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THE CONCEPT OF THE NATION IN THE FUNDAMENTAL LAW OF HUNGARY

ABSTRACT The paper introduces the national aspects of the new Hungarian constitution. We find direct references to the “Hungarian nation” in the text of the Fundamental Law of Hungary, and these references reveal the concept of the nation of the constitution-making? political majority. This concept is rather controversial and is widely debated in political and also in scientific discussions. I examine the problematic issues around the concept of the nation, which are the following: Is the concept of the nation clear? Does it imply the “cultural” or the “political”/“democratic” notion of the nation? What is the situation of the nationalities living in Hungary? What is the situation of the Hungarians living beyond the borders of Hungary? This paper intends to contribute to the discussion on the values of the new constitution of Hungary.

Key words: Hungary, constitution, nation, nationalities, citizenship

Surprisingly to some, nationalism is a big survivor and a successful ideology. It is a huge challenge for the Hungarian scholars, both in the field of political sciences and recently in the field of constitutional law.¹ The adoption of the new Constitution of Hungary has been a sensitive issue which concerns European public opinion and has been thoroughly discussed in political debates. Among the controversial aspects of the new Fundamental Law are the strong declarations concerning national values. In my paper I examine these declarations. I also include additional methods of interpretation, but my chief focus is on the normative impact of the text of the new Fundamental Law of Hungary that was published on 25 April 2011 and stepped into force on 1 January 2012.²

It is easy to recognize that the preamble, called the “National Avowal”, and the normative text of the Fundamental Law are different in genre, and this requires special methods of interpretation. Declarations of national values, as we will see, often raise insolvable problems for the exclusively legal thinking.³

The key words and central issues of the ideology of nationalism and those of the debates about the national character of the Hungarian Fundamental Law are almost the same. As we review the main values and concepts of nationalism, we see the main aspects of the interpretation of the Fundamental Law.

In the first place, there are the debates on the concept of the nation. It is a challenge to decide between the political and the cultural (ethnic-based) concept, to clarify the elements of national identity – common history, culture, language, etc. –, the relation between the individual and the community, the tensions of the principle of self-determination, practical needs and possibilities of “national” independence in the global world and inside a supranational organization such as the EU. In terms of constitutional law and interpreting the constitution, these issues can be translated as the subject of constituent (and sovereign) power, the concept of the political community, the *modus vivendi* between the majority and the nationalities, the common values listed in the preamble, and the issue of connections of national, international and EU-law. (This paper does not deal with these latter international problems.)

¹ See: Z. Bretter, Á. Deák (eds.), *Eszmék a politikában. A nacionalizmus*, Pécs 1995; M. Bihari, B. Pokol, *Politológia*, Budapest 2009, pp. 230-250; A. Jakab, *Az új Alaptörvény keletkezése és gyakorlati következményei*, Budapest 2011.

² The texts in English can be found at: <<http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>> and <[http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)018-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)018-e.pdf)>. The text following the 4th amendment is available at: <http://www.parlament.hu/angol/the_fundamental_law_of_hungary_consolidated_interim.pdf>, 17 July 2013.

³ F. Horkay Hörcher, ‘The National Avowal’ in B. Schanda, A.Zs. Varga, L. Csink (eds.), *The Basic Law of Hungary. A First Commentary*, Dublin 2012, p. 25.

1. THE CONCEPT OF THE NATION

1.1. Who is talking in the Fundamental Law?

The concept of the nation is the central issue of the discourse on nationalism, and so the most important concept causes the main problems. There have been serious efforts to define the nation, and there are different concepts: the nation may be regarded as a culturally or ethnically homogenous group of people ("cultural concept of nation"), or as a group of citizens of a nation-state ("political concept of nation"). These two concepts are both accepted in political science, but when interpreting a legal document, constitutional legal thinking encounters serious problems.⁴

Even liberal thinking accepts that the births of states are based on the success of the national movements, so if consciousness of togetherness is to be developed, attempts to achieve this state shall be inevitably linked to the phenomenon of the nation.⁵

Reading the text of the Fundamental Law, we have to observe that both concepts can be found in various phrases. The Fundamental Law puts forward the political concept of the nation but also includes strong elements of the "cultural" concept. *WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with a sense of responsibility for every Hungarian, hereby proclaim the following... [National Avowal]*

Nation appears first in the context of the subject of constituent power, as the first sentence of the National Avowal says that the constitution is the manifestation of the members of the Hungarian nation. But answering the question: "who's talking here?" is not so easy.

The simplest novelty – in comparison to the previous Hungarian Constitution – is that the pronoun "we" as subject appears in the text. This is a community-constituting phrase, which appears not only in the preamble, but also in the normative text: Article A) provides that *The name of OUR COUNTRY shall be Hungary.*

Difficulties appear when "we" seems to represent and substitute different subjects:

The first sentence of the preamble can represent both concepts of the nation, but the situation appears to be different at the end of the National Avowal: *We, the citizens of Hungary, are ready to found the order of our country upon the common endeavours of the nation.*

The phrase "citizens of Hungary" is more precise, and refers to the political concept of the nation. However, the final part of the Fundamental Law contains the follow-

⁴ See: H. Küpper, 'Zwischen Staatspaternalismus, Kollektivismus und liberalem Individualismus: Normative Grundlagen des Menschenbilds im neuen ungarischen Grundgesetz' in Z. Csehi, B. Schanda, P. Sonnevend (eds.), *Viva vox iuris civilis. Tanulmányok Sólyom László tiszteletére 70. születésnapja alkalmából*, Budapest 2012, pp. 223-228 (*Xenia. Bibliotheca Iuridica. Libri Amicorum*, 42); and A. Jakab, *Az új Alaptörvény...*, pp. 185-186.

⁵ B. Majtényi, '68.§ [Nemzeti és etnikai kisebbségi jogok.]' in A. Jakab (ed.), *Az alkotmány kommentárja*, Budapest 2009, p. 2402.

ing passage: *We, the Members of the Parliament elected on 25 April 2010, being aware of our responsibility before God and man and in exercise of our constitutional power, hereby adopt this to be the first unified Fundamental Law of Hungary.*

This refers to the Parliament, to the representative body that has the competence to adopt and amend the constitution. This is clear in terms of constitutional law, but cannot point to the sovereign power, or to involve the “community” as a value.

The “authors” of the Fundamental Law stated that they wanted to involve many values in the text, attempting to achieve a sense of belonging to a community. This community is the nation. The members of the nation and the members of the Parliament are talking together in the text, as stated by one of its authors, József Szájer. MPs presume that other members of the nation share their ideas. So the narrators of the National Avowal are the members of the nation and everyone who has a sense of belonging here can be a subject of the text. The Fundamental Law is inclusive.⁶

1.2. Borders of the political community

The cultural concept of the nation implies that the members of the community are held together by cultural, lingual ties and not by legal bonds – disrespectful to the political borders of the country. The so called “responsibility clause” in Article D) provides that *Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders...*

This phrasing tends to broaden the membership of the national community beyond the Hungarians who are living in Hungary. I note that this sentence can be grammatically interpreted in the simple way that “Hungarians” are also living outside of Hungary, but according to the Hungarian traditional interpretation, this clause refers to *Hungarians who are not Hungarian citizens*. A narrow, grammatical interpretation of this provision could lead to the conclusion that Hungary must bear responsibility for its *citizens* living abroad, although their protection is included in their status rights (diplomatic protection, etc.).⁷ But this article includes the Hungarians without citizenship in the national community, without any attempt of revision of state borders or extraterritoriality.⁸

The political community created by the constitution is the basis upon which the political concept of the nation may be defined. Hungary’s constitution creates this political community by regulating the preconditions of the right to vote.⁹ Only Hungarian citizens can participate in the elections of the Members of the Parliament, while

⁶ B. Ablonczy, J. – Szájer, G. Gulyás, *Gespräche über das Grundgesetz Ungarns*, Budapest 2012.

⁷ I. Halász, B. Majtényi, ‘6.§ [Nemzetközi kapcsolatok. Felelősség a határon túli magyarokért – a (3) bekezdés magyarázata.]’ in A. Jakab (ed.), *Az alkotmány...*, p. 346.

⁸ B. Schanda, ‘Constituent and Constitutional Entities’ in: B. Schanda, A.Zs. Varga, L. Csink (eds.), *The Basic Law of Hungary...*, p. 47.

⁹ Á. Domahidi, ‘70.§ [Választójog.]’ in A. Jakab (ed.), *Az alkotmány...*, pp. 2481-2482.

other nations' citizens may vote in the other (local and EU) elections. The new Fundamental Law allows citizens to exercise their right to vote without having any residence in Hungary. So the citizenship has become the main criteria of membership of the political community.

The political community created by the Fundamental Law expands beyond the borders, but it is important to see that the membership is connected to a clear legal fact, i.e. citizenship. It can be stated that the political community (nation) is linked with the cultural community by the responsibility clause. In this sense, the opening sentence of the National Avowal (*WE, THE MEMBERS OF THE HUNGARIAN NATION, [...] with a sense of responsibility for every Hungarian*) can be regarded as a statement of the political community.

Balázs Schanda supports this reasoning as he found that the "Republic" has been left out from the name of the state aiming at *narrowing the gap between the country and the State. Patriotism in Hungary means that most Hungarians have an emotional tie to the country, whereas it does not mean that they have any kind of relation to the State. The new wording envisages a stronger connection of country and State: one cannot be a good patriot without being a good citizen.*¹⁰

As a consequence, I think the political concept of the nation is stronger than the reference to the cultural nation. If political community (political concept of the nation) is based on citizenship, an ethnic concept that prevails over legal bonds, would be an unacceptable discrimination between citizen and citizen.¹¹

Constituent power states that nationalities "living with us" are part of the Hungarian political community and are constituent parts of the State (National Avowal and Article XXIX). This provision means that the nationalities are part of the political nation, because only persons who are Hungarian citizens may legally belong to recognized nationalities.¹²

Consequently, the Fundamental Law rules out the exclusive identification of the political community with the ethnic/cultural nation, but enlarges it beyond the residents of the country – since neither the (acquiring of the) citizenship, nor the right to vote is connected exclusively to the residence in Hungary. (So, there is no change regarding the subject of the sovereign and constituent power.¹³) In this situation, the citizens living far away from Hungary have the right to vote, but they do not feel its consequences, because they are not subject to Hungarian tax-laws, etc. On the other hand, the responsibility for the cultural nation can be implemented in various public policies that are not objects of this paper.

¹⁰ B. Schanda, 'Constituent...', pp. 48-49.

¹¹ B. Majtényi, '68.§...', p. 2403.

¹² See Article XXIX of the Fundamental Law and Act CLXXIX of 2011 on the right of nationalities, Art. 170 par. 1.

¹³ T. Györfi, '2. § [Alkotmányos elvek; ellenállási jog.]' in A. Jakab (ed.), *Az alkotmány...*, pp. 222-224.

2. DEFINING NATIONAL IDENTITY

As I presented above, the Fundamental Law, while using the political concept of the nation, simultaneously defines the content of national identity, enumerating many national values and frequently employing the phrases of “nation” and “national” (“nemzet”, “nemzeti”). In this aspect the identity of the national community becomes something more or different than the legally established “cohesion” of political community based on citizenship and right to vote. This may suggest that the cultural dimension determines the concept of the nation. The text of the constitution supports this feeling only partly, in that the authors of the Fundamental Law sought to answer not only the question of “where we are”, but also “who we are”. The constitution tries to give a list of values that could be shared by the whole community.¹⁴ The main elements of national identity are: 1) common history, 2) common culture, 3) common national symbols, 4) common, “national” institutes (only the Head of State will be introduced here).

2.1. Common history

Historical narrative is a widely used element of preambles of constitutions, to create community, common identity, while this function is implemented in various ways and styles.¹⁵

The National Avowal comprises a long catalogue of the nation’s common historical achievements and experiences. This catalogue seems to be too long, but Horkay Hörcher argues that this is because history has a direct relevance for today’s politics in this region.¹⁶ This standpoint is not satisfactory.

István Bibó taught us that the greatness of nations in the western part of Europe originates from their calm and evident national life free from the frustration to produce anything *as a nation*.¹⁷

On the other hand, if historical facts and attitudes have direct relevance for politics, history becomes a field of political debates and loses its integrative ability, of which the ambivalent social attitude to the “soft” dictatorship in the 20th century is clear evidence.

On this basis – accepting the attempts to use history as an integrative tool – we can expect the Fundamental Law to be precise and impartial at least when referring to historical facts and to avoid taking side in the discussions of historians. The following review of the historical references in the constitution reveals that the constituent power was selecting aspects from the history of Hungary.

¹⁴ See: B. Ablonczy, J. Szájer, G. Gulyás, *Gespräche...* and F. Horkay Hörcher, ‘The National Avowal’, p. 26.

¹⁵ I. Kukorelli, G. Máthé, ‘Közjogi értékeink a preambulumban’ in V. Lamm et al. (eds.), *Preambulum az alkotmányokban*, Budapest 2011, p. 11; and B. Fekete, ‘Történeti elemek az EU-tagállamok alkotmány-preambulumaiban’ in V. Lamm et al. (eds.), *Preambulum...*, pp. 33-45.

¹⁶ F. Horkay Hörcher, ‘The National Avowal’, p. 42.

¹⁷ I. Bibó, *A kelet-európai kisállamok nyomorúsága*, Bukarest–Kolozsvár, p. 48 (*Gordiusz*). (In foreign language see: *Misère des petits états d’Europe de l’Est*, Paris 1986.)

2.1.1. Fighting for independence

We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago.

We are proud of our forebears who fought for the survival, freedom and independence of our country.

We are proud of the outstanding intellectual achievements of the Hungarian people.

We are proud that our people has over the centuries defended Europe in a series of struggles and enriched Europe's common values with its talent and diligence.

We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country.

[National Avowal]

Obviously, it is easy to create and integrate the national community by references to glorious and uplifting moments of history. Everybody can be proud of ancestors' achievements. Referring to the country's roots in history is the justification of the territorial demands and existence of states, which is an argument frequently used in our region.¹⁸ A similar reference appears in the preamble of the Slovak constitution: *centuries of experience from the struggle for national existence and our own statehood, [...] and the historical legacy of the Great Moravian Empire [...]*

The National Avowal suggests that the fight for independence is a special feature of the Hungarian national identity, and – as a universal value – Christianity inevitably played a role in preserving the nation. The preamble can be regarded as a “Declaration of Independence”, as the fight for freedom has traditions also in the 19-20th centuries.

Christianity's role in preserving Hungarian nationhood triggered ideological debates, although this role can be proved by historical facts. I think Christianity can be regarded as a part of our historical experience, but – in contrast to the fight for freedom – it is not a feasible tool to integrate the political community anymore – even if *we value the various religious traditions of our country.*

Rejoining the community of European nations was a central idea of the actors of the system change in 1989-90, “being European” became a determining political ideology. Sólyom László found that it also became a “constitutional ideology” that determined the practices of the Constitutional Court.¹⁹ The ideology expected the Western nations to recognize our place among the Europeans. This claim appears in the National Avowal that refers to the founding of the state and emphasizes that the Hungarian nation struggled not only for its own independence and existence, but at the same time

¹⁸ Ibid., pp. 57-59.

¹⁹ L. Sólyom, ‘A jogállami forradalomtól az EU-csatlakozásig: Az alkotmányfejlődés keretei’ in L. Majtényi, Z. Miklósi, (eds.), *És mi lesz az alkotmánnyal?*, Budapest 2004, pp. 9-24.

protected Europe as well. The Hungarian nation also enriches Europe as a community based on values.

2.1.2. A nation torn apart: Hungarians living beyond the borders

We promise to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century.

[National Avowal]

The National Avowal states as historical fact that the Hungarian nation was torn apart in the 20th century. Its pledge to preserve the intellectual and spiritual unity of the nation has a rather vague content; I presume that it aims to preserve Hungarian culture and identity that exist regardless of political state-borders. Its meaning is clearer in light of the “responsibility clause” that provides: [...] *Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, and shall facilitate the survival and development of their communities; it shall support their efforts to preserve their Hungarian identity, the assertion of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands, and shall promote their cooperation with each other and with Hungary. [Article D]*

Article D) is a goal for the state with weak normative power: unconstitutionality of a legal norm could not be based on this provision, albeit it is applicable as constitutional value at the limitation of fundamental rights.²⁰ These provisions are linked to the cultural concept of the nation, and do not refer to either the border-revision, or establishing legal ties among the members of the political community. Legal bonds were set up between the kin-state and the parts of the nation by the extended citizenship and the right to vote.

Since 2010, when the right wing government came into power with a two-thirds majority in parliament, the concept of the nation began its great “career” in public law. One of the government’s first decisions was to make naturalization much easier for Hungarians living beyond the borders. Permanent residence in the territory of Hungary was no longer required in order to gain citizenship: the law allowed ethnic Hungarians to apply for simplified naturalization, as long as they could prove a sufficient knowledge of the Hungarian language and provide evidence that they were indeed of Hungarian ancestry. Soon after that, the right to vote was granted to the citizens who did not have residence in Hungary.²¹ These decisions attempted to bring the Hungarians living beyond the borders²² closer to the political community.

²⁰ A. Jakab, *Az új Alaptörvény...*, p. 188.

²¹ See Act XLIV of 2010 amending the Act LV of 1993 on Hungarian citizenship, Act XLV of 2010 on “National Togetherness”, and Act CCIII of 2011 on the election of the members of the Parliament.

²² The division of the nation inside the borders is not the result of the events which occurred in the 20th century, so this aspect is not applicable in the interpretation. Fundamental Law tries to compensate for the disunity of the political community by including the following wish in its last sentence: *MAY THERE BE PEACE, FREEDOM AND ACCORD.*

The decrease in the population of the communities is also worth mentioning. The census data in recent years show a decrease of circa 10% in the population of Hungarian minorities around the world. In numbers:

Country or continent	Population* (% of the whole pop. of the country)
Romania	1.238.000 (6.5%)
Slovakia	458.000 (8.5%)
Serbia	255.000 (3.53%)
Ukraine	141.000 (0.3%)
Croatia	14.000
Austria	10.000
Slovenia	6.000
North America	cca 1.5 million
South America	cca 130.000
Australia, New Zealand	cca 70.000

* Source: own collection from national census data.

The Parliament also granted the right to vote to the citizens who do not have residence in Hungary. This decision was debated widely, because these citizens can vote only for party lists and cannot vote for single constituency candidates. The equality of their right to vote has been restrained by the Fundamental Law, as Article XXXIII (4) provides that *a cardinal Act may provide that the right to vote and to be voted for, or its completeness shall be subject to residence in Hungary*. This limitation is regulated by Act CCIII of 2011 on the election of representatives of the Parliament, in Article 12 (3). The number of citizens with this kind of right to vote amounts to over 300,000, and this number is still increasing as preferential naturalization operates in this direction.

2.1.3. The historical constitution and the Holy Crown

We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation.

[National Avowal]

The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal and the achievements of our historical constitution.

[Article R, par. 3]

Here I cannot undertake the detailed introduction of the concept and the elements of the historical constitution and the doctrine of the Holy Crown. The Venice Commission found these references unclear, drawing attention to the other provision that requires that the achievements of the historical constitution be used as an interpretive method.²³

I regard the historical constitution and the Holy Crown as a historical element of the national identity, as long as the Fundamental Law refers to them – correctly – as historical evidence of the existence of the Hungarian State. Although the doctrine of the Holy Crown is a complex mixture of constitutional and political (and sometimes vague) tenets, one cannot deny its great symbolic value – it is, after all, part of the Hungarian coat of arms. This doctrine is sometimes mentioned as an anti-republican or anti-Trianon ideology, but this is obviously an anachronism, it does not have any normative basis at all. Despite this, we cannot ignore the fact that this ideological aspect played (and still plays) a central role in the political debates around the new constitution. As a result, the integrative nature of the Holy Crown has been seriously weakened, although it was involved in almost every draft of new constitution after 1989.²⁴

In any case, we have to interpret the historical constitution, since in its resolutions the Constitutional Court shall respect the achievements thereof. In the first year of the Fundamental Law, the Court used this interpretive tool only once, in the case of the compulsory retirement of judges (CC Res. 33 of 2012, par. 75-81). The Court found two laws in the 19th century that established the independence of the judiciary, and also referred to Constitutional Court cases between 1990 and 2011. The Court declared that Article R establishes an obligation for searching for “achievements”, roots of legal institutions in our history of law that are fundamental for the development of rule of law and constitutionality.

I can support this approach. The Court should not apply old laws that do not have legal force any more, rather it should look for tendencies and quasi *ratio decidendi* that are evidence of the progress towards modern constitutionality. The achievements of the historical constitution include positive elements of legal history and the case law of the Constitutional Court spanning 22 years.

2.1.4. Foreign occupations

We do not recognise the suspension of our historical constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and communist dictatorships. We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid.

We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May

²³ Opinion of the Venice Commission CDL-AD(2011)016, par. 29, 34.

²⁴ P. Smuk, *Magyar közjog és politika 1989-2011. A harmadik Magyar Köztársaság alkotmány- és parlamentarizmustörténete*, Budapest 2011, p. 151.

1990, when the first freely elected body of popular representation was formed.

[National Avowal]

The form of government based on the rule of law, established in accordance with the will of the nation through the first free elections held in 1990, and the previous communist dictatorship are incompatible.

[Article U]

According to the historical narrative of the Fundamental Law, during foreign occupations constitutionality and self-determination of the state were suspended. Hungary suffered from different occupations in history, but the National Avowal names only one period: between 19 March 1944 (Nazi occupation) and 2 May 1990 (inaugural sitting of the first freely elected Parliament).

Article U – its text was taken from the Transitional Provisions with slight modifications – provides that the Hungarian Socialist Workers' Party and its legal predecessors and the other political organisations established to serve them in the spirit of the communist ideology were criminal organisations, and their leaders have the responsibility, without the statute of limitations, of maintaining an oppressive regime, violating the law and betraying the nation; thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II; depriving citizens and certain groups of citizens of their fundamental human rights or in particular for murdering people, etc. Article U also finds that *Political organisations having gained legal recognition during the democratic transition as legal successors of the Hungarian Socialist Workers' Party continue to share the responsibility of their predecessors as beneficiaries of their unlawfully accumulated assets.* This refers clearly to the Hungarian Socialist Party.

I find Horkay Hörcher's interpretation that the constituent power wanted a clear division between freedom and dictatorship by *the outright condemnation of all totalitarian regimes experienced in twentieth-century Hungary*²⁵ unsatisfying. Answering the question of the Venice Commission, the Hungarian authorities stated that declaring the "invalidity" of the communist Constitution of 1949 is only a political statement.²⁶ On the other hand, one could posit the following question: if the country's self-determination was suspended in the times of the totalitarian regimes, then who was acting on behalf of the state? This "outright condemnation" may seem to be a self-exculpation²⁷, and what is more, its historical accuracy can be questioned as well – so this is a political declaration.

²⁵ F. Horkay Hörcher, 'The National Avowal', p. 44.

²⁶ Opinion of the Venice Commission CDL-AD(2011)016, par. 37. Otherwise many legal act would have been invalid, among others the system change in 1989 and the first elections in 1990.

²⁷ F. Horkay Hörcher, 'The National Avowal', pp. 40-41. Compares the text of the National Avowal with the text of the anthem of Hungary, and finds that some kind of "secular confession", that can be read in the anthem, would have raised the value and greatness of the Avowal.

This shows the adequacy of history in respect to today's politics, further degrading the integrative function. Even if everybody could agree with the condemnation of tyranny, the historical narrative loses its community-forming power when it blames a parliamentary competitor party for totalitarianism, murders and suppression in the 20th century.

2.1.5. National holidays

The national holidays of Hungary shall be:

- *the 15th day of March, in memory of the 1848-49 Revolution and War of Independence,*
- *the 20th day of August, in memory of the foundation of the State and King Saint Stephen the State Founder, and*
- *the 23rd day of October, in memory of the 1956 Revolution and War of Independence.*

[Article J]

National holidays are symbols of special importance, because, on the one hand, they reveal the traditional quintessence of the historical narrative, on the other hand from year to year the ceremonial occasions allow for the re-interpretation of the attitudes of the community towards them.

15 of March, 20 of August and 23 of October have a stable position in Hungarian social consciousness. The Fundamental Law changed the position of 23 October, because this was also the day of memory to the proclamation of the Republic of Hungary (and the system-changing amendments to the Constitution) in 1989. But – according to the narrative – this day in 1989 occurred during a period when the nation's self-determination was suspended, so it cannot be celebrated like the other dates. Unlike 1956, because as the Avowal states, *our current liberty was born of our 1956 Revolution.*

2.2. Common culture

We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. [...] We believe that our national culture is a rich contribution to the diversity of European unity. We respect the freedom and culture of other nations [...]

[National Avowal]

In Hungary the official language shall be Hungarian. Hungary shall protect the Hungarian language. Hungary shall protect Hungarian Sign Language as a part of Hungarian culture.

[Article H]

All natural resources [...] and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.
[Article P]

Hungary shall defend the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts.
[Article X]

Common culture and cultural traditions have central importance in forming national identity. These are elements of the cultural concept of the nation, but modern nation-states employ them by legal force to integrate the political community. The declarations of the Fundamental Law are cautious; they refer to the Hungarian national culture and the culture of nationalities together. In other articles, the Fundamental Law provides nationalities with the right to use their native languages, to promote their own cultures, and to be educated in their native languages (Art. XXIX).

It can be highlighted that, as a novelty, the protection of the Hungarian language and sign language appears in the constitution. Two institutions whose purpose is to preserve national culture are protected by the Fundamental Law: the Hungarian Academy of Sciences and the Hungarian Academy of Arts (the latter was established in 1992, but included only in the new constitution).²⁸

2.3. National symbols

The coat of arms of Hungary shall be a vertically divided shield with a pointed base. The left field shall contain eight horizontal bars of red and silver. The right field shall have a red background and shall depict a base of three green hills with a golden crown atop the central hill and a silver patriarchal cross issuing from the middle of the crown. The Holy Crown shall rest on top of the shield.

The flag of Hungary shall feature three horizontal bands of equal width coloured red, white and green from top to bottom as the symbols of strength, fidelity and hope respectively.

The anthem of Hungary shall be the poem Himnusz by Ferenc Kölcsey set to music by Ferenc Erkel.

[Article I]

[...] we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation.

[National Avowal]

²⁸ See also the Act XL of 1994 on HAS and Act CIX of 2011 on HAA.

In national traditions and in international relations the coat of arms, flag and anthem are generally used symbols. At sports, diplomatic, etc. events their function is to differentiate between countries and they are also able to create emotional ties. Sports heroes, with their outstanding performance, can arouse strong emotions and, consequently, may become part of a nation's historical traditions.

I would like to shed some light on one normative aspect of the national symbols, namely, their protection by the Criminal Code. The "old" Criminal Code (Act IV of 1978) punished the use of "outraging or humiliating" expressions directed against the national coat of arms, flag or anthem. In the case law of the Constitutional Court this crime could even limit freedom of expression.²⁹ The new Criminal Code (Act C of 2012 art. 334) uses the same wording, but it protects one more symbol: the Holy Crown. The constitutionality of this provision is questionable, because the legal basis (for the limitation of the freedom of expression) in the Fundamental Law is not as strong as in the case of the three other symbols. The Holy Crown is a part of the coat of arms, and its honour is included "only" in the preamble. But as long as it remains in the Criminal Code, the Holy Crown has not only a historical, symbolic value, but also a normative, constitutional value.

2.4. The Head of State "who shall embody the nation's unity"

The head of State of Hungary shall be the President of the Republic, who shall embody the nation's unity and shall safeguard the democratic operation of state organisation.

[Article 9]

The basic constitutional function of the President of the Republic has been regulated by the same wording as in the previous constitution. Here the embodying of the nation's unity is under investigation.

The President in parliamentary systems has only representative, protocol functions as a principle, but in Hungary, the head of state has several competences that can be exercised without countersignature. These competences allow the President to show how he or she perceives his or her role in the political system – although he/she is out of the executive branch of power. This can be exemplified by the practice of László Sólyom's presidency: for ex. he visited the communities of Hungarians living abroad, sometimes causing diplomatic conflicts.³⁰ The function to "embody the nation's unity" refers to the political nation, but the "unity" of this community is not obvious (we have differing political opinions, plural society in religion, nationalities, etc.). But the head of the state can also embody the state's responsibility for the fate of the Hungarians living abroad, and he or she can act in favor of nationalities. The President may have charismatic popularity, but exercising his or her competences is integrative too: he/she rep-

²⁹ Const. Court Res. 13 of 2000.

³⁰ P. Smuk, *Magyar közjog és politika...*, p. 307, 345-346.

resents Hungary, sets a date for the general elections, may dissolve Parliament, awards statutory decorations, prizes and titles, grants pardon to individuals, decides on several matters of territorial administration, decides on the acquisition of citizenship, and, of course, safeguards the democratic operation of the State.³¹

3. “NATIONALITIES LIVING WITH US”

The constitution states that nationalities³² “living with us” are parts of the Hungarian political community and are constituent parts of the State (according to the National Avowal and Article XXIX). Fundamental Law and other laws provide a wide scale of minority rights in Hungary. Regarding the bitter historical experiences pertaining to this matter and also the diplomatic interests towards the neighboring countries, the legislature tried to do its best, as demonstrated below.

Article XXIX of the Fundamental Law provides that nationalities living in Hungary shall be constituent parts of the State. Hungarian citizens belonging to any nationality shall have the right to freely express and preserve their identity. Nationalities have the right to use their native languages as well as the individual and collective names in their own languages, to promote their own cultures, to be educated in their native languages, and to establish local and national self-governments.

The detailed rules for these rights can be found in cardinal Act CLXXIX of 2011. The 4th amendment of the Fundamental Law in 2013 allowed this Act to subject the recognition of a national minority group to conditions of certain length of residence and certain number of members within a group.

Article IX of the Fundamental Law states that the exercise of one’s right to free expression cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to turn to court. This protection was also introduced in 2013 by the 4th amendment.

Article 2 (2) of the Fundamental Law states that the participation of nationalities in the work of Parliament shall be regulated by a cardinal act. Act CCIII of 2011 on the election of MPs introduced the institution of nationality lists and preferential quota into the Hungarian electoral system, which had previously lacked any similar kind of representation in Parliament. Every recognized nationality can run one list – with easy conditions – in the elections, and the first candidate on this list may gain a mandate according to the preferential quota. If the list fails to achieve this preferential threshold, the first candidate on the list becomes a spokesman of the given nationality in the Parliament. Spokesmen will have the right to question the government and enjoy immunity. Their main field of operation will be the new standing committee of nationalities, regulated by Act XXXVI of 2012 on the Parliament of Hungary.

³¹ See V. Kovács, ‘29. § [A köztársasági elnök általános funkciója.]’ in A. Jakab (ed.), *Az alkotmány...*, pp. 950-951.

³² Previously, the Constitution called them “national and ethnic minorities”.

The Fundamental Law also provides special protection for minority rights, Article 30 (3) rules that one of the deputies of the Commissioner for Fundamental Rights is in charge of the protection of the rights of nationalities.

The Venice Commission has acknowledged the efforts of the Hungarian legislature to introduce the rights of nationalities and their guarantees as well. In its opinion (CDL-AD(2012)011) Hungary has continued to pay particular attention to the promotion and protection of minority rights and to undertake specific efforts to ensure the protection and preservation of the ethnic, cultural and linguistic identity, traditions and cultural heritage of its nationalities.

The 2011 Nationalities Act guarantees rights to its thirteen recognised nationalities³³ and their members in the main areas of interest for the protection of their identity – education, culture, private and public use of mother tongue, access to media and participation – and aims to improve and strengthen the available institutional arrangements for nationality self-government in these areas. The Venice Commission has also stated that the Act appears to be, at times, excessively detailed and sometimes lacking in legal clarity which may cause difficulties in its implementation.

4. Summary – results and risks in nation-building

Upon observation, it is apparent that the governing majority included its conservative and patriotic values in the text of the new constitution. If we raise the question of the concept of the nation, whether inclusive or exclusive, we can hardly answer that the text is able to integrate the political community – as the procedure of creating it lacked any intention to achieve this effect.

Viktor Orbán once said that Europe has no heart without nations, and according to the new Fundamental Law of Hungary, our country will clearly represent the 'Europe of nations' concept in the integration. The new constitutional values are already backed up with several policy decisions and a more active diplomacy towards the Hungarian minorities spread throughout Central Europe. Upcoming conflicts regarding the Hungarians beyond the borders (for example, their impact on the results of the elections) and problems with the nationalities involved in Hungarian politics (compromised deputies and spokesmen in Parliament) may also be estimated in the near future. The Hungarian opposition argues against the value-content of the constitution, and this will most probably become the central issue of politics in the next several years in Hungary.

Those who seed wind will harvest storm.

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³³ Namely: Bulgarian, Roma (Romani, Beás), Greek, Croatian, Polish, German, Armenian, Romanian, Carpatho-Rusyn, Serb, Slovak, Slovene, Ukrainian.

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