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**THE ROLE OF CONSTITUTION-BUILDING PROCESSES
IN DEMOCRATIZATION**

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**Case Study
Hungary**

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INTRODUCTION

The Constitution-building process in Hungary, which essentially determined the transition into a multi-party, parliamentary democracy, took part in 1989-1990. In this period the Constitution was amended nine times, from which the Act XXXI of 1989 has the most significant role, as it basically changed the Constitution. In reality it introduced an entirely new Constitution, which provided the constitutional framework for the peaceful change of the regime.

I. THE BRIEF HISTORY OF THE WRITTEN CONSTITUTION OF THE REPUBLIC OF HUNGARY IN FORCE

The first written Constitution of Hungary came into existence in 1949 by adopting and promulgating the Act XX of 1949 on the Constitution of the Republic of Hungary (henceforth: Constitution). The Constitution of the Soviet Union served as a pattern for the Hungarian Constitution. Although formally the act in this number is still the Hungarian Constitution in force, but considering its content, it has been nearly completely altered.

The first significant reform of the soviet-type Constitution took place in 1972, which reform could have meant changes only within the socialist societal system, of course. The Act XXXI of 1989 on the amendment of the Constitution reformed the Constitution basically. Formally it was only an amendment, but actually, considering its content, it signified an entirely new Constitution. This amendment established the legal framework of the tranquil transition. On the one hand, with the transformation of the institutions also existed in the former Constitution, they became convenient to the requirements of the rule of law. On the other hand, it also founded new institutions, like the Constitution Court or the State Audit Office. In 1990, the Parliament, formed on the basis of democratic elections, revised the Constitution in connection with the Local Governments. The transition in Hungary completed with the election of the Local Governments, on 30th September and 14th October 1990. Although since its revision in 1990, the Constitution has been amended about twenty times, these modifications only refined it, they did not changed the constitutional, societal system of Hungary substantially.

The most important amendments of the Constitution from 1989 to these days

- The **Act I of 1989** reinforced the law-making authority of the Parliament, and firmed its freedom by the modification, that the Parliament – except of its inaugural sitting – shall be convened by the Speaker of the Parliament instead of the Presidential Council of the People’s Republic (‘Népköztársaság Elnöki Tanácsa’ henceforth: NET). It had a significant importance, that the right to peaceful assembly and the freedom of association became the part of the Constitution. It founded the legal base of the Act on the right of assembly and the freedom of association (Act II and III of 1989), giving legal framework to the organising and re-organising opposition groups and parties.
- The **Act VIII of 1989** regularised the connection between the Parliament and the Government, introducing the institution of the motion of no-confidence in the Council of Ministers or in a member of it.
- This case study will deal with the **Act XXXI of 1989** in detail afterwards.
- The **Act XL of 1990**, as the result of the pact of the two parties obtained the most votes on the election of MPs in 1990, decreased the number of the decisions, which require a two-third majority of the votes of the MPs, for the sake of ensuring the ability of governing. It also introduced a new category: the laws, which require a majority of two-thirds of the votes of MPs, present to pass, for the adoption of the most important laws. The simple majority of the votes needs for the adoption of the utmost laws. The introduction of the ‘constructive motion of no-confidence’ served (and still serves) the stability of governance.
- The **Act LXIII of 1990** revised the provisions of the Constitution according to the Local Governments. It founded the new Act on Local Governments and the Act on the election of the members of the Local Governments and on the mayors (Act LXIV and LXV of 1990). After the elections in 1990 the 80 % of the previous political elite renewed.
- The **Act LIX of 1997** regulated the rules of the national referenda on the level of the Constitution. It also amended the provisions of the Constitution according to the judiciary system in connection with the judiciary reform.
- The **Act XCI of 2000** contains the amendments required by the accession to the NATO, and the **Act LXI of 2002** contains those, which needed to the accession to the European Union.

II. THE PREMISES OF THE TRANSITION WITHIN CONSTITUTIONAL FRAMEWORKS

The transition in Hungary started in the political sphere, which followed from the fact, that the political subsystem over-determined the whole totality of the society, and so also the subsystem of the economy.

The change of the regime in Hungary based on compromises, passed off on a tranquil way. The transition took place within constitutional frameworks, on a method, which corresponded all the rules of the Constitution and other laws and was legitimate from every aspect. In this process the new Constitution was the tool (and not the aim) of the placid change of regime. To the better understanding of the political and social factors, which permitted and based the tranquil transition, it is necessary to review the characteristics of the previous regime briefly and to survey the relevant elements of those studies on the crisis of the system and studies on reform, which grounded for the particular content of the new Constitution.

The characteristics of the previous regime from the middle of the 80's

The historical background of the democratic, tranquil transition in Hungary was that long history of reforms, which Hungary exercised from 1965/68. As a result of this process, the socialism in Hungary, which had not differed from the others previously, significantly changed and became a special form of the European totalitarian socialisms. To the 80s the over-socialised, bureaucratic planned economy, which cancelled the interest of the manufacturers, gradually turned into more and more rationalised, and some relations of the market became part of the economy. The dictatorial type and power of the force decreased, and a softened dictatorship evolved. A latent and informal kind of pluralism of interests supervened, which led to the formation of so-called 'socialist lobbies' (as agrarian, industrial, energetic lobby, lobby of the different counties, etc.) and also to the rationalisation of the political decisions.

The political system operated in a single-party, party-centred system, the state-party exclusively possessed and wielded the authorities, without the participation of any other political powers. However, within the concentration of the powers some elements of the bureaucratic pluralism appeared. The innovation of the political system and the skill for renewal of the society had slowed down and the political system became the most important impeding factor of the revival of the society.

The state-party (Hungarian Socialist Worker's Party, 'Magyar Szocialista Munkáspárt' henceforth: MSZMP) deduced its legitimacy, determining and leading part from the Article 3 of the Constitution: 'the leading power of the society is the Marxist-Leninist Party of the working class'. From this formula arose the directional role of the party towards the state organisations and the special position of power of the First Secretary of the Party. The members of the leading bodies of the Party (Political Committee, Central Committee 'Politikai Bizottság' and 'Központi Bizottság', henceforth: PB and KB) were also the leaders of the state organisations and institutions at the same time. The Article 3 of the Constitution and the lack of the rules of incompatibility created the base of the party-state structure of power. A collective body exercised the authorities of the Head of State with 21 members (NET) whose members and leaders were elected by the Parliament from the MPs. The NET substituted the Parliament, when it was not in session, and it had the right to adopt a special kind of law, the decree law, which could replace any other law, except for the amendment of the Constitution. The NET was responsible for convening the Parliament. Although according to the Article 19 of the Constitution the Parliament was the 'supreme body of State power and popular representation' which 'exercises its rights based on the sovereignty of the people, ensures the constitutional order of society and define the organisation, orientation and conditions of government', it did not fulfil the classic (law-making and controller of the executive power) part of parliaments.

Ideal programs preparing the constitutional transition

On the summer and autumn of 1987, nearly at the same time, three radical reform programs were published, which gave the diagnosis of the crisis of the system and attempted to unfold its reasons on the one hand, wished to provide solutions and alternatives on the other hand.

The recommendation and program, entitled 'Societal Contract¹, or the conditions of the political denouement' was issued on the June of 1987 and its editors emphasised that they belonged to the democratic opposition. The authors' starting point: the implicit consensus within the society had broken up and the society has to get at the Societal Contract instead of the dictatorship. The mostly cited sentence of the study – 'Kádár has to be dismissed!² –

¹ It was brought out as a special issue of the illegally published monthly, the Beszélő ('Speaker') on 10th June 1987. It was edited and formulated by János Kis, Ferenc Kőszeg and Ottília Solt.

² János Kádár was the person, whose name marked the more than thirty years long period after the breaking of the revolution in 1956. Till the May of 1988 he had filled the most important leading position of the party (he

meant that a radical political change is required and that Kádár was personally responsible for the status of the country. The implicit consensus had arisen the fact, that after the beating down of the revolution in 1956, the bleeding and deadly tired country accepted the policy of the consolidation, the safe and comfortable living conditions, and return for it, the people took cognisance that – alluding to the people and the members of the party – the Party rules. However, the dissatisfaction within the society became general and the discontents have to be formed to appropriate political demands. The study recommended that the Party become the part of the legal system. The KB of the MSZMP, operating like a kind of first chamber, would direct the main processions of the society, and the Parliament, as a sovereign power on the base of pluralist division would exercise its law-making and controlling authority. The government has to be subordinated to the Parliament. Instead of the NET, the head of the state would be one person, the president of the republic. The institution of the motion of no-confidence, and the right to interpellation has to be introduced. The study dealt with the arbitrary censure and the freedom of the press. The right of assembly has to be ensured. The study also raised three important issues:

- 1) The relation between Hungary and the Soviet Union?
- 2) The opinion of the Hungarian state about the Hungarian minorities outside the borders of Hungary.
- 3) Is it possible to get over the disruption caused by the breaking down of the revolution in 1956?

Ad 1) It is unreal to reckon on the disintegration of the Soviet Empire within reasonable time. But there is a possibility for the depending countries to increase their relative separateness against the Soviet Union.

Ad 2) It is a moral duty to face the critical state of the Hungarian minorities outside Hungary.

Ad 3) It is the role and task of the reformers of the Party to get to the re-interpretation of 1956.

The ‘Turn and reform’³, to which four background studies also engaged, was written to the order of the Committee of Social Policy of the Patriotic Popular Front⁴ (‘Hazafias Népfront’

had been the Main Secretary of it) and after it he was the president of the party till his decease in the July of 1989.

³ It was published entirely as the supplement of the issue II of *Medvetánc* in 1987, edited by László Antal, Lajos Bokros, István Csillag and György Matolcsy.

henceforth: HNF), in 1986-87, with the co-operation of 68 authors. The study appointed that the Hungarian economy was in a critical state, and the country, because of its weak ability of adaptation, better and better seceded from the main trends of the development of the world economy. The negative tendencies originated in the disorders of the operation of the economic and societal institutional system. A new economic policy is required, to which it is necessary that the Party and the leaders of the state let initiate a dialogue with the public upon the evaluation of the crisis and the reforms. The reforms cannot be limited to the economic subsystem, but also have to extend on the other part of the society, within it the political relations. The reform has to be democratic; it is required to ensure a level of freedom for the citizens and their associations on the decisions about the reforms. The study also appointed that new problems arise in connection with the reforms, such like the unemployment, the decrease of the living standard and the grand investments of the state have to be reviewed.

The 'Reform and democracy'⁵ (subtitle: Diagnosis and program) was also written for the request of the Committee of Social Policy of HNF. It contained the thematic analysis of the political system from the aspect of Political Science, and the program on the reform of the political system. The study emphasised that reform programs and objectives, adopted on public debates are required for all of the subsystems of the society, since the socialism, as a societal structure is on crisis. It is a total crisis, which means that it affects all the subsystems of the society and it is a structural crisis, arising from the inner structure of socialism and the principles determining the system. The results of the reforms have to be institutionalised in systemic and legal forms to avoid anti-reforms. The historic existence of the socialist state and the leading role of the Party have to be taken notice. The study accented the importance of the acceptance and institutionalisation of the democratic, political values (e.g. freedom, democracy, freedom of participation in political decisions, freedom of assembly) and adding them to the Constitution. The principles of the democratic, political reform – among others – are the dissolution of the over-determining role of the political system, the change of the monopolisation of the single-party system, institutionalised division of powers instead of the concentration of the powers, the freedom of the press and political publicity, etc. One of the

⁴The Patriotic Popular Front was an organisation named on the Constitution, which 'gathered the forces of the society for the purpose of building up socialism totally, for the solution of the political, economic and cultural tasks, and participate in the election and work of the organisations of the popular representation'.

⁵First published entirely as the issue of the Münnich Ferenc College of the Technical University in Budapest in the October of 1987. In edited version was published as the supplement of the issue II of *Medvetánc* in 1987, author: Prof. Mihály Bihari.

most important reforms is the reform of the Parliament. It has to become a permanently working, law-making organisation, in which the freedom of forming political faction is ensured. President of the Republic is required instead of the NET. The electoral system has to be changed. The reform of the governance is necessary, the Parliament has to control the government instead of the direct control of the party leaders. Establishing the Constitution Court, ensuring the independence of the judges is also required, etc.

On the base of this study the so-called ‘Package deal of democracy’ had been prepared, which was submitted to the Parliament in the May of 1988 and was adopted as a working plan of the Government in the autumn.

The publication of the radical reform programs was foregone by comprehensive professional debates and series of discourses. After the publications the thinking and discussions about the reforms also started in the widespread, civil society: the three studies and the connecting reform ideas several thousand occasions were disputed in various clubs of universities and academies, in community centres, at large companies, later also in the different party bodies on the whole. They became the part of the public cogitation, making realise the crisis and its reasons.

The description of the total crisis of the socialism provoked intense resistance from the leading organisations and the leaders of the Party. János Kádár refused the existence of also a partial (economic) crisis yet in an interview given to the Canadian Radio in the March of 1988 and also on the Nationwide Party Conference in the May of 1988. ‘There is no crisis in Hungary in any sense. Only some hundreds intellectuals circulate that there is a crisis in Hungary.’

The claim of radical reforms gradually became a societal matter; the political movements under organisation formulated the radical reforms as collective political demands and wills. The drafters of the professional diagnoses and radical political demands called the leaders of the Party upon public debates and discussions. The claim that those members of the Party, who are committed to the reforms let get into leading position became more and more explicit. The writers of the radical reform programs and those, who accepted their opinions gradually showed up as alternative bearers and integrating powers. The radical reform economists, the popular-national opposition, the democratic opposition and the radical opposition within the Party (‘Party-opposition’) had the most definite integrating role. The claims of reform, as a collective professional will, promoted that counter-balances of forces

appeared on the single-party dictatorship. The diagnoses and radical claims of reform prepared the programs of the parties, organising in 1988/89.

The recognition of the total crisis of socialism and the radicalisation of the reform claims set the stage for the demand of the change of the regime and for the establishment of the system-altering political platforms, movements, associations and parties. Most of the party programs and laws of the transition are traceable to claims of the professional studies.

The writers of the studies had to take notice of some historical limits, like:

- a) Hungary is a part of the ‘soviet-block’ for an unforeseeable time, member of the CMEA⁶ and the Warsaw Pact; there is no chance for breaking with them.
- b) ‘Socialism’ seems to be unalterable for an unforeseeable time. Everyone has to take notice of the leading role of the MSZMP.
- c) As a result of these unalterable pressures, radical reforms can be executed only through the agreement with the Party-opposition. The ruling party has to be dividing from both outside and inside.

Although within the societal, historical, political pressures and limits:

- a) The power of the Party has to be restricted.
- b) The political role and the relative independence of the Parliament and the government has to be fortified.
- c) The catalogue of the political rights has to be enlarged, and the severity of the dictatorship has to be lightened.
- d) The rationalisation of the planned economy has to continue.
- e) The pluralism of interests and opinions within the society and the Party has to be strengthened and free.
- f) The democratic reform of the political system is unavoidable.
- g) The freedom of speech and the freedom of the press have to be assured. (E.g. legalisation of the illegal press, access to the foreign press, etc.)

Political actors of the transition

⁶ Council for Mutual Economic Assistance, Comecon

The single-party political system, which had seemed to be unchangeable in the autumn of 1988, transformed into a multi-poled system of forces, in which the different centres mutually tolerated each other's and the changes continued on a compromised way.

The political groups of the opposition had a relatively long historic past in Hungary. The activity of the intellectuals, who declared their solidarity with the signers of Charta '77 in Prague, established the *democratic opposition*, the predecessor of the Network, and its successor, the SZDSZ ('Szabad Demokraták Szövetsége', Alliance of Free Democrats). The organisation of the *popular-national opposition* also looked back for some years within the framework of MDF ('Magyar Demokrata Fórum', Hungarian Democratic Forum). The opposition appeared as a pluralist force from the beginnings, and did not gather into a unified mammoth-organisation or movement like the Solidarity in Poland. From 1987 there were several separate political forces. The Network, later the SZDSZ (democratic opposition), the MDF (popular opposition), the FIDESZ ('Fiatal Demokraták Szövetsége', Alliance of Young Democrats), the New March Front (movement which wanted to integrate the leftists reformers), and from the autumn of 1988 the reorganising historical parties, the FKGP ('Független Kisgazdapárt', Independent Smallholders Party), the KDNP ('Kereszténydemokrata Néppárt', Christian Democratic People's Party), the MSZDP ('Magyar Szociáldemokrata Párt', Hungarian Social Democratic Party), etc. The pluralistic forces of the opposition entered into an alliance in the spring of 1989 within the framework of EKA ('Ellenzéki Kerekasztal', Opposition Roundtable). This alliance was the first centre of forces, which turned them to macro-political factor and with it, they became real counter-balancing factor in contrast to the state-party. From the spring of 1989 the monocratic Hungarian political system transformed into a bipolar system of forces. It was not only the EKA, who compensated the state-party, but at least two political centres evolved also within the Party. One of them was the centre of 'new order party' around Károly Grósz⁷ and his companion, and the second was the centre of radical reformers, the 'reform-circles'.

MSZMP – transformation from the state-party into a defining, system-altering party

From the spring of 1988 there were considerable changes also within the state-party. The leaders of the party basically altered during the party conference in May. The forces of the 'conservative order party' (against the efforts for the reform, led by János Kádár) were

⁷ He was the Prime Minister of Hungary from 26th June 1997 to 26th November 1988.

replaced by the forces of the ‘new order party’, with the help of the ‘reform-circles’. Two prominent representatives of the reformers were also elected into the PB. The leader of the ‘new order party’, who was the Prime Minister, became the new main secretary of the party. He resigned from the position of the prime minister on 26th November 1988. He made some statement about the threat of the ‘white terror’ during the autumn of 1988, which he wanted to keep back the spreading of the radical reformers with. But these statements isolated him from most of the members of the society and he became more and more unacceptable also for the members of the party.

The popularity and the support of the ‘reform-circles’ grew both within the party and the whole society. On 28th January 1989 Imre Pozsgay, one of the leaders of the ‘reform-circles’ made known the standpoint of the Historian’s Committee, requested by the KB on a live broadcast of the radio. Accordingly to the standpoint, against the official point of view till then, the revolt in the October of 1956 was not a counter-revolution, burst by the enemies of the socialism, but it was a popular rising against the oppression. This announcement had a huge influence, as it staggered the legitimating base of the whole Kádár-regime.

The position of the MSZMP KB, adopted on 10-11th February, 1989 admitted, that as the partial reforms did not lead to permanent results, a real turn needed. The decision explained: *‘The standpoint of the MSZMP is, that the democratic exercise of power has to prevail by means of direct and representative democracy controlled by the society, within the framework of a multi-party system. It initiates that its conditions let come into existence and let receive constitutional warranties.’* It also declared that *‘it is ready for the two or multi-sided discussions about the new method of the exercising of forces, with any organisation operating within legal framework.’* The acceptance of the socialist system made the condition of the discussions but it also stated: *‘there could be parties and movements of the opposition, operating within constitutional frameworks. The MSZMP stands for dialogues and debates also with them’.* *‘The MSZMP ... would like to fill a determining part in the society ... but it intends to ensure it through political tools... and persuasion.’*

After the establishment of the EKA the MSZMP KB received its offer to the formulation of a conciliatory forum. The MSZMP KB stated that it accepts the EKA as a separate negotiator. The acceptance of the socialist system was not the condition of the discussions yet.

On 28th July 1989, conceding to the political pressure coming from the society and the party-members, the MSZMP KB adopted a position about the national reconciliation in connection

with the popular rising in 1956. The decision overruled the decision on the ‘reasons of the counter-revolution’ passed on 5-6th December 1956 by the Temporary Central Committee of the MSZMP. The historical and political legitimacy of the system, the totalitarian socialism, and the state-party marked by the name of Kádár ceased by this decision of the MSZMP KB. The Political Syndicate of the MSZMP (‘Politikai Intéző Bizottság’, henceforth: PIB) decided on its position on the political conciliatory negotiations on 15th August 1989. From the side of the MSZMP, this decision was the ground of the agreement accepted on the discussions of NEKA (‘Nemzeti Kerekasztal’, National Roundtable) and of the six bills enclosed to the agreement, creating the base of the constitutional transition.

The MSZMP held its 16th Congress between 6-9 October 1989, which was its last congress, and the 1st Congress of MSZP (‘Magyar Szocialista Párt’ Hungarian Socialist Party), at the same time. The Congress stated in its decision: *‘The different concepts of the socialism till now, the Stalinist system exhausted all of its societal, economic, political and moral reserves and are inconvenient for keeping up with the development of the world.’*

The Opposition Roundtable (EKA)

The EKA and its organisations, negotiating delegations and experts essentially worked from 22nd March to 18th September 1989.

The idea about the co-operation of the independent organisation of the opposition, established in 1987/88 was raised in the November/December of 1988. It was obvious, that the co-ordination is crucial to compensate the power of the state-party and to avoid the ‘salami-tactic’ of the MSZMP. The first, informal meeting on the co-operation took place on 5th December 1988. The participants did not represent, but connected to the following organisations: MDF, SZDSZ, MSZDP, SZKH (the Network) and BZST (‘Bajcsy-Zsilinszky Baráti Társaság’ – a kind of cultural association). The informal discussions, in an altering and enlarging personal circle, continued. To the general letter of intent about the negotiations, issued by the MSZMP on 10-11 February 1989 the independent organisations reacted on a declaration. They defined themselves as a *‘group of independent organisations, alliances and parties’*. The most important part of the Declaration is: *‘We suggest negotiations with the Government – with the participation of the leaders of the MSZMP and democratic political*

organisation – within the framework of a national roundtable for the purpose of the acceleration and confirmation of the democratic processes, resting on wide political base.’

The next important step was the appeal and the offer of the Független Jogász Fórum⁸ (Independent Forum of Jurists), issued on 15th March 1989, in which it assumed the task of organisation, reconciliation of the different opinions, and the professional elaboration of the compromises.

Formally the EKA was established on 22nd March 1989 on the Eötvös Loránd University, Faculty of Law, with the participation of eight organisations: BZST, FIDESZ, FKGP, MDF, MNP, MDNP, SZDSZ and the Democratic League of Independent Trade Unions (as an observant). Later the KDNP joined the EKA.

The aim of the EKA was the development and the representation of a unified position about the transition to a multi-party democracy and about the constitutional structure after the transition. The EKA suggested negotiating on the amendment of the Constitution, on the amendment of the Criminal Code in connection with political crimes, on the preparation of the new law on elections, and on the law on political parties. The EKA officially announced its establishment to the MSZMP on 30th March. The leaders of the MSZMP wanted to discuss with the organisations of the EKA separately, but they did not succeed. The EKA sent along a document to the MSZMP, containing practical motions on 19th April 1989. It urged the soonest beginning of the discussions, although with one condition: all the member organisation of the EKA should take part on the negotiations. They offered two-sided debates as the form of the negotiations, between the delegation of the MSZMP and the delegation of the EKA. They wanted to talk about the date of the election on MPs and about the following subjects:

- the establishing and operating of parties,
- the law on the press and information,
- the amendment of the Criminal Code and the Act on Criminal Procedure,
- the new rules on elections,
- the national referendum,
- the overruling of those laws, which impede the democratic transition,
- warranties against the violent re-exchange.

The MSZMP KB answered the document on its decision of 8th May. It suggested that the negotiators had to proclaim before the commencement of the discussions: they respect the

⁸ Professional forum, established by 135 jurists on 5 November 1988

principles of constitutionality, they recognise each other's as equal negotiators and abstain from all the one-sided steps, which could defeat the result of the discussions. It also suggested that political agreement let forego the legislation.

International background and latitude in 1988-89

The success and the character of the Hungarian transition, and the possible latitude of the democratic Hungarian forces were largely determined by the extraordinarily favourable international situation and environment. Although a conservative international block (DDR, Czechoslovakia, Romania, Cuba) formulated against the reforms and Hungary on the summer/autumn of 1989, but at least Hungary was not the only country of the socialist countries, in which different reforms proceeded. There were reforms also in the Soviet Union and Poland. Firstly in the Hungarian history, Gorbachev and his followers, the official soviet leadership appreciated and supported the Hungarian reforms.

The announcement of Mikhail Gorbachev, taken in UNO, on 7th December 1988 enlarged the political latitude and activity of the Hungarian Government. He declared that the Soviet Union intended to reduce the number of its troops in Hungary, Poland and Czechoslovakia. The partial withdrawal of the soviet troops from Hungary started on 25th April 1989.

The political leaders of the West-European countries and the USA were extraordinarily interested in the Hungarian reforms and gave political encouragement to it, but also cautioned to the danger of extremists and illusions.

The pact between Mikhail Gorbachev and President George H. W. Bush, decided in December 1989, near Malta had an enormous significance. Gorbachev ensured that the Soviet Union takes it cognisance and avoids from any military intervention in that case if a country, neighboured to it, decides on the change of the socialist system. It is the home affair of the given country. This pact overruled the principle of 'limited sovereignty' (connected to Breschnev's name) by which if the socialism was in danger in a socialist country, it was not the home affair of the country, but was a special conflict. The socialist countries were bound to 'provide internationalist aid' to solve the conflict and save socialism.

The agreement on the complete withdrawal of the soviet troops was adopted on 10th March 1990 and the last soldier of the soviet army left Hungary on 19th June 1991.

III. CONSTITUTIONS ON THE PROCESS OF TRANSITION

In the summer of 1988, when the idea of a new Constitution revealed at the first time, János Kádár, the leader of the Party listened to the proposal with total incomprehension: ‘Do they want a new Constitution? What for? Has the regime changed?’

After the Party Conference in May the relation within the Party basically changed. The ‘new order party’ obtained the largest support. In August 1988 the Minister of Justice announced the preparation of a new Constitution, and a Secretary on the Preparation of the Constitution, led by a deputy minister was established within the Ministry of Justice. In September 10 professional committees started to operate and they formulated 10 chapters of the Constitution. The opposition groups and parties also took part in the debates of them.

The first step of the transition in a wider sense was the amendment of the Constitution, adopted by Act I of 1989⁹, and the connecting laws. The aim of this amendment was not the transition, but only the reform of the socialist system. *‘The review of the Constitution proceeds, in accordance with the reform of the political institutions, with the purpose of enlarging the socialist rule of law. As a result of the work it is obvious, that a new Constitution has to be worked out, so the review has to continue. Nevertheless, the proper reform of the political institutions needs the formulation or the amendment of some laws, before the adoption of the new Constitution. These acts require the amendment of the Constitution in the meantime.’*¹⁰ This amendment of the Constitution enhanced the independence of the Parliament and founded the ground of the first group of the ‘transitional acts’, like the Act on the right of assembly, on the freedom of association and on national referendum (Act II, III and XVII of 1989). The Act on the right of assembly legalized the existence of the different groups of the opposition, providing the legal background of their work.

Process of the formulation of the Act XXXI of 1989 on the amendment of the Constitution (an entirely new Constitution in reality)

The preparation and the drafting work of the act on the amendment of the Constitution, assuring the placid transition, passed off within the framework of the National Roundtable

⁹ Announced on 24th January 1989. The different part of the Constitution came into effect in various times, but the amendments, important for this study came into effect on the day of its announcement.

¹⁰ See the motivation of the Act.

(NEKA) between 13th June and 18th September 1989. The negotiations were sealed by a political Agreement to which the amendment of the Constitution and five other bills of ‘transitional acts’ were enclosed. The Agreement stated: *‘The negotiators diagnose, that as a result of the discussions, there is a political concordance between the participants on the substantive and fundamental issues of the placid transition. ... The negotiators send the mentioned documents, attached to the Agreement to the president of the Council of Ministers [the Prime Minister]. The negotiators request him to submit the bills to the Parliament, according to the Act on legislation.’*

The Parliament adopted the amendment on 18th October 1989, and it was announced on 23rd October 1989. It was a symbolic¹¹ and probably the most important day of the transition, as the state-form of ‘republic’ instead of ‘people’s republic’ were also proclaimed this day.

The NEKA as a Constitution-making power

Since it was the NEKA who formulated and drafted the amendment on the Constitution and the second group of the ‘transitional acts’, and since the bills were the results of compromises achieved on its discussions, sociologically the NEKA became the Constitution-making power, irrespectively of the fact the Parliament adopted them at last.

The NEKA was an institution, organised in a pluralistic way, outside of the Parliament and it consisted of basically differing organisations accepting the political and legal framework of the transition. By the adoption of the Agreement and the bills it became a determining centre of forces, which was potent enough to force the government and the Parliament into adopting the most important legal acts of the transition and into continuing the reforms. The NEKA provided the institutional framework of the most important decisions of the transition and it – together with its organisations and political forces – assured the historical legitimacy of the transition. It justified and made the transition, based on political agreements and compromises, undoubted.

The participants of NEKA

The NEKA operated as a three-sided conciliatory forum; its stakeholders were the delegation of the state-party, the EKA and the so-called ‘Third Negotiator’.

¹¹ It was the 33rd anniversary of the Revolution in 1956.

The existence of the third side was the tactical action of the MSZMP's 'new order party'. They did not want to debate and arrange with the EKA alone, and they did not want to be the 'leftist' organisation among the negotiators. There was no real connection among the seven organisations composing the 'Third Negotiator'. The HNF had significantly transformed by that time, collecting the public figures strongly committed to the reforms. The National Council of the Trade Unions was a leftist mass organisation. The Alliance of the Hungarian Democratic Youth was the successor of the former communist youth organisation. The National Alliance of the Hungarian Women was the satellite-organ of the MSZMP. The Münnich Ferenc Association was a leftist organisation of the old communists. The Alliance of the Hungarian Resisters and Anti-fascists consisted of old communists, such like the Leftist Alternative, a group collecting leftist intellectuals.

The negotiations of the NEKA

On the grounds of the EKA's motion on discussion in April 1989, and the answer of it, given by MSZMP KB on 8th May, the preparation for the negotiations within a national roundtable had started, and had lasted for about seven weeks. The stakeholders of the preparation were Péter Tölgyessy and László Sólyom on the side of EKA, while György Fejti, Secretary of the KB and Imre Pozsgay¹² on the side of the MSZMP.

In an interview László Sólyom thus recalled the then events: *'The very first part of the discussions passed off ... in the April of 1989. On the locale of the EKA's sittings we reported, what we had done [on the preparatory discussion], and after a debate we received our new mandate. It became obvious during these negotiations that we could get further than Lech Walesa and his supporters got on the roundtable discussions in Poland. We succeeded to have acknowledged as a unified negotiator, so the previous 'salami-tactic' of the MSZMP failed. ... We also succeeded to achieve that the drafting of the necessary bills let happen within the framework of the Roundtable, and we also got some warranties that the Parliament adopts them. And the most important thing: both side bound itself for accepting the results of the free elections. As a matter of fact, in Poland the negotiators agreed, that irrespectively of*

¹² Péter Tölgyessy was the representative of the SZDSZ, László Sólyom of the MDF, György Fejti belonged to the 'order party' wing of MSZMP, and Imre Pozsgay was one of the best-known and most popular members of the reformers.

*the result of the election, there would be communist majority on the second chamber of the Parliament.*¹³

They (the EKA) suggested taking into the agenda of NEKA the subject of fundamental laws in connection with the political reform and the democratic transition, like bills on the Constitutional Court, on the president of the republic, on the parties, on the elections and on the information. The MSZMP suggested to work on the arrangements aimed to lighten the social tension and the economic crisis. The MSZMP also had some procedural motions: the discussions would run in plenary sittings and in committees. All the sides would have had the same time for their speeches and remarks. The scene of the plenary sittings let be the building of the Parliament and they would be public for the press. The committees worked behind closed doors.

The NEKA (National Roundtable) at last was established 13 June 1989, in the ‘Vadász terem’ (Room of Hunters) of the Parliament.

The first genuine discussion took place on 21st June 1989 on a plenary sitting. They decided on establishing six subcommittees, which tasks were:

- the drafting of the amendment of the Constitution,
- regulation on the operation and the managing of the parties,
- preparation for the election of the MPs, the amendment of the Criminal Code and the Act on Criminal Procedure,
- negotiate on the case of broadcasting and information,
- find warranties, which impede violent solutions.

Initially György Fejti, on the part of the MSZMP had attempted to slow down and preclude the approval of the Agreement with tactical manoeuvres. As the result of it, the discussions seemed to bog down during the summer (*‘the NEKA sinks in the political Bermuda triangle’* wrote the newspapers). From August Imre Pozsgay took the lead of the MSZMP’s delegation and the events speeded up. The acceleration was also conducive to the decision of the MSZMP PIB on the acceleration of the negotiations.¹⁴ The document disposed on the position of the MSZMP during the debates. It laid down that it was very important to find the compromise and the accordance on the main political and legal questions of the transition. At the same time it diagnosed that there were significant contrasts between the negotiators on some issues, like the institution of president of the republic, some principle of the Constitution

¹³ The interview with László Sólyom was published in the weekly ‘Élet és Irodalom’ (Life and Literature), Vol. 48, issue 41, under the title ‘Tények és fénytörések’ (Facts and refractions).

and the property of the MSZMP. The MSZMP insisted on the direct election of the president and that the Constitution let contain the term of ‘socialism’ as an essential value of the society. It urged the formation of the Constitutional Court and agreed on the establishment of the institution of ombudsman and the Court of Auditors. It accepted the unicameral Parliament and the principle of the electoral system (the rate of the MP’s elected on party-lists and in single-member constituencies is 50-50%) as a compromise.

Due to the speeding up of the debates, on 18th September 1989 the negotiators ceremoniously signed the Agreement formulated on the political discussions. The pact reflected the compromised standpoints of the opposition parties joined in the EKA and the radical reformers of the MSZMP in reality.

In the work of the NEKA more than a thousand contributors took part. There were about sixty politicians and professionals who directly entered into the formulation of the Agreement and the drafting of the bills attached to it. At last 15 of the 17 participating organisation signed the Agreement, and they determined that it is in effect till the constituent sitting of the new, freely elected Parliament. Two parties of the EKA, the SZDSZ and the FIDESZ – though they filled an essential part in the preparation of it – did not subscribe the pact, as they did not agree with the proposed way of the presidential election (directly, before the free elections of the MPs). The Agreement also contained some alternatives that reflected the EKA’s opinion.

The negotiators assumed that they get the Agreement across their sending organisations; they stand for it in public and assure its force with every possible political tool. The agreement also contained some political settlements that did not need to be adopted as a law. They recorded that the placid transition lasts from the beginning of the negotiations till the constituent sitting of the new, freely elected Parliament. They also secured that the participants of the discussions possess political and personal inviolability for their activity in connection with the NEKA and requested the Minister of the Interior, the Minister of Justice, the President of the Supreme Court and the General Prosecutor to secure it.

The specialities of the process on the adoption of the system-changing Constitution

¹⁴ Issued on 15th August, validated by the presidency of MSZMP on 28th August 1989.

The role of the amendment of the Constitution in the placid transition was to ensure its legal framework, to legalise and to legitimise the change of the regime.¹⁵ The amended Constitution (regarding its matter an entirely new Constitution) was intended as a provisional Constitution. The preamble of it contains still now: ‘In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted.’

Brief review of the constitutional process

The amendment of the Constitution was submitted to the Parliament in 1989 by the government in office, but it was drafted within the framework of the NEKA, with the determining participation of the MDF, SZDSZ and their experts.

The NEKA formally embodied most of the various political views existed in the society. In the negotiations of the NEKA excellent and well-known jurists, professionals took part, particularly on the side of the EKA.

The issues, which the NEKA dealt with, and the concrete content of the Constitution mainly based on those findings and claims, which appeared firstly in the reform-conceptions in 1987 and then became the part of the programs of the different opposition parties. The professional matters prepared by the Secretary on the Preparation of the new Constitution in the Ministry of Justice from the autumn of 1988 also provided remarkable assistance.

There was no direct international influence during the Constitution-making process. The process itself passed off extremely fast, within about three months, and furthermore, the real work took place mostly between the middle of August and 18th September 1989. At the same

¹⁵The most important opposition parties and the reformers of the MSZMP recognised that the change of the regime has to take place within constitutional framework, through negotiations and amendments of the Constitution. There were two main risks that threatened the democratic and peaceful transition. The first avoidable danger was the inauguration of an ‘order partial’, semi-military dictatorship, like the military coup in Poland on 13th December 1981. The other was the hazard of a political and economic anarchy. Taking these risks into consideration, the negotiators softened their claims, warned for sober and considered participation in the political life, and cautioned from the illusions, among of others from the illusion of the revolutionists in 1956, that the ‘West’ would help. “The ‘West’ did not helped then, and neither will now. At the most they will make us sure of there sympathy and will encourage us” – they stressed. In an interview given, on 25th April 2005 Imre Pozsgay remembered back thus: “*the daring idea that the change of the regime happens within reasonable time was not typical that time. I will never forget that – thanks to my function – in 1989 I met from Pope John Paul II to George Bush, President of the USA and Margaret Thatcher, the British Prime Minister. The only advice I*

time it is undeniable, that the drafters took the models and the solutions of the west-type democracies as a basis for the creation of new legal institutes or filling the old institutes with new content. One of the most conspicuous examples is the ruling of the Constitutional Court. In the course of its establishment, the German model was taken into consideration, with special regard to its wide authority.

At last the broader strata of the society was not involved into the constitution-making process. The negotiators were apprehensive of a referendum, which motivated that the entirely new Constitution formally was only the amendment of the socialist Constitution. By the provision of the Act on national referendum, adopted on 1st June 1989 on the adoption of the new Constitution a national referendum had to decide. However it was not a requirement in the case of an amendment. It was a real risk that for the sake of the referendum, the adoption of the new Constitution could be postponed and the parties wanted to avoid it¹⁶. Moreover, it would have been the first time when a national referendum is held.

It was the Parliament in office, elected on 1985 who adopted the bill on the amendment of the Constitution according to the rules in effect then, namely with majority of two-thirds of the deputies' votes. The Parliament did not amend the text of the bill, drafted by NEKA and submitted by the Government.

Summing up: the process of constitution making expected to be a conflict management tool in a society transiting from socialism to parliamentary democracy and to create consensus on the way forward. It was a revolutionary type of process in the sense that the Constitution itself and following it, also the type of the regime radically and substantially changed. Nevertheless, the process was evolutionary in the sense that the old and the pretender new elites negotiated on the new Constitution and the way of transition. At last it was a negotiated regime transition between elites, affirmed by democratic elections. The decisions mostly based on pragmatic impacts but also rooted in principled approach (e.g. in the case of the new institutions).

received: 'Be careful, you have to plan all of your tiny steps with taking note of Moscow.' There was no scenario, the West was also puzzled.'

¹⁶ Both the foreign and the interior political background were indefinite that time. The events extremely speeded up. Whilst the amendment of the Constitution, adopted on 24th January 1989 aimed the reform of the socialism, for the May of 1989 even also the state-party accepted that the transition would not happen within the system of socialism. It was also a significant standpoint that there were soviet military troops in the territory of Hungary (their partial withdrawal began in the April of 1989 and lasted till the June of 1991), the principle of 'limited sovereignty' (connected to Breschnev's name) formally still existed and there were firearms on the hand of the Workers Militia (strongly leftist, semi-militarian organisation supporting socialism) till its disband at the end of October 1989. With the assistance of the army and the police, the Government was responsible for the collection of the firearms. Theoretically the danger of the leftist turn back still existed.

The Constitution was successfully completed, adopted and it was also implemented in reality. It was the responsibility of the last ‘socialist’ Parliament and Government¹⁷ to implement the constitution and they fulfilled their legal and political obligations completely. In the beginning there were some attempt to derail the constitution making process by the ‘order party’ delegation of MSZMP, but after the change of power inside the MSZMP they terminated.

The pressure for change was internal, political pressure. The broader part of the society (the civil society) did not participated on the process of transition significantly. There were some demonstrations on which the people revealed their force, but the society basically sat out the transition.

In virtue of all, the constitution making process was an *elite negotiated, representative* process with *some consultation*.

General problems arising during the constitution making process

The participants of NEKA discussions and the stakeholders of the constitution making process almost completely agreed on also now, that the situation from the April of 1989 was unrealistic, non-foreseeable and incalculable. László Sólyom related: “*There were others who affirmed the unrealism of then situation; when a tightrope walker could hardly believe in the pure existence of the rope, whilst he had to know, that the fortune of the country depends on his feat. (...) The transition had got no ‘scenario’. The attainable aims shaped from negotiation to negotiation. It was unpredictable that the opponent when, why or in what subject yields to. Or what time does it cancel a previous arrangement. Therefore for example the operation of the subcommittee on political parties paused for an entire month; whilst in other demands achieved inexplicable success. The grand question again: how does history operate?*”¹⁸

The negotiators agreed that the citizens have to decide on the composition of the Parliament (to whose hands do they give the power), through democratic, free elections. They declared that they accept and admit the results of the free elections as obligatory to themselves. So as to the people could really live with their system-determining role, constitutional frameworks were needed. The outcome of the elections was completely unpredictable. The first part of

¹⁷ Elected/formulated in 1985/1988, by the rules of a socialist Constitution and other Acts.

¹⁸ See the interview with László Sólyom, cited previously.

1989 the public opinion polls unambiguously showed the support of MSZMP, and the questioned people thought also in August that the state-party wins the elections. The by-elections in September steadied the position of the opposition, and the termination of the MSZMP also changed in the composition of the voter's camp. To December the MDF received lead, but the MSZP seemed to be the second strongest party still then.¹⁹

The MSZMP would have liked to preserve its leading role also within the framework of a multi-party system, whilst the opposition would have liked to get powerful assurances against the re-exchanges. Due to this, all the content of the certain institutions was not shaped along a determined conception, but sometimes incidentally, as a result of political compromises.

One of the central questions connected to the president of the republic, his/her election and authorities. The MSZMP insisted on direct election. The public opinion polls showed that one of the reformers of the MSZMP had got the utmost chance to win this position (Imre Pozsgay owned the biggest support).²⁰ Among others, it is the reason of the fact that Hungary did not become a presidential or semi-presidential country, the President's sphere of authority is not too wide, the counter-signature of the Prime Minister or responsible Minister is required for most of his/her decisions.

The issue on the election of the President of the Republic had such an importance, that therefore two very active stakeholders of NEKA discussions (SZDSZ, FIDESZ) and also in the drafting of the constitution, did not signed the NEKA Agreement.²¹

It also reflects the assurance-seeking of the opposition parties, that the Constitution entered a new kind of law, the 'law with the force of the Constitution', of which adoption required the majority of two-thirds of the votes of the MPs. Some twenty subjects had to be decided by this majority; sometimes it was less-founded (such like the Act on the list of the Ministries).

The member organisations of the NEKA agreed on the necessity of the changes and also on the main orientations of them (placid transition within constitutional frameworks, multi-party system evolving through free elections, the institute of the President of the Republic, establishment of the Constitutional Court which controls the executive power, etc). At the

¹⁹ Source: Political Yearbook of Hungary, 1990. AULA-OMIKK, 1990. Edited by Sándor Kurtán, Péter Sándor, László Vass. Pgs. 433-463. (Furthermore: Political Yearbook 1990)

²⁰ See: Political Yearbook 1990

²¹ The question on the election of the President was shaped in a very interesting way henceforward. The amendment adopted by the Parliament at last in the October of 1989, contained that he/she is elected by the Parliament. From 12th March 1990, for the initiation of a deputy, the Constitution was amended on a way, that the citizens elect the President directly. The amendment of the Constitution, based on the Pact of the two parties attained the most mandates during the elections in 1990, set back the indirect election of the President from 25th June 1990. It rose his/her term of mandate to five years, opposite to the Parliament's term of mandate, which is four years.

same time those opinions, which were against the changes and insisted on socialism did not get a role during the negotiations of NEKA (if there were extreme left organisations participating in it, they had no political ponder). In 1988/89 the various organisations and parties formulated one after the other (till the beginning of December 1989 some 3500 associations and 11 parties were enrolled)²². Some of them resented that they was not allowed to participate on the work of the NEKA. Even so, those statements would not be true, that the preparation and the drafting body of the Constitution did not represented adequately the various opinions and segments of the society, or it was biased or non-independent.

The political atmosphere became open enough for genuine debates for this time. However it seems that the majority of the peoples was satisfied with the participation on some symbolic political events [celebrations on 15th March and the reburial of several martyrs of the revolution in 1956 (Imre Nagy, the ex Prime Minister and his companions) on 16th June 1989] with which they demonstrated and assured their support for the changes and opposition groups.

The majority of the society agreed with the new Constitution and the necessity of the changes. Whereas the society was not really informed about the reforms and the required changes in the spring and summer of 1989 but out and away beforehand, in the period of the debates about the diagnosis on crisis and reform conceptions. The public opinion polls in September 1989 showed that the 40 % of the adult citizens had not heard about the negotiations within the framework of NEKA. In the October of 1989 the majority accepted the change on the type of the state and the structure of the society, and after 23rd of October, the proclamation of the Republic, the overwhelming majority became pro-republic²³.

The acceleration of the events in the August/September of 1989, when the NEKA decided on the content of the amendment of the Constitution and other laws ensuring placid transition and also drafted them within a tight month, did not make possible the widespread public debates about the different new and altered institutions and the possible models²⁴.

²² By the Act on the freedom of association only 10 members are enough for establishing a social organisation. Although this Act also granted the right to establish a political party, but the special rules connected to parties (establishment, management, etc.) were charged into other act. Thus legally the party could be established only after the adoption of the Act on political parties (Act XXXIII of 1989, came into effect 30th October 1989 – its bill was the attachment of NEKA Agreement).

²³ See: Political Yearbook 1990.

²⁴ There were thematic booklets aimed to serve the expansion of the knowledge of the public about the Constitution and constitutionalism. They contained studies in various matters (Parliament, models of the institution of the presidency, Constitutional Court, etc.) written for the work of the preparation of a new Constitution, within the Ministry of Justice. The first volumes were published in the summer of 1989, but the proposed whole series (ten booklets) had not been issued yet – they lost actuality.

Nevertheless, it has to be emphasised that the great majority of the society agreed with the intended objectives.

Most of the peoples expected the fast improvement of the economic status of the country and also of their own from the transition. Many of them regarded to the changes of the political institutions as a tool of it. The reason of it most likely was, that the majority of the society met with the crisis of the socialist system as a crisis of the economy. To the middle and the second part of the '80s the dictatorship had weakened, Hungary was reckoned as the 'happiest shed in the socialist camp'. Most of the peoples were waiting for the economic miracle – that was the typical. This kind of distance keeping from the political life is exceedingly represented by the referenda on the election of the President of the Republic. Although the majority of the society favoured the direct election of the president by the public opinion polls, the new Constitution contained the contrary of it, but the first President of the Republic would have been elected directly, in December. On the referendum held on 26th November 1989 58.03 % of the citizens took part, and with a tiny majority (0.07 %) they decided, that the election of the President let be keep only after the free elections of the MPs. In reality it meant that the Parliament elects the President. The referendum on the election of the President of the Republic, held on 29th July 1990 was invalid, as only the 13.91 % of the citizens took part on it. Thus the majority of the Hungarian society did not exercise its right to decide on a part of the social structure when it had the opportunity for it²⁵.

The adoption process of the Constitution in 1989 was completely adequate to the constitutional and any other legal act in effect. The bill (drafted on NEKA negotiations) was submitted to the Parliament by the Government, which was entitled for do it. Without any alteration, the Parliament adopted it with two-third majority of the votes of the MPs. The MPs – with some exceptions²⁶ – gained their mandates on the election in 1985 as the candidates of the state-party (MSZMP) or the HNF. So the Parliament of the state-party undertook the role of the system-changer Parliament.

The society was not involved into the process of adoption, there was no referendum on it. However it showed a widespread support by the people that they *de facto* lived with the rights ensured by the Constitution: on the elections in 1990 they deprived the confidence from the

²⁵ Although the legitimacy of the President has never become doubtful or subject of debates till now, but in the case of direct election – with reference to broader public legitimacy – his/her role would strengthen and his/her sphere of authority would enlarge in some opinions.

successor of the state-party, and instead of them they got the opposition parties into power²⁷. It is also a proof of the support, that the Constitutional Court established on 1st January 1990 received more than 500 motions in the first four months of their operation (to the inaugurating sitting of the new, democratically elected Parliament).

Possible positive and negative impacts of the constitution making process

The most incontestable impact of the new Constitution adopted with Act XXXI of 1989 was the placid, constitutional transition itself. The transition required the establishment of new institutions and the transformation of others. Several of them had happened before the democratic elections. So in 1990 the new Parliament and the new coalition government could take a lead of a basically operable country, and the free elections provided them broad social legitimacy.

On 23rd October 1989 the new Constitution came into effect and the Speaker of the Parliament solemnly proclaimed the Republic. According to the Constitution he became the substitute (provisional) President of Hungary and exercised the authorities of the president (e.g. it was him who announced the parliamentary election in 1990).

On 1st January 1990 the Constitutional Court started its operation, which meant a real and strict control above the lawmaking bodies. The State Audit Office commenced its activity as well this day.

The fact that the preparation and the drafting of the Constitution took place within the framework of NEKA, in which the opposition forces appeared uniformly as the EKA, speeded up the preparation and also provided assurances for the negotiators at the same time. On the one hand it impeded that the state-party could avoid or delay the transition by driving special deals or get across such halfway measures, which guarantee their leading position also after the election (like roundtable negotiations in Poland). Both the government and the Parliament regarded NEKA as the centre of the preparation of the law, connected to the transition²⁸. On the other hand the negotiators ensured each others that they get the NEKA Agreement across to their principal organisations and also the members of it. Although this

²⁶ Some mandates fell vacant because of recalls or other reasons. Most of them were fulfilled by the candidates of the opposition parties, but their number on the whole was insignificant.

²⁷ The result of the elections: MDF 42.49 %, SZDSZ 23.83 %, FKGP 11.40 %, MSZP 8.55 %, KDNP and FIDESZ 5.44-5.44 %, independents: 1.55 %, common candidate: 1.04 %, Agrarian Alliance: 0.26 %.

²⁸ So thus the Parliament, for the proposal of the Government, took off from its agenda those, previously submitted bills, which was similar to the subjects of NEKA discussions.

method of lawmaking did not create unconditional confidence between the negotiators, but it promoted the dialogues, the reconciliation, the open and genuine debates. It also assured that the negotiators are observant of the developed consensus and the bargained compromises and they reckon them during their political activity.

In 1989 there were no real debate in the society about the necessity of changes, the great majority of it found it required. They promoted the development to a multi-party system and required to take part in such decision-making process, which provide real options. In respect of the concrete form and methods of the changes the society seemed to be uninterested. Presumably they did not believe or did not dare to believe in the possibility of the changes. The Hungarian society had a very little time, only a few months for the switchover from a kind of political mentality and culture (single-party, centralised power) to another kind of political culture (multi-party, democratic). Furthermore, some of the institutions like the Parliament or the Government had also operated previously but with other content and within other frameworks. Till the end of 1989 the government and the Parliament commenced to fill their classic role more and more. Whereas it is probably not a coincidence that the society turned to the newly established institutions like the Constitutional Court and the President of the Republic with more confidence and expectations than to the old ones.

The method of the constitution building process took effect into the direction of reconciliation and consensus building, and did not support extreme positions or divisive issues.

In the Hungarian Constitution building process a very specific situation eventuated: the new Constitution did not reflected to, did not legalised the then situation, but had created a new model, accordingly to which it changed the social-institutional system of the country. Thus the new Constitution was not the consequence of the changes but on the contrary, it provided legality and legitimacy to the transition, determined its way. It is uncountable that the Constitution could have fulfil this role completely also in the case of referendum (the involvement of the public into the Constitution building process). On the one part the decision on the Constitution would have delayed a lot (the society would have had to be informed and primed on the characteristic of the new institutions and the planned changes of the old ones in detail). On the other part the negotiators – hoping that they can get their standpoints across the society easier than the other negotiators – probably would have been less open to compromises. These factors would have led to the slow down of the transition by all means.

The organisations participating in NEKA discussions were accounted the most important, prominent representatives of the certain, determinative political opinions and forces by both

the Hungarian public and the international public opinion. On the whole the impression was, that every significant political ideas and forces was represented on the negotiations. Accordingly, the compromised Constitution perceived absolute legitimacy both domestically and internationally. As the new Constitution did not aimed the legitimisation of the existing social-institutional system, but on the contrary it created the required legal background for the transition into a new system, the new Constitution did not affected the legitimacy of the then government. But it established an absolute legitimating base for the Parliament, elected and the government, founded in 1990, which legitimisation was contested by no one.

This special Constitution building process also had negative impacts, of course. The one of it arose from the claim of the opposition side that they would have voice in decision- making process after the free elections by all means, also in that case if the state-party won the elections. Therefore they forced the enlargement of the number of the subject, which requires be ruling in a ‘law with the force of the Constitution’, adopting by the two-thirds majority votes of MPs. The Act XL of 1990 on the amendment of the Constitution, came into existence according to the pact of the two parties winning the largest support in the parliamentary election in 1990, changed this speciality of the Constitution. Ideologically the two parties were so much different (the MDF is a rightist-conservative, whilst the SZDSZ is a liberal party), that the grand coalition was inconceivable. The large number of these special laws and the rules on the motion of no-confidence threatened with the ungovernability of the country. By the Pact between the two parties the President of the Republic is elected by the Parliament again. The first person on this position was the member of SZDSZ, but it was the MDF, who chose the certain person. On the other hand they introduced a new category instead of the ‘law with the force of Constitution’. Thus for the adoption of the most important decisions is required only the majority of two-thirds of the votes of MPs present and not all of the MPs²⁹. This amendment of the Constitution introduced the institution of the so-called ‘motion of constructive no-confidence’. Submitting a motion of no-confidence, also the person of the new Prime Minister is has to be denominated. In case the Parliament adopts the motion, it also means that the denominated person was also elected as the new Prime Minister.

²⁹ There are 386 deputies in the Hungarian Parliament. It reveals the importance of the amendment, that the ‘law with the force of the Constitution’ would have required 258 supporting vote to be adopted. After the amendment, in consideration of the rules of quorum, 129 MPs can adopt a law, requiring qualified majority of the votes.

The very fast drafting and adoption of the Constitution also eventuated that several new principles and political rights were introduced into the Constitution, but the real content of these principle and rights was unclear, undefined and there were no debates on it. It is/was the Constitutional Court whose tasks is to define the Constitution and fill the certain rights and principles with adequate content (e.g. the prohibition of discrimination). As the Chairman of the Constitutional Court formulated in his collateral reasoning attached to Decision 23/1990. (X. 31.) AB: *‘The Constitutional Court has to continue its work to formulate the principle base of the Constitution and of the rights included it in its explanations, and to create a coherent system with its decisions, which serve as an ‘invisible Constitution’, a firm standard beyond the Constitution, often amended in daily political interests nowadays. Expectedly it will not be opposite to the ... future Constitutions. The Constitutional Court enjoys freedom in this process, till it stays within the framework of constitutionality.’* The unclearness of the legal and constitutional content of the different provision of the Constitution requires a very active role from the Constitutional Court and drives the development of two layers of the Constitution and constitutionalism: the written and the invisible Constitution, which exist parallel and together at the same time.

There is another possible negative impact of the special Constitution building process: most of the people turned from politics. The number of the participants and the result of the different elections and referenda indicate that most of the citizens are disappointed and disillusioned from politics and the political parties in power. They had been waiting for economic miracles from the transition, which was unreal. Since then they blame the all-time governance for the economic difficulties; there were no coalition or party during the 15 years of democracy, which was able to win the parliamentary elections in succession twice.

There have been several amendments of the Constitution in the process of the transition and also since its completion. The characteristics of these amendments are different, but it is common in them, that they were elite negotiated.

There was an unsuccessful Constitution-building process in 1995-1998, which originally was intended to formulate and adopt an entirely new Constitution, with the involvement of the widest range of professionals and society. The Parliament adopted precise, minutely elaborated rules of procedures and methods, which – among others – aimed to warrant the real

participation of all the parliamentary parties, even the smallest ones³⁰. The debates were not, but the different motions and draft were public, furthermore the draft of the concept was published in five, nationwide political newspapers. The Parliament received nearly eight hundred opinions and motions from the citizens and about a hundred from the different organisations on it. The Parliament adopted the concept of the new Constitution at last, but the parliamentary period expired in the meanwhile and did not remain sufficient time for the drafting and debating the text of the Constitution. The political situation is not favourable for the Constitution making processes, the two following, different coalitions could not and did not make any serious attempt for the creation of a new Constitution.

There is only one special rule considering to the adoption and the amendment of the Constitution: according to Article 24 of the Constitution, a majority of two-thirds of the votes of the MPs is required to amend the Constitution. Nevertheless, it seems to provide enough warranties for the consensual Constitution-building processes and against the arbitrary, incautious amendments of the Constitution, according to the evolving political situation³¹.

³⁰ During the period of 1994/1998, the governing parties gained and possessed the two-third majority of the parliamentary seats. It would have been enough for them to adopt the new Constitution, but they wanted to establish the Constitution into the broadest societal and political base.

³¹ It seems that the Hungarian party-system is on the way of bipolarization. The two largest parties together obtain approximately the 90 % of the parliamentary seats, their support is nearly the same and there is nor real chance for a grand coalition.

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