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THE  
FUNDAMENTAL LAWS  
OF THE  
HUNGARIAN CONSTITUTION



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BUDAPEST

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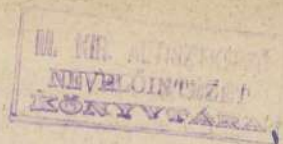
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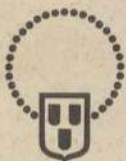


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## THE FUNDAMENTAL LAWS OF THE HUNGARIAN CONSTITUTION.\*)

The Hungarian constitution is a historic constitution, one whose statutes are not drawn up in any single Constitution Act. The fundamental principles and institutions of this constitution are the fruit of a development and a practice of centuries and were only in part defined by special Acts in special connections.

Hungary has been a constitutional monarchy ever since St. Stephen's time, power having been divided between the crowned king and the nation. The royal crown was the symbol of constitutional power as divided between these two factors of the constitutional monarchy.

The throne was formerly filled by election, some member of the deceased ruler's family being, generally, elected. After the Catastrophe of Mohács kings elected from the House of Habsburg had dominion over the country till at last (St. cl. II. and III. of 1687) sovereignty was made hereditary in the House of Habsburg, insuring succession to the male line according to the order of primogeniture. In St. cl. I., II. and III. of 1723, the so-called Pragmatic Sanction Act the

\*) This short collection does not contain neither all valid laws of the historical hungarian constitution, nor a detailed interpretation of the provisional organizations. Its only intention is to show the foreign scholars the way of the perception of our present special common law-situation.



right of succession was extended to certain female lines of the House of Habsburg—Lorraine.

The king was bound by the constitution to appoint his coronation within six months from the vacation of the throne (St. cl. IV of 1790) As a symbol of the fact that royal power is derived from the nation who is a participator in constitutional power the ceremony of the coronation was set in a parliamentary frame the crown being placed on the king's head by the Prince Primate of the country conjointly with the Palatine or, later, the functionary entrusted by Parliament with this office. The king on this occasion confirms the constitution of the country by a solemn oath and an inaugural diploma. It is only after his coronation that the hereditary monarch enters into his full sovereign rights notably of sanctioning laws and granting privileges.

The king's person is sacred and inviolable; he bears the title of "Majesty" and, as St. Stephen's successor, the epithet: "Apostolic".

In international relations the king as head of the State enjoys all the rights due to the monarch of a constitutional country: the rights of declaring war, making peace, forming alliances and international agreements; the agreements however, inasmuch as they relate to matters concerning legislature, must be enacted by Parliament.

As regards military administration the king is commander-in-chief of the whole army, all rights referring to the leading, command and inner organization of the army being his also.

The king has the right to bestow office, titles



and patents of nobility. The right to grant pardon is his to its full extent.

As regards Legislation it is a royal prerogative to convoke Parliament, to prorogue, close or dissolve it; the power to initiate, sanction and promulgate new laws also belongs to the sovereign. Until the end of world-war the nation, as an equal factor of legislative power, participated in it by means of Legislature consisting of two Houses: the House of Commons (Deputies) formed on the basis of representation and the Upper House (House of Magnates) the members of which are secular and ecclesiastical dignitaries, the major members of the ruling House of Habsburg further those members of those noble families endowed with the right of hereditary peerage that is to say those dukes, counts and barons who possess the necessary (pecuniary) qualification and finally fifty life-members appointed by the king. (St. clause III. 1885.) Parliament also had the right to initiate laws. Parliament was summoned for a term of five years.

Executive power was exercised by the monarch through a government responsible to legislature. (St. clause III, 1848.) Government is appointed by the king. Orders signed by the king must be countersigned by a minister to have validity. The cabinet, previous to the war, consisted of nine ministers besides the President of the council, besides whom four ministers without portfolio might be provisionally appointed during the war. (St. cl. XI, 1917.)

The nation takes part in executive power by means of its autonomous organs. Administration in general is in the hands of municipalities (coun-

ties and towns), towns with regular councils and of the large and small communities. (St. cl. XXI. and XXII. 1886.) The organs of financial administration and other special administrations as well the police-service belong to the State. At the head of the county there is a "viceispán" – deputy-prefect and at the head of town administration a mayor, both functionaries being elected. The affairs of the administration are superintended and controlled in the name of Government by the "főispán" prefect appointed by the ruler.

Judiciary power also, in theory, belongs to the sovereign who however does not exercise this power in person but through the legally organised independent tribunals of law. (Act. IV, 1869.) In cases for private or for criminal law judgement is pronounced by the royal tribunals whose staff is composed of judges appointed by the king. But the nation has a part even in judiciary administration inasmuch as the most important criminal cases are carried before a jury and cases of minor importance for private law, as also in cases of transgression, autonomous organs (such as communal judges, the authorities of administration, police courts etc.) may pronounce judgement. The ordinary tribunals of the country are the following: the Royal Courts of Justice and the Royal District Courts as tribunals of the first instance; the Royal Table and the Highest Court of Appeal: the Royal Curia. In criminal cases public prosecution is in the hands of the royal attorneyships organised so as to correspond to the ordinary tribunals and notably one attorney to the Crown as corresponding to the R. Curia, the R. attorneys-general as



complementing the R. Tables, and the R. attorneyships at the Courts of Justice. Jurisdiction in administrative cases belongs to the sole competency of the R. Hung. Court of Administration. (St. cl. XXVI, 1896.) Special royal authorities pronounce judgement in matters of patents. (Court of Patents and Higher Court of Patents.) Besides these there are special juridical organs for cases of labour-insurance and for youthful criminals. In cases of a conflict of competency between the royal tribunals and organs of administration a special court of competency has been organised, composed of members of the R. Curia and the R. Hung. Court of Administration. (St. cl. LXI, 1907.) Judiciary proceedings in the case of persons under proceedings on behalf of Military judicature belong to the competency of the military (*honvéd*) courts (courts martial).

Besides the competency involved in the sovereign right of the king he has a special sphere of power as regards the Roman Catholic and Greek Catholic Churches. This is the supreme royal right of patronage similarly exercised, however, through the Hungarian ministry. This right gives the king power to appoint the archbishops and bishops and in general all high dignitaries of the Church. The right of supreme superintendence as regards other Churches and creeds belongs to the prerogatives of the king.

The territory of the Kingdom of Hungary was composed besides Hungary proper of Croatia-Slavonia as Borderland, further the town and district of Fiume as special governmental territory (*separatum sacrae regni coronae adnexum corpus*). All these lands together formed one united State

named „the Lands of St. Stephen's crown“ their mutual position and relations in public law being regulated by St. cl. XXX, 1868, providing Croatia and Slavonia within the State unity, but as a political nation owning a separate territory, with an autonomy as regards affairs of the interior, public-worship and education, and judicature both as to legislation and administration. The head of this autonomous government was the „banus“ of Croato-Slavonia—Dalmatia, a State functionary responsible to the Croato-Slavonian diet and appointed by the king with counter-signature of the prime-minister of Hungary.

The lands of St. Stephen's crown did not, in international connections or in matters of home defence, form a perfectly independent State, for the Hungarian State had a close union in public law with Austria, the other State forming part of the Monarchy, within the frame of the said Austro-Hungarian Monarchy. The relations between the two States were regulated by St. cl. XII of 1867, which law provides that the person of the sovereign and the royal family being one and the same, home defence and foreign affairs should be the joint affair of the two States these common affairs being entrusted to joint ministers residing in Vienna (ministers of war, of foreign affairs and of common finances, this latter relating to the expenses of common affairs including the administration of Bosnia and Hercegovina). In all other matters the two States enjoyed a perfect independence in legislation and State administration based on the principle of parity. Accordingly to the dualistic organisation of the Austro-Hungarian Monarchy therefore the person of



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the ruler unites two separate legal individuals legal on the one hand the: person of the king of Hungary, on the other hand the legal person of emperor of Austria, the independence of these two legal persons finding an expression both in the ceremonies of accession to the throne and coronation and in the manner and the institutions of their rule.

The union of the two States having been sundered by the well-known results of the world-war Hungary has regained her ancient independence, in the affairs declared common between Austria and herself but has on the other hand lost two-thirds of her territory and more than half of her population. Croatia-Slavonia has been torn from her, as also Fiume and its district, the relations in public law formerly existing between Hungary and these portions of her territory being thus cancelled. The territory of what was strictly called Hungary has also been mutilated, considerable portions of it having been joined to other States.

Besides the consequences to the territorial extension of Hungary sanctioned by the clauses of the Treaty of Peace with the Allied and Associated Powers signed at Trianon June 4, 1920, the world-war had further effects on Hungary's relations in public-law.

The internal revolution following the loss of the war which broke out October 31, 1918 paralysed the activity of the chief organs of State power. In consequence of the revolution, and without abdicating, King Charles IV, on the 13<sup>th</sup> November 1918 ceased to exercise royal power, leaving it to the nation to decide on the form of government it should adopt. The Lower House,

similarly under the effects of revolutionary events, declared itself dissolved in a resolution carried November 16, 1918, and the Upper House holding a meeting on the same day in which this resolution was received and consequently its own sittings closed. Parliament ceased its activity. The exercise of governing power according to the accepted forms of the constitution was thus rendered impossible.

Under the circumstances revolutionary movements had free scope, their activity being directed against the ancient Hungarian constitution whose down-fall was their aim. The so-called National Council convoked by the Revolutionary Government carried a "people's resolution" (November 16, 1918) declaring Hungary to be a "People's Republic", independent of all other countries. Later on March 21, 1919 the so-called Soviet Republic was proclaimed and the country organised conformably to the principles of Communism. These Revolutionary forms of Government were overthrown by the counter-revolutionary government August 7, 1919 which with the intention of restoring the old legal constitution and to establish provisional order in the confusion prevailing in the affairs of the country, addressed the nation in an Order of Government elaborated on the basis of universal suffrage calling on them to elect their deputies for the National Assembly destined to represent their will on the basis of a secret, equal, direct and compulsory suffrage extended to the female population too.

The general elections having been held the grounds of the above Order, on in all those parts of the country where occupation by hostile



troops did not render it impossible the National Assembly met at Budapest on the 16<sup>th</sup> February, 1920. The newly formed National Assembly enacted the restoration of the constitution and the provisional ordering of the functions of supreme State power in St. cl. I, 1920. This Act cancels all orders and resolutions of the Revolutionary Governments and thus the constitution of Hungary was in principle restored. As, however, the full restoration of the constitution incurred insurmountable difficulties inasmuch as royal power and the activity of Parliament could not under the prevailing circumstances be restored it was necessary to substitute provisional measures for the missing highest organs of State power.

The before mentioned St. cl. I of 1920 declared the National Assembly the sole legal representative of the Sovereignty of the Hungarian State, privileged as such to order the further exercise of governing power. The National Assembly also enjoys the power of legislation.

Until the manner of the exercise of the power due to the Head of the State be decisively settled and that dignity be entered into on this basis, St. cl. I 1920 provides for the provisional exercise of these functions conformably to ancient precedents in constitutional law by ordering the election of a governor and so regulating the sphere of his activity, that the exercise of the constitutional rights accorded to royal power should, with certain restrictions, belong to the governor. The restrictions as set forth in the said St. cl. I 1920, with certain complementary clauses in St. cl. XVII 1920 are as follows:

The right of sanctioning the laws does not belong to the Governor who is bound, within sixty days, to affix the clause of promulgation and his signature to the laws created. He has a right, however, before ordering the promulgation of the law in one instance and stating his motives for this proceeding to send back the law to the National Assembly to have it reconsidered. In case the National Assembly refuses to alter the law thus returned the Governor is bound to promulgate it within fifteen days. In regard to laws referring to the form of government or the person of the Head of the State the Governor may not exercise the right of returning the law. The right of proroguing, closing or dissolving the National Assembly is among the Governor's rights within the same bounds as the similar rights enjoyed by the sovereign; but in case of dissolving the National Assembly the same writ as contains the order for its dissolution must provide for its convocation within three months; and the Governor may only prorogue the National Assembly for a term of thirty days at most.

In international relations Hungary is represented by the Governor. He may appoint and receive ambassadors. He may, through the responsible ministry, form alliances and other agreements with foreign powers, but inasmuch as these agreements refer to subjects forming the matter of legislation, they are subject to the concurrence of the National Assembly. Declaration of war and sending of troops beyond the boundaries of the country require the previous consent of the National Assembly. In case of immediate danger however the Governor may, on the responsibility of the unanimous vote of



the ministry and with the ultimate consent of the National Assembly give orders for the transfer of troops beyond the boundaries.

Executive power is exercised by the Governor exclusively through the responsible ministers. All his orders and measures, including those referring to the armed force, are only valid if countersigned by the competent responsible minister.

The Governor may not grant patents of nobility and may not exercise the right of Church patronage. The royal right of granting pardon is fully his and he may also give general amnesty. A minister however if impeached or sentenced can only receive pardon by special law.

The Governor's person is inviolable and receives the same protection of the law as the king; in case of a breach of the constitution or of the law he may, however, be made responsible to the National Assembly, for which purpose a proposition signed by at least a hundred members and a majority of two-thirds of the votes is required; the mode of proceeding in this case has not yet been regulated by law. The title of "His Serene Highness, the Governor" is due to him. The Governor pronounces an oath to uphold the constitution.

St. cl. I of 1920 has touched neither the position of the responsible ministry entrusted with the exercise of executive power nor the organisation of administration. As, however, during the period of existence of the Austro Hungarian Monarchy there was no Hungarian ministry for foreign affairs the cabinet has been completed by a portfolio setting up a ministry for foreign affairs.

St. cl. I of 1920 provides for the continued exercise of judiciary power by the legally organised tribunals but owing to the momentary absence of royal power, justice is administered not in the name of the king, but in that of the Hungarian State.

Though St. cl. I of 1920 expressed an endeavour to preserve intact the form of Government and the ancient constitution formerly prevailing in Hungary it has not definitely pronounced either on the future form of government or the legal position of the ruling House of Habsburg-Lorraine. Later however the stress of circumstances compelled the National Assembly to approach this question and St. cl. XLVII. 1921 declared the cessation of the sovereign rights of King Charles as also of the hereditary rights of the House of Austria and finally the reversion of the right of free election to the nation. At the same time it was expressly declared that the nation retains unaltered its ancient governmental form as kingdom, relegating the filling of the royal throne to a future period and instructing government to make its propositions in this regard at a favourable opportunity.

According to clause 73 of the Treaty of Trianon Hungary is an independent State completely independent of any other State and not authorised to throw up its independence without the consent of the Council of the League of Nations.

According to the above Hungary has, even in the altered circumstances brought about by the war and at the price of certain modifications and auxiliary measures, preserved the institutions of her ancient and historically developed constitution.



All civic and political rights forming the fundamental principles of a modern legal State have full force within the frame of the Hungarian constitution. Equality of rights for all citizens of the State was realised in 1848. Personal liberty, the inviolability of home, of letters and telegrams, and the security of property are secured by criminal laws.

The legally enacted freedom of confession gives everyone the right to profess and follow whatsoever religion or faith, taking part in public exercise of the same within the limits of the law and of public morals. (Act. XLIII. 1895.) The legal organs of the denominations are not considered as private but as public corporations. As to their legal position the law makes a difference between the Churches formed in the course of historic development which are the *received* Churches and the Churches legally *recognised* by ordinance of the authorities. The *received* Churches are: the Roman Catholic church whether of Latin, Greek or Armenian liturgy, the Reformed, the Augsburgian Evangelical, the Orthodox Greek, Unitarian and Jewish faiths. The following are at present the *recognised* Churches: the Baptist religion and the Islam (Mohammedan), recognised in a special Act. (St. cl. XVII. 1916.) A perfect equality of rights and full reciprocity subsists among these churches. (St. cl. XI, 1848, St. cl. LIII. 1868.) The churches have the right to found any type of school.

The rights of national minorities were insured by St. cl. XLIV. of 1868 on a basis of national equality and free use of language, these rights

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receiving, by Governmental orders, even further extension after the war. In virtue of the Hungarian constitution the national minorities enjoyed much broader rights as regards the use of their mother-tongue in intercourse with the authorities or in their schools than those provided for the protection of minorities by the Treaty of Trianon.

Consequently the Ministerial Order 4800/1923 regarding the execution of the protection of minorities undertaken in virtue of the Treaty of Trianon published by the R. Hung. Government, based as it is on the above mentioned Act (St. cl. LIV. 1868) secures minority rights in a measure for surpassing the stipulations of the Treaty of Trianon.

Besides this there are laws to ensure the freedom of the press. (Act XVIII, 1848., Act XIV, 1914.) The citizens have, within certain police restrictions, the rights of union and of meeting. The formation of unions is subject only to the presentment of their statutes to the authorities who affix their signature.

The civic duties recognised in all modern States prevail in virtue of the Hungarian Constitution too: among these especially the equal division of the burdens of State and as regards education: compulsory schooling. Compulsory military service has been abolished by St. cl. XLIX, 1921 and St. cl. III. of 1922 in virtue of the directions of the Treaty of Trianon which provide that the armed force of Hungary, the R. Hung. „Honvéd“ army is to be constituted and recruited exclusively by voluntary enlistment.

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Közvetlen Központi Könyvtár és Levéltár  
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Könyvtári és Honvédtudományi Kar

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