

# The Constitutional Development of Hungary After 1918

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## ABSTRACT

Before 1918, Hungary had a “historical constitution”. The structure of the constitutional system was not included in a single constitutional chart, instead it was determined by separate laws passed over the centuries in addition to customary law. However, the military collapse of 1918 started a revolutionary wave in Hungary, which caused a significant break in the development of the organic constitution. The revolution radicalized, followed by foreign military occupation. The National Assembly, convened in January 1920, restored the pre-1918 constitutional order, making the country a kingdom again. However, the constitutional system contained a number of unique features. The king, crowned before 1918, did not return to the throne, but was replaced by a governor. The second chamber of the parliament was also significantly reorganized, but the most controversial point in the whole system was the right to vote. Although it has been significantly widened, it still had shortcomings compared to the expectations of the age. The most striking was the re-introduction of open voting.

After 1945, with the introduction of the republican form of government, a democratic experiment took place. However, the Soviet occupation made it impossible to build a democratic state. In 1949, a Soviet-style constitution was issued, which meant the establishment of a dictatorship. This state order did not adopt the basic institutions of the rule of law, nor did it provide the minimum requirements of legal certainty for its citizens.

In 1989/90, constitutionality was restored, which had already taken on the expectations of the age. However, this was still achieved by amending the 1949 constitution. Although it did not mean a significant change in its content, in 2011 the Parliament passed a new Fundamental Law, which permanently broke with the pre-1989 constitutional order.

## KEYWORDS

governor, upper chamber, open voting, kingdom, republic, dictatorship, restoration of constitutionalism, Fundamental Law.

## 1. Introduction

Until 1918, Hungary had a historical constitution. The constitutional order was determined by customary law and certain organic laws, adopted over centuries, rather than being incorporated in a charter. However, the defeat in World War I sparked a series of uprisings in the country, disrupting this organic development. In the 1918 Aster Revolution, the state was transformed from a monarchy to a people’s republic, and

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the creation of a new constitution began; however, this process was interrupted by the far-left Hungarian Communist Party's coup in March 1919. The short-lived Hungarian Soviet Republic provoked foreign intervention, leading to the alien occupation of a large territory of the state. These events resulted in widespread dissatisfaction and disillusionment with revolutionary solutions among Hungarians. Therefore, when a new Constitutional Assembly was established in 1920, it had opted to restore the historical constitution and the monarchy as the form of state. This new monarchic era ended in the months before the defeat in World War II, when the fascist Arrow Cross Party seized power and instituted absolute dictatorship. After the war, the Soviet Army occupied Hungary, inhibiting democratic institutions and reforms. Following a few years of democratic attempts in the shadow of the Soviet Union and often hindered by the Hungarian Communist Party (the Hungarian Workers' Party), four decades of communist (or 'socialist') dictatorship began in 1949. Then, the regime change in 1989–90 signalled the dawn of the constitutional democracy currently established in the country.

Therefore, the Hungarian constitutional development in the twentieth century is marked by four periods: 1920–1945, 1945–1949, 1949–1989, and from 1989 to this day. The focus of the present chapter is largely on the first two periods. In the socialist state (between 1949 and 1989), the state was above the law; as it was not bound by legal regulation, examining this era from a legal point of view has a limited advantage, and a sociological approach is more warranted. As regards the fourth era (1989 and onwards), while the constitutional background of the regime change is relevant, the constitutional system established in 1989/90 is almost similar to that of the 2011 Fundamental Law. The parliament, government and other bodies are regulated almost uniformly by the Fundamental Law and the constitution of 1989 and thus do not merit separate examination in legal history.

## **2. The period of 1920–1945**

### ***2.1. Constitutional continuity***

In the case of historical constitutions, existing links between different periods of development are indispensable as their historical nature presupposes these connections. These links can be present formally – i.e. when political and legal power is acquired legally, according to the rules of the previous era – or in substance. To determine the presence of the latter, the question is whether changes in constitutional institutions in a new historical era take into account the models of the previous period or establish institutions without connection to previous ones. The legal literature refers to these two forms of continuity as formal and substantial continuity.<sup>1</sup> Which type is necessary to the integrity of a historical constitution is debated. The answer is evident: when both exist or do not exist simultaneously, but when only one form of continuity is detectable, it sparks debate.

1 Formal and substantial continuity is analyzed in depth by Gábor Schweitzer, see Schweitzer, 2017.

Nevertheless, this latter scenario was the situation between the two world wars in Hungary. While the National Assembly reinstated the pre-1918 constitutional system,<sup>2</sup> the assembly itself was not formed according to prior election laws. Although the previous parliament could have been convened, a new constitutional assembly was elected instead, whose election was regulated by a governmental decree. The underlying reasons for this solution will be delineated later in the chapter. Notwithstanding, this disrupted formal continuity while upholding substantial continuity. Could the historical constitution continue to be in force? In practice, the answer was yes as the state continued to function according to previous constitutional traditions.

### **2.2. The dilemma of the status of the king**

The entente strongly opposed the reinstatement of the Habsburg dynasty in Hungary. The return to monarchy as the form of state necessarily entailed the dynasty's claim to the throne as they had been the monarchs in Hungary before 1918. However, while the monarchic form of state was supported by most political actors, the return of the Habsburg dynasty was significantly less propagated. Two sides formed in this debate: the 'free electors' propagating the election of other than a Habsburg king, and the so-called 'legitimist' party, wishing to see the Habsburgs on the throne again.

The answer to this question need not be analysed further as it always remained theoretical. The return of Charles IV (Emperor Charles I in Austria) was opposed by the entente, and the debate in domestic politics reached a deadlock.<sup>3</sup> Although King Charles IV attempted to seize the throne twice in 1921, these attempts were destined to fail due to the circumstances. However, other dynasties did not have a more supported claim to the throne either, and thus, the vacation of the throne, which was expected to be temporary in the early 1920s, became permanent. The role of head of state was entrusted to a regent until the end of the era.

### **2.3. The head of state (the regent)**

Regency had been present in Hungarian public law since the Middle Ages as the substitution of the king; therefore, the political-constitutional framework of 1920 might appear to be in line with the historical constitution. Nevertheless, the solution found was a false analogy. Earlier, regents substituted the king in the case he was unable to govern the country (mostly due to his infancy); thus, the throne was not empty, and the king remained head of state. Contrarily, after 1920, the regent himself was the head of state (*sui generis*), and his duties resembled more that of a president than a king. While monarchy was the official form of state, the system of government had decisively republican features in practice.<sup>4</sup>

While the status of head of state is inherited in a monarchy, the regent of Hungary was elected by the National Assembly. Although his appointment was to last "until

2 Act No. I of 1920. Annulled all laws of the People's Republic and the Hungarian Soviet Republic.

3 Szabó, 2006, pp. 171–189.

4 Merkl, 1925, pp. 33–35.

the end of the special circumstances,” no precise term of office was determined. This was also unprecedented as the mandate of the regent had been always issued until a certain date, for example until the king was of legal age. The ‘special circumstance’ in 1920 was the uncertainty of the status of head of state, and the regent had a mandate until the resolution of this problem.<sup>5</sup> Although it was expected to take one or two years, this question reached a deadlock, prolonging the regent’s term of office for decades. Consequently, the next constitutional reform of 1937 had considered the throne to remain empty even after the death of the regent and laid down more sophisticated rules of election to the regency, in case it was necessary.<sup>6</sup> The new act created a lifetime appointment, similarly to that of a monarch.

The power of the National Assembly to impeach the head of state for a breach of law or the constitution was another republican characteristic.<sup>7</sup> In a monarchy, the head of state has no responsibility and cannot be impeached. Although this power of the National Assembly was rescinded in 1937,<sup>8</sup> it did not change the status of the regent as resembling that of a king. It did not annul his responsibility to the National Assembly, and only the National Assembly autonomously decided not to exercise this power. Therefore, it was a procedural rather than a material change, and it was more influenced by autocratic developments in other republics than by monarchic aspirations.<sup>9</sup>

The competences of the head of state were determined in line with the historical constitution. The regent mainly inherited the powers of the monarch, with the act listing the excluded competences.<sup>10</sup> In Hungarian public law, the coronation had been an important constitutional guarantee; while the new king assumed the throne by the death of his predecessor, he could not exercise certain competences until the coronation. Since the regent could not be crowned, he could not exercise these powers either. These competences were the prerogative to ratify bills, the right to award peerage, and the *ius supremi patronatus* – the right to exercise governance over the Catholic Church. The latter included the power to determine dioceses and to nominate bishops. The right to award peerage encompassed the right grant titles of nobility, such as baron and earl, although these titles did not bear considerable prerogatives since 1848. Nevertheless, the prerogative to validate a bill represented absolute veto power as no statute could be promulgated without the king’s consent. Contrarily, the regent could only return the bill to the National Assembly for reconsideration, and if the National Assembly voted to uphold it, he was obliged to promulgate the act. This

5 “Until the National Assembly does not decide on the exercise of executive power, and the new Head of State does not take office, a Hungarian citizen shall be elected by secret ballot as regent by the National Assembly” (Act No. I. of 1920, Section 12).

6 Act No. XIX of 1937, Sections 3–5.

7 Act No. I of 1920, Section 14 (2).

8 Act No. XIX of 1937, Section 7.

9 The ministerial report on the bill expressly mentioned the 1935 Polish Constitution.

10 Act No. I of 1920, Section 13.

was the third republican characteristic of the form of government:<sup>11</sup> while the king is equal in power to the parliament, the head of state of a republic does not have the same status.

The restriction of other executive competences was at the discretion of the National Assembly and was quite wide in the beginning. For example, the king had a significant influence on the operation of the parliament, with the power to adjourn and to pronounce the end of each parliamentary session and the annual session. He also had the power to dissolve the parliament. These powers were mostly excluded from the competency of the regent. Moreover, he could only grant pardons but not amnesties, and the consent of the National Assembly was also necessary to declare war and to broker peace.

Nevertheless, the extension of competences already began in the August of 1920. In two steps, the constraints on the regent's competence over the National Assembly were removed, and he also attained the right to grant amnesties. Moreover, in 1937 the regent also received stronger veto power. While in 1920 he could exercise a one-time within 60 days, in 1937 the term limit was expanded to 6 months, with the ability to veto a bill twice. Therefore, the regent could prolong the promulgation of an act even by a year.

#### ***2.4. Franchise***

The House of Representatives was a key institution of the Hungarian public sphere between the two World Wars. The members of parliament were the source of sovereignty in Hungary; consequently, whether the constitutional system had autocratic characteristics can be best determined by examining the laws of the election of the House of Representatives. Although the competences and composition of the House of Peers and the powers of the regent are also indicative, the most significant marker was the franchise. The will of the people could be distorted through election laws by gerrymandering, limiting the franchise and allowing the possibility to influence voters. Election laws were indeed the Achilles' heel of the Hungarian constitutional system of the era.

A new act on the franchise was adopted after the Aster revolution of 1918<sup>12</sup>; however, due to the far-left coup, it was never implemented. After the fall of the Soviet Republic, the government (and not the parliament) created a new election regulation in 1919, and the election of January 1920 was held according to this.<sup>13</sup> Additionally, new rules were adopted in 1922,<sup>14</sup> 1925<sup>15</sup> and 1938.<sup>16</sup> The first two (in 1919 and 1922) were issued in governmental decrees, while the latter ones were adopted as acts, more in line with constitutional requirements. The reason that the rules on election

11 It was also expressly recognised in the ministerial report on the bill.

12 People's Act No. I of 1918.

13 PM Decree No. 5985/1919.

14 PM Decree No. 2200/1922.

15 Act No. XXVI of 1925.

16 Act No. XIC of 1938.

were issued in the form of a decree in 1919 was that the election law adopted in 1918 had been deemed outdated. Since the former parliament was elected according to the 1918 rules, it was not convened either, and thus, the only institution left with the authority to issue binding regulation on the subject was the government. Although the National Assembly, formed in 1920, was elected for 2 years, it did not adopt a new Election Act either. The government re-regulated the issue, quite unfittingly, in a prime ministerial decree in 1922. In 1925, the National Assembly adopted the decree as an act, with minor changes. Therefore, with regards to elections, three different legal norms can be distinguished in the era: the regulations of 1919, 1922/25 and 1938.

The election laws of the 1918 Aster Revolution instituted reforms on three grounds: they broadened franchise significantly and instituted secret voting and a proportional instead of a majority voting system. The regulation of 1919 upheld the first two changes but reinstated majority voting.

The reform of 1922 limited franchise by introducing the requirement of primary education. The 1919 decree only required literacy for women, which decreased franchise to 58% percent from 75% in the adult population. In the case of universal suffrage, the rate should be nearly 100%. Moreover, open voting was reinstated, allowing significant influence over voters from vulnerable groups.

In conclusion, the regulation of elections placed Hungary on the verge of democratic and autocratic regimes. The reinstatement of open voting was a substantial backslide, although it was partly due to the lack of control over political parties. The desire to control voters' behaviour stemmed from the fact that candidates of parties were able to run with starkly opposite ideologies than that of the ruling party of the time. As the communist regime after World War II demonstrated, even if universal franchise and secret voting are ensured, the exercise of these important rights is still moot if only one party is allowed to run.

### ***2.5. The House of Peers***

The Hungarian Parliament had had two chambers since the early seventeenth century. Members of the lower chamber were the lower ranks of nobility and the representatives of free royal cities, while the upper chamber consisted of the higher-ranking aristocracy and clergy. In 1848, during the revolution against the Habsburg dynasty, the lower chamber was converted into the House of Representatives, with popular representation.<sup>17</sup> The composition of the Upper House did not change, but it was renamed to House of Peers, better reflecting the status of its members. Although its reform was attempted in 1885, it did not result in significant changes<sup>18</sup> as the proposed reform needed the consent of the House itself, which only allowed limited changes. As it was discussed, the legal/constitutional continuity with the era before 1918 was substantial rather than formal, and thus, the parliament operating before

17 Act No. V of 1848.

18 Act No. VII of 1885.

1918 was not convened. The National Assembly elected in 1920 had only a chamber of representatives – first, because the previous parliament had been elected with a more limited franchise, and second, because the House of Peers refused to revise its original composition. Consequently, the act reinstating the second chamber in 1926 was adopted solely by the National Assembly with the exclusion of the House of Peers. It was the Act on the Upper House<sup>19</sup> that divided the Hungarian parliament into two chambers again.

Theoretically, the reform of the second chamber had two possible directions: to change its composition or to limit its competences. The House of Peers had previously had veto power in legislation as all bills required its consent. This had been the main obstacle to the success of the 1885 reform, the aim of which was to change the composition of the House. The example of the 1911 British reform of the House of Lords of the British Parliament offered another alternative, where the composition of the other house remained untouched, while its competences were limited.

After 1926, the composition of the second chamber reflected both adherence to traditions and innovation. The new Upper House was composed of members by all the former titles, while new members were introduced. This was the primary reason for changing the name of the chamber from “House of Peers” to “Upper House” as the number of peers among the members declined from 66% to less than 16%; this represented the starkest change in the chamber’s composition. It was the direct consequence of the adjustment of the legislative framework as the nobilities who participated personally in the work of the House before 1918 were represented by only 38 members elected from among themselves under the new regulation. In addition, the number of seats of the highest-ranking peers and clergymen remained unchanged (52 members), with 40 members appointed by the head of state. Nevertheless, the largest section comprised of the representatives of the governing councils of counties (76 members) – a new category created by the act. Although in some European states, the parliamentary reform of the upper house involved the introduction of popular representation, this was intentionally avoided in 1926 as this solution was deemed to unnecessarily duplicate the House of Representatives.

Apart from its composition, the reforms also transformed the competence of the new chamber. Although the initial proposal had left it unchanged, allowing a ‘prerogative of consent’ to the Upper House, it was nevertheless constrained by the 1926 Reform Act. Similar to the 1911 British Parliamentary reforms, the veto power of the Upper House had been limited to a two-time suspensive veto. If the House of Representatives repeatedly voted on a bill after the second veto of the Upper House, it was sent to the regent for promulgation. Notwithstanding, in 1937 the pre-1918 competences of the second chamber were reinstated.<sup>20</sup>

19 Act No. XXII of 1926.

20 Act No. XXVII of 1937.

### **2.6. *The impact of traditions (the clash of traditionalism and dogmatism)***

Legal dogmatism aims to integrate the body of existing legal norms into one logical structure. By the twentieth century, legal dogmatism was the underlying principle of the legal systems of most European states. However, the Hungarian legal system between the two world wars contained elements that were irreconcilable in one logical structure. The most evident example was the state form of ‘monarchy without a king’ with an almost republican governmental system. These elements were nevertheless able to coexist due to the strong traditionalism that shaped Hungarian constitutional history, along with dogmatism.

### **2.7. *The dictatorship of the Arrow Cross Party (October 1944–March 1945)***

In the face of certain defeat in World War II, Hungary attempted to broker a ceasefire with the Soviet Union. To prevent this, the far-right Arrow Cross Party seized power with Germany’s assistance. The party derived its name from its symbol: an isosceles cross with arrows as ends, invoking the swastika, to express their ideological identification with the Nazi party.

Following the Arrow Cross *coup d’état*, the system of government had the characteristics of every totalitarian system: the activity of political parties was severely limited, and a single-party parliamentary system was introduced. The Arrow Cross Party became intertwined with state institutions, the offices of the party had direct control over ministries, and by appointing their officials, they seized control over the lower levels of state administration – the so-called ‘Armed Party Guards’. A paramilitary unit was organised, which committed horrendous massacres. The use of government decrees instead of laws had increased during the war and peaked under the Arrow Cross Rule. Judicial independence was also significantly limited, completely abolishing the separation of powers.

## **3. The era of 1945–1949**

### **3.1. *The resumption of the state***

The frontline in Hungary created two powers in each part of the country during the war. The western part remained under the Arrow Cross Rule, while in the eastern part, a new state structure began to form. On 21 December 1944, a so-called Interim National Assembly was formed in Debrecen, the largest city of East Hungary. The members of the Assembly were delegated by various political and municipal governmental bodies, formed in an ad-hoc manner on the territories occupied by the Soviets. Consequently, it could hardly be regarded as a real institution of parliamentary democracy. Nevertheless, this body created the Interim National Government and later created the National High Council to fulfil the role of the head of state. The main task of the Provisional National Assembly had been to create a new election act, setting out the conditions of a new parliamentary election and thus allowing state administration to resume its ordinary functions. The law was adopted in the



autumn of 1945, after a prolonged legislative process, and the election was held on 4 November 1945.

### ***3.2. Republic as form of state and the president of the republic***

Why the determination of the country's new state form required more than a year is still uncertain. While, during the 1918 Aster Revolution, Hungary was declared to be a people's republic within days, in 1945, the issue was not addressed for a long time, even in the electoral campaigns. Surprisingly, the running parties did not consider this to be an important subject. The Act on the Republican State Form was eventually adopted on 1 February 1946,<sup>21</sup> having the direct consequence of establishing the status of president of the republic.

The legislation on this status was created with a compromise between the three most influential parties of the time (the Small Holders, the Communists and the Social Democrats). Each of them presented drafts,<sup>22</sup> and the final text of the act reflected various aspects of all three. The relation of the President of the Republic to the executive power was the most contentious issue. While the Small Holders wanted a presidential system in line with constitutional traditions, the other parties would have preferred a parliamentary system. The most controversial questions were the nomination of the President of the Republic and his competences over the National Assembly. The first concerned the dilemmas of whether forming a government should require confirmation by the National Assembly or nomination by the president of the republic, and whether both the National Assembly and the president of the republic, or only the former, should be granted the power to dissolve the government. In the case of the competences of the head of state over the National Assembly, the Small Holders' Party wished to grant the former royal prerogatives to the president of the republic (dissolution, adjournment), while the other parties wanted to limit these powers.

Eventually, the Small Holders' ambitions gained traction as the National Assembly obtained advisory rather than confirmatory power in the formation of the government, and the president of the republic acquired the power to dismiss the cabinet exclusively. Nevertheless, the dissolution of the National Assembly required the consent of the government or the petition of two-fifths of the representatives. Although the latter allowed the dissolution even against the vote of the government majority, these rights bore small relevance due to the informal powers delineated below.

Additionally, it must be highlighted that Act No. I of 1946 did not create a Constitutional Charter either, and thus, the transformation of state form happened within the framework of the historical constitution.

### ***3.3. The effect of Soviet occupation***

As mentioned in the introduction, the attempt to establish a democratic state between 1945 and 1949 was unsuccessful. The most important cause was the impact of the

<sup>21</sup> Act No. I. of 1946.

<sup>22</sup> Vida, 1982, pp. 951-969.

Soviet occupation, which did not support democratic aspirations. The informal pressure of SU-friendly political groups was present in the country since 1945 as the ministry of the interior was controlled entirely by the Communist Party, without any oversight of the government. The circumstances of the resignation of Prime Minister Ferenc Nagy in July 1947 illustrate this situation. During his vacation abroad, the prime minister's secretary was arrested in the ministry. Since his safety was also threatened by the Minister of the Interior – formally his subordinate – he chose to resign and left Hungary.

In 1945 whether a party was allowed to run in the upcoming election had been decided by the occupying forces. In 1947, a new parliamentary election was held, where the Communist Party could safely commit thinly veiled instances of electoral fraud. In the following years, they forced the social democrats into a union and gradually ousted the other parties from political power. During the next election in 1949, the only option on the voting list was the Hungarian Workers' Party, and the single-party system was completed. In August, the newly elected National Assembly adopted the Act XX of 1949 as the Constitution of the Hungarian People's Republic, and 40 years of communist rule began.

## **4. The socialist state (1949–1989)**

### ***4.1. The absence of the rule of law***

The cornerstone of rule of law is legal certainty. The objective of the democratic state is to make legal norms known to its citizens and incentivise law-abiding behaviour, and coercion is used only in case of a breach of previously published laws. On the contrary, the totalitarian state aims to raise uncertainty among people, and state retaliation without clear cause induces civilians to refrain from public criticism and active participation in public decision-making. In the new Hungarian political system, the constitution could not function as a firm foundation either as power was exercised through informal means. The constitution adopted in 1949 did not even attempt to comprehensively regulate the functioning of the state; for example, it did not even mention, let alone regulate, the police. The operation of law enforcement agencies was generally opaque (see Section 4.3.), increasing people's fear and uncertainty.

The operation of totalitarian states regardless of their ideologies is largely similar; therefore, many institutional features of the Arrow Cross Party's rule were also present under the communist dictatorship.

### ***4.2. The relationship of state and law***

In the socialist system (and in fact in all totalitarian systems), the connection of law and state was tainted. While in a democracy the operation of the state is determined, and the political will of state actors is constrained by law, in the totalitarian state, the law is simply a tool of the state power (i.e. the political will of those in power). As the state was the master of the law in Hungary as well, textual legal analysis cannot

inform us about the actual functioning of the Hungarian communist/socialist state; its characteristics can be more aptly determined on a factual basis in a sociological dimension rather than by analysing legal norms.

#### **4.3. The characteristics of the socialist state**

*The single-party political system.* The most important element of the encroachment on democratic aspirations between 1945 and 1949 was the obstruction of political parties. Consequently, in the election of 1949, voters could only vote the candidates of the Hungarian Workers' Party (the communist/socialist party), rendering the aim of elections (i.e. to allow the choice of different alternatives to voters) itself moot. A single-party political system can only serve to strengthen the power of the ruling party, not to facilitate democratic self-organisation. This was the case not only in the Hungarian communist regime after 1949 but also in the Arrow Cross Party's rule in 1945 and in Nazi Germany.

*The fusion of state and party organisation.* Another characteristic of all totalitarian states (the socialist regime as well as the rule of the Arrow Cross Party) is the fusion of party and state structure; similarly, in Nazi Germany, political leadership belonged to the party, with state organisation playing only an administrative role.<sup>23</sup> The political leadership of the socialist party was also declared by the 1949 constitution.<sup>24</sup> This fusion was most salient from a functional aspect: the organisation of the Hungarian Workers' Party was parallel to ministries, all branches of public administration having a separate party committee or other body; even 'personal unions' were not uncommon, with one person having both a ministerial position and an overlapping position within the party.

*The heightened role of state security agencies (the political police).* As previously discussed, the role of the police is different in totalitarian systems than in democracies. An important characteristic of the totalitarian police force is the absence of a legal framework that regulates law enforcement agencies and thus protects citizens from abuse. Another attribute is the establishment of a separate political police allowing the prioritisation of state security, a crucial subject in dictatorships. Due to the Soviet influence, the ministry of the interior had been under the influence of the Communist Party since the end of World War II. Consequently, the 'Department of Political Security' had been established in 1945 and renamed the 'Department of State Protection' (DSP) in 1946. For many Hungarians, this acronym and that of its successor, the State Protection Authority (SPA), are still all too familiar. The SPA was established in 1948 and further strengthened the Hungarian political police by removing its ministerial control. The SPA was one of the most feared institutions of the socialist regime until 1956, when it was reintegrated into the ministry of the interior after the revolution.

23 Kluge and Krüger, 1939, p. 93.

24 "The Marxist-Leninist party of the working class is the leading force in society" (Act I. of 1972 on the amendment of Act XX. of 1949 and the single text of the Hungarian People's Republic, Section 3.).

Due to the paramount role of state security agencies in enforcing terror, institutions similar to the SPA were established in other communist states as well, such as the KGB in the Soviet Union, the Securitate in Romania or the Stasi in East Germany. The Gestapo (its official name, *Geheime Staatspolizei*, which translates to ‘Secret State Police’) of the Nazi party played a similar role.

*The paramilitary unit of the state party.* Apart from the security forces, the state party also established a new paramilitary unit to strengthen its position. The unit, called the Workers’ Guards, was established in 1957; functionally, it was similar to the SS in Nazi Germany or the Armed Party Guards of the Arrow Cross regime.

*The elimination of the separation of powers.* The separation of powers was not expressly recognised in the constitution of 1949, and the state organisation it set out did not adhere to this principle either. In fact, the parliament was exclusively empowered to exercise state sovereignty,<sup>25</sup> and this provision in itself eliminated the separation of powers between separate branches of government. Additionally, another organ of the new people’s republic, the Presidential Council, was granted the power to substitute parliamentary legislation by so-called ‘legislative decrees’<sup>26</sup>. This resulted in a practice where only 10–20% of legislative sources were acts adopted by the parliament, while most questions were regulated by legislative decrees issued by the Presidential Council. Although the constitution provided for judicial independence, judges could be party members – in fact, this was often the precondition of a successful career.

*The abolishment of local governments.* While it is largely connected to the elimination of separation of powers, the elimination of municipal governments also merits delineation. At the local level, executive committees were organised with the power to substitute the representative bodies of local councils, similarly to the Presidential Council. These executive committees were under the government’s control.

#### **4.4. The most important elements of the eradication of legal certainty**

Totalitarian regimes aim to erode legal certainty and the rule of law as these allow retaliation against its opponents without clear legal boundaries. Since in a totalitarian regime, the law is merely an instrument of the state party’s political will, it cannot function as an effective constrain of state/political power. Moreover, the characteristics examined in the previous points allowed the total elimination of legal certainty, which had the most salience in the areas of administrative law and criminal law.

Administrative law was removed from judicial control in 1949, and therefore, the strictly hierarchical state administration was no longer forced to abide legal norms. On the contrary, administrative exceptions had been easily granted for a higher political purpose. Nevertheless, the most detrimental was the absence of any legal regulation in many areas of life. As previously discussed, the constitution of 1949, while covering various subjects, forgot to regulate law enforcement agencies, and

25 “Parliament shall exercise all powers stemming from of popular sovereignty” (Constitution of the Hungarian People’s Republic of 1949., Section 10.2.).

26 Constitution of the Hungarian People’s Republic, 1949, Section 20. 4–5.

there was hardly any regulation at the lower level either; consequently, in the case of police actions, an ordinary citizen could not know whether the measures were in fact legal. Although the police had a strict code of conduct, it was unknown to ordinary citizens. The police's official manual of conduct was only made public in January 1990,<sup>27</sup> and only its provisions of annulment revealed that the entire body of the police was regulated by an order of the Minister of Interior until that point.<sup>28</sup>

As regards the body of criminal law, secret legislation existed in this branch of law as well, facilitating grave abuses of justice.<sup>29</sup> Moreover, in politically sensitive areas, criminal law provisions were often worded superficially and ambiguously, granting a wide margin of discretion to judges and law enforcement agencies. One such area was the crimes against the state or the crimes against the economic order, and criminal law was also used to enforce irrational administrative provisions. One example of crimes against the state is the protection of constitutional order. While the previous criminal code of 1878 described it as “the crime of high treason is also committed by any act aiming to (...) forcibly amend (...) the constitution of the state of Hungary”,<sup>30</sup> the wording of the criminal code of 1978 demanded that “a person who participates in, or supports a conspiracy, directly aimed to overthrow or weaken the constitutional, social or economic order of the Hungarian People's Republic is guilty of a felony”.<sup>31</sup> In the latter, the social and economic order is also subject of protection, and the *actus reus* encompasses both overthrowing and weakening. Moreover, the latter provision does not require the direct link between the sanctioned act and the subject of protection and does not only refer to violent acts.

#### 4.5. *The intensity of coercion (from terror to consolidation)*

The idea that a state's constitution is a realistic picture of state organisation, and the ordinary functioning of the state is rooted in the concept of rule of law; therefore, it is less applicable in a totalitarian state, where the system of government can be better examined through sociological factors. In these states, the subjective will of those wielding political power influences the system of government rather than legal norms.

The communist state was nevertheless consolidated in Hungary over the decades. By the 1980s, ordinary people were generally not threatened by arbitrary state actions. However, it was not a complete change in means, as the previously employed instruments of dictatorship were still at disposal, but a change in the attitude of the political leaders. The single-party system, the fusion of the state and the party, the

27 1/1990 MI Decree.

28 24/1998 MI Order.

29 One such legal norm was the legislative decree No. 26. of 1950, which threatened certain instances of border crossing with the death penalty. Although this legislative decree was never published in the Hungarian Gazette, the official journal, it was actually invoked as the legal basis of several realised death sentences.

30 Act No. V of 1878, Section 127. (2).

31 Act No. IV of 1978, Section 139. (1).

secret police within the ministry of the interior and the paramilitary units of the party all existed until 1989/90. The independence of local governments was restored in the autumn of 1990 as well, after the first free elections. The law reconciling crimes against the state with the requirements of the rule of law was adopted in the summer of 1989, and the police's manual of conduct became public in January 1990; therefore, the rule of law was permanently absent until the fall of the regime.

## 5. The reinstatement of constitutional democracy

After 1989/90 the former socialist countries of Central and Eastern Europe re-established a constitutional democracy either by returning to the pre-communist constitutional framework or by creating a new constitution. The first option was chosen only in Latvia,<sup>32</sup> while in the other states, a new constitution was adopted. This latter option raised another challenge, namely to create the normative framework of constitutional transition. The foundations of a democratic state had to be laid down before the new democratic elections, which required a new election act, the establishment of new parties, independent judicial oversight and constitutional adjudication. However, such a transitional constitution had to have been adopted by the parliament of the old regime. Moreover, after the democratic elections, the creation of a new constitution, with all the political and legal disputes that it entailed, was a tedious and uncertain process.

In Hungary, the democratic transition was ensured by the amendments of the 1949 constitution promulgated on 23 October 1989. After the regime change, several attempts to adopt a new constitution were introduced in parliament; however, no draft could gain the required two-thirds majority of votes until 2010, when the Fundamental Law was adopted.

The Fundamental Law aimed to reinstate continuity with the historical constitution. While the amended constitution of 1989 did not provide for such continuity, Art. R (3) of the Fundamental Law established the “achievements of the historical constitution” as a supplementary means to its interpretation.

32 The constitution adopted in 1922 came into force again.

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