 1971, abridged proceedings]. Budapest, 1971. pp. 18–19. Report of the National Council of Trade Unions.)

however, the Constitution refers also to the elements of direct democracy of the exercise of the sovereign power. "At the site of work and at their domicile the citizens take part also directly in the management of public affairs," states § 2 (5) of the Restatement of the Constitution. In this formulation the category of "public affairs" appears as a collective notion. It expresses the direct participation of the citizens in the exercise of public power (hereincluded the organizational forms in the first place which attached to the various public representative, administrative organs and to the judiciary invite the population to the discharge of state functions), and at the same time it is an indication of the recognition – on a constitutional level – of the institutions of democracy in the places of employment, in the factories, etc.<sup>12</sup>

4. As has been made clear earlier even viewed from the institutional side of the political relations the provisions of the Constitution on giving expression to the principal traits of the social arrangement present a rather remarkable development. The changes on the other side of the political relations, viz. the side of the rules governing the state functions and the conditions of the discharge of the state functions, are even more remarkable. Already the earlier wording of the Constitution defined the external and internal functions of the sovereign power. The development results mainly from the circumstance that following upon the laying of the foundations of socialism the state of the Hungarian People's Republic "organizes the forces of society for the complete building up of socialism" (§ 5 [1]). In the course of carrying through this principal function of necessity the scope of both internal and external functions of the sovereign power will tend to expand.

(a) The earlier wording of the Constitution dealt rather tersely with the external functions of the state or the sovereign power. It contained though provisions on the defence of the independence of the country,<sup>13</sup> still it omitted to settle the position of the country on the international plane or the trend of its foreign policy in a policy-making form. The Restatement before all makes clear the relations of Hungary to the community of the socialist countries. "Relying on the community of the socialist countries the Hungarian people has laid the foundations of socialism", states the Preamble of the Constitution. The chapter on the social order defines the international position of the Hungarian People's Republic in a clear-cut form: "The Hungarian People's Republic, as part of the socialist world system, develops and

<sup>12</sup> This method of regulation is wholly peculiar. The socialist constitutions in so far as they contain provisions on the elements of direct democracy, normally bring under regulation the field of enforcement of this democracy separately as far as the exercise of public or political power is concerned and in the framework of democracy in the factories, in the places of employment. See e.g. §§ 2 and 11 of the Czechoslovak Constitution of 1960, §§ 5 and 42 of the Constitution of the German Democratic Republic of 1968, §§ 2 and 24 of the constitution of the People's Republic of Bulgaria.

<sup>13</sup> As a matter of fact the Constitution contains at other places, and also in its earlier wording, indirect references to the external functions of the State. Thus e.g. within the economic organizing functions it mentions the increase of the defensive power of the country as an objective, on dealing with the competence of the Parliament and of the Presidential Council it refers to the right of declaration of war and signing of peace treaties, the signature of treaties and international agreements, functions associated with the country's foreign representation; in an indirect form the Constitution indicates the course of foreign policy, in the provisions dealing with political asylum.

strengthens its friendship with socialist countries; in the interest of peace and human progress it strives for cooperation with all peoples and countries of the world.” (§ 5 [2]).

The special stress laid on the international relations existing with the socialist countries is a peculiarity of the latest socialist constitutions. On the whole similar provisions have been taken up in the Constitution of 1968 of the German Democratic Republic. Accordingly: The German Democratic Republic, conforming to the principles of socialist internationalism, fosters and develops the all-round cooperation and friendship with the Union of the Socialist Soviet Republics and the other socialist states.” (§ 6 [2]). The Bulgarian constitution of 1971 partly in its Preamble, partly in its first chapter refers to the reinforcement of “cooperation, alliance and friendship” with the Soviet Union and the socialist countries. (Section 3 [1]). In addition on describing the social and economic system of the country the constitution specially declares that “the economy of the People’s Republic of Bulgaria develops as part of the socialist economic world system”. (§ 13 [3]).

(b) At the time of the introduction of the Constitution of 1949 Hungary made the first steps only on the path leading to the creation of a socialist system of economy. Consequently the Constitution, beyond proclaiming the social ownership of the bulk of the means of production, confined itself essentially to the formulation of programmatic rules as regards the functions of the State in organizing the country’s economy. The Constitution took the multisectoral structure of economy for granted and showed the coexistence of the ownership of the means of production by society and by the exploiting classes. At the same time it drew the outlines of an economic policy having as its goal the gradual elimination of the exploiting classes from economy. At the time of the approval of the Constitution the policy to be continued towards small-scale producers of goods had not yet been defined with the required clarity. Consequently, even the Constitution did not sharply distinguish between the private ownership of small-scale producers of goods and the private ownership of an exploiting characters. This was a period when the criteria for a delimitation of small-scale private property and personal property had not yet been formulated as well. On the other hand within the sphere of social property the Constitution drew too rigid and sharp lines between state and cooperative ownership. Setting out from the idea of “the higher order” and “more consistently socialist character” of state ownership and the “transitional” character of cooperative ownership the Constitution exaggeratedly extended the sphere of economic activities exclusively reserved for state organizations, a sphere namely where even the operation of cooperatives was suppressed.

As regards economic management the Constitution was satisfied with defining the principle of a planned economy and also its guarantees. It omitted to delimit the functions of the economic units (i. e. the enterprises) and of the administrative agencies directing them. It was for this reason that no provisions were taken up on the

autonomous responsibility of the enterprises and the units directly engaged in economy or on guarantees reinforcing this responsibility.

This presentation of the characteristic traits of the regulation of 1949 at the same time pegs out the path of further development. The restatement of the Constitution of 1949 as a result states the liquidation of the exploiting classes of society and the predominance of the socialist relations of production (§ 6 [1]). The disappearance of the exploiters as a class, the domination of socialist relations of production and the liquidation of exploitation are but links closely knitted together, yet not necessarily coinciding, in the same process. This is borne out also by developments in Hungary. The disappearance of the exploiters as a class of society was e. g. declared by the VIIth Congress of the Party, as early as in 1959,<sup>14</sup> whereas the predominance of the socialist relations of production was proclaimed only following upon the socialist reorganization of agriculture.<sup>15</sup>

The amendment of the Constitution in the form of a principle declares that the State "develops and protects all forms of social ownership". (§ 6 [2]). This formulation of governmental policy in respect of social ownership deserves attention for several reasons. Before all it indicates that even in the present phase of development the Hungarian Constitution sets out from the thesis of a coexistence of the various forms of social ownership and as far as the protection and development of property is concerned does not distinguish between the types of social property. As is known the positions adopted in this question are far from being uniform in the several socialist countries. In the Yugoslav Federal Socialist Republic only the property of the people as a whole has been recognized as social property and the enlistment of any type of group property in the sphere of social property has been precluded.<sup>16</sup>

Incidentally the text of the Constitution does not determine the sphere of forms of property which may be recognized as social. It cannot be argued, however, that the Constitution defines State and cooperative property as the fundamental

<sup>14</sup> "During the latter decade we have liquidated the capitalist and seigniorial classes" declares the resolution of the VIIth Congress (November 30 – December 5, 1959). See: *Az MSZMP határozatai és dokumentumai (1956–1962)* (Resolutions and documents of the Hungarian Socialist Workers' Party [1956–1962]). Budapest, 1964. p. 388.

<sup>15</sup> For the first time the resolution of the Central Committee of the Hungarian Socialist Workers' Party (September 12, 1961) on the second development plan of national economy development declared: "In all branches of our national economy socialist production relations have become predominant." See *ibid.* p. 500. The amendment of the Constitution of 1972 essentially uses the same formula, i. e. one in conformity with a situation which has become established more than a decade before. For that matter there are substantial differences between the constitutions of the popular democracies in this respect. The Rumanian constitution of 1965 at the corresponding place speaks of "the definitive termination of exploitation of man by man" (§ 5), whereas according to the Bulgarian constitution of 1971 "the economic system is a socialist one", "it precludes the exploitation of man by man and develops in the direction of a communist economy according to plan" (§ 10).

<sup>16</sup> For details see Kovács, I.: *A társadalom gazdasági berendezkedése és az alkotmány jog* (The economic arrangements of society and constitutional law). *Gazdaság és Jogtudomány*, IV. (1970) pp. 408 et seq.

forms of social property. This is what unambiguously appears from all other relevant provisions of the Constitution. Nor is there any doubt as to the qualification of joint property of the state and cooperatives, or of cooperative organizations as social property. The situation of the property held by social organizations or associations is by far not defined in this clear-cut form. Obviously the property of social organizations not governed by the law of associations has to be classified as social property in its entirety, and in all likelihood also the property of associations governed by this law has to be assigned to this category. This may be stated even if we know that the provisions of the particular branches of law make certain distinctions as regards the property of these two types of social organizations. This opinion is supported also by the regulation of the Hungarian Civil Code (Act IV of 1959). Accordingly unless the law provides otherwise the provisions governing cooperative property (i. e. one of the generally recognized fundamental types of social property) have to be applied to the property relations of both social organizations and associations (§ 179 [2]). A relatively wider concept of social property has the support of socialist legal and in particular economic literature. Literature in the majority of the socialist countries almost unanimously agrees on a concept assigning group property in the socialist countries to the category of social property.

Also it should be remembered that a comparison of regulations incorporated in the several constitutional charters provide by far fewer guiding marks as regards the extent of social property. E. g. the majority of the socialist constitutions avoids the use of the category of social property, at least as a collective notion. The Soviet constitution of 1936 e. g. provides of the socialist ownership of the means of production and not of social property. It refers to state and cooperative property as the two types of socialist property and not as social property.<sup>17</sup> In the first popular democratic constitutions the use of the term of social property as a collective notion was out of the question. The Hungarian Constitution of 1949 was the first to provide of social property as a general category embracing the various forms of state and group property. In this respect the Rumanian constitutions of 1952 and 1965 rely in their entirety on the pattern worked out in the Soviet constitution of 1936. Interestingly as regards its essence the regulation taken up in the constitution of 1968 of the German Democratic Republic also adheres to the path marked out by the Soviet constitution of 1936. Still it departs from the Soviet regulation in so far as in addition to state and cooperative property it refers to the property of the social organizations as a type of social property.<sup>18</sup>

<sup>17</sup> Cf. 5 of the Soviet constitution of 1936.

<sup>18</sup> For a better understanding of the particular forms of property coming within the scope of socialist property in the following the relevant provisions of the constitution of the German Democratic Republic will be quoted verbatim: "§ 10 (1): "Das sozialistische Eigentum besteht als gesamtgesellschaftliches Volkseigentum, als genossenschaftliches Gemeineigentum werktätiger Kollektive sowie als Eigentum gesellschaftlicher Organisationen der Bürger."

The notion of social property has been defined in the Czechoslovak constitution of 1960 and in the Bulgarian constitution of 1971 in a manner on the whole uniform with the definition of the Hungarian Constitution.<sup>19</sup>

The provisions of the Hungarian Constitution of 1949 dealing with state property are merely reflections of the uniform process of the genesis of socialist state property. Practically the uniform state property came into being only following upon the enactment of the Constitution, or at least the process of the birth of uniform state property could be regarded as concluded only with the enforcement of the provisions of the Constitution. An example for this was the merger of communal property in the uniform state property.<sup>20</sup> Neither can the statement be made unequivocally that at the enactment of the Constitution this development could already be foreseen. As a matter of fact in the Constitution by the side of state and cooperative property the property of public bodies or communities was dealt with as a sub-special of social property. Undoubtedly in the period under review this form of property referred not only and not in the first place to communal property. Notwithstanding the statement may be made that the recognition of the property of public bodies or communities on a constitutional level could have provided the legal framework for the integration of communal property into the system of forms of socialist property as developed in Hungary without recourse to an amendment of the Constitution.<sup>21</sup>

<sup>19</sup> According to § 8 of the Czechoslovak constitution of 1960 "socialist social property has two fundamental types: state property (national assets) and cooperative property (the property of the people's cooperatives)". In a manner analogous to the formulation of the Hungarian constitution this formulation also omits the property of social organizations as a special form of social property, still because the constitution explicitly refers only to the fundamental types of social property, it implicitly recognizes also the other forms of social property. Relevant literature for that matter enumerates the property of social organizations among social property. The Bulgarian constitution of 1971 uses a specific way of regulation. On defining the socialist character of the economic order the Constitution refers to the social ownership of the means of production (§ 13). Then without any classification it enumerates the forms of property existing in the People's Republic of Bulgaria, viz. state and cooperative property, the property of social organizations and personal property (§ 14). Then it declares the unified state property (as all-national property) the form of highest level of *socialist property*. It specially points out that the existence of state property defines the socialist character of both cooperative property and that of social organizations. Accordingly the constitution declares special protection only of state property. Finally the constitution reverts to social property as a collective category. Within the article on state and cooperative property and the property of social organizations the constitution declares that "the forms of social property develop continually and approximate one another in order to develop to uniform, all-national property".

<sup>20</sup> At the time of the enactment of the Constitution property of the self-governing units or communal property was still known. Act X of 1949 only a few months before the enactment of the Constitution provided of the communal enterprises as enterprises in the ownership of "municipalities, further of municipal, communal self governments" by the side of enterprises in state ownership. The Act emphasizes the socialist character of the enterprise. At the same time it draws a line between the property of the self-governing units and state (national) property. The introductory decree of the Act, in the autumn of 1949, decreed the reorganization of enterprises in the ownership of self governing units into communal enterprises (Decree 4311 (4311/1946, [XI. 12]) 1949 (XI. 12.) of the Council Ministers. The communal enterprises were with the termination of the duality of public administration (state and municipal) and the birth of the unified system of organs of state power and administration built upon the local councils merged into the uniform state property. The process was closed with the promulgation of the uniform legal rule on the state enterprises (law-decree No. 32 of 1950 – August 6, 1950).

<sup>21</sup> On another occasion we have dealt in detail with the meaning of the category of communal property in the Soviet Union, a form which lived till 1930. Among others we have indicated its effects on the modern regulation of landed property. (Cf. Kovács I.: *A társadalom gazdasági berendezkedése és az alkotmányjog* (The economic arrangement of society and constitutional law). *Gazdaság és Jogtudomány*,

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Actually, however, there is no more doubt that soon following upon the enactment of the Constitution of 1949 the unity of state property could be regarded as definitive and consolidated as regards both the object and subject of this property. On the other hand it cannot be argued that in certain phases of socialist construction work exaggerated consequences were attached to this unity which pointed by far beyond the guarantees needed for the unity of state property. This accounts for why during the latter years the question of the appropriate interpretation of the unity of state property has come to the fore in two respects. In the preparatory stage of the economic reform, then later, when the self-government of the councils was on the agenda, the problem of the distinction of the so-called budgetary assets at the disposal of the administrative agencies within state property, further of enterprisal assets, and still later of communal and municipal assets emerged on several occasions. For that matter the amendment of the Constitution has settled the still open questions even here. In the Restatement of the Constitution expression has been given to the thesis that in the present phase of socialist development neither the reinforcement of enterprisal autonomy nor the guarantee of the self-government of the council can affect the unity of state property. In the given case the settlement of any questions consists in neither the further differentiation of the forms of ownership nor even the recognition or non-recognition of the several sub-species of state property, but in a structure of the system of economic management and its methods which guarantees an autonomy for both the enterprises and the local government councils representing certain territorial units in harmony with their functions in respect of the utilization of state property entrusted to their care. This essentially political recognition has been given expression in the provisions of the chapter on the social order which declares that the state enterprises and economic organizations in the service of the general interests of society manage the assets entrusted to them autonomously in the manner and with the liability as provided by the law. (§ 9.) Among the guarantees of the self-governing rights of the councils the thesis that the councils "manages its material means independently" (§ 43) on the whole expresses the same idea.

Further two amendments affecting state property also come within the scope of economic management. Namely the one which narrows down the sphere of objects

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IV. (1970) pp. 422 et seq.) Beyond this let it be mentioned that the institution of communal property, which existed earlier, influenced even the provisions of the Constitution of 1936. Thus it is by no means accidental that the constitution specially enumerates the communal public utilities and the municipal housing funds among the exclusive objects of state property. As a matter of fact earlier these were special objects of communal property. It should be remembered that at the time of the enactment of the Hungarian constitution of 1949 the Czechoslovak constitution was the only of all socialist constitutions in force which made mention of communal property. The way how the constitution integrated communal property into the system of socialist property is a matter of special interest. Accordingly it was the State that as a rule disposed of national property. The part of national property void of any all-national interest and wholly or mostly serving the interests of the inhabitants of an administrative unit, municipality (commune, district, region) belonged to the organs of popular administration (communal property). (§ 149 of the constitution of 1948.) Incidentally communal property ceased to exist in Czechoslovakia and was merged into the uniform state property already in 1950. Cf. KNAPP, V.: *A tulajdon a népi demokráciában* (Property in popular democracy). Budapest, 1954. p. 139.

of property (and economic activities) directly defined by the Constitution and exclusively reserved for the State and refers the specification of these objects to special legislation respectively. The amendments also imply the widening of the guarantees of planned economy. Earlier the Constitution in the first place included these guarantees in the provisions governing state property, whereas the Restatement includes in these guarantees even such as come within the scope of cooperative property.<sup>22</sup>

Whereas the provisions governing state property have been expressed in association with the system of economic management, the provisions relating to cooperative property have been embedded in the cooperative development scheme launched by the government. Here the far-reaching amendment of the thesis of the Constitution is explained by the circumstance that in 1949 (the year of the enactment of the Constitution) the cooperative movement made its first tentative steps only. In this phase of socialist metamorphosis mainly the political functions of the cooperative movement, characteristic of the period of transition, came to the fore, i. e. the enlistment of the small-scale producers in the camp of socialist development, the gradual carrying over of this layer of society to the forms of collective production. Accordingly the Constitution in the first place testifies to the process as the outcome of which the association of the broadest layer of small-scale producers, viz. the peasantry, in newtype agricultural cooperatives has unfolded itself. Besides by giving expression to the policy of the State to promote every genuine cooperative movement directed against exploitation, recognition has been given to artisans' and homecraft, purchasing, sales and consumers' cooperatives of earlier date, yet in a process of metamorphosis. In the period under review voluntariness, suppression of exploitation, in this connexion the stress laid on the work of the members of the cooperatives in cooperative operations and the state support of the cooperatives embodied the principles of the socialist cooperative movement as formulated in the Constitution.

This period of transition of the cooperative movement has come to an end. Now that this period has come to an end of necessity a change has taken place in cooperative policy which instead of laying stress on the transitional (mainly political) functions has before all sponsored the cooperatives as long-lasting economic associations or undertakings, being justified even after the foundations of socialism have been laid down. Essentially the features of the cooperatives as large-scale enterprises of socialist economy akin to those of state enterprises come into prominence with the difference, however, that the cooperatives have preserved and even added to their traditional traits, viz. the voluntariness of association, the participation of the member in the management of the cooperative (i. e. the institutions of cooperative democracy), and the self-government of the cooperative. In addition to economic

<sup>22</sup> Act VII of 1972 on national economic planning is directly built upon the Constitution and realizes its relevant provisions.

functions the socialist cooperatives discharge also others. Thus in general they stand for the interests of their members, contribute to the shaping of the socialist way of living of their members.

The priority given to economic functions, the relations of these to other functions of the cooperatives, further the extension of the role of typically cooperative institutions have been defined in a complex form by Act III of 1971 on cooperatives.<sup>23</sup> The drafting stage of the act, its enactment and promulgation (October 2, 1971) on the whole coincided with the drafting state of the amendment of the Constitution. This explains why the Constitution, though in another setting and by laying stress on the long-range scheme, essentially sums up the same principles.

The amendment of the Constitution gives expression also to the changes that have occurred in the state supervision of the cooperative movement. As is known, in the first phase of the development of the socialist cooperative movement stress was laid mainly on the state direction (and not supervision) of the cooperative movement. In addition to extensive supervisory powers embracing cooperative activities as a whole the state agencies had expressed directing rights in several scopes of cooperative operations. The system of state direction was even reinforced by the fact that the regional and all-national associations, federations of cooperatives of a variety of types acted not only as representative agencies of interests of the cooperatives, but exercised also rights otherwise vested in public authorities exactly in the field of cooperative management. With the exercise of these functions the federations came to be integrated into the hierarchical system of the public administrative machinery. We cannot even ignore that in fields where federations or associations of cooperatives were non-existent (e.g. in the system of agricultural cooperatives) the local governmental agencies, the councils and their administrative organs at the same time exercised the rights of federations of cooperatives. As the outcome of development since taken place, first, in all fields of the cooperative system national federations of cooperatives have become established. These are active exclusively as the representative agencies of interests of the cooperatives: their functions as public authorities have ceased to exist. This development is by itself a strong guarantee of cooperative autonomy. Secondly, it is the law that defines the extent of the supervisory rights of governmental agencies. This development has found expression also in the restate-

<sup>23</sup> "§ 1 The cooperative shall be a community constituted voluntarily by the citizens carrying on, with the personal and proprietary participation of the membership, enterprise economic and social activity which shall discharge its functions on the basis of socialist cooperative property and democratic self-government as a juristic person.

"§ 2 (1) The economic purpose of the cooperative shall be the furthering of the membership's material welfare as well as a planned and profitable cooperation in-satisfying society's manifold requirements.

(2) The social purpose of the cooperative shall be the developing of the membership's socialist way of life and thinking and serving its interests.

"§ 3 The Hungarian People's Republic shall recognize the freedom of cooperation aimed at an economic activity free from exploitation; it shall support and protect cooperatives which shall constitute organic parts of the socialist social and economic system."

ment of the Constitution, which declares that "The State ... guarantees the autonomy of the cooperatives and exercises supervision over their activities for the enforcement of the principles of socialist cooperation"<sup>24</sup> (§ 10 [2]).

The amended wording of the Constitution also indicates the preferred position agricultural producing cooperatives enjoy within the cooperative movement. "The Hungarian People's Republic pays particular attention to the agricultural cooperatives of the peasantry. It protects and promotes the cooperative socialist ownership of the land"; states the Constitution (§ 10 [3]).

The Restatement of the Constitution, in harmony with the development since 1949, brings under regulation separately personal property and the property of small-scale producers. The constitutional regulation of these two types of property is rather tersely worded. No special provisions have been taken up as regards either the objects or the subjects of these two types. This economy of words does perhaps suggest that here we have a case of forms of property for the long run at least still in a state of flux. It is this state of affairs which a comparison with the relevant provisions of the Soviet, and other popular democratic constitution in force suggests as well.

Constitutional regulation goes into somewhat more details as regards the property of small-scale producers. Accordingly the Constitution "recognizes the socially useful economic activities of small-scale producers. However, private property and private initiative must not be prejudicial to the interests of the community." (§ 12). From this way of regulation (compared to the most important effective rules governing small-scale production) certain general conclusions may directly be drawn which throw a light on the contents of the theses of the Constitution. First, the Constitution does not recognize small-scale producing property as a special category of property: it considers it private property, or in the parlance of the Civil Code, small private property. Secondly, the Constitution does not distinguish between peasants tilling their landed property individually and other small-scale producers. Undoubtedly at present provisions of law of a lower order in many respect indicate this differentiation, Constitution, however, does not put up obstacles to a complete

<sup>24</sup> Apparently this formulation of the state supervision of cooperatives is more comprehensive than the scope of state supervision of lawful operation as laid down in the Cooperative Act. Accordingly the state agencies in charge of supervision may merely make sure whether or not *a)* the statutes of the cooperative or its representative agencies, or any other domestic regulation, conform to the provisions of law; *b)* the operations of the cooperative and the decisions of its agencies are in agreement with the provisions of law, the provisions of its statutes and of other domestic regulations. This supervision does not, however, extend to the examination of the economic operations of the cooperative from the point of view of economic expediency, or to such concrete matters where a lawsuit connected with cooperative membership is allowed. (The provisions on the supervision of legality for that matter do not affect the controlling competence of the procurator's office and of the agencies in charge of people's control. § 113 of Act III of 1971.) Undoubtedly the theses of the Constitution lay stress on the supervision for the observance of the principles of socialist cooperatives and in this respect do not distinguish between the economic or other activities of the cooperatives. The contradiction is, however, not a real one. As a matter of fact the principles of socialist cooperatives have been taken up in the Cooperative Act itself. Supervision for their observance or non-observance obviously remains the right of the authorized state agencies also in specially economic activities. As a matter of fact in reality here there would be a case of the valuation of the activity for its legality and not for its economic expediency.

identification. Finally the statement may be advanced that at present neither the Constitution nor any other legal regulation regards small-scale producing individual activities or the pursuit of any other economic activity of a non-exploiting nature as a subjective right. The constitution recognizes small-scale production only if it is socially useful and necessary.

(c) The rules which at the primary and secondary distribution of the national income by defining the long-range policy-making principles and in a way attached to the economic-organizational and cultural-educative functions of the State lay down the principles of the public health, social and cultural policy of the State constitute a special group of the constitutional provisions on the social order.

Obviously the primary distribution of the national income is affected by the provisions incorporated in § 7 of the Constitution. Accordingly the fundamental objective of economic planning is the development of the forces of production, the increase of social property, the systematic improvement of the material and educational standards of the citizens, and the strengthening of the defensive forces of the country. Incidentally these theses of the Constitution are in complete agreement with the wording of the relevant provisions of the Constitution of 1949. The principle of distribution by work done has also remained unchanged in its essence. Neither does the restatement declare that the principle of socialism has already become established in the distribution of the goods produced. It indicates, however, that the State is making efforts consistently to translate the principle of socialist distribution into reality.

As new elements theses on the protection of the institution of matrimony and the family, the socialist education of youth, the safeguarding of the interests of youth, the hygienic and social care of the citizens, science and art policy, the improvement of the educational standards of the citizens have been taken up in the provisions governing the social order. Most of these theses appear also in the earlier wording of the Constitution, in the chapter bringing under regulation the fundamental rights of the citizens, within the set of provisions declaring the economic, social and cultural rights. The Restatement testifies to the recognition that the economic, social and cultural rights as defined by the socialist constitutions have a duality of contents. That is to say, from one aspect, as fundamental institutions of the social arrangement, these are provisions obligating the governmental, and eventually social agencies, to provide the necessary material means for the enforcement of individual rights, from an other aspect these are individual rights, themselves, for the satisfaction of definite economic, social and cultural needs. This duality of contents is better met by a method of regulation which displays the first aspect among the rules governing the social order, whereas other relations are included in the fundamental rights.<sup>25</sup>

<sup>25</sup> For details see: *Az állampolgárok alapvető jogai és kötelességei* (Fundamental rights and duties of the citizens). (Edited by HALÁSZ – KOVÁCS – SZABÓ) Budapest, 1965. pp. 21 et seq.

## III

1. Coming to the constitutional theses associated with the development of the state organization we have to remember before all that at the time of the Constitution of 1949 only the central organs of the state were in a somewhat consolidated state. (The further development of the Constitution, however, affected also these organs.) All other elements of the state organization have been given an institutional form by legislation enacted on the ground of a schedule laid down in the Constitution itself. This explains to some extent why the amendments of the Constitution approved since 1949 are in general associated with the introduction or the development of certain institutions of the state organism. In the following the central organs, then the local agencies, finally the constitutional development of the Judiciary and the Procurator's Office will be reviewed one by one.

2. The supreme representative organ i.e. the parliament or diet was before the enactment of Constitution of 1949 integrated into the system of the central organs of the sovereign power substantially within the framework characteristic of the *regime* of parliamentary republics, on the principle of the separation of powers. I.e. Parliament as legislative organ shared the exercise of the supreme power with the President of the Republic as the head of the executive. This statement will hold its own even when it is admitted that Act I of 1946 settling the relations of Parliament and President, guaranteed the preponderance of the legislature with greater efficacy than anyone of the most democratic western bourgeois parliamentary republics. With the enactment of the Constitution, on the principle of the unity of the sovereign power, (this being one of the cardinal principles of the state organization in the majority of the socialist countries), Parliament became the exclusive depositary of the sovereign power.<sup>26</sup> Pursuant to the Constitution Parliament ceased to be simply the organ of legislation: it was vested with the right of directing and controlling the state organization as a whole and within it the Government and so also the central administrative organization. It cannot be denied, however, that within the new legal framework the activities of Parliament began to unfold themselves in a more or less protracted manner. Parliament earlier operating on a multi-party system was at a loss when it came to find its place in a political system practically built up on a single party. This was the case even if it is ignored that the years following upon 1949 did not favour anyhow the development of representative organs elected on democratic principles. Finally following upon the XXth Congress of the Communist Party of the Soviet Union, within a scheme having the development of socialist democratism as its goal, Parliament could in its resolution No. 1 of 1956 outline the forms of activity and

<sup>26</sup> In a more precise formulation: following upon the enactment of the Constitution from the date onwards when the Parliament elected the Presidential Council of the People's Republic for the first time, Parliament became the exclusive holder of the sovereign power. On the basis of the Act XXI of 1949 on the provisional arrangements associated with putting into force the Constitution this took place on August 23, 1949.

also the organizational forms which helped it to become an active participant in the supreme management of political life. The expansion of the activities of Parliament since then could to the latest time take place within the framework of the Constitution enacted in 1949. However the amendment and restatement of the Constitution as laid down in Act I of 1972 have changed the provisions governing the legislature, too.

As the outcome of development which has taken place since 1949 actually four principal functions of the Parliament may be distinguished, viz. the political, legislative, controlling and organizational functions. In the following discussion we shall impart an idea of the development of the Constitution as adjusted to these four principal functions of the Parliament.

Of these four functions, the justification of the first, viz. the what is called political, has remained a moot question to this day. Essentially this function was defined by Resolution No. 1 of 1956 in a way that beyond the particular Bills "also all questions of nation-wide importance have to be put on the agenda of Parliament whose settlement defines the development of the economic, cultural, political life of the country". The concrete form of the discharge of this function is the debate on political programmes and development schemes affecting state activity as a whole or certain branches of it, and on the ground of this debate the approval of resolutions binding the state agencies responsible for their enforcement. The growth of the political functions of Parliament is borne out by the circumstance that Parliament discusses the government programme, debates on the bill of the national economic plan and the annual budget estimates, in certain cases on the long-term development schemes of particular administrative or economic branches,<sup>27</sup> and the passing of resolutions on these subjects. This function has been affected by the latest amendment of the Constitution in so far as it expressly decrees the presentation of, and the debate on, the government programme to the plenary session of Parliament. In like way the political functions include the issue of resolutions of Parliament in international matters, or in general the functions of the Parliament concerning international relations. (In the new rules defining the competence of Parliament special stress has been laid on these functions.) Finally the political functions of Parliament also embrace the activities of the county groups of members. Since among the members there is a large number holding important state or social posts, the activities of these groups of members partly directly influence the developments in local politics, and, partly, indirectly react on the political functions of Parliament as a whole.<sup>28</sup>

<sup>27</sup> It is within this scope that e.g. the provisions of Act VII of 1972 on national economic planning according to which Parliament debates on the principles of the long-range national economic plan and decides on their approval, has to be valued; in the debate on the state budget Parliament reviews the estimates of the annual national economic plan and regularly obtains certainty of the yearly execution of the plans (§ 18).

<sup>28</sup> Until of late only Resolution No. 1 of 1956 of the Parliament contained provisions on groups of members and their operation. In the recent amendment of the standing orders of Parliament the most important provisions regarding the groups of members have become part of the standing orders. Cf. Resolution No. 6/1971-75 of Parliament § 55.

A number of papers have analysed the legislative functions of Parliament, their development and their relations to the substituting competence of the Presential Council of the People's Republic.<sup>29</sup> In this connexion it should be remembered, however, that the latest amendment of the Constitution in particular with the extension of the scope of legislation as defined by the Constitution, has contributed remarkably to the development of the legislative functions of Parliament. The scope of legislation has been extended partly by implication, when the competence of the Parliament has been defined without reference to separate legislation, partly explicitly when certain subjects of regulation have expressly been referred to legislation. Even in its original formulation the Constitution has embraced a number of subjects coming within the scope of its legislative powers. In addition each new act at the same time amounts to the extension of the scope of legislation. Still the provisions of law expressly defining new subjects of legislation deserve special attention. In particular two provisions of law enacted since the introduction of the Constitution of 1949 should be stressed upon particularly. The one is law-decree No. 26 of 1954 which declares that "New criminal offences cannot be established unless by an Act of the Parliament or a law-decree". (§ 3.) The extension of the legislative powers of Parliament was expressly purposed by the provision of Resolution No. 1 of 1956 of Parliament according to which "Any question of fundamental importance affecting the totality of the working people shall be brought under regulation by an Act of Parliament. Accordingly the extension or legislative activity is indispensably necessary in a sense that the provisions of law affecting the fundamental rights and essential duties of the citizens shall be enacted in the form of Acts of Parliament". (Chapter II, 1.) The amendment of the Constitution by Act I of 1972 has taken up the gist of this provision in the Constitution. "In the Hungarian People's Republic, an Act of Parliament establishes the rules applying to the fundamental rights and duties of the citizens", states § 54 of the Restatement of the Constitution.

By leaving earlier provisions unchanged the Constitution establishes the following new subjects of legislation: in Chapter I the objects of exclusive state ownership, the scope assigned to exclusive state activities, the autonomous responsibility of the state enterprises and its guarantees; in Chapter II the approval of the enforcement of the Budget Act; in Chapter III the legal status of the members of the Council of Ministers and secretaries of state and the manner of calling them to account; in Chapter V the rules relating to the Judiciary, and separately rules stating the causes of recalling judges and the method of the election of professional judges; in Chapter VI the rules relating to the office of the Procurator; in Chapter VII the fundamental rights and duties of the citizens and in addition to the general provisions the Constitution specially mentions the right of association; in Chapter VIII beyond the rules relating to the election of the members of the Parliament and their recall, and which

<sup>29</sup> In particular see: Kovács, I.: *A törvény és a törvényerejű rendelet problematikájához* (To the problems of the Acts and law-decrees). *Állam-és Jogtudomány*, 3/1973. pp. 333–394.

according to the earlier wording were also subjects of legislation, the Constitution specially emphasizes the rules of the election and recall of the members of the councils and the cases of disfranchisement.

Closely related to the matter of the legislative functions is the extension of the sphere of agencies vested with the right to initiative legislation. Such newly added agencies are the parliamentary committees (§ 25 [1]).

Since the enactment of the Constitution of 1949 the controlling functions of the Parliament have developed considerably. This development is fairly well indicated by the several amendments of standing orders of Parliament, although some of them required also the simultaneous amendment of the Constitution. The principal elements of this development are as follows: the reinforcement of the right to put questions (interpellations), a right in the initial phase of development hardly made use of; the growth of the parliamentary committees earlier discharging mainly functional duties and with activities restricted to the preparation of the sessions to permanent committees vested with extensive controlling and advisory powers, regularly operating between two sessions of Parliament and embracing all scopes of governmental work (this metamorphosis of the committees has also been given expression in the Constitution); the reports addressed to the plenary session of Parliament by the government, or in certain cases by its particular members, by the Procurator General, and the President of the Supreme Court. The recent amendment of the Constitution has even widened the controlling functions by entrusting to Parliament safeguarding the constitutional order of society (§ 19 [2]), the control of the observance of the Constitution (§ 19 [3]). As a guarantee the Constitution expressly provides for the possibility of annulment by Parliament of measures of the state organs conflicting with the Constitution or violating the interests of society.<sup>30</sup>

By organizational functions the functions of Parliament are understood implying the formation of its internal organization and the creation (election, recall) of the principal state organs. These functions have not been affected by the amendment of the Constitution.

3. There have not been any changes in the development of the Constitution concerning the status of the Presidential Council of the People's Republic taking care of the continuity of the exercise of the supreme power when Parliament is not in session. By virtue of the constitution of 1949 the Presidential Council discharges a duality of functions, viz. first, it operates as collective Head of State, secondly, except for a few matters, it acts as a substitute for the Parliament during its recesses, however, with the obligation to render account subsequently of this activity.

The recent amendment of the Constitution has carried through no changes as well in the organization of the Presidential Council and in its relations to the Parlia-

<sup>30</sup> This provision at the same time extends the scope of functions of the parliamentary committees. As a matter of fact the amended standing orders among the functions of the permanent committees mentions their obligation continually assist Parliament in the securing of the constitutional order of society. (§ 15 [3] of the parliamentary resolution No. 6/1971-75.)

ment. On the other hand a few noteworthy amendments have been carried through in the provisions defining the competence of the Presidential Council. Part of these amendments has adjusted the constitutional provisions to the actual practice. Among these is the assignment of the granting of public pardon, or the foundation of orders or decorations to the competence of the Presidential Council of its own. Even before these functions were usually discharged by the Presidential Council, still in its capacity of a substitute of Parliament. In this connection, yet for just the opposite reasons, we have to mention the amendment which has withdrawn from the Presidential Council the direction of the local councils as organs of state power. The Presidential Council in reality has not exercised this right. Even under the National Defence Act (§ 7 of Act IV of 1960) the Presidential Council had to establish and proclaim "a state of grave danger menacing the security of the State, and its cessation". This competence of the Presidential Council has also been taken up on the Re-statement of the Constitution (§ 31 [2]).

New competences of significance have been conferred on the Presidential Council as regards the observance of constitutionality. The Presidential Council has powers of constitutional supervision, as powers of its own, to an extent almost congruous with similar powers of Parliament. "The Presidential Council watches over the enforcement of the Constitution. Within this competence it may annul or modify any legal rule, administrative decision or measure contrary to the Constitution." (§ 30 [2]). This provision implies the right of the Presidential Council to take the initiative in cases where the Constitution has been infringed by the default of anyone of the agencies rather than by an act. (E. g. the agency concerned fails to draft provisions of law necessary for the enforcement of the Constitution or fails to take action in cases where otherwise it would have to proceed against unconstitutional actions.) The conditions and procedural order for the exercise of the competence granted under this article of the Constitution have been laid down in the standing orders of the Presidential Council.

The Presidential Council exercises special powers in the field of the constitutional supervision over the councils. Within this sphere the Presidential Council sets the date for the general election of the councils, dissolves the council whose operation conflicts with the provisions of the Constitution, or gravely imperil the interests of the people, further it takes care of the safeguard of the rights of the councils (§ 30 [3]). The functions following from the Presidential Council's rights to safeguard the rights of the councils deserve special elucidation. In this connexion reference has to be made to the difference existing between the formulation of the relevant provision of the Council Act and the wording used by the Constitution. According to § 71 of the Council Act the Presidential Council takes care of the safeguard of the rights of the councils not in general, but of the safeguard of the "self-governing rights" of the councils. The difference between the formulation is justified in so far as the Constitution, as amended following upon the enactment of the Council Act, could give a more precise formulation to the safeguard of the rights of the councils. Namely as for

its contents the self-government of the councils is embodied by the rights of the councils defined by the legislation. On this understanding the statement may be made that the formulation of the Constitution is of greater accuracy in a sense that the provision of the Constitution extends to the safeguards of the autonomy of the council as defined by the Council Act as well as to those finding expression in other legislation.

Finally a new right of significance has found expression in the new provision of the Constitution according to which "In the event of war or danger gravely menacing the safety of the State, the Presidential Council may institute a Council of National Defence vested with extraordinary powers" (§ 31 [1]). The Constitution does not provide for the limitation of the extent of the extraordinary powers. It follows from the whole structure of the state organization, however, that these powers cannot extend beyond those of the Presidential Council.

4. As the result of a process set in after 1945 gradually the organization and competence of the Council of Ministers had become established which then received their statutory definition in the Constitution of 1949. Before 1945 the Council of Ministers had been integrated into the system of the central state organs on the grounds of a legal structure characteristic of the form of government of constitutional monarchy. The exclusive head of the executive power was the Regent, the head of state essentially exercising royal rights in the direction of public administration. The Council of Ministers operated more or less as a coordinating organ of advisory character and it could make decisions in matters precisely defined by separate legislation. Hence in certain matters the Council of Ministers operated as a corporate organ vested with autonomous competences. This, however, meant no change in the situation that towards the head of state and Parliament the government was represented by its president, the prime minister and the heads of the government departments, and not by the Council of Ministers. On the other hand it cannot be argued that already in the years preceding the Second World War the corporate competences of the government tended to widen, and during the War several special powers brought about the strengthening of the position of the government as a corporate organ vested with competences of its own. As a matter of fact, the resolution of the Provisional National Assembly of December 21, 1944 relied on the practice developed during the War when it instituted the Provisional National Government as a corporate organ vested with competences of its own. (The Provisional National Government was vested with full powers to manage "the affairs of the country" as a corporate organ. The republican form of government introduced by Act I of 1946 virtually did not weaken the corporate character of the government. Undoubtedly by this act the President of the Republic became the head of the executive power, still under the circumstances of a government formed by the coalition of the political parties invariably important political consequences remained attached to the maintenance and even reinforcement of the corporate character of the government. Furthermore the powers associated with reconstruction work in general also implying

the right of the amendment of legislation in force again widened the rights of the government as corporate organ. In addition the functioning of the National Assembly and since 1947, of Parliament, sitting almost permanently, their momentous legislative activities, the permanent and direct relations between Government and Parliament, the extensive controlling powers granted to the National Assembly, respectively Parliament, and its political committee, in public administration as a whole, all testify to the fact that already in the period before the enactment of the Constitution of 1949 the government functioned in fact as the direct executive-operative agency of the Parliament, although its members were appointed and dismissed formally by the President of the Republic.

In point of fact the Constitution of 1949 sanctioned the situation as developed still with the difference that the institution of the Presidential Council operating as the permanent substitute for the Parliament did not anymore justify the maintenance of the rather extensive powers vested in the government. Therefore the Constitution restricted the scope of such extensive powers, and precluded from this field the possibility to amend acts of the Parliament or of the Presidential Council, promulgated following upon the enactment of the Constitution of 1949.<sup>31</sup>

Since 1949 a large number of amendments of the Constitution were introduced which affected the chapter dealing with the Council of Ministers. Some of these amendments carried through changes in the number of government departments. Since the ministers at the head of the government departments are in each case members of the government, the original wording of the Constitution gave the enumeration of the government departments. This implied that in the relatively rapidly passing period of transition, when government departments were created or reorganized frequently, an amendment of the Constitution was required in each case.<sup>32</sup> This situation came to an end with the amendment of the Constitution by Act II of 1957 when the enumeration of the government departments was deleted in the wording of the Constitution, and was left to a separate Act of Parliament.<sup>33</sup>

The amendment by the side of the deputy presidents of the Council of Ministers introducing the institution of the first deputy president or of the first deputy presidents was closely associated with the functions discharged by the Council of Ministers in the system of economic management. (Incidentally the institution has

<sup>31</sup> I.e. the possibility to vest the government with authority to amend legislation promulgated before the enactment of the Constitution remained as before. Cf. § 24 (2) of Act XX of 1949. It should be noted that Act I of 1972 has reworded this provision.

<sup>32</sup> The amendments of the Constitution coming within this scope have been laid down in Act IV of 1950, Act I of 1951, Act I of 1952, Act IV 1953, Act VI 1953, Act III 1954, Act VII 1954, Act II 1955, Act IV 1955, Act III 1956.

<sup>33</sup> Actually the government departments of the Hungarian People's Republic are enumerated in Act IV of 1973. Accordingly there are the following departments: Ministry of Home Trade, Ministry of Home Affairs, Ministry of Health, Ministry of Construction and Town Planning, Ministry of National Defence, Ministry of Justice, Ministry of Metallurgy and Machine Industry, Ministry of Light Industry, Ministry of Communication and Posts, Ministry of Foreign Trade, Ministry of Foreign Affairs, Ministry of Agriculture and Food, Ministry of Labour, Ministry of Cultural Affairs, Ministry of Heavy Industry, National Planning Office, Ministry of Finance.

again been abolished by the recent amendment of the Constitution.) It was at that time that the Constitution made the President of the National Planning Office a member of the Council of Ministers.<sup>34</sup>

Already the Constitution of 1949 vested powers in the Council of Ministers for the efficacious discharge of its functions to institute differentiated and elastic organizational forms. In particular wide powers were conferred on the Council of Ministers in matters, and the organization, of public administration. Thus the Council of Ministers has been authorized to take action directly or through any of its members, in any matter coming within the scope of state administration, further to draw under its direct supervision any branch of state purposes. The recent amendment of the Constitution has even extended these rights of the Council of Ministers by authorizing it without any limitation of the particular matters to form government committees "for the discharge of definite functions" (§ 40 [1]).<sup>35</sup>

The functions of the Council of Ministers discharged in the all-national direction of the councils and their agencies underwent changes on several occasions since 1949. These changes at the same time entailed the amendment of the Constitution. The Constitution of 1949 by assigning, beyond the right of annulment and amendment of the acts of the agencies of public administration, the right of annulment and amendment of the acts of the local organs of state power to the competence of the Council of Ministers at the same time indicated that at least in the period of the consolidation of the organization of councils it wanted to entrust the Council of Ministers and not the supreme organs of state power and representation with the general principal supervision and the all-national direction of the councils and the agencies sub-

<sup>34</sup> At the time of the enactment of the Constitution of 1949 the Council of Ministers did not direct economy directly, but through the National Economic Council organized under Act XVI of 1949. The National Economic Council was in charge of the direct supervision of a number of central administrative agencies as well. Thus e.g. subordinate to it were the National Planning Office, the Central Statistical Office, the general central controlling agency of Government, the what was called State Control Centre, the National Office of Labour Force Economy, etc. The members of the National Economic Council were appointed on the advice of the government by the President of the Republic, or later by the Presidential Council. Its President was appointed from among the members of the government. The National Economic Council ceased to exist at the end 1952. From this date onwards its functions were discharged directly by the Council of Ministers (law-decree No. 20 of 1952). Still the increased and expanded scope of functions of the government had repercussions on its organizational structure. The deputy prime minister responsible for economic management works in the government as first deputy prime minister. This also explains why the president of the National Planning Office earlier supervised by the National Economic Council, now directly subordinate to the government, became member of the government only as late as 1953.

<sup>35</sup> Even before the amendment of the Constitution the Council of Minister was authorized to organize government committees. The particular kinds of committees (control, advisory, preparatory, committees acting within the competence of the Council of Ministers in certain cases, etc.) have been dealt with by literature on state and administrative law. (Cf. BEÉR-KOVÁCS-SZAMEL: *Magyar államjog* (Hungarian state law) Budapest, 1960. pp. 334 et seq.). The raise of the system of committees to a constitutional level adds to the weight of the committees. For that matter this is borne out by recent development. Earlier the legal status of the Economic Committee of the Government was unsettled. This circumstance to some extent hampered the Committee in its operations. On the contrary with reference to § 40 of the Restatement of the Constitution the Government by dissolving the Economic Committee has called to life the State Planning Committee and has brought under regulation its legal status, too. Cf. Resolution of the Council of Ministers No. 10233/1973. (VI. 30.)

ordinate to them. It was also in this sense that the first Council Act (§ 10 [2] of Act I of 1950) provided. The amendment of the Constitution by Act VIII of 1954 as a precondition of the introduction of the solutions intended by the second Council Act (Act X of 1954) entrusted the Presidential Council with the general direction of the councils as organs of state power and at the same time withdrew from the Council of Ministers the right of the annulment and amendment of the acts of the councils. As has already been indicated, this general directing competence of the Presidential Council has not become established in reality. Act I of 1971 therefore again entrusted the Council of Ministers with the general direction of the various council organs. In line with this was the amendment introduced by Act I of 1972 according to which the Council of Ministers directs the councils, supervises their activities from the point of view of legality (§ 35 [1/d.]). Within this competence "the Council of Ministers annuls the decrees and resolutions of the councils which violate the interests of society" (§ 35 [4]). It should be noted that this competence is narrower than the original granted under the Constitution of 1949 in so far as it does not extend to the amendment of the acts of the councils. This indicates the increased recognition of the independent competence of the councils. On the other hand the provision goes beyond the scope of the right of annulment guaranteed by the Council Act. As a matter of fact the Council Act provides for the right of annulment of the Council of Ministers only in respect of the decrees and resolutions of the county councils and the metropolitan council (§ 72 of Act I of 1971). The formulation of the Constitution appears to be in agreement with the role filled by the Council of Ministers in the state organization as a whole.

The Constitution of 1949 defined the Council of Ministers as the supreme organ of state administration. In reality, however, its activities extended to a by far wider scope. The recent amendment of the Constitution has drawn the consequences of this circumstance in so far as beyond the enforcement of the law and the direction of the organization of public administration (functions which had been taken up in the earlier wording of the Constitution) the Restatement of the Constitution on defining the competence of the Council of Ministers enumerates such important functions as well which are essentially political ones, e. g. the safeguard of the state and social order and of the rights of the citizens, the drawing up of the national economic plans, the definition of the trends of scientific and cultural development, of the system of social and health care, and the guarantee of the necessary personal and financial conditions of these. In addition the Restatement of the Constitution mentions the functions of the Council of Ministers in foreign affairs and foreign policy. Thus the Council of Ministers has been vested with authority to conclude and approve treaties for and on behalf of the government.

The activities of the Council of Ministers as a whole, still in the first place the political functions referred to before are effected by the new provision of the Constitution according to which "In the performance of its functions the Council of Ministers cooperates with the social organizations concerned" (§ 36). Also the de-

signation of the Council of Ministers has been changed. The Constitution refers to it as the government of the country and not as the supreme organ of state administration.

Strictly speaking the amendments so carried through do not affect the legal status of the Council of Ministers. They merely express the development which has taken place within the framework of the theses of the Constitution in practice since the Constitution was approved.

In the central organization of public administration directly subordinate to the Council of Ministers the most significant change of late years is the establishment of the institution of secretaries of state. Law-decree No. 5 of 1968, which has introduced the office of secretaries of state distinguishes two kinds of secretaries, viz. the secretaries functioning with a government department and acting as the deputies of the respective ministers and the secretaries in charge of the direction of central organs of public administration (all-national authorities) subordinate to the government yet not organized as government departments. The secretaries of state are appointed by the Presidential Council, they are not members of the government, still they attend the session of the Parliament with the same responsibilities and rights as the members of the Council of Ministers. In addition the secretary of state in charge of directing an all-national authority may issue dispositions binding state organs and in general state and cooperative economic organizations. In the hierarchical order of sources of law these dispositions occupy a position under departmental decrees and cannot affect the legal relations of the citizens. The definition of the rights of the secretaries of state to issue dispositions already indicates that the introduction of this office is essentially associated with the reform of economic management. As a matter of fact the reform of economic management has restricted the possibility to issue direct instructions to the enterprises. This system on the one part weakened the what may be called direct guidance of the enterprises by the particular departments, still on the other part it increased the importance of the central functional administrative agencies (such as e. g. the Office of Materials and Prices) in economic management. Later the use of the institution of secretaries of state has become wider, it has also been applied in other fields of public administration. The Constitution, too, mentions the institution of the secretaries of state for this extended scope of application.

Already the Constitution of 1949 declared that the manner of calling to account the president of the Council of Ministers, his deputies and the members of the Council would be defined by a special act of Parliament (§ 27 [2]). As is known this provision of the Constitution has not been carried into effect. Act I of 1972, amending this provision, declares that a special Act of Parliament will bring under regulation the legal status and the manner of calling to account both the members of the Council of Ministers and the secretaries of state. This provision has been given statutory formulation in Act II of 1973 when the legal status of the members of the Council of Ministers and of the secretaries of state has also been defined, and law-

decree No. 5 of 1968 so far governing the institution of secretaries of state has been set aside.

5. Until the end of 1950 local administration operated, with slight corrections only, within the organizational and legal framework of before 1945. The Constitution of 1949 set before itself the creation of a new-type socialist local administration as an object. In the given period this meant the establishment of "council type" local administrative agencies. To ensure the enforcement of the Constitution so far three "Council Acts" have been put on the statute book, the first in 1950, then later a second in 1954 and finally the third in 1971, when organization and operation of the local councils have been brought under regulation again in their entirety. Simultaneously with the promulgation of the three Council Acts the relevant provisions of the Constitution have also been amended so as to suit the political and economic exigencies of the period.

The makers of the Constitution of 1949 had the idea of a strongly centralized state organization before them. To make the particular stages of the hierarchy of subordination and superordination dovetail the Constitution deliberately built up both the central and the local agencies on uniform organizational forms. This organizational pattern was given even greater stress by the first Council Act (Act I of 1950) carrying into effect the provisions of the Constitution. This Act, as for the organizational pattern, puts signs of equality between the various levels of the local agencies, the municipal and communal councils, further the territorial, i. e. district and county councils, and their administrative agencies. The situation was even more aggravated by the exaggerated centralism of the system of economic management of the given period, when the money funds at the disposal of the councils were reduced to a minimum.

The second Council Act (Act X of 1954) on the ground of the initial experiences gained in the operation of the council, under essentially unchanged economic conditions, tried, by a segregation of the competences of the hierarchical levels and types of organs (representative organs – agencies of general competences – specialized agencies) and the reinforcement of the legal guarantees of autonomy, to throw open the path to the further development of the council system. The solutions adopted by the Act not only required the modification of the competences of the central organs (Presidential Council, Council of Ministers) but at the same time in particular by segregating the competences of the representative organs, their executive committees and specialized agencies the new act also entailed the amendment of certain provisions of the chapter of the Constitution relating to the local councils.

Formally the second Council Act was in force for more than fifteen years. However, already as early as in 1957 and 1958 attempts were made at a reorganization of the system of councils. As is known preparatory work for the Council Act actually in operation (Act I of 1971) set in already in the opening years of the 'sixties. For the improvement of the efficacy of this preparatory work law-decree No. 8 of 1965 (on the development of the operations of the council organs) eventually au-

thorized the government for experimental purposes and with a transitory character to introduce such new institutions which even required the promulgation of legal rules departing from the Council Act then in force (Act X of 1954). For practical purposes this meant that until a new Council Act was put on the statute book the government temporarily by government decree regulated the spheres of the council organization earmarked by it in a manner departing from effective legislation. Incidentally the last phase of the drafting stage of the Council Act now in force coincided with the preparation of the amendment of the Constitution. Act I of 1971 itself (Council Act) has been passed by the Parliament as an Act amending the Constitution. (According to the § 75 [2] of Act I 1971 the provisions of Act XX of 1949 (the Constitution) relating to the councils have been modified so as to conform to the provisions of the new Council Act.) The amendment of the Constitution as decreed by Act I of 1972 has carried through the modifications of the council system as decreed by Act I of 1971 on the wording of the Constitution.

Regulation relating to the councils is of the multi-level type. The Constitution itself defines the most essential fundamental institutions only. The Council Act goes into by far more details, and it has been supplemented by a detailed introductory decree. (Government decree No. 11/1971. [III. 31].) In addition each council takes charge of the enforcement of the Act by formulating its own organizational and operating regulation, as decreed by § 75 (9) of Act I of 1971.

This differentiated multi-level regulation provides opportunities for the establishment of such legal and organizational framework of settlements (urban and rural) and territorial units (counties) of a variety of types which is in agreement with the qualitatively and quantitatively divergent functions of these units. In this system of legal regulation the Constitution has in fact confined itself to the definition of the most general rules relating to the organization of councils and can take up only the provisions which are equally applicable to each level and type of this organization. In other words, the more differentiated the system of regulation of the organization of councils, the more justice is done to the differences existing between the particular settlements (urban and rural) and administrative units (districts and counties) the more narrower the sphere of rules which may be taken up in the constitution. This explains why Act I of 1972, on restating the chapter of the Constitution of 1949 on the councils, has at the same time considerably reduced the size of this chapter.<sup>36</sup> This indicates that here we have a field of the state organization of the country invariably in a state of flux.

The general provisions of the Constitution before all provide a fundamental framework for the appropriate recognition of the more or less divergent functions of

<sup>36</sup> Professor Bihari on analysing the amendment of the Constitution laid down in Act I of 1972 deals specially with the provisions of the Constitution on the councils and believes that the material of Constitution dealing with the councils could be narrowed down also on other considerations. Cf. BIHARI, O.: *Alkotmányreformunk jelentősége* (Significance of the constitutional reform). Jogtudományi Közlöny, 2/1973. p. 59.

the municipal, communal and county councils in the further development. The constitutional regulation promotes the unfolding of the self-government of both the municipal and communal councils. Furthermore it provides appropriate basis for legislation, by building up the strongly ramified mechanism of central direction, and by establishing the differentiated organizational system and competences of the county councils to integrate the organs of the local councils disposing of a high degree of autonomy on the principle of democratic centralism into the system of the state organs. The Constitution itself draws a line between municipal and communal organs discharging also self-governing functions and the county organs acting in the first place as intermediaries between the central and local agencies. This policy has been given expression also in the structure of their representative and administrative organs. Thus the communal and municipal councils are elected by the population by direct vote, whereas the members of the county councils are elected by the municipal and communal councils. This is one of the safeguards of the consideration of the communal and municipal interests in the operation of the county and district organs. (This is even specially advanced by the circumstance that since 1970 there are no separate representative organs in the districts. The district administrative organs are organs of the county.) The Constitution specially safeguards the self-governing rights (here-included also the financial rights) of the towns and communes against possible encroachments by partly the central, partly the superior county, respectively district organs. On the highest level this safeguard of the self-governing rights is guaranteed by the powers of constitutional supervision of the Presidential Council, as has already been described above.

6. During the past quarter of a century the chapter of the Constitution concerning the Judiciary has undergone perhaps the fewest modifications. This does not, however, mean as if here development has been of a degree more moderate than in other fields of the state organization. The relatively fewer modifications are an indication of the fact rather that in the relevant provisions of the Constitution were the most potentialities, the most such elements whose translation into reality can or could be implemented in a relatively extended period of time. On the other hand it is one of the peculiarities of the judiciary, once new institutions have struck root these will determine the operation of the given organization for sustained periods.

In the following we shall examine the elements of development where a formal modification of the Constitution is the indication of the appearance of a new institution. Then we shall present the principal traits of the development during the latter twenty five years, which can be noticed within the framework of even unchanging constitutional principles.

In the temporal order the first was the reform introduced by Act IV of 1950 which abolished the interterritorially organized high courts. By this the system of courts of the People's Republic became built up on three levels instead of the earlier four. It is worth while to remember that at that time the motivation of the Act referred to a single reason only for the abolition of the high courts, namely that the

system of the councils introduced at that time does not recognize a territorial unit or council corresponding to the high courts. The recognition of high courts would have operated against the principle assigning the courts to the separate levels of the system of councils, so to enforce the principle of entrusting the councils of corresponding level with the organization of the courts, the election of their judges. Actually when the courts operating in the largest number, the district courts have no parallel elected council organ, the reason given for the abolition of the high courts could not hold its own. This is the case the more because the recognition of the need for three or four levels of course depends on a number of other factors as well.

Among the formal modifications undoubtedly those associated with the election of the judges are the most significant ones. As is known the Constitution replaced the earlier judiciary operating within the legal framework of before 1945 and consisting of appointed professional judges by a new organization of the administration of justice formed of judges elected by the corresponding central and local representative organs for definite periods, who could even be recalled by the same organs, and of assessors (lay elements) of equal rights. As is also known several attempts have been made at the enforcement of these provisions of the Constitution. Act II of 1954 decreed special measures to transplant the relevant provisions of the Constitution into practice. However, this and other attempts succeeded partially only. Until of late the provisions of the Constitution have been enforced only as far as the president and members of the Supreme Court and the people's assessors are concerned. The district and county councils have never made use of their right to elect and to recall professional judges. Eventually Act I of 1972 has amended this provision. The election of the professional judges for terms indefinite has been entrusted to the Presidential Council of the People's Republic. At the same time the provision relating to the recall of judges has been brought into harmony with the principle of the independence of the judges when the Constitution has declared that judges once elected can be recalled only for reasons defined by the law. Also the office term of the President of the Supreme Court has been reduced. Accordingly Parliament elects him for a term of four years instead of the earlier five. (§ 48)

Also the right of defence has been supplemented. The amended wording of the Constitution expressly declares that persons against whom criminal proceedings have been instituted are entitled to the right of defence in all phases of the proceedings (§ 49 [2]) in contrast to the earlier formulation of this right which as regards the right of defence referred to the trial in court only.

The new Act on the organization of the judiciary (Act IV of 1972) relying on the Restatement of the Constitution has advanced the enforcement of constitutional guarantees of the judiciary which else have not been affected directly by the amendment of the Constitution. Thus e.g. the new Act on the organization of the judiciary enforces the constitutional principle of "the administration of justice through the judiciary" in a by far consistent manner than the earlier regulation. The new regulation extends the jurisdiction of the courts considerably, narrows down the

sphere of non-judicial organs entrusted with judicature and vests their jurisdiction in the courts of law. Thus e.g. the jurisdiction of the earlier committees of arbitration in matters of economy has been transferred to the ordinary courts of law, and that of the territorial committees of arbitration in labour cases to the recently organized courts of labour. In addition the new Act on the judiciary in a policy-making form determines the sphere of social relations where the courts have jurisdiction other agencies may proceed in exceptional cases only by authority received under a statute or a decree of the Council of Ministers. In general even in such cases the courts have supervisory rights if decisions passed by such agencies affect the rights or duties of the citizens. This extension of the jurisdiction of the courts at the same time reinforces the unity of judicature. The provision that guiding principles and policy-making decisions of the Supreme Court have to be published in the official gazette operates, among others, also towards the reinforcement of the unity of judicature.

The Act IV of 1972 adds to the guarantees of the principle of the independence of the judges. Of these mention has already been made of the election of the judges by the Presidential Council and the statutory definition of the causes for which judges may be recalled from their office. Another guarantee of importance is that the tenure of office by a judge can be terminated only by the Presidential Council or an enforceable judgement of the court barring the judge from participation in public affairs. The Presidential Council may recall the judge when a petition to this end has been submitted by the committee proceeding in disciplinary matters, elected from among the judges. (There will be a case of exemption e.g. when the judge asks for it or asks to be transferred to another office. A judge may be exempted also when he becomes permanently unable to perform his functions.)

The statutory provision that the Minister of Justice while discharging his supervisory powers over the general functioning of the courts cannot act in a way violating the principle of the independence of judges works likewise towards the widening of the guarantees of the independence of the judges. Previously the extent of the supervisory powers of the Minister of Justice over the general functioning of the courts was not defined; and the Act II of 1954 on the court organization did not draw an accurate line between the supervisory powers of the Minister of Justice and the policy-making guidance exercised by the Supreme Court.<sup>37</sup>

The act has also done much in the way of translating the participation of people's assessors and the principle of a collegiate administration of justice into practice inasmuch as under the Act use is made of the facilities afforded by the Constitution for a more differentiated application of the system of people's assessors and collegiate judicature as required by the nature of the cases than before.

<sup>37</sup> RÁCZ, A. also with regard to the solutions used in Act IV of 1972 and relying on a vast comparative material analyses the relations of the Ministers of Justice and the supreme courts in his paper: *A bíróságok igazgatásának elvi kérdései* (Questions of principle of the administration of the law courts). *Jogtudományi Közlöny*, 12/1973. pp. 644 et seq.

7. The Constitution of 1949 decreed the substitution of a new type organization of procurator's office, beyond the usual functions in criminal matters vested also with what is called the right of general supervision of legality, for the earlier system of prosecution. These provisions of the Constitution were carried into practice only as late as 1953 (law-decree No. 13 of 1953). By this a wholly new type organ has been integrated into the system of state organs of the Hungarian People's Republic, an organ which defies classification as a representative, administrative or judicial agency. The fact that with the creation of the new type of a procurator's office an organ independent of all other state organs and responsible only to the supreme organs of state power and representation has become the special agency of the control of legality, has not only brought about changes in the mechanism of the whole controlling activities discharged by the State, but reacted also on what may be termed traditional duties of the prosecutor or procurator, on the discharge of functions associated with criminal investigation. Although organs discharging functions of general supervision of legality similar to those of the new type procurator's offices have no traditions in the Hungarian state organization at all, the new type procurator's office has struck roots before long. The principles underlying the organization of procurator's office as defined by the Constitution may also be regarded as sufficiently firm. Neither the introduction of law-decree No. 13 of 1953, nor the second law-decree on the procurator's office (law-decree No. 9 of 1959) exploiting the practical experiences of the procurator's office as well have required the corresponding amendment of the Constitution. However, in the Restatement of the Constitution, enacted as Act I of 1972, the chapter relating to the procurator's office has been reworded in its entirety.

By maintaining the earlier principles the amended Constitution gives expression to the development which has taken place in the system of the guarantees of legality since the Constitution of 1949 was approved. As has been stated in the motivation of the Bill on the Amendment of the Constitution, the new wording defined with greater precision the functions of the Procurator General and the procurator's office than the earlier provisions. The Restatement gives expression to the principle that the safeguard of legality is not exclusively the procurator's duty.

Act V of 1972 (third act on the procurator's office) following in the wake of the amendment of the Constitution describes the organization and operation of the procurator's office. Relying on the restated Constitution the new act distinguishes between the functions of the procurator's office in criminal procedure and those discharged in his general supervisory capacity of legality with greater clarity than the earlier wording of the Constitution.

Essentially the procurator's organization takes part in judicial procedure within the earlier limits. In this respect, however, the act, exactly with regard to the independence of the judges and its extended guarantees, omits any reference to the supervision of legality.

Special stress has been laid on the functions of the procurator's organization in legislation. The Procurator General may at the Council of Ministers, the government departments, the administrative agencies of all-national competence initiate the promulgation of new provisions of law (the organs of the procurator's office may initiate the promulgation of provisions of law or general rules at organs of lower level as well). The drafts of legislation of a degree higher than decrees of government departments have to be commented on – from the point of view of legality – by the Procurator General in beforehand.

The Restatement of the Constitution has omitted the provision according to which “the procurators proceed independently of the organs of public administration and the local organs of state power” (§ 44 of the Constitution of 1949). In all likelihood for this omission problems of terminology may account. As a matter of fact the restated Constitution in general avoids the use of the terms “organs of the state power” in connection with the councils. Yet even the term “organs of public administration” does not occur in the Restatement of the Constitution in as clear-cut a form as in the earlier wording. (Here we should e.g. remember the modification of the designation of the Council of Ministers.) Whatever explanation may be offered for the omission of the provision in question on the strength of both the Constitution and new wording of the new Act on the procurator's office the statement may be made that the position held by either the Procurator General or the organization of the procurator's office in the system of the state organization has undergone no changes. The Procurator General is invariably responsible only to the supreme organs of state power and representation and the organization of the procurator's office is invariably directed and supervised by the Procurator General. No person other than the Procurator General or the procurators of superior rank can issue instructions to the procurators. Moreover as regards the independence of the procurator's office of the organization of public administration the new regulation has made provision for yet further guarantees. The Act declares the rights and duties of the procurator when acting in his official capacity can be defined only by an Act of Parliament or a law-decree. Earlier even departmental decrees contained rules concerning the activities of the procurators.<sup>38</sup> All the new Act does is to vest authority in the Council of Ministers to institute functions for the procurator's organization in certain definite procedures.

The amendment reducing the tenure of office of the Procurator's General from six to four years does not affect the legal status of either the Procurator General or the procurator's organization as well. (§ 52 of the Constitution.)

<sup>38</sup> See the motivation to §§ 1 to 6 of the Act.

## IV

As the keystone of this display of constitutional development in the following we should like to subject to an analysis the metamorphosis and changes of the constitutional provisions defining the rights and duties of the citizens. In this connexion it should be remembered that at present at the drafting of every new constitution (and even of a general amendment of an existing constitution of the extent of the one laid down in Act I of 1972) of necessity several problems of principle or theory will emerge which are associated with the definition of the fundamental rights, their position in the structure of the constitution, and the methods of their regulation in the constitution. Solution of, and response to, these questions are normally interrelated and often reciprocally determine each other.

As regards the extent of the fundamental rights and duties of the citizens we may find that at drafting a definite constitution the principal questions to be answered will not be the one of which of the schedule of rights of citizens come within the category of specific fundamental rights of the citizens. We may even say that at present international standards are available by which we may on the whole define the rights and duties which may be taken up in constitutions tied to definite types of state. Disagreements are mainly connected with the question to what the extent these quasi fundamental rights would appear independently in the constitution or attached to the one institution of the constitution or the other. In certain cases it will be easy to describe the variants. Franchise e. g. is beyond doubt a fundamental right, if fundamental rights are conceived in a wider sense. Its regulation, however, may be attached to the particular representative organs or to the fundamental institutions of the political system among the rules of the social order, or may appear as an element of the electoral system brought under regulation as a special institution. (This method was chosen by the makers of the Hungarian Constitution of 1949.) Still franchise may be taken up among the fundamental rights of the citizens (incidentally the most essential amendment affecting franchise and the electoral system has been referred to in connexion with the local organs when mention has been made of the indirect election of the county councils and metropolitan council). Similarly there are variants imaginable concerning the right of defence. Is defence a special right, or simply one of the guarantees of personal freedom? Or has defence to be brought under regulation in association with criminal procedure and through it in a form attached to the principles of the operation of the judiciary? These are all questions which are answered in a concrete form at the drafting of each constitution.

There are, however, problems of a different kind. Where should a place be found for the right to personal property? It has been brought forward by many that it should preferably be placed among the personal rights. As a matter of fact as regards the elements of the social arrangements the stress is in the first place laid on the ownership of the means of production, whereas personal property appears at most as a poor relation by the side of the means of production. (As is known the Rumanian

constitution of 1965 has brought under regulation the institution of personal property among the fundamental rights of the citizens.)

The relations of certain rights and their guarantees may occasionally emerge in wholly peculiar forms. Certain "guarantees" may sometimes appear as independent rights. (This was the case e. g. with the right to recreation, which in the earlier wording of the Constitution appeared as a separate right, whereas in the Restatement it is referred to as one of the guarantees of the right to rest.) Anyhow in the socialist conditions of production the relations of certain rights and their material guarantees throw out a number of problems. In many cases the strongest guarantee of the one right or the other is strictly speaking not the very institution associated with the particular right, but the socialist establishment of society or in general the fundamental institutions of the relations of production which obviously cannot be separately enumerated at the particular rights. This state of affairs has given birth to the idea that the structure of the constitution has to be abandoned where following upon the fundamental institutions of the social order, then the particular elements of the state organization there stand as third scope of regulation the fundamental civic rights. Instead the fundamental civic rights have to be brought under regulation in the opening chapters of the constitution, so to say in conjunction with the provisions governing the social arrangements. Thus strictly speaking we have to reckon with two principal scopes of regulation only. This method beyond doubt relies on highly honourable traditions. The method was usually adopted not only at the dawn of the western bourgeois constitutions, but also in the first socialist constitutions. It is understandable therefore that recent socialist constitutions more and more adopt this structure.

Undoubtedly the method itself is open to criticism. Does it not imply a return to the earlier declarative form? Does the method advance the development which help the socialist regulation of fundamental rights to move away from the level of solemn declarations? As a matter of fact this would be the condition that fundamental rights brought under regulation in the socialist constitutions appear as rules buttressed up by legal guarantees and directly enforceable in the legal system.

In the drafting stage of Act I of 1972 the counterposing of the different alternative proposals would have had a sense only if the case had been one of drawing up a new constitution and not merely one of the amendment of the Constitution of 1949. It was in this way that with certain corrections the earlier structure of the Constitution was eventually preserved for the accommodation of the fundamental civic rights. (There is reference to these corrections in Part II of the present study.)

As regards the concrete amendments in the first place obviously the new thesis of the restatement of the Constitution has to be mentioned, viz. "The Hungarian People's Republic respects the human rights" (§ 54 [1]). As is known the makers of the socialist constitutions for a long time refrained from using the term "human rights". This they did on the plea that the use of the term human rights or fundamental rights would at the same time have drawn a line between the doctrines of natural

law, on the one, and positivist law on the other part. The situation has changed since. International usage by human rights understands a more or less well defined group of fundamental rights which sets up a definite system of postulates to the legal system of the particular states, without, however, dubbing the term of human rights with a hue of natural law. Accordingly strictly speaking this new thesis of the Constitution is but the declaration of the voluntary undertaking of the Hungarian People's Republic to respect and recognize this standard of the comity of nations.

The regulation of the whole system of fundamental rights and their guarantees has been affected by the fact that the exploiting classes have ceased to exist. This has opened the path to the regulation of each of the fundamental rights as such of a general nature, unlike the earlier regulation which formulated some of the rights as such of the working people. This was the case with the rights to rest, recreation, health care, cultural enlargement, with the guarantee of the freedom of speech, the press, assembly and association. As for certain rights the earlier wording of the Constitution, by pleading the "interests of the working people" gave expression to the fact that here there was a case of rights granted to the working people and not to the population in general. In the process of socialist development the majority of these rights have become general in practice even before the enactment of the amendment of the Constitution. (E. g. as regards the right to education where earlier class limitations were in force for the matriculation in universities, all restrictions have been abolished years before.) In certain cases, however, further consequences are attached also directly to the amendment of the Constitution. Thus e. g. the declaration of health care as a general civic right has brought about the declaration of the right of every citizen to free-of-charge medical treatment and hospital care. Earlier this right was incorporated in the services of the social insurance scheme and only persons in employment and their dependants qualified for it. The new regulation in addition to recognizing these rights as general ones, at the same time provides for guarantees that these rights could not be used to the prejudice of the socialist order of society. According to the Restatement of the Constitution in the Hungarian People's Republic the civic rights have to be exercised in agreement with the interests of the socialist order of society and the exercise of these rights is inseparable from the discharge of civic duties (§ 54 [2]).

As is known the Restatement of the Constitution has considerably widened the sphere of the scope of civic rights taken up in the Constitution. By way of example let here the right of the citizens to material provision be mentioned, and so also the right to the freedom of scientific and artistic creative work, the right to the submission of proposals in the interest of the public and among the guarantees of public health, nature conservation. Finally special stress has to be laid on the thesis taken up in the new wording of the Constitution on the fundamental rights of the citizens as well, viz. the declaration of the right of each citizen to take part in the management of public affairs. This thesis expresses among the civic rights that in the Hungarian People's

Republic, after the foundations of socialism have been laid, all class limitations have ceased to exist and in principle each member of the society participate in the exercise of political power with equal chances.

## Un quart de siècle sur le chemin du développement de la Constitution démocratique populaire (1949–1974)

I. Kovács

Dans la République Populaire Hongroise c'est la Constitution démocratique populaire promulguée le 8 août 1949 qui est, bien qu'avec certaines modifications, même à nos jours en vigueur. Parmi celles-ci la plus importante était la loi N° I de 1972 portant une modification générale. En analysant le développement de la Constitution l'étude consacre une attention particulière aux modifications contenues dans la loi mentionnée et à leur réalisation pratique. Dans sa première partie l'étude met en lumière les causes qui à l'opposé des autres démocraties populaires ont rendu possible en Hongrie d'exprimer dans le domaine du droit constitutionnel les changements intervenus en conséquence de l'achèvement de la phase initiale du passage au socialisme sans établir une nouvelle Constitution (c'est-à-dire par la modification de la Constitution en vigueur). La deuxième partie présente le développement des normes constitutionnelles exprimant les institutions fondamentales du régime social (c'est-à-dire le développement des normes constitutionnelles fixant le caractère de classe de l'Etat; le mécanisme étatique et social de l'exercice du pouvoir politique; les fonctions de l'Etat). La troisième partie analyse les changements des institutions fondamentales de l'organisme de l'Etat (le développement des bases constitutionnelles du Parlement, du gouvernement, des organes locaux représentatifs et administratifs, de l'organisation judiciaire et de celle de la procureure). La quatrième partie traite le développement du droit constitutionnel concernant les droits et obligations fondamentaux des citoyens.

## Четверть века по пути развития народно-демократической конституции

И. КОВАЧ

В Венгерской Народной Республике и в настоящее время имеет силу — с некоторыми изменениями — народно-демократическая Конституция, принятая 18 августа 1949 г. Важнейшим из этих изменений является закон 1 от 1972 года об общем изменении Конституции. Рассматривая развитие Конституции, автор ставит в центр изменения, внесенные законом 1 от 1972 года, и их реализацию на практике. В первой части освещаются те причины, которые способствовали тому, чтобы в Венгрии — в отличие от других народно-демократических стран — выразили без принятия новой Конституции (т.е. с изменением прежней Конституции) те изменения, которые произошли в области государственного права при заканчивании начального этапа перехода к социализму. Во второй части представлено развитие конституционных положений, регулирующих основные институты общественного устройства (т.е. классовая сущность государства, государственный и общественный механизм осуществления политической власти, развитие конституционных положений, закрепляющих государственные функции). В третьей части анализируются изменения основных институтов государственного аппарата. (Развитие конституционных основ Государственного Собрания, правительства, местных органов государственной власти и государственного управления, организации суда и прокуратуры.) В четвертой части рассматривается развитие конституционного права, касающееся основных прав и обязанностей граждан.