The new national constitution of Hungary has become topical both inside and outside the country. As the Basic Law of Hungary entered into force on 1 January 2012, several new institutions were introduced to the legal system and many others were given new roles and tasks. Hungarian scholars are keen to evaluate the institutions, some being very critical about the new regulations, others being rather optimistic. Several novelties in the new Hungarian constitution have been debated by international organisations as well and even institutions of the European Union have discussed some elements. Such interest is quite unusual for a national constitution. And indeed, the new Basic Law of Hungary does bring unusual solutions.

Introducing and evaluating a new constitution in a rather short article is a difficult, if not impossible task. In this article we aim to give a general overview on the creation and basic regulations of the new Hungarian constitution in the first part. In the second part, we focus on some of the most widely debated topics, in particular the economic constitution and the changes concerning the Constitutional Court and the ombudsman system.

I. On the Basic Law in General

The constitutional order of a country is usually determined by three factors: first, the mere text of the constitution, secondly, the interpretation and the application of the constitution in practice, and, thirdly, the political atmosphere of the country. In Hungary, the Basic Law has only very recently entered into force, and on several issues constitutional practice is still lacking. It is an open question how the judiciary and especially the Constitutional Court will apply some of the new elements introduced by the Basic Law.
The political climate also plays a role in the constitutional system of a country, as it provides the context within which flesh is put on the bones of the constitutional texts. This is a factor that should not be neglected in the evaluation of the constitution of a state. Nevertheless, in this short contribution, the emphasis will be on the legal materials in a narrow sense.

1. The constitutionalisation process

1.1. Constitution-making in general

Adopting a new constitution is very different from drafting ordinary legislation, or even amending an existing constitution. In Hungary, the rules regarding the constitutional amendments had remained unaltered since the transition from communism. A two-thirds majority of all MPs was required to amend the constitution. Unlike many other constitutions, the Hungarian Constitution contained rules on its own replacement. The Parliament was entitled to adopt a new constitution with qualified majority. Nevertheless, Parliament did not adopt a new constitution at the beginning of the new democratic era even though most of its provisions were amended. Substantively, there was a clear break with the communist constitution of 1949. The adoption of the new 2012 Basic Law symbolically expresses formal discontinuity, but with respect to the basic content – apart from a few criticised examples – there is continuity with the constitutional culture of the past twenty years.

The constituent power, in the original term, derives from the people.3 However, adopting a new constitution by a referendum is not the only form in which the original constitution making power can be exercised. According to a comparative study, 20% of the new constitutions adopted since 1789 were adopted by a legislative body which did not have explicit mandate to adopt a new constitution, but only to amend it, or not even that.4 In 17% of the cases, the new constitution was adopted by the legislative body, together with the executive branch. Only after these methods, comes the referendum with 12% and the constitutive assembly also with 12%. There were also 9% of the new constitutions which were adopted only by the act of the executive branch. This comparative research,5 demonstrates that the Hungarian constitution-making process – which was sharply criticised and admittedly suffered from relevant shortcomings – does not necessarily have a crucial impact on its legitimacy.

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3 According to the concept of Abbé Sieyes the constituent act can only stream from the people (pouvoir constituant), directly. See Dreier 2008, p. 9.
4 Elkins, Ginsburg and Blount 2009, p.205. In this large scale project 806 national constitution was examined after 1789. Quoted by Pócza 2011, p. 106.
5 Elkins, Ginsburg and Melton 2009. In the research the following system of viewpoints were taken into consideration: period of time, importance, inclusiveness, publicity, strategy, the method and voting of the adoption. See: Pócza 2011, p. 122.
1.2. Historical background

Until the 20th century, the political system of Hungary was based on a ‘historical constitution’, and the constitutional rules and norms were not laid down in one document. This fact can be explained by Hungary’s history. Since the 16th century, Hungary had always been under the influence (and often under the occupation) of foreign forces, and the country had hardly had an occasion to create its own single constitution. Therefore, Hungarian politicians and theorists had often referred to the historical constitution as the symbol of independence and sovereignty of the country. The first elements of the so-called Holy Crown doctrine date back to the Middle Ages, to King St Stephen who founded Hungary and to the Golden Charter of 1222 acknowledging the basic rights of the political community. Over the centuries several documents were created as parts of the historical constitution, but these documents had never formed a single constitutional system.

The first attempt to create a written constitution was made during the short period of the Hungarian Soviet Republic after World War I. After World War II an important step towards a constitutional charter was Act I of 1946, but this charter only covered issues related to the organisation of the state. The Act proclaimed the republic and assigned the executive power practically to the Government, which was responsible to the Parliament. However, the republican and parliamentary form did not last long. Under Soviet pressure Hungary was formed to be a people’s republic in 1949. Like those of other Central-Eastern European states, Hungary’s constitution of 1949 was modelled on the Marxist concept. It did not separate the powers according to Montesquieu’s theory and contained no guarantees for fundamental rights.

In June 1989 a new forum emerged for anti-communists in Hungary: the Roundtable of the Opposition. In September, the Roundtable started negotiations with the Communist Party on the political transition, forming the so-called National Roundtable. Primarily, the National Roundtable aimed to establish free elections, and it did not define itself as a national assembly for constitution making. Nevertheless, Hungary’s democratic constitutional system is rooted in these roundtable talks. Before the free elections the Parliament adopted an amendment to the Constitution that essentially renewed the constitutional system. It proclaimed the republic and declared that the country is governed under the rule of law. After the elections the governing conservative party (MDF) realised that the amendment of the Constitution is essential in order to stabilise the governance. To this end it agreed with the biggest party in opposition (the liberal SZDSZ) and jointly amended the Constitution (Act XL of 1990).

Between 1989 and 2011 the constitutional system of Hungary has
practically been based on the aforementioned constitutional amendments of 1989 and 1990.

During the political transition, the opposition considered it evident that a new constitution be adopted after free elections. However, the political parties could not come to an agreement on the new constitution. Therefore, the adoption of a new constitution was temporarily removed from the agenda and the Government withdrew the bills. Procedurally, the Constitution was easy to amend: the votes of the two-thirds of all MPs were sufficient. Between 1990 and 2010 the Parliament amended the Constitution more than twenty times. In this period five parliamentary terms took place, while only one government had a two-thirds supermajority in the Parliament (between 1994 and 1998).

In 1994, when the socialist-liberal coalition gained supermajority in the Parliament, they adopted an amendment to the Constitution stating that the parliamentary decision on the draft of the new constitution should be adopted with four-fifths majority. Several critics therefore have stated that the new 2012 Hungarian constitution should have been adopted by four-fifths of the votes of the MPs. Such a statement is unfounded, however, as the Act on the amendment ceased to be in force in 1998 at the end of the parliamentary term. Before 2009 there was wide agreement among Hungarian scholars that the relevant provision had not been part of the constitution since 1998.

1.3. The constitution making process of 2010-2011

As in other post communist countries, in the early years of democracy the political community was anxious to create a new constitution that has no connections with the communist regime. Due to the lack of political agreement, all the attempts had failed, as there was no chance for a document to receive the required qualified majority. Not even between 1994 and 1998; although the coalition gained supermajority, the governing parties were in disagreement concerning the constitutionalisation. Despite all the weaknesses of the constitutional system of 1989, both the political community and the theorists of constitutional law accepted this fact. The constitutional adjudication had a huge part in this process, and as a result of the interpretations of the Constitution, nearly all political powers found the basic principles and values in the text that they intended to achieve. ‘Of all constitutional principles, the rule of law played a special, symbolic role: it represented the essence of the system change, being the watershed between the nondemocratic, nonconstitutional socialist system and the new constitutional democracy’.

Having gained two-thirds majority in the general parliamentary elections in April 2010, the governing party felt authorised and responsible to draft

7 Such a statement is made in the *amicus curiae* brief of some Hungarian scholars to the Venice Commission. Z. Fleck, et al., ‘Opinion on the Fundamental Law of Hungary’, https://sites.google.com/site/amicusbriefhungary/.
8 The leading commentary to the Hungarian Constitution (inspired by Professor László Sólyom) also regarded the provision as one that was out of force. Jakab 2009, p.64. According to Jakab, the wide, teleological interpretation of the Constitution, and the Act together mean that the four-fifths rule was not in force after 1998. [Art. 2. Act XLIV of 1993]. For another standpoint see the critic of Andrew Arato on the 4/5 rule: http://www.comparativeconstitutions.org/2011/04/arato-on-constitution-making-in-hungary.html.
9 Sólyom and Brunner 2000, p. 38.
a new constitution. The creation of a new Constitution seems to have been instigated rather by political than legal reasons. The governing party communicated that the political community aspired to set new basis to the society.

In the early stages of the process starting in June 2010, the drafting seemed to be based on compromise. The Parliament set up an ad hoc committee responsible to determine the basic principles and regulations of the new constitution. All parliamentary parties were represented in the committee. Later on, for daily political reasons the socialist MSZP and the liberal LMP decided to withdraw from the process. From then on it was rather clear that the new constitution would be based on the votes of the governing parties and not on a political compromise.

The governing parties appointed two MPs and a member of the European Parliament to draft the text of the new constitution with the help of the Government. During the process, the draft was presented to several international forums, among others, to the Venice Commission.

The socialist and the liberal parties did not participate in the parliamentary debate. The radical party Jobbik and the independent MPs voted against the draft which was finally adopted on 18 April 2011 and promulgated on 25 April 2011.

On 30 December 2011 the Parliament acting as constituent power adopted a new Act called ‘Transitory Provisions to the Basic Law’. The status of this Act is debated in Hungarian legal literature. On the one hand, it is argued that formally it is a constitutional document as it is the product of the constituent power, but on the other hand the Basic Law declares itself to be the ‘foundation of the legal system of Hungary’ (Article R), which implies that the Basic Law has a higher rank in the sources of law than any other legal document, including the Transitory Provisions. The question is crucial in the sense that if the latter interpretation is accepted, the regulations of the Transitory Provisions cannot prevail when they are contrary to the Basic Law.

The Transitory Provisions consists of two main parts. First, there is a political statement condemning the sins of the previous regime and declaring the Hungarian Socialist Party (MSZP) responsible for the actions that were committed during the communism. Secondly, the document contains regulations that are said to be necessary for the transition and for the application of the Basic Law. However, some of its regulations seem to be contrary to the Basic Law itself: for instance, it allows for the reduction of the pension of certain leaders of the communist era and extends the criminality of certain crimes (considered political crimes committed before May 1990) that have already lapsed.
On 13 March 2012 the commissioner for fundamental rights (ombudsman) initiated proceedings before the Constitutional Court asking whether the regulations of the Transitory Provisions contradict the Basic Law. Therefore, it is a question for constitutional adjudication how to define the role of the Transitory Provisions and how to evaluate its provisions.

2. General Characteristics

2.1. Terminology and structure

An apparent novelty of the new Hungarian constitution is its name: ‘Basic Law’. It is familiar from the German constitution, called ‘Grundgesetz’, which is the loan translation of the Hungarian term. The Basic Law of Hungary consists of four main parts: The National Avowal, Foundation, Freedom and Responsibility, and finally The State. At the end of the text, there is a short unit, the Final Provisions (‘postamble’), which consists of four points regarding the transitory provisions and the implementation of the Basic Law. Every main unit has an emphasised word or expression at the beginning, marked by capital letters. These expressions are ‘WE, THE MEMBERS OF THE HUNGARIAN NATION’, ‘OUR HOMELAND’, ‘MAN’ and finally ‘HUNGARY’. Not only the name and the division of the constitution, but also the numbering has changed. The Basic Law uses three different notations. The Foundation contains articles from A till T, Freedom and Responsibility marks articles by roman numbers [I.], and finally the articles of The State are numbered by Arabic numerals [1.]. The National Avowal does not have separate numbering. Although this kind of notation makes the orientation and the quotation a bit difficult, it could be regarded as a symbolic notion, showing respect towards the divided acts of the historical constitution.

One of the most important features of the text is the strongly traditional-symbolic nature. The National Avowal, i.e. the preamble, serves as the best example for that, starting with the first line of the Hungarian national Anthem [God bless the Hungarians!]. The historical character also emerges from the postamble, where we find the motto from the 12 points of the 1848 Hungarian Revolution [Let there be peace, freedom and concord]. In connection to the historical features, the evocation of Christianity is much debated. The National Avowal mentions it twice: first, as the Christian Europe of which Hungary forms part, and secondly, as the role of Christianity which preserves the nation. In order to compensate the emphasised role of Christianity, the National Avowal secures that Hungary honours the various religious traditions of the country. The

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14 The phrase ‘man’ is gender-neutral in Hungarian.
15 This opinion appears in the work of András Jakab about the new Hungarian Basic Law. Jakab 2011, p. 176.
Basic Law contains one more reference regarding religion, after the Final Provisions, when it states that the Parliament determined the first, unified Basic Law of Hungary ‘being aware of our responsibility before God and man’. This phrase is also reminiscent of the preamble to the German Grundgesetz, which uses almost the same expression. A brief comparative survey shows that a reference to God in a constitution does not necessarily concern the freedom of religion or the relation between church and state. For instance, the constitutions of Germany, Ireland, Greece and Poland also contain such a reference. Such a reference in itself does not necessarily alter the relation of state and church created by the previous Constitution. However, the Hungarian Parliament has adopted a new statute on churches allowing less religious gatherings to operate as churches. Religious groups may request the status of ‘church’ if they have functioned for twenty years prior to the request. Problematically, the Parliament decides on whether to grant the status of church to religious groups. As the Parliament’s decision cannot be challenged by courts, such a solution may easily result in the fact that the decision will be formed on political, rather than legal grounds.

It should be emphasised that the National Avowal as the preamble, as well as the postamble, serve as interpretative tools for the whole Basic Law. Although preambles generally do not have normative force, they mostly help to find the right meaning of the provisions of the operative part of the constitution, the Hungarian Basic Law lays down in Article R of the Foundation that ‘the provisions of the Basic Law shall be interpreted in accordance with their purposes, the National Avowal and the achievements of our historical constitution.’ This means that the preamble expressly has an interpretative function. The strongly religious character and the high value content have been criticised and the fear has been voiced that interpreting the Basic Law in accordance with a certain value choice will result in a discriminate jurisprudence and a lower-level of protection in the field of fundamental rights. Since the Basic Law only entered into force only on 1 January 2012, the real effects and consequences can only be evaluated later on. Hence, the only way to draw an objective picture of the general character of the Basic Law is to take into account all the alternatives in the frame of the text itself.

2.2. The legal system
First, the name of the state, Republic of Hungary (literally: Hungarian Republic) has been changed into Hungary. Though the name of the country has changed, the republic form of government is still ensured in Article B paragraph (2). In Article B the Basic Law lays down that

16 The first line of the German Grundgesetz: ‘Im Bewußtsein seiner Verantwortung vor Gott und den Menschen’.
Hungary shall be a democratic state under the rule of law, and Article C ensures the principle of separation of powers.\textsuperscript{17} The Basic Law connects the legal system to the European acquis, as well as to the international legal system. Besides the Article regarding the membership of the European Union, Article E lays down that Hungary shall contribute to achieve European unity in order to realise the liberty, the well-being and the security of the European peoples. In addition, according to Article Q Hungary shall ensure the conformity between international law and Hungarian law in order to fulfil its obligations under international law.

2.3. Fundamental rights

Article II ensures human dignity, stipulating that it shall be inviolable. It continues to state that every person shall have the right to life and human dignity, the life of the foetus shall be protected from the moment of conception. In the former Constitution, the ‘inherent right to life and to human dignity’ was protected, which means that the Basic Law aims to distinguish the protection of life from the protection of human dignity.\textsuperscript{18} There are serious debates on whether this Article will prohibit abortion or not. According to the text and the former jurisprudence\textsuperscript{19} of the Constitutional Court, the fear that this provision would prohibit abortion does not seem to be founded. Under the previous Constitution, the Constitutional Court declared that the life of the foetus needs protection and it constitutionally limits the self-determination of the woman concerned. This is exactly what the Basic Law declares. Therefore, the wording of the Basic Law cannot lead to the prohibition of abortion.

The Basic Law was also criticised for not declaring the prohibition of capital punishment.\textsuperscript{20} However, the introduction of capital punishment does not seem to be a real option in Europe and the absence of such declaration does not seem to constitute a derogation of the level of constitutional protection. Furthermore, Article XIV paragraph (2) states that ‘\textit{No person shall be expelled or extradited to a state where he or she is threatened to be sentenced to death or to be subjected to torture or to inhuman treatment or punishment’}. This rule can be interpreted as an implicit prohibition of capital punishment.\textsuperscript{21}

Accordingly, we submit that in these questions constitutional adjudication will not change much. Nonetheless, there are changes in the text of the Basic Law. We consider it most dubious that Article IV makes life imprisonment possible.

We have already mentioned the criticisms in connection to the said value choices manifested in the National Avowal. This kind of commitment could also be noticeable in the Foundation and in the Freedom and

\textsuperscript{17} Previously, the principle of separation of powers was deduced from rule of law in the jurisprudence of the Hungarian Constitutional Court.

\textsuperscript{18} This solution is also after German sample, from Article 1 item 1 of the Grundgesetz: ‘Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.’


\textsuperscript{21} Balogh and Hajas 2012, p. 88.
Responsibility, where the return to traditional values is most prevalent. Article I stipulates that Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the institution of family as the foundation of the subsistence of the nation. The present case law of the Constitutional Court does not prohibit the registered partnership of homosexual couples and does not bind the notion of family by all means to marriage.

Another criticism that has arisen is that Article XV does not refer expressly to the prohibition of sexual discrimination. As the list in Article XV is not exhaustive, the turn ‘or any other ground whatsoever’ can be understood as to include sexual discrimination. This is also confirmed by the case law of the Constitutional Court.

In parallel, we also mention a new aspect emerged in the Basic Law regarding the protection of fundamental rights. The most important underlying changes concern the presence of responsibilities, the common values beside the individual ones, as well as sustainability. In this spirit the National Avowal states that Hungary bears responsibility for our descendants, that Hungary shall bear a sense of responsibility for the fate of Hungarians living outside its borders, and that it shall foster the survival and development of their communities. This reinforced role of responsibility and sustainability will probably transpire in the case law of the Constitutional Court, but it can only appear as an additional element in the test regarding the restrictions of fundamental rights, and not as a single mechanism of the fundamental rights limitation. Together with articles of the Basic Law mentioned above, this means that the level of protection of the fundamental rights has not changed much, but the approach towards their protection is different. The Basic Law demonstrates a new vision of human beings, who are the subjects of the rights and responsibilities. As Article O states, every person shall be responsible for himself or herself, and shall be obliged to contribute to the performance of the state and community tasks in proportion to his or her abilities and possibilities. Unlike the Constitution, the Basic Law uses more public spirit in the field of fundamental rights and is based less upon the individualist approach. It can be seen from a provision of the National Avowal stating that ‘We believe that individual freedom can only be complete in cooperation with others’.

This concept is akin to the communitarian political philosophy, which relies on the individual as part of a certain community, and who is able to define his or her identity only through these communities. This philosophy says that the total autonomy of the individual is a fiction, and personal identity is embedded into the community. This is why it is impossible to understand the individual without external links. As a consequence, the

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23 It is worth to note that despite the Spanish Constitution defines marriage as the union of a man and a woman, few years ago the notion of homosexual marriage was presented in the legal system without unconstitutionality.
25 This provision is very similar to Article 6 of the Federal Constitution of the Swiss Confederation: „All individuals shall take responsibility for themselves and shall, according to their abilities, contribute to achieving the tasks of the state and society.”
26 For more on liberal and communitarian political philosophy see: Forst 2002.
importance of sustainability (budget management, natural resources, environmental protection) has also increased. One cannot choose among philosophical values by a scientific approach. In the context of law one cannot say that communitarianism is always better than individualism or, conversely that individualism is necessarily better than communitarianism. It is an important question, though, whether the different philosophy of the Basic Law has consequences for the legal system as a whole. The judiciary and the Constitutional Court will play a great part again in determining this: if they apply not only the mere provisions of the Basic Law but also its philosophy that may result in a different approach of fundamental rights.

Finally, a formal novelty should be mentioned. Under the previous Constitution, most of the fundamental rights were to be regulated by qualified majority. The Basic Law maintains the institution of statutes of qualified majority (the so-called cardinal statutes) but it mostly points out issues of state organisation and the economic bases of the society to be regulated by cardinal statutes and not the guarantees of human rights.

2.4. Historical Constitution

We have already mentioned Article R, which states that beside the National Avowal and the purposes of the provisions, the Basic Law shall be interpreted in accordance with the historical constitution. Before the communist Constitution of 1949, the historical constitution consisted of several formally ordinary acts, which were equal in force and of fundamental importance. Because of its special feature, it is not clear – even in the Hungarian legal literature – what exactly the elements of this historical constitution are. The other problem is that several elements of the historical constitution are incompatible with other provisions of the Basic Law, as well as with the European acquis [see Articles E and Q]. This is why the Basic Law uses the word ‘achievements’, to exclude for example the nobility’s right to rebel against taxes. Furthermore, in the Hungarian legal literature, the presence and the content of the historical constitution are highly debated, which is striking given the vagueness of this notion.

Some commentators argue that the historical constitution will only serve a symbolic role in the interpretation. A written, unified constitution such as the Basic Law (see the postamble), does not support a non-written constitution. Others say that the notion of historical constitution could serve as a tool to bring back the traditions and precedents of the Hungarian constitutional culture, for example the former, relevant jurisprudence of the Hungarian Constitutional Court. The future of the historical

28 This right was given to the Hungarian nobility in the II. item of the famous Golden Charter in 1222.
constitution in the new constitutional system will depend on the Constitutional Court’s jurisprudence.

II. New elements of the Hungarian constitutional system

1. Economic constitution

The concept of ‘economic constitution’ evolved in Germany just after World War I (Wirtschaftsverfassung). It pertains to the constitutional provisions on the relation of the state and economy and the most basic rules governing the economic actors. The idea of regulating financial issues on a constitutional level has spread in Europe as a consequence of the economic crisis. Not surprisingly, the Hungarian government thought it essential to stabilise the finances of the country. The regulation of financial and economic issues on a constitutional level is one of the most important novelties of the Basic Law. Accordingly, the Basic Law defines the Parliament’s role in public finances. Article 36 paragraphs (4)-(5) states: ‘(4) The Parliament shall not adopt such an Act on the central budget which would result in a public debt exceeding half of the gross domestic product. (5) As long as the public debt exceeds half of the gross domestic product, the Parliament shall only adopt the Act on the central budget which includes the reduction of the state debt in proportion to the gross domestic product.’

Another novelty is that these rules are enforced by a relatively new organ, the Budget Council. The Basic Law delegates strong competences to this organ. The draft of the central budget needs the prior approval of the Budget Council. Article 3 paragraph (3) item b) strengthens this competence, as the president is entitled to dissolve the Parliament if the latter does not approve the central budget until 31 March of the current year. Implicitly, the adoption of the Act on the state budget is a vote of confidence. In constitutional terms, neither the government nor the Parliament questions the confidence, but politically the issue is so essential to the government that it would be unable to govern any longer. However, it should be recalled that the Budget Council has the right to veto the Act on the state budget. Consequently, the Budget Council will be able to force the Parliament’s dissolution if it continuously refuses the draft budgets. It has been argued that the Parliament would not be efficient in governing the economy and would not be flexible enough to follow the changing needs of the society. It is difficult to prove at this point whether the freezing of the basic rules of finances into the constitution will be effective to bind Parliament, or conversely, to stabilise the finances of the country. Time will tell...
2. The Constitutional Court

Under the former Constitution, the Constitutional Court’s main task was to maintain the Constitution’s integrity and to annul all norms that are contrary to the Constitution. Therefore, the Constitution granted everyone the right to turn to the Constitution Court if he or she considered a law unconstitutional (actio popularis).

The most apparent change in the field of state organisation seems to be that the primary task of the Constitutional Court will be the examination of individual complaints, instead of the abstract posterior review of pieces of legislation. Under the new Basic Law, not only laws but also judicial decisions can be challenged in the constitutional complaint proceedings. As the Basic Law restricted the range of initiators and abolished actio popularis – only the Government, one-fourth of the MP’s and the Commissioner for Fundamental Rights can initiate the Court’s procedure –, the importance of abstract a posteriori review is reduced. Comparative experiences show that constitutional complaint proceedings and abstract review cannot be efficient at the same time; one of them tends to be the general rule and the other one is the exception.34

The change fundamentally alters the role of the Constitutional Court as well as its relation with ordinary courts. The Basic Law has created a clear hierarchy between the Constitutional Court and ordinary courts in the interpretation of the content of fundamental rights. If the Constitutional Court is entitled to review the particular decisions of the courts, the courts cannot interpret the law differently. Such a mechanism seems to strengthen the unanimous interpretation of fundamental rights.

On the other hand, the Constitutional Court’s competence to review abstract norms has been reduced. Accordingly, the Constitutional Court’s basic task is to safeguard individual rights in practice rather than to review the pieces of legislation from a constitutional aspect.

A much-heard critique of the Basic Law is that it maintains the 2010 restriction of the review powers of the Constitutional Court on financial laws.35 According to the amendment, the Constitutional Court may only review and annul laws on state budget and taxes if they violate the right to life and human dignity, the protection of personal data, the freedom of conscience and religion or the rights connected to Hungarian citizenship. From a theoretical perspective, this regulation is controversial. Firstly, it infringes constitutionality in a formal sense: without judicial review there is no guarantee that the regulations of the Constitution on financial issues prevail in practice. Secondly, it is unclear why the Constitution named those four basic rights to be the possible bases of the review.36

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34 Csík and Schanda 2012, p. 162.
35 Act CXIX of 2010 on the amendment to the Constitution.
Although Article 37 paragraph (4) of the Basic Law states that the restriction terminates when the state debt goes under the 50% of the GDP, regarding the state of the finances, this is unlikely to happen in the near future.\footnote{Before the regression the state debt was close to the 50% of the GDP (ca. 55%) but later on it reached the 70-80% of the GDP.} Another change in the structure of the Constitutional Court occurred in 2010. According to an amendment the president of the Constitutional Court would be elected by the Parliament, while previously the president was elected by the justices from among themselves.\footnote{Former President of the Republic, professor Ferenc Mádl regarded the changes reshaping the role of the Constitutional Court as a remedy of an imbalance of powers: Mádel 2011.} The Venice Commission was of the opinion that electing the president by a political actor is a widely accepted phenomenon. Nonetheless, it is a regression in the independence of the Constitutional Court.\footnote{Opinion 621/2011 of the Venice Commission, CDL-AD(2011)016. Item 94. Having said that though, upon the new regulation the Parliament re-elected Péter Paczolay, who was previously elected by the justices.} At the same time, the amendment lengthened the term of office from nine to twelve years and terminated the possibility of the re-election of the justices, which may strengthen their independence.\footnote{Jakab 2008.}

3. The commissioner for fundamental rights

The former Constitution designated the ombudsmen as the independent organs of parliamentary control. Due to the nature of the institution, ombudsmen are external to the executive branch. Their task is not to grant remedies for infringements of human rights. They investigate anomalies that have come to their attention and initiate particular or general measures for redress.

Until 1 January 2012 four ombudsmen were active: the (general) commissioner for fundamental rights, the commissioner for the rights of the minorities, the commissioner for future generations (dealing with issues concerning environment protection) and the commissioner for data protection and freedom of information. The latter two institutions had a dual nature: they were ombudsman-like institutions on the one hand, and authorities on the other, as they had direct administrative measures to protect the rights and interests of their specific field.

The Basic Law left the role of the ombudsman intact but introduced significant changes in the structure of the institution. It terminated the institution of the commissioner for data protection and freedom of information and left the task of protecting personal data and the right to access public information to an independent authority. The institutions of the other three commissioners were unified.

According to Article 30 paragraph (3) of the Basic Law, the commissioner for fundamental rights has two deputies who ‘ensure the protection of the interests of future generations and the rights of national minorities residing in Hungary’.
Interestingly, the Basic Law stipulates own scopes of authorities to the deputies – literally independently to the commissioner for the fundamental rights. As a consequence, there is an administrative hierarchy between the commissioner for fundamental rights and his or her deputies, but the deputies have their own tasks and their legitimacy is the same, too (all of them are elected by the Parliament with qualified majority).

### III. Conclusion

A constitution does not coincide with the legal text of the constitution. The role of a constitution is not only to lay down the basic rules of the constitutional system and to recognise human rights. To a certain extent it has to be a flexible, open document, which can conform to the changing circumstances. Constitutions are never independent from time and space. The new Hungarian Basic Law is influenced by the political context too. It will prevail in a way the Parliament, the central government, and other constitutional institutions apply and implement it, and it will progress in the way the Constitutional Court’s jurisprudence shape it. If the organs of state authority maintain the constitutional culture of the past twenty years, the Basic Law could become an efficient document for strengthening democracy, human rights and the welfare of the society. On the other hand, if the Basic Law is used as a tool for achieving particular and politically biased purposes, it will not become a long-lasting, inherent part of the legal order. As László Sólyom wrote in early January, the constitutional culture is a firm foundation, which is difficult to curtail. He warned that one cannot step away from the role the whole legal community has to play in reconciling the ‘real’ constitution with the ‘ideal’ one. We submit that the real consequences of the Basic Law can only be evaluated later on, but then, in addition to the text, the constitutional culture and its interpretation will also play a major role.

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