



Working Draft:
“General Principles Guiding Hungary’s Constitution”¹

Prepared by the *Ad hoc* Parliamentary Constitution Drafting Committee²

GENERAL PROVISIONS

- The Parliament as the main representative body has the constitutional power. The constitution is not only the most important source of law but also a living framework, which expresses the common will of the nation. It should be short and concise.
- Only the most important laws and principles of government should be included in the constitution, the details should be specified by laws that require a two thirds majority.
- The concise and short Preamble should be a tribute to our norms and principles that guide this nation and they should also be reflected in the body text of the Constitution.

PREAMBLE

- It should refer to the most important fundamental principles, the principles of rule of law, and democracy.
- It should honor our one thousand years history, the role of Christianity in shaping our history, the role and principles of our ‘historical constitution’,³ it should refer to the Holy Crown as the representation of Hungarian statehood, it should also evoke the ideas of liberty and solidarity, and mention our historic fights for the cause of liberty.

FUNDAMENTAL PRINCIPLES

1. Political power belongs to the people, or the nations, whose members are responsible for each other and are equal in their inalienable dignity. Constitutional continuity is represented by the Holy Crown.⁴ Hungary feels responsible for Hungarians living outside of its borders.

¹ This condensed English translation is provided by Common Sense Society (Budapest, Hungary: December 6, 2010) and is available at: www.common sensebudapest.com/

² Original Hungarian version available at: <http://www.parlament.hu/biz/aeb/orsz/munkaanyag.htm>

³ Written and unwritten rules, different laws that became either constitutional in force, or part of the Hungarian constitutional tradition.

⁴ The Doctrine of the Holy Crown is a secular, legal principle that underpins the unwritten constitutional norms of Hungary’s thousand years of legal tradition. The Crown is now symbolically housed in the rotunda of the parliament building and represents the idea that political power and sovereignty belong to the people.

2. Hungary is a democratic republic, governed by the rule of law, and the separation of powers. Those striving to gain or exercise power through violent means should not be tolerated. Freedom of association and forming of parties representing the public will. Parties cannot directly exercise power; certain offices cannot be fulfilled by party members.
3. Hungary’s national symbols: flag, national anthem, coat of arms and national days (March 15: Revolution of 1848, October 23: Revolution of 1956, August 20: state founding, King St. Stephen’s Day). The official flag should include the coat of arms.⁵ Budapest is the capital.
4. The Constitution is the basic law of Hungary, Parliament shall make no laws that the Constitution does not stipulate. The law making procedure shall be specified by two-thirds law, parliamentary procedures shall be specified by the Parliament’s Standing Orders.
5. Hungary as a sovereign member of the European Union contributes to the making of a whole, free, and secure Europe. Stemming from its responsibilities and rights as a member state, it exercises certain constitutional powers independently or jointly with other member states through European institutions.
6. Hungary strives to cooperate with all other nations, rejects war as a means for resolving conflict, abstains from aggression or the threat of aggression against the independence or territorial integrity of other nations. Hungary accepts the norms governing international law and guarantees the harmony between its international obligations and its domestic law.
7. The first and foremost responsibility of the state is to guarantee the fundamental rights and liberties of the people and to defend the institution of marriage and the family. The Constitution guarantees everyone’s inalienable rights and liberties; it provides special protection to the institution of marriage, understood as the most basic and natural union between one man and one woman,⁶ and the family.
8. Fundamental rights and liberties also come with responsibilities. They can only be restricted when it conflicts with the fundamental rights and liberties of others, or in defense of public health, public safety, the nation’s security, or public morale. Fundamental rights cannot be understood as a means to harass others or harm others’ constitutional rights and liberties.
9. In the application of human and citizenship rights, discrimination of any form is unacceptable. Men and women shall enjoy equal rights.
10. Every child has the right to be protected and cared for in order to reach their self development. Parents are obliged to care for their underage children’s teaching and education, but they should have the right to choose the appropriate means of education for their children. The family, the mother and children should enjoy special protection by law.

⁵ Currently the Constitution does not specify that the official flag should include the coat of arms, although some state offices, embassies, *etc.* use this version of the flag today.

⁶ Although the current constitution lends the institution of marriage special protection, it does not specify marriage as being a union between a man and a woman.

FUNDAMENTAL RIGHTS AND RESPONSIBILITIES

The new Constitution should include all the fundamental human rights and citizens’ rights contained in the current constitution. Accordingly:

1. Protection of life, understood as starting from conception,⁷ and human dignity.
2. Right to freedom and personal security, equality before the law, right to due process, presumption of innocence, right to appeal, no retroactive punishment,⁸ freedom of movement and free settlement, right to privacy of the home, personal secrets and personal data, right to fair name. Freedom of thought, conscience and religion, independence of churches and religious communities. Freedom of speech, opinion and freedom of the press. Freedom of access to public information. Freedom of scientific research and the arts, freedom of education. Freedom of association and gathering.
3. Right to private property to which responsibilities are attached. Freedom of forming one’s last will and testament. The government can only inherit where there are no straight-line or side-line inheritors as described by law or the last will. Restriction or taking of private property is only allowed in special cases and in defense of the public interest.
4. Support of the right to entrepreneurship and free market competition, equal treatment of private and public property. Public administration overseeing public goods and wealth should operate effectively and with due diligence.
5. Right to free choice of occupation. State’s special duty to facilitate right to work. Right to fair payment for work, right to rest and right to regular paid holidays. Right to form and join economic and social interest groups, right to deny work if conditions not allow for the afore-mentioned circumstances. Right to a healthy environment, everybody’s responsibility to protect the environment. State’s responsibilities: protection of adequate working conditions, maintaining a public health care system, providing facilities for sports and regular exercise, protection of the built and living environment.
6. Every Hungarian has basic citizenship rights (no arbitrary taking of citizenship or expulsion, right of return, consular protection while abroad). Hungarian citizens’ right to hold public office and voting rights based on specific conditions to be set by two-thirds law.

Certain basic citizenship rights can be granted to non-citizens as well. Certain citizens’ rights can be given to aliens living in Hungary.

Every citizen’s right to belong to an ethnic or national minority group. Collective minority rights (collective participation of minorities in public affairs, cultivation of their own culture and language, including teaching of their own language, use of their own language’s version of official names), minorities’ right to be represented locally.

Right to social security and self-cultivation; the Constitution should specifically stipulate the state’s responsibilities of providing for cultural and social rights. Protection of youth and the feeble.

⁷ The current constitution does not explicitly state that life begins at conception.

⁸ No *ex post fact* punishment.

7. A citizen’s responsibilities include: national defense and paying taxes (the latter is not exclusive to Hungarian citizens).

THE PRESIDENT

1. The President represents national unity and overlooks the democratic functioning of the state. The President cannot be a member of any organization or hold any other office or job—except for authorship for which he cannot accept any compensation.
2. Personal requirements: at least 35 years of age, Hungarian citizenship with right to vote. Can only be reelected once.

Proposal A:

Elected by Parliament for 5 years, according to current practice. New election shall be held 60 days before the end of the President’s term, the earliest, 30 days the latest.

Proposal B:

Elected by a joint session of the two houses of Parliament, rules of the election according to current practice. New election shall be held 60 days before the end of the President’s term, the earliest, 30 days the latest.

3. Basic responsibilities of the President should not change substantially; it should basically remain the same.⁹ However, the Constitution should also give the right to Parliament to empower the President with special authority in certain cases.
4. If the President cannot fulfill its duties, the Speaker of the Parliament (or in case of two chambers, the Speaker of the House of Representatives) should exercise presidential powers temporarily, but without restraint. In this case, the Speaker’s responsibilities should be exercised by the deputy Speaker.

THE LEGISLATURE

Parliament

1. The Parliament is an indirect tool of power resting with the people, thus it manifests popular representation and exercises the power of the legislative.
2. Regulations on its role and powers need no fundamental change. These powers could not be fully enumerated in the Constitution, thus references to laws increasing its powers have to be added to the Constitution. Powers of the Parliament which have to be specified in the Constitution are: powers of the Parliament to write the Constitution, make laws,

⁹ Currently these include: representative and symbolic duties, competences which require the countersignature of the competent minister (appointment and dismissal of high-ranking officials, signing of international contracts, presenting awards and orders of merit), extraordinary powers (in state of emergency, state of war he is commander-in-chief of the armed forces), competences related to changes of parliamentary term and the establishment or change of a government (appointment of PM which is elected by the Parliament, dissolution of parliament in very restricted cases), discretionary political powers (submission of bills to the Parliament, initiation of referenda, initiation of special Parliamentary meetings, right to veto legislature once for political or constitutional concerns, issuance of public statements).

elect the most important dignitary representatives of the state,¹⁰ power to make the state budget, power to decide on international treaties, decide on war and peace, decide on the use of the army abroad, and other military operations related to preserving national sovereignty, and decide on the state of emergency and crisis. The Constitution has to include especially the power of the Parliament to decide on issues related to the trust in Government.¹¹

3. –

Proposal A:

The Parliament has one chamber; members are elected for 4 years on the basis of popular representation at an equal, secret, and direct election.

Proposal B:

The Parliament has two chambers. The first chamber (House of Representatives) is elected on the basis of popular representation at an equal, secret, and direct election. Its mandate is for 4 years. The composition of the second chamber (Upper House or Senate) is regulated in a separate law. This law has to provide for the representation of churches with a high social impact, national and ethnic minorities, public institutions (The Hungarian Academy of Sciences, various chambers) universities, high-impact social organizations. Representation of territorial interests should be provided by the county councils or directly elected county representative in the second chamber. The law should allow for the president to delegate a limited number of outstanding individuals of the scientific, cultural, and political life as representatives to the second chamber. The law determines the start and the termination of the second chamber’s (and its members’) tenure. The second chamber has a veto power over certain decisions of the first chamber. Legislative issues related to the budget and its execution, and those which relate to the trust in the Government should be decided by the House of Representatives. Laws regulating the above issues require a two-third majority of the Parliament.

4. –

Proposal A

Members of the Parliament (MP) fulfill their elected duties on the principle of free mandate. MPs act for the entire nation and for the public, thus could not be directly ordered. In order to preserve the integrity of the Parliament, members have immunity while acting in their capacity as an MP. The laws determining the details and other regulations on the legal status of MPs are determined by the two-third majority vote of the Parliament. The Constitution should contain instances for the termination of MPs tenure.

Proposal B:

Members of the Parliament (MP) fulfill their elected duties on the principle of free mandate. MPs act for the entire nation and for the public, thus could not be ordered. MPs

¹⁰ These include the President of the Republic, the Prime Minister, the members of the Constitutional Court, the ombudsmen to deal with the observation of civil rights and the rights of national and ethnic minorities, the president and vice-presidents of the State Audit Office, the president of the Supreme Court and the chief prosecutor.

¹¹ Referring to questions of confidence or no-confidence votes.

of the second chamber act according to the values and interests they represent in coordination with the public interest, and while the law regulating the activities of the second chamber specifies the MPs’ other mandates. In order to preserve the integrity of the Parliament, members have immunity while acting in their capacity of an MP. The laws determining the details and other regulations on the legal status of MPs in the second chamber (including reference to immunity) are determined by the two-third majority vote of the Parliament. The Constitution should contain instances for the termination of MPs’ tenure.

5. –

Proposal A:

The Constitution should include the most important regulations referring to the structure and the operation of the Parliament (e.g. the appointment of officials—the Speaker of the Parliament, his/her deputies, secretaries—and the start and termination of the Parliament’s tenure). The laws determining the details and other regulations on the operation of the Parliament are determined by the two-third majority vote of the Parliament on the Standing Order of the Parliament. The Constitution should include the right of the MPs to check legislative and executive powers—introducing a bill, interpellation, and the right to ask questions.

Proposal B:

The Constitution should include only the most important regulations referring to the structure and the operation of the Parliament (e.g. appointment of officials—the Chairmen of the two chambers, their deputies, secretaries—and the start and termination of the Parliament’s tenure, etc.). The laws determining the details and other regulations on the operation of the Parliament are determined by the two-third majority vote of the MPs present and the two-third majority vote of those in the second chamber on the Standing Order of the Parliament. The Constitution should include the right of the MPs to check legislative and executive powers—introducing a bill, interpellation, and the right to ask questions. Rights of the second chamber to check the operation of the Parliament is written in the Standing Order of the Parliament.

6. –

Proposal A:

Rules regulating the dissolution of the Parliament (House of Representatives) change in a way that it could only be dissolved if it repeals trust in the Government three times within twelve months or if it refuses to approve the state budget. Parliament could still be dissolved if the new Prime Minister (PM) recommended by the President is not approved by Parliament within forty days after the President announces the nomination. Regulations on the self-dissolution of Parliament are unchanged.

Proposal B:

Rules regulating the dissolution of the Parliament (House of Representatives) change in a way that it could only be dissolved if it repeals trust in the Government three times within twelve months or if it refuses to approve the state budget. Parliament could still be dissolved if the new Prime Minister (PM) recommended by the President is not approved by Parliament within forty days after the President announces the nomination. The

President can dissolve Parliament if it serves the solution of a constitutional-political crisis induced by the serious lack of trust. Parliament can dissolve itself before the end of its tenure.

7. The Parliament makes law about the state budget every year. The Government submits the bill to the Parliament. Principles of transparency and reasonability in details should be applied when writing the budget. By adopting the budget the Parliament gives the right to the Government to collect revenues and perform approved expenses (appropriations). If the budget is not finalized by the end of the year, then the Parliament makes law on temporary measures (indemnity). If the budget bill is not adopted by the beginning of the active fiscal year and there are no temporary measures adopted, then the Government is entitled to collect revenues based on the law in effect, and conduct expenses proportionate in time and based on the budgetary constraints approved for the previous year (*ex-lex*). If the budget is not approved by March 31 of the actual fiscal year, then the President can dissolve the Parliament. The Government shall execute the budget by applying the principle of reasonable treatment of public money. The Government shall file a final report, which if approved Parliament states the remission of its further responsibility of management.

State Audit Office

8. The State Audit Office is the financial controlling institution of the Government; it conducts its responsibilities by considerations of legality, expediency, and the financial results of the units concerned. The State Audit Office reports on its findings to Parliament, and its reports must be made public. The election of the State Audit Office’s president shall be approved by a two-third majority vote of the MPs. Specific law refers to structural and operational principles of the State Audit Office.

Ombudsmen

9. The duty of Ombudsmen is to investigate, or to have investigated, any abuse of constitutional rights that has come to his attention, and to initiate general or particular measures for redress. Ombudsmen report on their activities and experiences annually to Parliament. The annual report must be made public. Anyone can approach the Ombudsman with their complaint. Ombudsmen could conduct investigation from their own right if there is no other way to perform the redress. Ombudsmen are elected on the nomination of the President by a two-third majority vote of all MPs necessary. Ombudsman act by the power of their own office. The law further regulates the legal status, duties, and activities of the Ombudsmen.

Direct ways of exercising power

10. Public referendum and national initiative are direct ways of exercising power of the people. Specific law details the rules referring to conducting a public referendum and national initiative. Regarding these institutions, the Constitution should include the following: public referendum can only be held on issues pertaining to the powers of Parliament and the local governments, thus only national and local referenda could be

conducted. Among the powers of the Parliament, no referendum could be held on issues relating to those specified in the Constitution, with the amendment that—apart from the Constitutional Court’s duties—no public referendum could be held on the amendment of the Constitution. Depending on the voter turnout, national referenda can be indicative of opinion or of a decisive nature. The results of national referenda have a compulsory binding force for the Parliament; local referenda have a compulsory binding force for the local governments.

THE EXECUTIVE

The Government

1. The most important duties of the government (execute laws, set the state’s general and issue-specific political guidelines and their implementation, conducting activities of the armed forces and the police, securing legislative supervision, and oversight of local government) should be included in the Constitution. The more specific ones should not be included in the Constitution.

Its powers specified in the Constitution should include: the use of Hungarian armed forces abroad; the relationship between Parliament and Government in issues related to EU membership.

Its duties to be included in the Constitution: instruction of the police, providing for public safety and public order, and defense of national borders with the Parliament. The concrete rules of their operation should be specified by two thirds laws.

The government is made up of: Prime Minister (PM) and other ministers (ministries are enumerated in a separate law).

National public administration: set by the government decrees based on the Constitution and other relevant laws.

Governmental decrees cannot go against the Constitution and other (higher) laws. Executive orders regulate the Government’s own and its subordinate institutions’ operation.

Rules governing the formation of the government require no changes. Change to the current system of constructive motion of no-confidence: nominating a new PM is not required and adopting the motion does not entail the election of a new PM; 1-3 of all MPs can submit the motion; during one session (sitting) one MP could vote for only one motion.

Caretaker Government: upon the termination of the Government’s tenure and until the new Government sets up.

The PM leads the Government and coordinates its operation, is responsible to Parliament, represents the government’s policies.

Ministers execute public administration duties related to their specific ministries; report to the PM and Parliament; can sit in Parliament and address the Parliaments; issue orders based on governmental decrees.

2. Public administration units of the country according to our historic traditions: capital, counties, cities/towns, villages. Capital can be divided into districts; towns could be divided into districts. It is possible to use other units of public administration (if adopted as law).
3. Branches and institutions of public administration are under the Government’s control; local governments are separate and independent in their operations; governmental control can be curtailed or revoked (to be specified in separate laws).

LOCAL GOVERNMENTS

4. Local governments are part of the constitutional tradition. Their role is the democratic settlement and management of local matters, they have equal basic rights but diverging responsibilities, in matters of its own responsibilities it can turn to public administration courts; in case of basic rights it can turn to the Constitutional Court.

They operate through locally elected town councils (separate law on details of operation, rights, guarantees, and limitations). Their basic rights (according to the law or else voluntarily adopted) include issuing orders as well as independent management of property and assets.

Based on the law it is entitled to: proportionate financial support for performing compulsory duties, set the rate of local taxes, decide on their structure and operational order, free association (law could require for compulsory association).

Local governmental institutions and officials could exercise public administration rights and duties.

ARMED FORCES

5. Duties include armed defense of the country and collective defense responsibilities set by international treaties; in case of emergency, it can used for restoring order (details on duties, operation, leadership, and management shall be included in a separate law)

Leadership ultimately rests within Parliament (international treaties have a binding force).

Official members of the armed forces and the police cannot be members of a party or political organization.

HUNGARIAN NATIONAL BANK

6. Responsibility includes setting monetary policy (separate law for details on activities).

President shall be appointed by the President of the Republic for 6 years; reports annually to the Parliament.

THE JUDICIARY

Constitutional defense, Court system

1. Justices of the Constitutional Court shall be elected by a two-thirds majority of the Parliament. The Court shall assess the constitutionality of the laws and if it deems a law unconstitutional, it shall specify a legal action to be taken.
2. Courts defend the constitution and constitutional principles, protect the rights of individuals and other legal entities, adjudicate legal processes and decide legal disputes. Their decision is final and obligatory.
3. Public administration courts adjudicate legal matters of the public administration system and judge effectiveness. They serve to protect the rights of local governments and adjudicate public administration disputes.
4. Judges are independent and are subject only to the law, they cannot be members of any party or political organization, they are appointed by the President. The Constitution should specify the circumstances of non-official judges’ involvement in court procedures.
5. The Curia which provides for the uniformity of legal decisions, and is on the top of the judiciary branch; its head should be appointed by the President and elected by a two-thirds majority of the Parliament.
6. The National Judiciary Council provides the administration and organization of the judiciary branch.
7. The Prosecutor’s Office and the Prosecutor General represent the state’s punitive interests. It defends the rights of natural persons and legal entities, and holds rigorously accountable those who harm or endanger the constitutional order, or the country’s security and independence. The Prosecutor exercises its rights defined by law in the investigation phase, represents the plaintiff in the judicial phase, oversees the legality of execution of laws and fulfills other roles as the defender of the public interest. The Prosecutor General is appointed by the President and elected by the two-thirds majority of the Parliament. The Prosecutor is required to report to the Parliament. The Deputy Prosecutor General is appointed by the President. The Prosecutor General heads and manages public prosecution and appoints prosecutors who cannot be members of any party or political organization.
8. The Notary Public can be given special responsibilities which do not infringe on the right to due process.

AMENDMENT PROCEDURE

The Constitution can be amended if two consecutive Parliaments approve the amendment by a two-thirds majority.

CLOSING ACT

The new Constitution’s entry into force shall be specified with special regard to the laws and rules that will need to be amended in a way that does not endanger the constitutional order.