# Carved in granite? Variable constitutional architecture in Hungary (2010-2018)♦

*by Nóra Chronowski*

**Abstract: Scolpita nel granito? La struttura costituzionale variabile in Ungheria (2010-2018)** – The Hungarian constitution called Fundamental Law of Hungary was adopted in April 2011 and came into force on 1 January 2012. However, at the time of its adaption it was promised that the new constitution is carved in granite (i.e. will be stable and unchangeable), in the past years it was amended seven times. Dismantling of the pre-2010 constitutional system in less than two years and the frequent amendments to the new Fundamental Law raise a triggering question: does the constitution in Hungary fulfil its primary function of constraining public power? Or is it a simple instrument for the supermajority government? The study analysis the Hungarian constitution making and amending practice of the last decade and tries to explain why the stability of the constitution is not observed.

**Keywords:** Hungarian constitution; Constitution-making; Constitutional amendments; Division of powers; Constitutional Court.



## 1. Introduction

The Hungarian constitutional developments since 2010 have attracted widespread attention throughout Europe. There have been various explanations surrounded the new constitutional identity building including criticism and concerns[1] and welcoming and self-justification[2]. The new Fundamental Law of Hungary came into force on 1st January 2012 after a relatively rapid period of constitution making. However, the constitutional patchwork was not finished, and seven adopted amendments have shaped and shaded the new constitutional architecture and, of course not with equal significance, but all of them influenced

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[1] See e.g. Z. Szente, F. Mandák, Z. Fejes (eds.), *Challenges and Pitfalls in the Recent Hungarian Constitutional Development*, Paris, 2015; G.A. Tóth (ed.), *Constitution for a Disunited Nation – on Hungary's 2011 Fundamental Law*, Budapest and New York, 2012, A.L. Pap, *Democratic Decline in Hungary. Law and Society in an Illiberal Democracy*, London and New York, 2018.

[2] See e.g. L. Csink, B. Schanda, A.Zs. Varga (eds.), *The Basic Law of Hungary. A First Commentary*, Dublin, 2012; A.Zs. Varga, A. Patyi, B, Schanda, *The Basic (Fundamental) Law of Hungary. A Commentary of the New Hungarian Constitution*, Dublin, 2015; L. Trócsányi, *The Dilemmas of Drafting the Hungarian Fundamental Law*, Passau, 2016.

the present landscape. A practically unlimited constitution amending power – a two-third parliamentary majority – acted during 2012-14, when the most formative amendments were adopted. We can also describe this time as a permanent constitution making period. After the 2014 elections, in the lack of two-third majority the compromise-finding amendment practice that characterised the pre-2010 constitutional system returned. In this period the governing party alliance had one successful and one failed amendment. Finally, after the 2018 elections the governing majority bearing again the two-third of the mandates in the parliament almost immediately adopted another amendment. There are some triggering questions beyond the numbers: Why the stability of the constitution has not become the part of the constitutional culture in Hungary? Is the power-restraining function of the constitution observed at all in Hungary?

In this paper, a short section is commenced to the theoretical background of the division of constitution making and constitution amending power, to clarify why this theory cannot be applied under Hungarian circumstances. Attention then moves to an analysis of the constitution making and amending practice of the past decade (from 2010) with special regard to the reduction of rule of law guaranties and incapacitating the judicial review. Finally, the reasons of the instability of the Hungarian constitutions are sought, taking into consideration the long traditions of unwritten constitution as well.



## *2. Constitution making and amending power in the 'division of powers' system – the theory and its limits*

The division of powers doctrine is one of the most influential principles of constitutional law which from time to time undergoes a new revival.[3] One of its aspects is the differentiation and separation of the constitution making and constitution amending power. In contrast to the Schmittian concept of an unlimited constitution making power[4] there are steady efforts in the academic discourse to distinguish the primary and secondary constitution making power and to identify the limits of constituent power and constitution amending power.[5] The purpose of this study is to analyse the Hungarian constitutional

[3] B. Ackerman, *The New Separation of Powers*, in 113 *Harvard Law Review*, 3 (2000), 633-725, 639.

[4] C. Schmitt, *Constitutional Theory*, (transl. and ed. J. Seitzer), Durnham and London, 2008, 125.

[5] G. Burdeau, *Essai d'une théorie de la révision des lois constitutionnelles en droit français* (Thèse pour le doctorat en droit, Faculté de droit de Paris), Paris, 1930; A. Negri, *Le pouvoir constituent: essai sur les alternatives de la modernité*, Paris, 1997; G. Bianco, *Brevi note su potere costituente e storia*, in *Studi in onore di Pietro Rescigno*, Milano, 1999; K. Gözler, *Pouvoir constituant*, Bursa, 1999; H.-P. Schneider, *Die verfassunggebende Gewalt*, in *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Band VII (hrgs. J. Isensee, P. Kirchhof), Heidelberg 1992; E.W. Böckenförde, *Die verfassungsgebende Gewalt des Volkes – Ein Grenzbegriff des Verfassungsrechts*, in Id., *Staat, Verfassung, Demokratie – Studien zur Verfassungstheorie und zum Verfassungsrecht*, Frankfurt am Main, 1991; Y. Roznai, *Unconstitutional Constitutional Amendments. The Limits of Amendment Powers*, Oxford, 2017; J.

turmoil, however, the basic distinctions, synthetized from the referred works, will be applied.

The constitution making power as a pre-constitutional power is theoretically unlimited thus can create any kind of constitution e.g. after a revolution or a state establishment. This power can be considered as existing beyond the system of division of powers, although it is not a permanent actor of the constitutional system, because its mandate is restricted to the elaboration of the constitution. This is a pre-constitutional power and is not even bound by the former constitution of the country. However, a democratic constitution making is moderated by procedural elements such as legitimised, open, transparent, deliberative and democratic process. The drafter also shall take into consideration the functions of a constitution i.e., manifesting and symbolizing the integrity and unity of the given political community and limiting of the state power; political and cultural traditions of the country and the international obligations and expectations of the international community.[6]

The constitution-amending power as a constituted power is limited[7] and can be exercised under the framework of the constitution and according to the rules prescribed in the constitution. The limitations of the constitution-amending power must be set in the constitution, e.g., formal-procedural rules and substantive ones. Formal-procedural limitations e.g. that two subsequent parliaments discuss or adopt the amendment, or qualified majority, are necessary to the adoption or the procedure is combined with obligatory or optional referendum. The special procedural rules also serve the separation of constitution amending and legislative powers. Substantive limitations are the eternity clauses that help the constitutional court in the course of constitutional review to set standards against unconstitutional amendments.[8]



However, under some constitutional jurisdiction, the above outline theory is completely inapplicable. First, the constitution making and constitution amending power is undividable under the doctrine of parliamentary sovereignty, where no acts of parliament can be challenged against a higher rule; constitutional review is not accepted and qualified majority is not applied for the decision making in the parliament.[9] Second, the two concerned powers are undividable – as in Hungary[10] – if the same rules govern constitution making and amending. Regarding the organ and the procedure, both powers are vested

Petrétei, *Az alkotmányos demokrácia alapintézményei*, Budapest-Pécs, 2009, 67-80; L. Csink, *Mozaikok a hatalommegosztáshoz*, Budapest, 2014.

[6] H.-P. Schneider, *op.cit.*, 20.

[7] Klaus Stern, *Das Staatsrecht der Bundesrepublik Deutschland*, München, 1986, 152.

[8] N. Chronowski, T. Drinóczi, J. Zeller, *Túl az alkotmányon… 3 Közjogi Szemle*, 4 (2010), 1-12, 4-6.

[9] E. Barendt, *An Introduction to Constitutional Law*, Oxford, 1998, 88, 211.

[10] Z. Szente, *Az „alkotmányellenes alkotmánymódosítás" és az alkotmánymódosítások bírósági felülvizsgálatának dogmatikai problémái a magyar alkotmányjogban*, in *Alkotmányozás és alkotmányjogi változások Európában és Magyarországon* (szerk. F. Gárdos-Orosz, Z. Szente), Budapest, 2014, 218.

in the parliament, and no substantive guarantees are established for the stability of the constitution e.g., eternity clause.

In Hungary, Article S of the Fundamental Law declares the rules of constitution making and amending. Paragraph (1) stipulates the initiation – in the same way as in the case of legislative initiatives – "A proposal for the adoption of a new Fundamental Law or for the amendment of the Fundamental Law may be submitted by the President of the Republic, the Government, any parliamentary committee or any Member of the National Assembly." Paragraph (2) sets down the adoption, which does not differ from the majority required by the former Hungarian Constitution (Act XX of 1949) – "For the adoption of a new Fundamental Law or the amendment of the Fundamental Law, the votes of two-thirds of the Members of the National Assembly shall be required." These regulations – together with Article 1 paragraph (2) point a) – express that the adoption and the amendment of the constitution is the exclusive competence of the National Assembly, the supreme organ of popular representation. The same rules governed constitution-making and amending in the former Constitution (Act XX of 1949), but the Fundamental Law contains some novelties.

Article 8 on national referendum in its paragraph (3) point a) stipulates that national referenda may not be held on any "questions aimed at amending the Fundamental Law" and thus the electorate is not involved into constitutional matters. The people of Hungary may exercise its constitution making power stemming from popular sovereignty only indirectly through the parliament.[11] The former Constitution did not exclude explicitly the referendum on constitutional issues.



Paragraph (3) of Article S was revised by the Fourth Amendment of the Fundamental Law in 2013, which clarifies that, in the course of constitution making and constitution amending, the head of state cannot exercise political veto i.e., the president cannot send back the constitution or amendments to the parliament for consideration and the constitutional veto is limited to the initiation of the constitutional review of procedural requirements, i.e. validity.[12] Thus, the substantive constitutional review of the constitution or its amendment is excluded – "The Speaker of the National Assembly shall sign the adopted Fundamental Law or the adopted amendment of the Fundamental Law within five days and shall send it to the President of the Republic. The President of the Republic shall sign the Fundamental Law, as received, or the amendment thereof, as received, within five days of receipt and shall order its publication in the official journal. If the President of the Republic finds that any procedural requirement laid down in the Fundamental Law with respect to adoption of the Fundamental Law or the amendment of the Fundamental Law has not been met, the President shall request the Constitutional Court to examine the issue. Should the examination by the Constitutional Court not establish the violation of such

[11] J. Petrétei, *Magyarország alkotmányjoga I. Alapvetés, alkotmányos intézmények*, Pécs, 2013. 132.
[12] *Ibid.*

requirements, the President of the Republic shall immediately sign the Fundamental Law or the amendment of the Fundamental Law and shall order its promulgation in the official journal." The formal constitutional review, regarding the procedural requirements of the adoption, of the Fundamental Law or its amendment may take place subsequently, according to Article 24 paragraph (5) point b), upon the request of the Government; one-fourth of the Members of the National Assembly; the President of the *Kúria* [Supreme Court of Hungary] and the Prosecutor General or the Commissioner for Fundamental Rights. This can only happen within thirty days of promulgation.

Paragraph (4) of Article S provides for the special denotation of constitutional amendments, which is different from that of legislative acts of parliament as the Fundamental Law. These amendments do not belong to the legal acts enumerated in Article T, they are instead special, independent and original[13] sources of law – "The designation of the amendment of the Fundamental Law in its promulgation shall include the title, the serial number of the amendment and the day of promulgation."

### *3. 2010/11 constitution making in Hungary*

In Hungary a new constitution, the Fundamental Law was promulgated on 25 April 2011 and came into force on 1 January 2012. Its drafting rose to prominence in Europe and was severely criticized both by domestic experts and the Venice Commission. After the 2010 parliamentary elections, political forces forming a parliamentary majority, possessing two-thirds of the seats, expressed their intention to create a new constitution. In the course of "replacing the old with new", the development of another constitutional regime and the writing of the Fundamental Law came in parallel with the devastation of the previous constitutional order with permanent amendments to the former Constitution. In the background of this policy, the unequal fight of the Constitutional Court and the governing majority took place which could be summarised by the question 'who is the final arbiter in constitutional matters?'.[14] This ended in the partial incapacitation of the Constitutional Court by weakening it as a counterbalance of the executive and legislative powers.[15] Until the Fourth Amendment, the Constitutional Court made cautious efforts to strike down the strivings of the supermajority government acting in the parliament.[16] Since then and especially after the failed Seventh Amendment in 2016, as the institutional and competence changes had their effect, the Constitutional Court gave a helping hand to the



[13] J. Petrétei, *Magyarország alkotmányjoga*, cit., 131.
[14] N. Chronowski, M. Varju, *Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law*, in 8 *Hague J Rule Law*, 2 (2016), 271-289, 281-282.
[15] See also Z. Szente, *The Decline of Constitutional Review in Hungary – Towards a Partisan Constitutional Court?*, in Z. Szente, F. Mandák, Z. Fejes (eds.) *Challenges and Pitfalls in the Recent Hungarian Constitutional Development*, Paris, 2015, 192-196.
[16] See to this N. Chronowski, *The Fundamental Law Within the Network of Multilevel European Constitutionalism*, in Z. Szente, F. Mandák, Z. Fejes (eds.) *Challenges and Pitfalls*, cit., 223-240.

constitution maker and it is even ready to substitute the constituent will to go along with the intents of the government.[17]

The antecedent circumstances of the Hungarian constitution making meant that the political situation was overloaded with the effects of the economic world crisis and domestic tensions –thus after a constitutional but unsuccessful governance, society was deeply divided at the time of 2010 election, i.e., the majority of citizens wanted a change of government. The newly elected two-third majority government blamed the past for all the difficulties and the former Constitution became one of the scapegoats and was no longer no worthy of any respect.

Permanent amendments to the old Constitution commenced in parallel with the declaration of creating a brand new constitution. These amendments can be grouped into two types: 'normal' modifications and 'demolishing' amendments. The 'normal' modifications are justified because any new government is authorised to constitutional reforms on the basis of its electoral program and experiences of the constitutional practise. However, only a minority of the 2010-11 amendments belonged to this group:

1) The number of seats in the parliament were reduced to 200 from 386.[18]

2) The position of deputy prime minister was introduced.[19]

3) The status of deputy major, other organs of local governments and the transfer of state administration competencies were modified.[20]



4) There were clarifications on the legal system, legal acts, rules of *ex ante* norm control were set down[21]

5) The status of the prosecutor general was reformed to increase its independence.[22]

6) The Supervisory Authority of Financial Organisations[23] and National Media Authority became constitutional organs.[24]

The subject matters of the 'demolishing' amendments were:

[17] See below the story of the originally failed Seventh Amendment, and the role of the Constitutional Court; N. Chronowski, A. Vincze, *Önazonosság és európai integráció – az Alkotmánybíróság az identitáskeresés útján*, in 72 *Jogtudományi Közlöny*, 3 (2017), 117-132.
[18] Act of 25 May 2010 on the amendment of the Constitution of the Republic of Hungary (not exactly this solution was maintained in the Fundamental Law).
[19] Act of 25 May 2010 on the amendment of the Constitution of the Republic of Hungary.
[20] Act/1 of 6 July 2010 on the amendment of the Constitution of the Republic of Hungary.
[21] Act CXIII of 2010 on the amendment of the Constitution of the Republic of Hungary (published on 16 November 2010).
[22] Act CXIII of 2010 on the amendment of the Constitution of the Republic of Hungary (published on 16 November 2010).
[23] Act CXIII of 2010 on the amendment of the Constitution of the Republic of Hungary (published on 16 November 2010, it was not maintained in the Fundamental Law).
[24] Act CLXIII of 2010 on the amendment of the Constitution of the Republic of Hungary (it was not maintained in the Fundamental Law).

1) The nomination of Constitutional Court judges – the composition of the nominating parliamentary committee changed and the opposition lost its influence on nomination.[25]

2) The freedom of press – a constitutional basis for new media legislation was created.[26]

3) Judiciary – court clerks were allowed to act as judge in certain cases.[27]

4) A special tax was introduced on severance pay against *bona fides* (morals) in public service.[28]

5) Limitations on the right to be elected for officials of the armed forces.[29]

6) Applying a limitation on the Constitutional Court's competence regarding the review of acts concerning public finances.[30]

7) A special tax on severance pay – retroactive legislation backdated up to five years.[31]

8) A basis for changing pension system in order to remove early retirement benefits.[32]

9) The nationalisation of local governments' property.[33]

10) Judiciary – the president of the *Kúria* (Supreme Court) shall be elected until 31. December 2011.[34]



[25] Act of 5 July 2010 on the amendment of the Constitution of the Republic of Hungary, authorised the governing majority in the parliament to appoint the judges unilaterally, without the consent of the opposition.
[26] Act/2 of 6 July 2010 on the amendment of the Constitution of the Republic of Hungary.
[27] Act/2 of 11 August 2010 on the amendment of the Constitution of the Republic of Hungary.
[28] Act/2 of 11 August 2010 on the amendment of the Constitution of the Republic of Hungary.
[29] Act/1 of 11 August 2010 on the amendment of the Constitution of the Republic of Hungary (it was not maintained in the Fundamental Law).
[30] Act CXIX of 2010 on the amendment of the Constitution of the Republic of Hungary (published on 19 November 2010, it was announced as a temporary limitation, but the Fundamental Law has maintained).
[31] Act CXIX of 2010 on the amendment of the Constitution of the Republic of Hungary (published on 19 November 2010).
[32] Act LXI of 2011 on the amendment of the Constitution of the Republic of Hungary (published on 14 June 2011).
[33] Act CXLVI of 2011 on the amendment of the Constitution of the Republic of Hungary (published on 14 November 2011).
[34] Act CLIX of 2011 on the amendment of the Constitution of the Republic of Hungary (published on 1 December 2011; with the intention to remove the acting president, András Baka; later the European Court of Human Rights stated the violation of the Convention, see *Baka v. Hungary*, Judgement of 27 May 2014, no. 20261/12.)

11) The president of the Constitutional Court shall be elected by the parliament instead of the court and the number of elected was increased to 15 from 11 judges.[35]

There is a clear line of threatening (constitutional) judiciary and undermining the rule of law in this group of amendments whilst the supermajority also strived to eliminate the constitutional impediments of economic governance and policy-making as well.[36]

In the meantime, following the announcement of constitution making intentions, a parliamentary *ad hoc* committee was set up in June 2010 with the responsible for preparing the constitution and its work started in September 2010. The composition of the committee reflected the parliamentary proportions of the party fractions. In 2010, the preparatory activity was not intensive. During July and August, some expert teams from universities and research institutes, as well as representative organizations of the civil society were invited to share with the committee their recommendations to the constitution making. At this stage the expert and interest groups received no feedbacks from the parliamentary *ad hoc* committee and their substantive participation was not realised.

For a variety of reasons, the opposition left the preparatory committee and in December 2010 the concept of the new constitution was only endorsed by the representatives of the ruling coalition in the *ad hoc* committee. Finally, no draft was elaborated on the basis of this concept instead, the concept was put aside and all the parliamentary fractions were given the chance to submit their own draft constitutions.



In early March 2011, two bills on the new constitution were lodged in the parliament: one by the governing party alliance (bill on the Fundamental Law of Hungary) and the other by an independent MP (bill on the Constitution of the Republic of Hungary). They were parallel discussed from 21 March and after 9 effective days of parliamentary debate on 18 April 2011 the bill of the governing parties was endorsed with the two-third majority of votes of the MPs with no opposition MPs voting for the bill.[37] The new constitution, the Fundamental Law was adopted with a reference to the effective Constitution: "This Fundamental Law shall be adopted by the National Assembly pursuant to Sections 19 (3) a) and 24 (3) of Act XX of 1949." Thus the validity of the Fundamental Law derives from the former Constitution.

This short summary clearly shows that the actual and effective constitution-making was quick but not at all transparent. The general public had only five weeks to evaluate the text and the scope of the actors with effective influence on the formulation of the draft remained secret. Academic institutions,

[35] Act LXI of 2011 on the amendment of the Constitution of the Republic of Hungary (published on 14 June 2011).
[36] M. Varju, N. Chronowski, *Constitutional backsliding in Hungary*, in 6 *Tijdschrift voor Constitutioneel Recht*, 4 (2015), 296-310, 298.
[37] N. Chronowski, *Human Rights in a Multilevel Constitutional Area. Global, European and Hungarian Challenges*, Paris, 2018, 105-111.

expert organizations, civilians, minorities and other groups of the society had no role in the process and the preparatory committee in the parliament was also just the part of the scenery.

Assuming and accepting that the constitution making power is an original political will and the process itself cannot be criticized. However, if the final goal is the creation of a democratic constitution, integration with society and meeting with the expectations of the international community, with special regards to those international and supranational organisations (Council of Europe and European Union) in which Hungary is a member state, is key. It is no wonder that the parallel constructive and destructive methods raised severe domestic and international criticism. The Venice Commission issued two opinions during the Hungarian constitution making, first upon the request of the Hungarian government[38] (March 2011),[39] and second upon the request of the Monitoring Committee of the Parliamentary Assembly CE (June 2011).

It must be noted that the draft of the new constitution was not sent to the Venice Commission on time and thus the first opinion of 28 March 2011 contained general comments and not evaluated any particular provisions of the draft constitutional text.

The Venice Commission in its second opinion, published on 20 June 2011, examined the final text and revealed several criticalities that should be eliminated by utilising the common European values during the interpretation.[40] The commission welcomed the most recent European constitution but it also formulated important concerns and critics regarding:

1) The procedure of drafting, deliberating and adopting without the opposition and the wider public.



[38] The Venice Commission was addressed three legal questions by the Deputy Prime-Minister and Minister of Public Administration and Justice of Hungary: i) To what extent may the incorporation in the new Constitution of provisions of the Charter of Fundamental Rights enhance the protection of fundamental rights in Hungary and thereby also contribute to strengthening the common European protection of these rights?;ii) What is the role and significance of the preliminary (*ex ante*) review among the competences of the Constitutional Court. In particular, who is entitled to submit a request for preliminary review? What is the effect of a decision passed by the Constitutional Court in a preliminary review procedure on the legislative competence of the Parliament? iii) What is the role and significance of the *actio popularis* in ex post constitutional review? What is the state of play in Europe as regards the availability of *actio popularis* in matters of constitutionality? Could it be considered as an infringement of the European constitutional heritage (acquis) if the main focus of the Constitutional Court's activity was to shift from the posterior review, carried out on the basis of an *actio popularis*, to the examination of specific constitutional complaints? See European Commission for Democracy Through Law (Venice Commission) Opinion no. 614/2011, Strasbourg, 28 March 2011, Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary.

[39] Venice Commission, Opinion no. 614/2011, 28 March 2011, Available at www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2011)001-e.

[40] Venice Commission, Opinion no. 621/2011, Strasbourg, 20 June 2011, Opinion on the New Constitution of Hungary, www.venice.coe.int/webforms/documents/CDL-AD%282011%29016-E.aspx.

2) The high number of cardinal (organic) laws, especially in the fields of family legislation, social and taxation policy, which are typically simple majority decisions of any government.

3) The concept of 'historical constitution' as rule of interpretation.

4) The wording of the preamble.

5) The provisions related to Hungarians living beyond the borders.

6) The constitutional obligations with uncertain content.

7) The lack of explicit reference to abolition of death penalty.

8) The limitation of the Constitutional Court's competence.

However, the Hungarian parliament ignored the critics and insisted on the challenged solutions. Parliament has modified the Fundamental Law seven times, not considering the transitional provisions of unique status and history, since its entry into force and has, *inter alia*, cemented the model of limited constitutional judicature; attempted to break constitutional continuity; restricted the exercise of the right to vote and freedom of expression and perpetuated the practice of overruling the decisions of the Constitutional Court.[41]

## *4. Amendments to the Fundamental Law*



### *4.1. Transitional Provisions and First Amendment*

In order to support the entry into force of the new constitution, the so-called Transitional Provisions to the Fundamental Law were adopted by the National Assembly.[42] These was proclaimed on 31 December 2011 and came into force on the next day, together with the Fundamental Law.

It was an extremely alarming issue concerning the basic principles of the Fundamental Law – with special regard to the principle of the rule of law – that the Transitional Provisions, where many of which were not of transitional character, have constructed an unusual constitutional liability for the "communist past". Furthermore it has overruled some important statements of the constitutional Court e.g., on the right to the lawful and impartial judge,[43] and undermined some rules of the Fundamental Law itself.[44]

[41] See also P. Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary*, in *Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania* (eds. A. von Bogdandy, P. Sonnevend), Oxford – Portland, 2015, 52-63.

[42] The bill was lodged to the parliament by two MP's – the fraction leaders – of the governing party alliance on 20 November 2011.

[43] CC Decision no. 166/2011 (XII. 20.) AB.

[44] On the TP-FL and other cardinal acts read more in Gábor Halmai and Kim Lane Scheppele (eds.), *Amicus Brief for the Venice Commission on the Transitional Provisions of the Fundamental Law and the Key Cardinal Laws*, February 2012, available at <http://fundamentum.hu/sites/default/files/amicus_brief_on_the_fourth_amendment.pdf>

According to the Commissioner for Fundamental Rights of Hungary, the Transitional Provisions severely harm the principle of the rule of law, which may cause problems of interpretation and may endanger the unity and operation of the legal system. The Ombudsman was concerned because the Transitional Provisions contained many rules which obviously a transitional character did not have.[45] Thus, the Ombudsman requested the Constitutional Court to examine whether the Transitional Provisions comply with the requirements of the rule of law laid down in the Fundamental Law. After the Ombudsman's initiative, the parliament adopted the First Amendment to the Fundamental Law clarifying that the Transitional Provisions are part of the constitution. By this amendment, the governing majority intended to avoid the constitutional review of the Transitional Provisions, confirming their constitutional rank.[46]

It is worth to mention that in the First Amendment, the Hungarian parliament i.e., the two-third governing majority, gave up its intention to change the constitutional status of the Central Bank by merging it with the authority supervising financial bodies. Thus it repealed Article 30 of the Transitional Provisions, which originally stated: 'A cardinal act (…) may specify that a new organisation assume the tasks and jurisdiction of the organisation charged with Financial Supervisory Authority and the Hungarian National Bank.' The rationale of this amendment can be rooted in the pressure from EU institutions, especially from ECB, however, as it will be seen, the success was transitory.

Despite the efforts of the governing majority, the Constitutional Court on the basis of the Ombudsman's petition declared that all the articles of the Transitional Provisions lacking transitory character are invalid.[47]



[45] On the petition of the Ombudsman lodged in March, 2012 to the Constitutional Court concerning the Transitional Provisions of the Fundamental Law see AJB 2302/2012 on 13 March 2012, in *Report on the Activities of the Commissioner for Fundamental Rights of Hungary in the Year 2012*, Budapest, 2013, 49-50.

[46] In April 2012 the Government of Hungary lodged a bill to the parliament as the First Amendment of the Fundamental Law of Hungary to clarify that the Transitional Provisions are the part of the Fundamental Law. It is available in Hungarian at www.parlament.hu/irom39/06817/06817.pdf. (30 April 2012) The First Amendment was adopted in June 2012. It added a new 5th point to the Closing Provisions of the Fundamental Law: "5. The transitional provisions related to this Fundamental Law adopted according to point 3 (31 December 2011) are part of the Fundamental Law." Other relevant points of the Closing Provisions: "2. Parliament shall adopt this Fundamental Law according to point a) of subsection (3) of Section 19 and subsection (3) of Section 24 of Act XX of 1949. 3. The transitional provisions related to this Fundamental Act shall be adopted separately by Parliament according to the procedure referred to in point 2 above." (The Fundamental Law was not in force yet when the parliament adopted the Transitional Provisions – that is the reason of the reference to the former Constitution).

[47] The Constitutional Court annulled approximately half of the articles of the Transitional Provisions in its decision of 28 December 2012 (CC Decision no. 45/2012. (XII. 29.) AB). Press release (23 January 2013): "The Constitutional Court has declared that the Hungarian Parliament exceeded its legislative authority, when enacted such regulations into the "Transitional Provisions of the Fundamental Law" that did not have transitional character. The Hungarian Parliament shall comply with the procedural requirements also when acting as constitution-maker, because the regulations that violate these requirements are invalid. Therefore the constitutional Court annulled the concerned regulations due to formal deficiencies. The Constitutional Court, regarding its consistent practice, did not examine the constitutionality of the content of the Fundamental Law and the Transitional Provisions",

In its landmark decision on the unconstitutionality of Transitional Provisions, the Court emphasised that the constitutional criteria of a democratic state governed by the rule of law are respected by the international community. They are reaffirmed by international treaties as values, principles and fundamental freedoms and some of them are part of the international *ius cogens*. These criteria must not be eroded or endangered. The Constitutional Court may keep under control whether the substantive guaranties and requirements of the democracy and rule of law prevail and how they are incorporated into the constitution. The Court criticized and condemned the constitutional practice of the parliament that infringed the principle of rule of law by enacting the Transitional Provisions with its controversial and non-transitional rules. The Court underpinned that it is a slippery-slope to deprive the Court itself from its jurisdiction and to establish controversial provisions with constitutional rank outside the text of the Fundamental Law.[48]

It is worth mentioning that the governing party immediately declared that the annulled provisions will be inserted into the Fundamental Law, which was realised by the Fourth Amendment some months later.

*4.2. Intermediate amendments in 2012*

A strongly debated issue connected to the right to vote was the introduction of the periodical electoral registration. In the previous few decades, the electoral registers were created by the authorities on the basis of the personal data and residence registers; all adult citizens with voting right and residence in Hungary were automatically enrolled. Article 2 of the Fundamental Law declares universal and equal suffrage but the amendment to the Transitional Provisions, declared under the First Amendment the part of the Fundamental Law, thus becoming the Second Amendment, and the new act on electoral procedure adopted in November 2012 prescribed the registration upon request as precondition of voting on any kind of elections.[49] The constitutionality of the new act on electoral procedure was examined in January 2013 by the Constitutional Court upon the request of the Head of State. The Court declared that certain provisions of the new act – on electoral registration and political campaign – are contrary to the Fundamental Law.[50] This Constitutional Court



available at hunconcourt.hu/announcement/certain-parts-of-the-transitional-provisions-of-the-fundametal-law-held-contrary-to-the-fundamental-law/.

[48] CC Decision no. 45/2012. (XII. 29.) AB, points IV.7-8.

[49] The related articles of the Transitional Provisions were annulled by the Constitutional Court in Decision no. 45/2012. (XII. 29.) AB.

[50] CC Decision no. 1/2013. (I. 7.) AB. Press release: "The constitutional Court has declared that in the Act additional conditions are defined: in order to practice the right to vote, a previous registration should be done. Regarding these provisions, the constitutional Court has examined whether there is any constitutional reason for the previous registration. Taking the practice of the European Court of Human Rights into consideration, the constitutional Court has declared that in case of citizens domiciled in Hungary, the mandatory registration disproportionately restricted the right to vote without any reason, thus this is contrary to the Fundamental Law. (…) In connection with the rules of election campaign, the constitutional Court has declared that the freedom of expression and the

decision was partly successful because the governing majority gave up the idea of the introduction of voters' registration, but the bans on media campaign[51] were inserted into the Fundamental Law with the Fourth Amendment, partly overriding the Constitutional Court's decision.

The Third Amendment, adopted in relation with the preparation of new legislation on arable land, drew much less attention.[52] It completed Article P of the Fundamental Law on natural resources with a new section declaring that "The limits and conditions for acquisition of ownership and for use of arable land and forests (…), as well as the rules concerning the organisation of integrated agricultural production and concerning family farms and other agricultural holdings shall be laid down in a cardinal act".

### *4.3. Fourth Amendment in 2013*

The governing majority adopted the Fourth Amendment of the Fundamental Law as a response to the Decision no. 45/2012 of the Constitutional Court. This amendment incorporated into the Constitution the majority of the abolished articles of the Transitional Provisions and overrode several former Constitutional Court decisions.[53] There are many valuable commentaries about this amendment.[54] For the purpose of this study however it is worthwhile to

freedom of press are disproportionally limited, because according to the Act during the electoral campaign the publication of political advertisements is allowed only in the public media service, thus these rules are contrary to the Fundamental Law. The rules that ban the publication of public opinion polls regarding the elections within six days before the elections has also been found contrary to the Fundamental Law." Available at hunconcourt.hu/announcement/certain-provisions-of-the-act-on-election-procedure-held-contrary-to-the-fundamental-law/ (12 January 2013).



[51] According to the Fourth Amendment, Art. IX(3) of the Fundamental Law shall be replaced by the following provision: "For the dissemination of appropriate information required for the formation of democratic public opinion and to ensure the equality of opportunity, political advertisements shall be published in media services, exclusively free of charge". In the campaign period prior to the election of members of Parliament and of Members of the European Parliament, political advertisements published by and in the interest of nominating organisations setting up country-wide candidacy lists for the general election of members of Parliament or candidacy lists for the election of Members of the European Parliament shall exclusively be published by way of public media services and under equal conditions, as determined by cardinal Act.

[52] Published 21 December 2012. See Sonnevend, A. Jakab, L. Csink, *The Constitution as an Instrument of Everyday Party Politics*, cit., 54.

[53] On 8 February 2013, members of the governing coalition, having two-thirds of the seats in the Hungarian Parliament, submitted a proposal to amend the constitution. The parliament adopted the amendment on 11 March 2013. It was published in the official journal on 1 April 2013. In March 2013, in the course of the amendment, the Council of Europe, the UN High Commissioner, the President of the European Commission, Hungarian human rights associations and scholars voiced concerns over the changes.
The amendment was firmly criticised by the Venice Commission, see Opinion no. 720/2013 of the Venice Commission on the Fourth Amendment of the Fundamental Law of Hungary, Strasbourg 17 June 2013, www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e (17 June 2013).

[54] See for example I. Vörös, *The constitutional landscape after the fourth and fifth amendments of Hungarian Fundamental Law*, in 55 *Acta Juridica Hungarica*, 1 (2014), 1-20; J. Zeller, *Nichts ist so beständig… Die jüngsten Novellen des Grundgesetzes Ungarns im Kontext der Entscheidungen des Verfassungsgerichts*, in 59 *Osteuropa-Recht*, 3 (2013), 307–325, A. Vincze, *Wrestling with*

emphasize that the provisions inserted into the Fundamental Law can be once more grouped into two types: modifications with overriding character and the amendments imposing further limitations on constitutional review. The first group contains:

1) The President of National Judicial Office received power to transfer proceedings.[55]

2) The introduction of New restrictions on free expression and ban on certain political advertisements.[56]

3) The constitutional ground for criminalization of homelessness.[57]

4) Parliament's final say on church status.[58]

5) The constitutional notion of family was narrowed to married couples, parents with child[59]

6) Domestic employment in exchange for state contribution to study costs regarding the students contracts.[60]

The other group of amendments was devoted to reinforce the control over constitutional review:

1) In order to settle the superior constitutional authority of government acting in parliament and to take the edge out of potential future attempts by the Court to oppose government action in the spirit of pre-2010 constitutionalism, the Fourth Amendment repealed every decision of the Constitutional Court which had been delivered prior to the entry into force of the Fundamental Law.[61]



2) Despite the Constitutional Court never performing a substantive review of constitutional amendments, Article S paragraph (3) was reformulated in order to prevent any potential future efforts of this kind. The Fundamental Law now set down the formal *ex ante* and a 'within 30 days from promulgation' *ex post* review of amendments as exclusive options.

3) Article 37(4) in the Chapter on Public Finances of the Fundamental Law lays down, with regard to *ex post* norm control and constitutional complaint procedures, that the Constitutional Court is

*Constitutionalism: the supermajority and the Hungarian Constitutional Court*, in 7 *Vienna Journal on International Constitutional Law*, 4 (2013), 86–97.

[55] CC Decision no. 166/2011. (XII. 20.) AB declared it unconstitutional.

[56] CC Decision no. 1/2013. (I. 7.) AB held it contrary to the Fundamental Law.

[57] CC Decision no. 38/2012. (XI. 14.) AB held it contrary to the Fundamental Law.

[58] CC Decision no. 6/2013. (III. 1.) AB held it contrary to the Fundamental Law.

[59] CC Decision no. 43/2012. (XII. 20.) AB held it contrary to the Fundamental Law.

[60] CC Decision No. 32/2012. (VII. 4.) AB held it contrary to the Fundamental Law.

[61] Before the Fourth Amendment, the Court followed the practice of revisiting its previous jurisprudence adopted under the 1989 Constitution in case the text of the constitutional provisions was the same in the two documents, see CC Decision no. 22/2012 (V. 11.) AB.

prevented from reviewing the content of an act or annulling acts on public finances, with the exception of four "protected fundamental rights", as long as state debt exceeds half of the Gross Domestic Product.[62] This is not even rectified by the fact that Acts relating to this subject-matter may be annulled in the case that the requirements of the legislative process were not met (for formal reasons). The Transitional Provisions upheld and extended the effect of the disputed limitation on constitutional review[63] and the Fourth Amendment incorporated it into the constitution.[64]

4) The Transitional Provisions originally introduced further indirect constraints on the right to effective judicial protection. The Fourth Amendment maintained this line. If the ruling of Constitutional Court or the CJEU results a debt obligation of the State, under certain circumstances a general contribution covering the common needs i.e., extra tax, shall be adopted. It can be understood as an intention to sanction, at least indirectly, the lawsuits and complaints in cases of great economic significance.[65] The European Commission had expressed its serious concerns about the conformity with EU law of the new article on CJEU judgements entailing payment obligations and the Fifth Amendment subsequently repealed this rule.



The Venice Commission was also concerned about the systematic shielding ordinary law from the constitutional review. The reduction (budgetary matters) and in some cases complete removal (constitutionalised matters) of the competence of the Court to review ordinary legislation undermines the principle of rule of law, as the constitutional protection of the standards of the

[62] "As long as state debt exceeds half of the Gross Domestic Product, the constitutional Court may, within its competence set out in Article 24(2)b-e), only review the Acts on the State Budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes for conformity with the Fundamental Law or annul the preceding Acts due to violation of the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and with the rights related to Hungarian citizenship. The constitutional Court shall have the unrestricted right to annul the related Acts for non-compliance with the Fundamental Law's procedural requirements for the drafting and publication of such legislation". Article 37(4) of the Fundamental Law

[63] Art. 27 of the Transitional Provisions: "Article 37(4) of the Fundamental Law shall remain in force for Acts that were promulgated when the state debt to the Gross Domestic Product ratio exceeded 50% even if the ration no longer exceeds 50%".

[64] Art. 17 of the Fourth Amendment.

[65] See Art. 29 of the Transitional Provisions: "As long as the public debt exceeds 50% of the GDP, if the constitutional Court, the CJEU, other Court or other law applying that body's decision requires the State to pay a fine, and the Act on the central budget does not contain necessary reserves to pay the fine, and the amount of the fine cannot be allocated from the budget without undermining a balanced management of the budget or no other item from the budget may be eliminated to provide for the fine, a general contribution covering the common needs must be specified that relates in its name and content exclusively and explicitly to the above fine". This Article was annulled by the Constitutional Court in its Decision no. 45/2012. (XII. 29.) AB.

Fundamental Law becomes limited and also undermines the democratic system of checks and balances, as the Constitutional Court lost its influence and is not able to provide effective control.[66]

*4.4. The Fifth Amendment in 2013*

The Fifth Amendment was adopted by the governing majority in September 2013 with the intention of 'closing international debates.' However not all of the challenged articles were modified and the amendment entered into force on 1 October 2013. The amendment:

1) Voided the option of extra tax for certain court decisions and the power of the President of the NJO to transfer proceedings.

2) Modified the ban on certain political advertisements and since then the constitution allows publishing political ads in all types of media, not just on public service broadcasts, but exclusively free of charge and with equal air time, or alternatively not at all. It is rather hypocritical solution, because if the commercial media is prohibited to charge for political advertisements and has to guarantee equal airtime for all qualified parties during the campaign, the more economic choice may be to refrain from this activity.

3) Smoothly amended, with the rules of cooperation, the authorisation of the Parliament to decide on recognising of established churches. Under the modified regulation, all religious communities (churches) may operate freely, but those of them seeking further cooperation with the State must be permitted by the parliament, thus receiving "established" or "accepted" church status. This solution still erodes secularism and leaves room for political considerations in the recognition of churches.



4) Ironically – and contrary to the First Amendment – it reintroduced the constitutional basis for merging the authority supervising financial bodies and the Hungarian National Bank.

*4.5. Further amendments and attempts in 2016*

The loss of a by-election in 2015 resulted in the governing party alliance no longer having a two-third majority in the National Assembly and heralded a return to the compromise-finding constitution-amending techniques of pre-2010. The draft bill of the Sixth Amendment, in order to set down new, relaxed rules on introducing special legal order in case of a terror threat, originally was not officially published at the parliament website but was later by a far-right opposition MP.[67] It was business as usual with no public debate or democratic deliberation regarding the subject matter[68] but the lack of constituent majority

[66] Opinion no. 720/2013 of the Venice Commission, point 87.

[67] The bill was finally tabled by the government on 26 April 2016.

[68] Civil unions criticized the amendment for undermining the rule of law: www.amnesty.nl/actueel/hungary-proposed-sixth-amendment-to-the-constitution-would-be-a-frontal-attack-on-human-rights; www.ekint.org/en/constitutionality/2016-04-08/ekints-standpoint-on-the-public-deliberation-of-the-sixth-amendment-of-the-fundamental-law.

forced the government to cross-check and negotiate with the opposition. The Sixth Amendment entered into force on 1 July 2016 and introduced a new state of emergency in case of threat or act of terrorism, beyond the existing five special legal order situations: National crisis, emergency, preventive defence, unforeseen intrusion and danger.[69] There is no room for a thorough analysis, but a short comment seems to be necessary. This regulation still provides wide discretional power to the government, because the constitution allows the introduction of the special legal order even in case of terror threat – about which the intelligence agency may have exact information, thus the democratic control on the necessity of the introduction is rather limited. The question arises whether it is a proportional answer to the refugee crises that motivated the amendment.

A failed attempt to amend the Fundamental Law occurred in October 2016 with the government intending to set new substantive limits on joint exercise of power with other member states in the framework of the European Union in order to protect the Hungarian constitutional identity and prohibit the resettlement of foreign population in the territory of Hungary. There was an invalid referendum (2 October 2016) on EU refugee relocation quota in the background of the issue.[70] The government's plans with the referendum and the subsequently failed amendment fizzled out but the Constitutional Court gave a helping hand.

In its Decision 22/2016. (XII. 5.) AB, the Court established that upon a relevant motion and in the course of exercising its competences it may review whether the joint exercise of powers with other EU member states or by way of the EU institutions violates human dignity, or another fundamental right, the sovereignty of Hungary or its constitutional identity based on the country's historical constitution. The judgment raised countless questions[71] stemming from the political influences, such as the invalid refugee relocation referendum and the failed attempt of constitutional amendment and the controversial former case law of the Court. It remains unclear whether the newly invented national constitutional identity, which naturally originates in the ancient Hungarian historic constitution, is a shield or a sword. In other words, it is still an open question how the new judge-made competence will be used in the conflicts of EU law and domestic constitutional law. However, what the Constitutional Court



[69] R. Uitz, *Hungary's attempt to manage threats of terror through a constitutional amendment*, in *Constitutionnet*, 28 April 2016, available at www.constitutionnet.org/news/hungarys-attempt-manage-threats-terror-through-constitutional-amendment.

[70] Z. Szente, *The Controversial Anti-Migrant Referendum in Hungary is Invalid*, in *Constitutional Change*, 11 October 2016, available at constitutional-change.com/the-controversial-anti-migrant-referendum-in-hungary-is-invalid.

[71] For a thorough analysis, see G. Halmai, *The Misuse of Human Dignity and Constitutional Identity – The Case of Hungary*, manuscript (2018), 7-14., available at me.eui.eu/gabor-halmai/wp-content/uploads/sites/385/2018/11/Dignity_identity_Hungary_Halmai.pdf.

was seeking in vain during the domestic constitutional turmoil, now seemingly has found against the power of the EU by a dangerous legal transplant.[72]

*4.6. Seventh Amendment in 2018*

The Seventh Amendment was finally adopted on 20 June 2018, whereas – after the general parliamentary elections – the two-third majority of the governing party alliance was regained. The former draft amendment was reinforced and complemented with new issues: establishment of an Administrative High Court and creating constitutional basis for a judiciary reform ending in separate administrative court system, protection of privacy versus freedom of opinion and assembly, limited right to asylum and, a general prohibition of habitual dwelling on public places.[73]

This amendment 'constitutionalized' the government's anti-immigration policy and sovereignty-fights against the EU by introducing the following.

1) Into the text of the National Avowal (preamble of the constitution) a new sentence was inserted: "We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State." In line with this, Article R) was also completed: "The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State." The joint exercise of power within the EU under Article E(2) "shall comply with the fundamental rights and freedoms provided for in the Fundamental Law and shall not limit the inalienable right of Hungary to determine its territorial unity, population, form of government and state structure." All these – partly codifying the 22/2016. Constitutional Court decision – give a vide margin of appreciation for constitutional court justices on the primacy of the EU-law.



2) In line with the purpose of the failed and invalid referendum in 2016, now the constitution prohibits the settlement of 'foreign population' in Hungary, and "[a] non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution" (Article XIV). Amongst the duties of the police the prevention of illegal immigration got a special emphasis (Article 46).

3) Other governmental 'experiences' resulted in minor though significant changes in terms of human rights and rule of law. For better protection of common use of public places, a general ban on homelessness was introduced: "The State shall provide legal protection for homes. Hungary shall strive to ensure decent housing conditions and access to public services for everyone. The State and local governments shall also contribute to creating decent housing conditions and to protecting the use of public space for public purposes by striving to ensure accommodation for all persons without a dwelling. Using a

[72] See A. Vincze, *Ist die Rechtsübernahme gefährlich?* in 73 *Zeitschrift für Öffentliches Recht*, 1 (2018), 193-214.
[73] See also G. Halmai, *op.cit.*, 19-24.

public space as a habitual dwelling shall be prohibited" (Article XXII).[74] To save private life (mainly that of politicians and other public actors from investigative journalism and demonstrations) Article VI was completed: "Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others. The State shall provide legal protection for the tranquillity of homes."

To ensure the prevalence of legislative will and enforce originalism in the interpretation of legal acts, it was introduced that if the courts seek for the rationale of a legal act, they shall consider its preamble and the reasoning of the bill (Article 28). Finally, the amendment created constitutional basis for establishing a separate administrative court system with an Administrative High Court on the same level as the Supreme Court (Kúria), taking away the competence for administrative justice from independent ordinary courts (Article 25).

### *5. Conclusions*

Surveying the Hungarian constitutional amendments from the past decade prompts the question whether the Fundamental Law is a rigid or flexible constitution. There are arguments for considering it a rigid constitution because the Fundamental Law distinguishes and separates the legislative power and the constitution amending power by establishing different rules of procedure for the latter. It also contains detailed regulation for the exercise of state power e.g., the formation of the government and the motion censure, the election and the responsibility of the head of state. However, under certain political circumstances i.e. if the government acting in the parliament has a two-third majority, it becomes easy to circumvent these procedural and structural impediments and subordinate the constitution to political expediency.



The reason for that constitution amending practise may be sought for in the historic and near past. Hungarians had a long-standing tradition of unwritten and flexible constitution that mainly restrained the quasi-external power of the Habsburg monarch. The first written constitution, Act XX of 1949 was not the result of an independent and free decision of the political community and was not based on the democratic will of the people, it was a copycat of the Soviet constitution of 1936. It was just a piece of paper without any normative character and thus the respect for the constitution did not became part of the political culture. In the course of the democratic transition, a new constitution was not adopted and despite of the totally revised content and the steady efforts of the Constitutional Court, the basic law of the Hungarian Republic kept the label of being transitory. After the 1989 thorough revision, the former

[74] See to this N. Chronowski, G. Gábor Halmai, *Human Dignity for Good Hungarians Only: The Constitutional Court's Decision on the Criminalization of Homelessness*, *in VerfBlog*, 2019/6/11, available at verfassungsblog.de/human-dignity-for-good-hungarians-only.

Constitution was amended 25 times until the autumn of 2009[75] and however these amendments did not concern the basic structure and principles of the Constitution, they clearly indicate the general attitude of the policy makers – the constitution is not considered to be a 'holy writ' but can be the subject of political bargains. This attitude has not been changed with the adoption of the Fundamental Law. The seven amendments of the past years show that Hungary is clearly on the way of democratic backsliding[76] and the Fundamental Law with its hampered checks and imbalances is not able to fulfil the power-restraining function of a constitution. Thus, Hungarians do not trust in their constitutions and do not really respect them. The underdeveloped constitutional culture of the written constitution means that the constitution itself will not help with political backsliding.



[75] I. Kukorelli, *Magyarországot saját alkotmánya nélkül kormányozni nem lehet. A közjogász almanachja*, *Budapest*, 2014, 27.

[76] A. Huq, T. Ginsburg, *How to lose a constitutional democracy*, in *Vox*, 21 February 2017, available at www.vox.com/the-big-idea/2017/2/21/14664568/lose-constitutional-democracy-autocracy-trump-authoritarian.