István Szabó[*]

THE IMPACT OF TRIANON ON PUBLIC LAW TRADITIONS[1]

1 Prologue

The military collapse in 1918 launched a revolutionary wave in Hungary which – similarly to the other loser states of Central Europe – also did away with the monarchic system of government. The new system of government in Germany and Austria was there to stay; in Hungary, however, the constitutional order of the era prior to the military collapse was re-established just one and a half years later. What could be the reason for these sudden swings? Was the break with the earlier public law setup a well-considered constituent step or was it merely designed to drain off tension piling up in the wake of the war? Did it mediate a well-considered demand for change, or was it no more than a gesture towards the victorious powers?

The question really is to what extent the goal of republican endeavours was to break with the past? Did they regard the republic as a constitutional setup ensuring a more beautiful and happier future than the monarchy based on reasons of state philosophy, or the choice of the system of government (the break with the past) was no more than an instrument to achieve some political objectives? The paramilitary organisation fighting for Kosovo's independence (UCK) called itself a liberation army, which would have been fitting also for the organisation that had earlier fought for the separation of Northern Ireland. The latter, however, opted for the name of Irish Republican Army (IRA) instead of liberation army. A republican system of government means liberation

[*] Dean and full professor – Pázmány Péter Catholic University - Faculty of Law and Political Sciences, Department of Legal History, szabo.istvan@jak.ppke.hu.

[1] The short term „Trianon" refers to the Treaty of Peace between the Allied and Associated Powers and Hungary, signed in the Palace of Trianon in Versailles, Paris, France on 4 June 1920.

because they wish to break away from a monarchy and the change in the system of government renders belonging there impossible also in terms of constitutional techniques. A republic cannot be a constituent element of the United Kingdom.

Drawing a parallel from Hungary's history, similar motivation can be discovered also in the case of Kossuth's republican sentiments. The republic was to underscore the break-off from the Habsburgs rather than a break with traditions. Insistence on the past can be found at several points in his public law thinking. As the leader of the so called municipalists,[2] when thinking about the reform of the counties, he wished to retain a number of the features of the old counties, those which could be fitted in with the framework of a civil (non-feudal) state.[3] He took a stand for the tied mandates of the representatives (delegates) of the national assembly even at the time of the Compromise while in exile.[4] Traditionalism broke through dogmatism also in this case, because the principle of representation and the free mandate are handled as interrelated notions. In his draft of the constitution produced after the freedom fight (Constitution of Kütahya) he again combined modernisation with traditions. Obviously, he maintained the institution of an accountable ministry, but he wished to align the names of the portfolios established in 1848 with traditions as he wrote: *"I regard the historical foundation and its analogy to be retained also with respect to the ministers."*[5] He wished to call the minister of justice "országbíró" (judge royal), the minister of finance as "tárnokmester" (master of the treasury), the ministry of defence "országos főkapitány" (national captain in chief) and the minister of the interior "országos

[2] An umbrella term referring to a group in the Hungarian Parliament, the members of which advocated for maintaining the decision-making powers of the counties in the 1840s.

[3] Stipta István: Kossuth Lajos önkormányzat-koncepciója. In: Balogh Judit (ed.): *Európai Magyarországot! Kossuth Lajos és a modern állam koncepciója.* Debrecen: DE-ÁJK. 2004, 111–115.

[4] Stipta 2004, *ibid* 127–130.

[5] Kossuth Lajos: Alkotmányjavaslat (1851. április 25. – későbbi módosításokkal és javításokkal), http://mek.niif.hu/04800/04882/html/szabadku0167.html, dowloaded: 2020.12.08.

főispán" (lord-lieutenant).[6] What needs to be highlighted in particular is that he retained the traditional names of institutions also in the republican system of government. He envisaged a "kormányzó" (governor) elected by the people for a specific period of time at the head of the state, whose deputy - taking the American vice president as an example – was to be the "nádor" (palatine).[7] Even though he changed the system of government, he did not fully break away from the previous system of government. Based on these facts, I deducted that Kossuth's republican sentiments were probably motivated by the break with the Habsburgs and not a break with the past.

Coming back to the question raised (in what way can the period of 1918-1920 be linked to public law traditions), we can state that a break with the previous public law setup is not a necessary consequence of a republican system of government. Even a republic could be linked with the traditions of the preceding monarchic constitutional system. Following a constitutional reform, the connection is never one hundred percent as every constitution evolves, certain elements are omitted, while new elements are included. Changes take place even if the system of government remains a monarchy.

In the study below, I examine what motivated the objective to break with traditions in the autumn of 1918 and what may have caused a radical realignment a year after. What were the effects of the country's territorial disintegration and the Peace Treaty sealing it on Hungarian public law.

2 The peculiarities of the constituent process in the autumn of 1918

As mentioned in the preceding section, the events taking place in Hungary manifested a number of similarities with those taking place in the other two loser states (Germany, Austria) in the initial weeks.

[6] Kossuth 1851, *op. cit.*; Stipta István: Kossuth Lajos 1859-es alkotmánykoncepciója. In: *Jogtudományi Közlöny* 1995/1, 52.

[7] Kossuth 1851, *ibid*

The Néphatározat (People's Resolution) issued on 16 November introduced a republican system of government (the people's republic),[8] and envisaged convening a constituent national assembly.[9] While the elections were soon held in Germany and Austria,[10] it came to a standstill in Hungary because of territorial disputes. The people's law on the election of the national assembly[11] extended to the entire territory of the state prior to the war with the exception of Croatia, but the Entente Powers were opposed to it.[12]

It was, however, a greater problem than the obstruction of the Entente Powers that in actual fact the process of preparing the constitution did not begin at all, even though the People's Resolution specified the adoption of the constitution of the people's republic as the task of the constituent national assembly.[13] Whereas in Germany Hugo Preuß entrusted with the preparation of the constitution drafted its first concept as early as in December 1918,[14] and No. 15 of the *Reichsanzeiger* published the first public draft of its text on 20 January 1919, virtually nothing happened in Hungary. Reading the minutes of the meetings of the Council of Ministers, we can find a single sentence note at the meeting of 20 November 1918, in which the minister of justice was assigned to prepare the constitution of the republic.[15] Four months passed until the Tanácsköztársaság (Council Republic), but the new

[8] People's Resolution of 16 November 1918 Article I.

[9] People's Resolution of 16 November 1918 Article II(1).

[10] In Germany, the elections were held on 19 January 1919 and the national assembly held its constituent meeting in Weimar on 6 February; in Austria, the constituent national assembly was elected on 6 February and it held its constituent meeting on 4 March.

[11] People's law XXV of 1919.

[12] Lieutenant-Colonel Vix requested Mihály Károlyi to postpone the elections in his letter dated as early as 23 January 1919. [MNL OL K-26-1920-III-1455.].

[13] People's Resolution of 16 November 1918 Article II(1).

[14] Preuß, Hugo: *Das Verfassungswerk von Weimar*. Herausgegeben, eingeleitet und erläutert von Lehnert, Detlef, Müller, Christoph, Schefold, Dian. Heidelberg: Mohr Siebeck. 2015, 111–134.

[15] The text in the minutes is no more than this: "Upon the submission of the minister of justice, the Council of Ministers entrusts him with the work of preparation for the constitution of the republic" [MNL OL K-27 meeting of 20 November 1918, p. 6.].

constitution was not even mentioned at the meetings of the Council of Ministers. I myself could not find any evidence in sources of the archives, nor have I read in secondary literature about anyone finding any ministerial document containing at least a concept of the main lines of the new constitution, let alone a draft text.

Similarly to the work of the government, the activity of legal science also remained at a very low level. In Germany, beside the official draft by Hugo Preuß, dozens of legal scholars and social scientists drafted independent constitutional drafts,[16] whereas in Hungary, there was quiet in legal science - similarly to the ministerial preparation. Following the detailed study of bibliographies, I found only a single study related to the subject matter. Early in 1919, Emil Benárd published a concept for the constitution in the journal *Jogállam;*[17] however, he did not get to drafting a text either.

We find a number of writings demanding revolutionary changes in the articles published in *Jogtudományi Közlöny* from November 1918, but nobody wrote about this being conditional upon a new codified constitution. The series was opened by Rusztem Vámbéry's writing entitled *Forradalom* (Revolution),[18] and subsequently we could read about the democratisation of the administration of justice,[19] the tasks of legal science after the revolution[20] or about revolutionary legislation.[21] The writings of Károly Szladits and Pál Angyal stand out from among the best of legal science. Szladits discussed the transformation of

[16] Fenske, Hans: Nichtamtliche Verfassungsentwürfe 1918/1919. *Archiv des öffentlichen Rechts* 121/1996, 24–58.; Dubben, Karin: *Die Privatentwürfe zur Weimarer Verfassung – zwischen Konservativismus und Innovation*. Berlin: Logos. 2009.

[17] Benárd Emil: A Magyar Népköztársaság alkotmánya. In: *Jogállam* 1919/1–2, 73–85.

[18] Vámbéry Rusztem: Forradalom. In: *Jogtudományi Közlöny* 1918/44–45, 337–338.

[19] Láday István: Az igazságszolgáltatás demokratizálása. In: *Jogtudományi Közlöny* 1918/46, 345–346, *Jogtudományi Közlöny* 1918/47, 353–355, *Jogtudományi Közlöny* 1918/49, 370–371.

[20] Rosnyai Dávid: A jogtudomány első feladata a forradalom után. In: *Jogtudományi Közlöny* 1918/46, 346–348.

[21] Morus Junior: Forradalmi jogalkotás. In: *Jogtudományi Közlöny* 1919/6, 41.

the legal system,[22] and his inaugural address of rather revolutionary tones delivered at the 23 February meeting of the Hungarian Law Association was also remarkable. In this latter, he discussed the need for the renewal of the constitution, referring primarily to resolving the ethnic minority issue, but he did not mention a new codified constitution.[23] Pál Angyal discussed the amendments to criminal law becoming necessary because of the republican system of government,[24] but he too resorted to modifications to the existing legal order instead of building up a new constitutional order breaking with the past.

All in all, it can be established about the relationship of legal science to a new constitution that apart from Emil Benárd's writing already mentioned, no independent works were published about its necessity, and what's more, the problem was left untouched even in relation to the studies addressing the revolutionary transformation.

Let us then discuss briefly the only study about the subject matter. With quotations taken from it, I wish to summarise the essence of Emil Benárd's thoughts below:

> "Presumably, in this way the largely unwritten historical constitution of our country will be replaced by a written constitution, perhaps hurting those who see the power of the Hungarian con-

[22] Szladits Károly: A jogrendszer átalakulása. In: *Jogtudományi Közlöny* 1918/51, 385–386.

[23] "The war and the revolution transformed our statehood. We have to rebuild our entire constitution, almost our entire administration up to the leader of the people's state and according to their needs. We await ensuring the historical and economic integrity of the Hungarian state from the Peace Conference with full trust. But within this uniform state territory, we wish to set up a new governing structure to replace the old one which based on the system of autonomy for ethnic minorities grants the enforcement of free self-government to our brother ethnic minorities. The related separation of the responsibilities of the authorities and their unification into a higher unit is the most difficult problem of the governing structure through the successful solution of which Hungarian men of the law will fill in a world historical calling, acting as a paragon for all times." *Jogtudományi Közlöny* 1919/9, 65.

[24] Angyal Pál: Büntető jogszabályaink és a Magyar Népköztársaság. In: *Jogtudományi Közlöny* 1918/49, 369–370; *Jogtudományi Közlöny* 1918/50, 379–380, *Jogtudományi Közlöny* 1918/51, 387–388, *Jogtudományi Közlöny* 1919/1, 4–5, *Jogtudományi Közlöny* 1919/2, 13–14, *Jogtudományi Közlöny* 1919/8, 58–59.

> stitution in its primordiality, in its historical genesis. […] On the other hand, this constitution need not break with the historical past in all aspects. […] It would be a senseless dissipation of the great values of the nation, if our constitution failed to make use of the non-obsolete, reformed and proven institutions of the ancient Hungarian constitution. In this way, the new constitution can be the incorporation in writing of the centuries old constitutional institutions which largely evolved historically and thus even though the constitution would be put in writing it would bring forth the basic historical nature of the Hungarian constitution. […] The recognition that the constitution of the People's Republic will consist partly of existing and partly of new constitutional institutions could lead to a principle of editing that the law on the constitution will contain only the new items of our constitution and otherwise declare the maintenance of the old institutions of our constitution desired to be retained. This kind of editing would express the historical nature of our constitution and the continuity of constitutional law even in appearance; in contrast, the spirit of the changed times requires a technique for editing the law, which aims at conciseness, clarity, simplicity and completeness. Let, therefore, the new constitutional law be the integrated and complete constitutional code of the People's Republic of Hungary accessible to all."[25]

The essence of Emil Benárd's thoughts: One must not fully break with public law traditions, but to develop a new constitutional system, it is not enough to supplement the historical constitution with new laws, but it has to be consolidated into a codified constitution. He upholds a new written constitution, but rejects a full break with traditions.

[25] Benárd 1919, *ibid*. 73–85.

3 The relationship of the Károlyi era to traditions: regulating the national coat of arms

Although political communication in the era marked by the name of Mihály Károlyi was characterised by a break with the past, yet as seen in the section above there was no effective constituent (constitutional preparatory) activity. Thus, we find little by way of objective sources for the analysis of connecting to traditions or breaking with them. The regulation of the national coat of arms is one of the rare cases which could be suitable for this. Although the People's Resolution did not specify a relevant obligation for the government,[26] yet it was regarded as important. It is worthwhile to examine the regulation of the coat of arms both in terms of form and content to see how strong their bond was to traditions or to what extent they broke with them. I understand the legal background to the statement to mean the first and the world of symbols associated with the coat of arms as the second.

The new coat of arms was established by a government decree.[27] Albeit Article III of the People's Resolution assigned full sovereignty to the people's government led by Mihály Károlyi until the constituent national assembly was convened, which meant that the government could enact laws (including people's laws), in the case of specifying the national coat of arms they used the form of government decree following the practice prior to 1918. The regulation of the national coat of arms by government decree is unusual in the framework of a codified constitution as it would be more fitting to include it in the text of the constitution itself. Using the form of government decree is linked to tradition as the specification of the national coat of arms had historically been a competence of the monarch, whose powers were exercised through the responsible ministry once it was set up. Presumably, not with direct deliberateness, but the Károlyi government built the regulation of the coat of arms on traditional legal basis.

[26] Article IV of the People's Resolution lists the subject matters, in which the people's government had to take measures without delay [franchise, freedom of the press, juries by the people, right of association and assembly, land reform].

[27] ME Decree on the coat of arms of the republic and the state seal.

The decree modified the former small coat of arms to the extent that the Holy Crown was removed from it together with the crown in the middle of the triple hill:

> "The coat of arms of the People's Republic of Hungary differs from the state's small coat of arms used to date to the extent that the royal crown resting on the crest and the open crown formerly in the middle part of the triple hill will be omitted."[28]

We need to pay attention also to the terminology of the text of the decree: the crown resting on the crest is referred to as the royal crown rather than the Holy Crown. The removal of the crown and reference to it as the royal crown clearly leads to the conclusion that the *Károlyi era regarded the crown on the coat of arms as a symbol of the system of government*. This meant a break with traditions as they did not accept the meaning of the Holy Crown symbolising Hungarian statehood.

4 The Council Republic and the conditions after its collapse

In a manner characteristic of totalitarian states, the Council Republic quickly dealt with the task of "creating a constitution". Of course, within quotation marks, because this was no more than a formal constitution. The document issued by the national assembly of the allied councils on 23 June 1919 clearly broke with tradition already in its first article as usual in the case of socialist constitutions.[29] The condemnation of the past and the promise of a happier future are among the general characteristics of socialist (communist) powers.

After the collapse of the Council Republic, the question was whether to connect to the people's republic proclaimed on 16 November 1918,

[28] ME decree 5746/1918 Article 1(1).

[29] "In the Council Republic, the proletariat seized all freedoms, rights and powers, in order to terminate the capitalist order and the rule of the bourgeoisie and to replace them with the socialist order of production and society." [Constitution of the Socialist Allied Council Republic of Hungary Article 1].

or to the period preceding it. The victorious powers - wishing to avoid the return of the Habsburgs - expected the republican version. At the time of the Council Republic even the future prime minister, István Bethlen made a promise to the victorious powers along these lines.[30] Later, the Entente Powers informally signalled that they would regard a plebiscite as desirable concerning the issue of the system of government.[31] They hoped that the majority of the population was for the republic. However, Archduke Joseph, the *homo regius* delegated by Charles IV in the autumn of 1918 also participated in relaunching public life. He invited István Friedrich to form a government. And the new government adopted the following decision at its first meeting:

> "The council of ministers declares that the official name of Hungary shall be the Republic of Hungary headed by Archduke Joseph as governor."[32]

The decision recognizes the republican system of government but breaks with the People's Resolution at two points. On the one hand, it does not use the people's republic included in it for the designation of the system of government, while the fact that the decision recognises Archduke Joseph as the head of state constitutes a particularly clear break. Undisputedly, he was linked to the era before the People's Resolution

Although Archduke Joseph soon resigned his office, the next months were spent in this interim state. The government recognized the republican system of government, but its actual activities were not clearly linked to the public law setup after 16 November 1918. For instance, the government gave orders for the reestablishment of the conditions of 30 October 1918 for municipalities already at the

[30] Ruszoly József: Az első nemzetgyűlési választások előzményeihez. In: Ruszoly József: *Alkotmánytörténeti tanulmányok 1.* Szeged: JATE Kiadó. 1991, 222–223.

[31] Prime minister Károly Huszár referred to this even in the council of minister's debate of the bill concerning the reestablishment of constitutionality. [MNL OL K-27. Meeting of 13 February 1920. 33.].

[32] MNL OL K-27 meeting of 8 August 1919. 10.

beginning of its rule (on 8 August).[33] Naturally, there were several cases when the government ordered the reestablishment of the legal situation that existed before 21 March 1919.

At its session of 4 December 1919, the council of ministers discussed an interesting submission. The Party of the Hungarian Kingdom initiated the reinstatement of the Holy Crown onto the coat of arms and the use of the adjective 'public' instead of the term 'people's republic' for public authorities.[34] However, the council of ministers did not regard adopting a decision desirable for general political reasons. Although the submission only wanted to render the naming of public authorities neutral with regards to the system of government, even that was considered a sensitive decision by the government. It reveals a lot that the initiative was put on the agenda indicating sympathy for the issue. The submission itself was rather muddled as the government had already required the courts in its decree promulgated on 20 August to bring their verdicts in the name of the Republic of Hungary,[35] yet the Party of Hungarian Kingdom still referred to the people's republic.

[33] "Until the constitutional reorganisation of public administration, all the municipal bodies (legislative committee, administrative committee, body of representatives, town council, village prefecture and their formations) and all the individuals, who exercised the powers of authority or office either as members of the bodies referred to, or on the basis of election or appointment on 30 October 1918 shall immediately begin their operation […]" [Decree 3886/1919. ME. (2)].

[34] "The prime minister shall present the submission of the Party of Hungarian Kingdom requesting a government measure that the Holy Crown be reinstated into the coat of arms of the Hungarian state, Hungarian public authorities be referred to as 'public' and not that 'of the people's republic' and these names be used on all official documents and that the courts bring their verdicts in the name of the Hungarian state and not on behalf of the people's republic." [MNL OL K-27 meeting of 4 December 1919. 46.].

[35] "Until constitutionality is fully re-established, the courts shall bring their verdicts in the name of the Republic of Hungary." [Decree 4038/1919. ME. Article 1 (2)].

5 The strongest appearance of public law traditions: the specification of the system of government

The national assembly convening in February 1920 expressly broke with the public law setup of the Károlyi era. The act on the reinstatement of constitutionality declared their entire operation invalid, specifically mentioning the People's Resolution.[36] With rendering the latter null and void, the system of government (kingdom) that existed before 16 November 1918 was re-established, yet the text on the filing stamp of the prime minister's office read "*The office of the prime minister of the Republic of Hungary*" even after the election of Miklós Horthy as governor.[37] Fearing the reactions of the Entente Powers, the issue of the old system of government still was not raised.

The impasse was surmounted by the establishment of the new government led by Sándor Simonyi-Semadam. At the first session of the council of ministers following the formation of the government on 15 March 1920, he declared that the system of government of the country was not a republic, but a kingdom, and the issue of a government decree on this subject matter was regarded necessary.[38] The minister of justice presented the draft decree the next day,[39] on the basis of which Decree 2394/1920 ME on "*the naming of public authorities, offices and institutions and the use of the Holy Crown on the national coat of arms*" was promulgated on 18 March. In essence, this legal regulation was the implementation decree of Act I of 1920 and declared that:

> "[…] Act I of 1920 […] did not change Hungary's thousand-year-old system of government, […] and declared null and void the

[36] "All the provisions issued in people's laws, decree or any other description by the bodies of the so-called people's republic and council republic shall be null and void. […] The so-called people's resolution and people's laws registered in the Corpus Juris shall be deleted." [Article 9 Act I of 1920].

[37] MOL K-26-1920-III-1443 (2160/1920). [The document mentioned as an example was filed on 12 March 1920.]

[38] MOL K-27. Meeting of 15 March 1920. p. 12.

[39] MOL K-27. Meeting of 16 March 1920, pp. 28–31.

> anti-constitutional revolutionary provisions which […] desired to erase the institution of kingdom […]. Relative to this therefore, so long as the legislature does not provide otherwise, Hungary's lawful system of government shall remain the kingdom."

One could conclude from the background of legal sources that the republican system of government was changed to kingdom by a government decree. And that would be a rather strange step. There is, however, a nuance to the picture, namely that prior to 1918 the system of government was determined by common law, which is a norm existing without being incorporated in writing. Over the centuries, a number of the common law rules of the historical constitution were reinforced by law, their normative force, however, still did not stem from these, but from common law. In the nine centuries, such written confirmation was not regarded necessary for the system of government; it could have been topical in the midst of the muddy conditions of 1920. There is no doubt, it was extraordinary that such an essential element of common law was confirmed not by law, but by decree. István Csekey was absolutely right when he raised this problem.[40]

All this, however, does not alter the fact that within the framework of the historical constitution, the law and the decree could be legal sources, being not only substantive (creating rights), but also formal (confirming existing rights). In these days, however, only the former is admissible.

After Werbőczy,[41] Hungarian public law attributed three functions to common law: explaining the law, deteriorating the law and substituting for the law.[42] The essential difference between the two types of constitution is that in the case of the historical constitution,

[40] "This recently issued decree is a strong and decisive step towards the full implementation of the continuity of law, but we object why all this did not take place in the form of a law." Csekey István: A kormányzó és jogköre. In: *Magyar Jogi Szemle* 1920/5, 260.

[41] Hármaskönyv Előbeszéd Title 11. Articles 3–5.

[42] Molnár Kálmán: *Magyar közjog*. Pécs: Danubia, 1926, 31; Egyed István: *A mi alkotmányunk*. Budapest: Magyar Szemle Társaság. 1943, 53.

there existed also a law substituting custom, while in the case of a codified constitution it only had the law explanatory function. Legal practice can resolve legal disputes only on the basis of itemised legislative texts. The law supplementary custom, however, arose so that legal practice could resolve legal disputes even in the absence of itemised legislative texts, that is, legal practice made up for the law. A law or a decree can be a substantive source of law, if it confirms the law substituting custom. Today, we can find substantive source of law only in the Fundamental Law,[43] which may render it comprehensible that we handle every law and decree automatically as formal sources of law.

So, the system of government became *de jure* kingdom as from the entry into force of Act I of 1920, there can be no doubt about it. Filling the royal throne, however, was made increasingly difficult by reasons of both foreign and domestic politics, thus a settlement of the *de facto* situation did not take place. The country remained a kingdom for the long run without filling the royal throne. Now without a king, the republican elements predominated in the operation of the state. This position was decisive also in the public law literature of the age (see, for instance, the works of István Csekey,[44] Ödön Polner[45] or László

[43] In paragraph (67) of the justification to AB Decision 22/2016. (XII. 5.) the Constitutional Court declared that "[…] the constitutional identity of Hungary is a fundamental value, which is not created by the Fundamental Law, it is only recognized by the Fundamental Law." [See also Varga Zs. András: Történeti alkotmányunk vívmányai az Alaptörvény kógens rendelkezéseiben. In: *Iustum Aequum Salutare* 2016/4, 89.] Here the Fundamental Law functions as a substantive source of law: it does not give rise to rights, but confirms existing ones.

[44] Csekey criticised Act I of 1920 as follows: "Rather than dividing the powers of the state between the head of state and the national assembly representing the members of the nation based on the Holy Crown theory, it continued to reserve a substantial portion of the rights due to the head of state thereby smuggling a very peculiar republican tasting spirit of sovereignty into the Hungarian constitutions." Csekey 1920, *ibid* 259.

[45] Ödön Polner's opinion was as follows: "There is no doubt this corresponds to the legal conditions of a republic and Act 1 of 1920 determined the legal standing and powers of the governor deliberately and admittedly according to its justification as those usually assigned to the head of state of a republic. These powers differ from those, in particular insofar that the position is not to be filled for a specified period and its external dignity is higher. These differences, however, do not affect the heart

Buza[46]). Adolf Merkl was, however, the one who formulated the most eloquent opinion expressly discussing this issue in the lead article of the 1 March 1925 issue of Jogtudományi Közlöny. His conclusion was the following:

> "A forward-looking political eye can already see the outlines of a kingdom, the legal eye, which can only direct its sight to the legal regulations in force, sees nothing other than the republic. […] Nevertheless, the current Hungarian state is still a republic where the designation as »királyság« (kingdom) is in contradiction with the provisional constitution."[47]

This means that we find strong republican features in the *de facto* situation. And this gives rise to the question whether the *de jure* and the *de facto* situation can be separated. *Can the system of government be kingdom even if a dogmatic analysis of the state organisation leads to a republic?*

The answer rests on traditions. If they are strong, they can override dogmatic reasoning.

6 Specification of the national coat of arms (1920)

Decree 2394/1920. ME. settled the issue of the coat of arms together with the system of government. According to paragraph (5) of the decree:

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of the matter." Polner Ödön: A kormányzói jogkör kiterjesztésének kérdése. In: *Magyar Jogi Szemle* 1920/3, 97.

[46] László Buza held the following opinion: "Hungary's system of government and its government reflect just the actual state of affairs today. The country is a republic; legally, however, it is a monarchy and it shall remain a monarchy so long as the competent legislator - the national assembly to be convened - does not change the system of government." Buza László: A királyválasztás joga. In: *Magyar Jogi Szemle* 1920/2, 84.

[47] Merkl Adolf: A mai Magyarország államformájának kérdéséről. In: *Jogtudományi Közlöny* 1925/5, 35.

> "The legal provisions according to which the Holy Crown shall be applied on the coat of arms of the Hungarian state as the symbol of the sovereignty of the Hungarian state shall remain in force."

It is essential that the decree specifies the Holy Crown not as a mediator of the system of government but as a symbol of the sovereignty of the Hungarian state. The phrase "*The legal provisions shall remain in force*" refers to the fact that the government drew the same conclusion as in the case of the system of government: if Act I of 1920 declared the measures taken during the period of the people's republic null and void, then that should hold also for Károlyi's coat of arms decree adopted at the end of November 1918. The coat of arms with the crown shall not be used because the system of government is kingdom, but because that was the national coat of arms prior to the people's republic.

7 Epilogue

In the title of the study, I promised to examine the impact of Trianon on public law traditions. In relation to this, I attempted to verify some assumptions already in the Prologue. Referring to Kossuth, the point of departure was that a liquidation of the traditions linked to the era of monarchy was not necessarily concomitant with a change in the system of government (the introduction of the republic). A break with the past is not necessarily a constitutional consequence, it is merely a momentary political decision. In 1918, the break with the past was rather motivated by the anger against the monarch because of the lost war, a gesture towards the victorious powers and hope for better peace conditions than any revulsion against the public law setup prevailing till then.

The political decisions sweeping away the past were born with the People's Resolution envisaging the proclamation of a new

constitution. When, however, work had to begin on the preparation of the constitution both the ministry and legal science sank into a state of paralysis. We could read many declamations on the urgent need for revolutionary changes, but nobody actually drafted the text of the constitution. Even the only available study (Emil Benárd) discussed that one must not fully break with the historical constitution. Some of its parts had to be retained, while some of its parts had to be amended. If the historical constitution was to be supplemented with new acts as in April 1848, then that could be well implemented in terms of legislative technique. If they wanted to draw up a codified constitution, then the parts retained from the historical constitution had to be put on paper, clearly delineating them. And that was a major stumbling block. If we liquidate everything from the past as done by the Council Republic, it is easy to write a constitution, particularly in a dictatorship. Whoever picks up a pen can write whatever he thinks fit. It is, however, virtually impossible to incorporate the historical constitution in writing without debate. Presumably that is why nobody tried.

To return to the question posed in the title, in what way Trianon impacted public law traditions, the answer we can give is that it reinforced them to an extraordinary extent. A major part of the public expected the revolution and the republic to safeguard the territorial integrity of the country. When that failed, disappointment in the revolution prevailed. Trianon was no longer a direct consequence of the lost war, but that of the failed revolutions. At least a major part of the country's population thought so. Thus, Trianon induced those wishing to break with traditions to take a back seat. This was manifested best in the system of government, which is why I emphasised it so much. In 1920, it was thought that the institution of the governor was only for a transitory period as the royal throne would be filled in the foreseeable future. This, however, did not take place, because of which legal dogma exerted increasing pressure on the system of government as the time passed.[48] The state setup was *de facto* republican, but then why the

[48] Uncertainties about dogma were most thoroughly summarised by Gábor Schweitzer. Schweitzer Gábor: Közjogi provizórium, jogfolytonosság, új közjogi irány – A két világháború közötti magyarországi alkotmányjog-tudomány vázlata.

system of government was *de jure* kingdom. The reason was that they really strongly insisted on public law traditions because of Trianon. It was felt that it served the restoration of the country's territorial integrity essentially better than a new public law setup breaking with the past.

In: Schweitzer Gábor (ed.): *A magyar királyi köztársaságtól a Magyar Köztársaságig – Közjog és tudománytörténeti tanulmányok*. Pécs: Publicon. 2017, 14–25.

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