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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

REGULATORY CONCEPT OF THE CONSTITUTION OF THE HUNGARIAN REPUBLIC

(Preliminary working material)

Index

I. The Principles Relevant to a New Constitution

1. There is no absolute need for a change in the Hungarian constitution. The constitution was substantially amended in 1989 and further extended in 1990 and thus essentially conforms to the basic constitutional requirements of a democratic state. Even though the constitution is workable, its provisions are not sufficiently coherent and its contents, as well as its structure need to be re-developed. A further disturbing factor is the heading of our present constitution: Act No. XX. of 1949 is connoted with the break from parliamentary democracy.

   Both politicians and lawyers usually admit the need for redevelopment of the constitution. This is illustrated by the fact that all parliamentary parties included the creation of a new constitution as an item in their manifestos prior to the 1994 general elections. Legal scientists have prepared for the creation of a new constitution and several concepts as well as sample wordings have been published. Since the birth of the Republic's constitution in 1989 sufficient experience of the its practical effects has accumulated.

   Admittedly, following the general elections the essential legal requirements for creation of the new constitution are fulfilled since the present governing coalition has a 72 per cent majority in Parliament which is, under present regulations sufficient for amending the constitution. Nonetheless, more is needed for the adoption of the new constitution: Fulfilment of social and professional requirements as well as of conditions of a political nature (in a wider sense) is crucial.

   It does not suffice if parliamentary parties agree to the changes of the constitution: Their active co-operation is absolutely necessary. Furthermore, legal scientists, as well as state and public bodies need to participate in developing the contents of the new constitution. Finally but

most importantly the general public must co-operate in the amendment of the constitution and citizens must be prepared for its acceptance. The press, radio and television may provide a great help in this respect. All these can achieve that the final product is not just an excellent scientific product of intellectual groups or a unilateral decision by the governing parties but a constitution properly adopted by society.

2. The basic elements of the constitutional system were laid down in 1989-90. It was accepted that the state system was to be built on the principle of separation of powers and a system of brakes and balancing factors. In the months of political change the most important questions regarding the state system were decided: The choice of the type of state and government, the establishment of the post of a President, the introduction of a single-chamber parliament, of a constitutional court, the State Audit Office and the Parliamentary Commissioners of citizen's rights.

   According to social surveys the general public desires a stable and predictable existence. There is no public demand for a radical change of the present constitutional system. Therefore any new constitution must be based on the principle of continuity. No new solutions regarding the power structure are needed; instead, the constitution should be systematically reviewed and on the basis of this review all genuinely necessary changes must be carried out. Such review should be based on the attitudes of a social constitutional state. Thus limits to the state's powers must be established and the constitution must prevent the concentration of financial and economic as well as of cultural and media powers. At the same time public acceptance of the state must be achieved.

   In order to carry out any further work and achieve common ground between the constitutional proposals these principles must be determined.

   Thus the essential principles of a new constitution should be as follows:

   a. The rules of the constitution must be re-developed essentially at such points, in such directions and to such extent as is justified by practical experience. Such practical experience may be ascertained mainly from

decisions of the Constitutional Court, also taking into account miscellaneous experience of public administration, the courts of law and other bodies;

b. Certain issues are left unregulated by the constitution, these omissions must be remedied;

c. The constitution must be brought into conformity with our international obligations and must be amended so as to enable us to participate fully in European integration;

d. The structure of the constitution should be changed to achieve the right proportions, a logical order and appropriate length of its provisions;

e. Apart from the constitution itself, the main acts based on it must also be reviewed and a proposal for further regulations should be drafted.

3. According to practical experience of the constitution's workings amendments are justified mainly in the following areas:

a. The scope of legislation to be carried out by Parliament is far too wide which slows down the legal process of the change of political system. Therefore, while providing necessary guarantees, government authority to issue decrees must be increased. Furthermore, the relationship between the scopes of legislation of central and government and municipalities must be clarified.

b. The issue of acts requiring a two-thirds majority in Parliament is also in need of clarification. The number of acts requiring a qualified majority should be substantially reduced. However, qualified majority should be retained in relation to certain issues, such as the most important bodies of state structure, the rules regarding voting rights and Rules of the House.

c. The rules regarding the scope of authority of the President of the Republic fail to reflect that Hungary's head of state acts as an individual

branch of power and has a balancing function. Therefore the provisions must be clarified.

d. The chapter in the constitution dealing with municipalities essentially reiterates certain provisions of the Act on Municipalities. Instead, provisions are necessary which are substantially new and different and which clarify the relationship between public administration and municipalities, regulate the scope of authority and economic autonomy of, as well as the legal and financial controls over municipalities .

4. The constitution seems to have the following loopholes or so-called 'white patches':

a. There are two distinct categories of fundamental rights in the constitution which are not clearly separated. The first category includes rights which put a positive obligation upon the state to act in a certain way; these rights cannot be enforced in a court of law. The second category contains rights which require the state to refrain from certain acts; the breach of these entitles citizens to seek a remedy in a court of law. This differentiation must be made as it would also re-emphasise citizen's rights.

b. The constitution fails to deal with economic issues, such as preparation of the state budget and determination of the tax system. Furthermore, the status and tasks of the Hungarian National Bank should be regulated.

c. No provisions regarding public administration and public bodies are included in the constitution.

d. The provisions as to the principles of the administration of justice, the activities of courts and the public prosecution and the Constitutional Court are very brief.

e. The provisions regarding situations endangering state security, the armed and police forces need re-development and more detailed regulation.

f. There is no constitutional regulatory framework regarding protection of the constitution itself.

5. In order to bring the constitution into conformity with our international obligations the relationship between Hungarian and international law must be clarified. The present constitution fails to elaborate on this relationship. Furthermore, it does not clarify the regulations regarding the conclusion of international agreements and the scope of authority and procedure connected with such agreements. Owing to the extensive development of our international relations and our intention to participate in European integration it is crucial that agreements properly concluded by Hungary become part of national law. The same applies to decisions of European integration bodies, subject to the difference that these become part of national law upon their publication, without the need for implementation as legal rules.

   Furthermore, rules of international law must be reflected in the regulations regarding fundamental rights. This does not necessarily mean that all provisions regarding fundamental rights should be included in the constitution but the whole of our legal system must conform to international treaties.

6. At present the constitution puts undue emphasis on regulation of state organisations. In contrast, a relatively short part of it deals with fundamental rights, only after the section on state organisations. Thus, according to the principle of social constitutional states the constitution should be structured in such a way that the provisions on fundamental rights come before the section on state organisations but after the general regulations regarding its basic principles, the type of state and government and sovereignty.

7. Our present constitution also contains grammatical errors and mistakes which make it difficult to comprehend. These should be eliminated in the process of amendment.

8. It is highly important that the constitution should be of normative nature, rather than just a collection of wishes and desires. This is because in a constitutional state the constitution is a basic law, a legal rule which can be directly applied by courts of law and other bodies. Nonetheless, it must not contain too much detail as a constitution which is difficult to amend should not constrict conditions of life.

9. Any preparation of a new constitution would be imperfect if attention was limited to the contents of the constitution itself and failed to review the most important acts regarding fundamental rights and the state system. Thus the work on a new constitution must cover this legal material "behind the constitution" and any new concepts must be developed in the light of these acts.

II. Introductory and General Provisions of the Constitution

1. The Preamble

Whether our new constitution should contain a preamble at all is a question to be considered. Many countries do without one and in Hungary, too, the contents of a preamble may be subject to dispute; already several different and contrasting expectations have been voiced with regards to the preamble. Nevertheless, this Concept suggests that the most important aims and intentions of the legislators should be spelt out in the preamble.

The preamble to our present constitution emphasises its provisional nature: The 1989 amendments were aimed to assist the peaceful political transition to a multi-party system, parliamentary democracy and a social market economy.

The preamble to our new constitution should spell out the peaceful completion of the change of political system but also signify the openness to new developments in certain areas. At the same time the preamble should express the obligations towards the thousand year -old traditions of Hungarian state and the universal values of the constitution, it should describe the most important the values which the legislators intend to express in the constitution and signify the definite intention that Parliament will ensure its effectiveness.

The preamble should be concise, any high-flown expressions and unnecessary poetic style should be avoided.

2. General Provisions of the Constitution

a. The general provisions must cover the following main issues:

- provisions regarding the name of the state, the type of state and government and the nature of the state;
- provisions regarding the state's power, the sources of power and the right of resistance;
- basic provisions regarding direct and indirect democracy;
- provisions regarding the state's territory, the capital and the state's territorial divisions;
- main provisions regarding the state's population and citizens;
- provisions regarding national symbols, the coat of arms, the state banner and the national anthem;
- main provisions regarding foreign policy and the relationship between international and domestic law;
- basic principles regarding proper exercise of the law;

b. The constitution must contain the official name of the state: Hungarian Republic. Slightly expanding the wording of the present constitution, the nature of the state should be defined thus: the Hungarian Republic is an independent, democratic, social constitutional state which respects and protects the inalienable and inviolable fundamental rights of man.

The social nature of the constitutional state signifies the fact that the state considers as important public solidarity and responsibility for citizens, and appropriately provides for social groups in need. This principle is substantiated by the individual rights listed as fundamental rights, as well as the separate acts regarding these rights.

In connection with the state's nature it should be spelt out that Hungary has a market economy in which there is equality between forms of ownership and freedom of enterprise. This principle is also spelt out further in the section on fundamental rights.

c. The constitution must contain detailed provisions regarding the primary power. The constitution should state that in the Hungarian Republic power is derived from the people. The people exercise power subject to the constitutional framework through the constitutional institutions. The constitution determines the different forms of exercising the power, all of which complement each other and form a substantial part of the constitution. (The forms of exercising the power include, for example, general elections, voting, legislation, execution and the administration of justice.)

   An issue closely connected with sovereignty is the constitutional right of resistance. The constitution must formulate the rule that any claim to or possession of exclusive power is unconstitutional and prohibited. Subject to legal rules, every Hungarian citizen has the right to express resistance against persons who gain power through the use of force.

d. The constitution should record the principle that state organs act within their competence and scope of authority. No state body may exercise any rights in the scope of authority of another state body. This follows from the principle of separation of powers and the prohibition of forfeiture of competence.

e. One of the most important tasks of the state is to protect the freedom and power of the people, the country's independence and territorial integrity. It is unnecessary to record the country's borders in the constitution, it suffices to refer to the fact that these are determined by international treaties.

f. The territory of the Hungarian Republic is divided into the capital, counties, towns and parishes and the capital is further divided into districts. Towns may be divided into districts. The constitution must state

that Budapest is Hungary's capital and - unless an act determines otherwise - the location of state bodies with nation-wide competence. The capital's districts, as well as the county towns and the towns and parishes belonging to each county shall be determined by acts.

g. The most important legal relationship between the individual and the state is the law of citizenship, and the basic principles and rules thereof must be recorded. The constitution should contain the definition of citizenship, as well as the most important rights of citizens flowing from their status as Hungarian citizens. Such rights include: The right to consular protection in foreign states, the prohibition of the citizens' extradition to a foreign state, the right to enter and - subject to certain conditions- to leave the state. The existing provision, prohibiting the forfeiture of Hungarian citizenship should be upheld.

   Separate provisions may be drafted regarding citizens resident abroad. Thus it may be spelt out that acts may lay down rights and obligations for Hungarian citizens permanently resident abroad which are different from those of citizens resident in this country (for instance political and social rights, military service). The detailed rules of citizenship are determined by an act.

h. The constitution must determine the most important national symbols, namely the coat of arms, the banner and the national anthem. Other symbols, such as national or state holidays should be regulated by separate acts, rather than the constitution.

i. Under the principles of foreign policy it should be stated firstly that the Hungarian Republic rejects war as a means of solving disputes between nations and refrains from the use of force against the independence or territorial integrity of other states, as well as from the threat of force. The Hungarian Republic seeks co-operation with all nations and democratic countries in the world. It should be considered whether the Hungary's participation in European integration should be spelt out as a further aim of foreign policy.

In the light of the unique historical and political situation of Hungary the following should be recorded: The Hungarian Republic desires that all countries secure the rights of national, ethnic and linguistic minorities under the rules of international law. Furthermore, the following existing provision of the constitution should be retained: The Hungarian Republic considers itself responsible for the destiny of Hungarian nationals living outside its borders and will seek cultivation of their mother tongue, national culture and of their relationship with Hungary. (At the same time, the rules on rights of national minorities must acknowledge the identical rights of minorities living in Hungary.)

Here the relationship between international law and Hungarian law should also be regulated. This is explained in further detail in a separate chapter.

j. The principle of the proper exercise of power, well-known in civil law, should be spelt out as a general constitutional principle which also governs the activities of public bodies. Accordingly the rights and obligations determined by rules of law must be exercised properly. Any abuse of rights is prohibited.

k. There are certain fundamental rights which, due to their nature cannot be treated as rights *in personam* in the present state of Hungarian society and therefore cannot be enforced in the courts of law, such as the majority of economic, social and cultural rights. Whether these rights should be included in the chapter on fundamental rights or among the general provisions, is a question to be decided. (This concept does not even suggest the alternative, according to which these rights should not be included in the constitution at all as they are not genuine rights, even though this view does have followers).

An argument in favour of the latter solution is that these rights may be determined only as aims set or obligations undertaken by the state. The normative nature of the chapter on fundamental rights would be strengthened if it included solely rights which may be enforced in the courts - this would provide real substance to the principle of adjudication

over fundamental rights by the courts of law. (This concept suggests that courts of law adjudicate over fundamental rights. The Constitutional Court's function to protect fundamental rights covers the examination of whether the rights spelt out in several chapters of the constitution are effective in other rules of law. This issue is discussed in greater detail in the chapter on the Constitutional Court)

However, it can be argued that all fundamental rights should be dealt with in the same chapter since these rights are connected to each other, and uniform regulation is called for with regards to certain possibilities of restricting and suspending any of these rights which are allowed in situations endangering the country's security or otherwise.

Therefore we wish to achieve the necessary differentiation between fundamental rights according to their enforceability in courts through clear definitions, within a unified chapter on fundamental rights. The differentiation between the categories of rights *in personam* and of state aims and undertakings will be made on the basis of the chapter's wording.

III. The Fundamental Rights

1. General Issues

a. Our constitution in force regulates fundamental rights on the basis of multilateral international treaties obligatory to Hungary, primarily the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Hungarian regulation fulfils the minimal requirements of a constitutional state but has numerous defects:

- It fails to take proper account of the Human Rights Charter of the Council of Europe, even though Hungary has become a member of the Council of Europe.

- The adoption of certain rights from the Covenant has been defective and the phraseology of these rights is unclear.

- The rights enjoyed exclusively by Hungarian citizens and the general human rights are not properly separated; some human rights are wrongly phrased as rights of citizens.

- The constitution merely declares rights and instead of defining their substance or the principles of restricting these rights delegates these tasks to a separate act.

- some social rights are defined as rights *in personam* even though these can be effective as state aims only (the Constitutional Court has attempted to circumvent this contradiction but it is doubtful whether the wording of the constitution may be changed through judicial interpretation).

b. Constitutions usually adopt the collection of human rights from international treaties on human rights. Apart from the three most important treaties above numerous other treaties contain fundamental rights (e.g. the European Social Charter, the The Convention on the Rights of the Child and international treaties on labour law). Naturally,

the Hungarian constitution may not contradict international agreements obligatory to Hungary or its international obligations. Nonetheless, fulfilment of this principle does not mean that international treaties should be reproduced or directly followed. If -as is suggested in this concept - the constitution provides that the rules of international law must be applied in Hungary, this provides a guarantee which is sufficient to give effect to international human rights in the Hungarian constitutional order. International Law only requires states to secure human rights determined by international agreements, it does not direct states to record these rights in their constitutions. Thus legislators are free to determine the list of fundamental rights in the constitution. Nonetheless, the fundamental rights included in the constitution illustrate which values the legislator considers important.

c. The subjects of fundamental rights must be recorded in the constitution. As a starting principle, every individual, regardless of his or her citizenship, enjoys fundamental rights if he is within the jurisdiction of the Hungarian state. Any rights enjoyed exclusively by Hungarian citizens must be so described in the constitution.

Foreign citizens may be subjected to separate provisions. The principle of equality before the law may be constitutionally departed from, thus these provisions may contain certain rules of alien control and may restrict certain rights (for example political rights, the right to acquire property or undertake work).

Any rights which, due to their nature are not restricted to natural persons (for example, the right to acquire property, the right to a good reputation) are appropriately enjoyed by legal persons too. This, however, does not mean that the rights of legal persons are enjoy equal protection to the rights of natural persons. For instance, rights of legal persons may be restricted by any act without the need for authorisation in the constitution.

2. The Categorisation of Rights and Their Position in the Constitution

a. Constitutions usually categorise rights according to their subject matter. Accordingly the usual categorisation is the following: rights of personal freedom; political rights; economic, social and cultural rights. This classification is not beyond dispute since there are rights which cannot be categorised (e.g. the freedom of opinion may be classified both as a right of personal freedom or a political right; the right to acquire property may be classified as a right of personal freedom or as an economic right); furthermore, some rights are of a general nature over and above the categories (for example the right to equality and the right to human dignity).

   In the light of the above this concept does not suggest the categorisation of fundamental rights into chapters. It seems more appropriate to deal with these rights together, without dividing them into chapters.

b. In contrast to the present constitution this concept suggests that fundamental rights should not be dealt with in the chapter on fundamental rights but rather in the sections corresponding to their subject matter. Hence military obligations should be regulated by the provisions on the armed forces and tax-paying obligations in the chapter on state revenue (finances). The duty to attend primary education establishments should be spelt out in the section on the right to education.

c. The constitution should provide for the following rights (rights *in personam* and state undertakings)

   - the right to equality and equality before the law;
   - the right to human dignity;
   - the right to life;
   - the right to inviolability and bodily integrity;
   - the right to personal freedom and security;
   - the prohibition of slavery;

- the prohibition of imprisonment for contractual breaches;
- legal competence;
- equality before the law;
- the freedom of movement;
- the right to privacy;
- the rights of the individual (right to a good reputation, the right to a name, the right to keep personal data);
- the freedom of conscience and religion;
- the right to marriage and child-raising;
- the rights of the child;
- the freedom of thought and opinion, the freedom of the press;
- the freedom of education, culture and scientific research;
- the right to the administration of justice, to a court of law and a judge appointed under an act;
- the right to an independent and unbiased court;
- the right to a just, equitable and open trial;
- the right to use one's mother tongue;
- the right to claim legal remedies;
- the principles of "one may be only held liable for acts punishable under the law" and "one may be sentenced only to a punishment determined by law".
- the presumption of innocence;

- the right to legal representation (defence);
- the right to a personal hearing;
- the right of an accused to know the charge and the evidence against him;
- the right to compensation for wrongful conviction (custody);
- the prohibition of multiple convictions for the same offence;
- the right to congregate;
- the right of association;
- the right to participate in public issues (right to vote, right to hold an office);
- the right to submit applications and complaints;
- the right of access to data and information of public importance;
- the right to acquire and inherit property;
- the freedom of trade and industry, the protection of fair market competition;
- the right to choose one's work and profession freely;
- the right to fair and equal conditions of work;
- the right to form and participate in trade unions;
- the right to industrial action;
- the right to rest;
- the right to social security (insurance);
- the right to health protection;

- the right to social security and care;
- the right to a place of residence;
- the right to cultural education;
- the right to a healthy environment;
- the rights of national and ethnic minorities;
- the rights of foreigners;
- the right of asylum.

d. A detailed explanation of the contents of the fundamental rights is beyond the volume and scope of this concept. The contents of these rights are more or less well-known, as defined by the international treaties, detailed by domestic law and interpreted by the Constitutional Court and legal literature.

Instead, this concept will endeavour to outline the method by which the constitution would regulate each right. The following general structure is suggested:

- declaration of the fundamental rights: this section identifies the right and declares that it is enjoyed by everyone (*rightsin personam*) or alternatively, that the state will procure enforcement of the right (state undertakings);
- definition of the fundamental rights: in this part the contents of the right are described (this guides the Constitutional Court as to the substance of the fundamental right which cannot be restricted);
- the limits and conditions of the fundamental right: here the constitution outlines the restrictions acknowledged with respect to the given fundamental right. In this section the legislator needs to state the exceptions from the cases covered by the given right. For instance, it

may be a condition that the given right may be exercised "within legal limits only";

- the prohibition, permissibility or compulsory nature of regulation by acts. The provision regarding the fundamental right must determine the role of the legislature in securing or clarifying the right. If it is intended that the fundamental right be restricted by act or judicial decisions only, or not at all, the constitution should state this.

3. Restricting and Suspending Fundamental Rights

a. Firstly, the type of legislation by which the fundamental right may be regulated should be determined. The basic principle, under which fundamental rights may be regulated only by an act (or the constitution itself) should be upheld. Nonetheless, in order to enforce a fundamental right, such an act may delegate the regulation of such enforcement to an inferior source of law. This is because the fundamental rights concern a wide number of issues (in practice, the entire legal system), therefor to limit the regulation of these rights to acts would be unworkable and senseless. Nevertheless, it is possible that in the case of particular fundamental rights the legislator may deem it necessary to limit their regulation to acts; in such cases this should be expressly stated.

b. Fundamental rights may be restricted by the constitution only or by an act, if this has been authorised by the constitution. The constitution should generally limit any restrictions by an act and should prohibit restriction of the "substantial contents" of the fundamental right. (Thus only the constitution itself may provide for restriction of the substantial contents of a fundamental right.). In addition it should be stated that any restriction will be valid only if the act expressly refers to the fundamental right restricted.

As a general limit to the exercise of fundamental rights, the constitution may determine that these rights must not be used to bring down the

constitutional system, to abolish the fundamental rights or to infringe upon the fundamental rights of others.

c. The fundamental rights enjoyed by a particular individual may be restricted only in order to protect the fundamental rights of others, or in case of commission of a crime or for reasons of public health or the protection of public order.

d. A related issue is the restriction of the rights of a particular group of persons or of the members of a particular profession. Judges, public prosecutors, members of the armed forces and public servants may be restricted in the exercise of particular rights or prohibited from the exercise of certain rights for a period of time. The extent of such restrictions should be limited (only those genuinely necessary are allowed) and they must be proportional to their purpose (e.g. the independence of the administration of justice, the proper performance of public tasks).

e. The voluntary restriction of fundamental rights is an issue to be separately examined. As a basic principle the constitution should state that no one may be compelled to exercise their fundamental rights.

f. A difference must be drawn between the restriction of fundamental rights and their suspension in case of war or other situation endangering the country's security. The suspension of these rights is subject to strict conditions under international law which determine those rights which cannot be departed from.

The conditions are as follows:

- a state of emergency must be officially declared;
- any departure from the fundamental rights must be restricted to the extent absolutely required by the given situation;
- no departure from the fundamental rights may be contrary to other obligations under international law;

- such departure may not be based on differences of race, colour, gender, language, religion or social background;

The following fundamental rights must not be suspended even in a situation endangering the country's security:

- the right to life;
- the right to human dignity;
- the prohibition of slavery;
- the prohibition of imprisonment for contractual breaches;
- the principles of "one may be only held liable for acts punishable under the law" and "one may be sentenced only to a punishment determined by law".
- the presumption of innocence;
- the right to legal representation (defence);
- the prohibition of multiple convictions for the same offence;
- the right to compensation for wrongful conviction (custody);
- legal competence;
- the freedom of thought, conscience and religion;
- the prohibition of forfeiture of citizenship.

The rules of international law should be included in the constitution. The most important substantial rules regarding the suspension of rights must determined in the constitution. The detailed rules of possible restrictions of rights in cases of situations endangering the country's security shall be contained in an act passed by qualified majority.

4. The Guarantees Regarding the Enforcement of Fundamental Rights

The entire state organisation must guarantee enforcement of the fundamental rights. A number of these rights are enforced through activities of the state: through the health and social service and through educational and cultural establishments. Some of these establishments are maintained by the state but the state also contributes to the maintenance costs of non-state-institutions. Furthermore, the state is not just a passive onlooker on the enforcement of rights of freedom: it actively assists the success of these rights through maintenance of public order and crime prevention.

Nonetheless, protection of the fundamental rights is effected mainly through special institutions. The strongest protection is provided if the constitution states that every person has the right to seek a remedy in a court if their fundamental rights are infringed. This concept provides the courts of law with jurisdiction to deal with so-called constitutional complaints (as referred to above). After all possible domestic remedies are exhausted international bodies may be appealed to, such as the Human Rights Commission of the United Nations or the European Commission and Court of Human Rights. This is provided by international rules and needs not be expressly stated in the constitution.

However, a person may turn to the Constitutional Court if their right has been infringed due to the unconstitutional nature of a legal rule, or if some fundamental right cannot be enforced owing to an unconstitutional failure to legislate.

Furthermore, the fundamental rights are protected by the public prosecution and parliamentary commissioners. The constitutional tasks of these bodies are further detailed in separate chapters.

IV. Parliament

1. The Constitutional Tasks of Parliament

In the Hungarian Republic Parliament exercises legislative power and controls the executive power. Through its elected representatives Parliament is a member of state sovereignty but is not the only or main member, since under the modern principle of separation of powers each state organ, whether made up from elected or appointed officers, exercises its scope of authority determined by the constitution and may not deprive another organ of its scope of authority.

With regards to the relationship between Parliament and the Government it must be made clear that while the Government is responsible to Parliament, this does not put the Government in an inferior position. Thus Parliament may not give orders to the Government regarding particular issues or questions of substance. (Naturally, it may allocate a task to the Government.)

2. The Rules of Electing the Representatives

a. The basic constitutional provisions regarding the election of parliamentary representatives should be contained in the chapter on Parliament. The constitution's volume is not sufficient to include detailed rules of the election system and procedure, therefore these must be contained in a separate act. Such an act will function only if it is widely accepted by the public as it bears on the fundamental framework of power. Therefore it needs to be adopted by qualified majority.

b. The existing principles regarding the election of representatives must be upheld: The right to vote is of general and equal nature, voting is direct and by secret ballot.

c. Most constitutions include basic rules of the election system. Thus these rules should be part of the Hungarian constitution. However, an issue to be considered is whether the present mixed election system should be

maintained or whether it should be changed to a system of proportional representation or a first-past-the post system.

Even though the present election system has been criticised and often held too complicated, the two general elections held so far have proved that the system can fulfil its most important role: A stable system of political parties has developed and the ability of Parliament to function properly has been shown. Therefore the important elements of the present election system should be retained, the necessary amendments being carried out in the Act on Elections. (It has been suggested that the number of parliamentary representatives should be reduced to between 200 and 250. The argument in favour this suggestion has been that countries of similar size usually have either a single-chamber Parliament of this size or a house of representatives of this size, in case of a two-chamber Parliament. Nonetheless, if the present election system is upheld, it will be difficult to carry out this suggestion. The number of individual constituencies cannot be substantially reduced. The most that could be done is to change to a system where instead of voting for lists of parties in each county, shorter nation-wide lists of parties could be voted for.)

The most important elements of the election system are as follows: Representatives are elected in individual constituencies or from lists. Not less than half of the representatives must be elected in a proportional system. Only parties who have reached at least 4 per cent nationally may get a place in Parliament from lists. (According to experience so far the 4 per cent threshold is sufficient to ensure the stability of Parliament). Each candidate may accept a maximum of one individual nomination and one nomination on a list.

Any new Act on Elections or amendment to such an act which is passed in the year of the general elections or the preceding year will take effect only after the elections. This provision also governs the rules on municipality elections. This principle should apply to provisions on incompatibility of office in such a way that the new Parliament should be

prohibited from retrospectively changing the rule on incompatibility in effect on the day of the elections or from bringing into force a stricter rule during the office of the new Parliament.

3. Provisions regarding Representatives

a. The constitution needs to determine the posts and offices incompatible with the office of a representative. These posts are: the President of the Republic, the judges of the Constitutional Court, judges, public prosecutors, parliamentary commissioners of citizen's rights, members of the State Audit Office, public servants and officially employed members of the armed forces . The act regarding representatives may determine other cases of incompatibility,(e.g. economic incompatibility).

b. The independence of representatives must be secured. This is why it should be stated that representatives carry out their activities in the interests of the public and are not subject to orders. The constitution should also guarantee their parliamentary immunity. This immunity must extend to the representative being able to refuse to give evidence as a witness regarding facts which he has learnt or introduced in connection with his office as a representative.

   To ensure their independence, representatives are entitled to a salary and allowances, the detailed rules of which are governed by an act.

c. Representatives take office upon certification of their mandate, in case of representatives elected in general elections, on the day of the first sitting of Parliament. The office ceases upon the loss of Parliament's mandate, the death of a representative, the declaration of incompatibility, upon the resignation of the representative or loss of the right to vote.

d. The constitution should record the fundamental rights of representatives (right to put forward bills, right to ask questions in Parliament, right to request written information from the state bodies), as well as their most important obligations, thus representatives are under a duty to participate

in the work of Parliament. Absence from voting causes a loss of salary but should not be punished with forfeiture of the representative's mandate.

4. Rules of the Functioning of Parliament

a. It is not necessary to list the tasks and scope of authority of Parliament in the constitution. This is because the detailed provisions on legislation, conclusion of international agreements, the forming and control of Government, the use of the armed forces, the admission of foreign armed forces into Hungary, situations endangering the country's security, the adoption of the budget, as well as on the appointment of particular officers are included in individual chapters of the constitution. In connection with the latter issue it suffices to state that Parliament appoints and dismisses the officers determined in the constitution and other acts.

b. The present rules on parliamentary sessions, sittings and the adjournment of Parliament should be retained. Provisions should be included on the roles of officers, of parliamentary parties and of parliamentary commissions. Special rules should be drafted for the investigating commissions, which should provide that such commissions may be established upon a petition by one-fifth of the representatives. Similarly, the duty to appear before commissions and to supply information should be recorded in the constitution.

   In order that the Government is duly controlled, the constitution must regulate the following: The right to put questions to the Government and the institution called a day of political debate which may be initiated by a party in minority in Parliament. Furthermore, questions may be put to the leaders of organisations controlled by Parliament, such as commissioners, the president of the State Audit Office and (unless his constitutional position is changed), the public prosecutor.

c. Parliament's mandate commences upon its first sitting and terminates upon the expiry of four years after that. Representatives must be elected

within 60 days before termination of the previous Parliament's mandate. If, after expiry of the four years the first sitting of the new Parliament is not held, the old Parliament is deemed to carry on working until the first sitting

The right of Parliament to dissolve itself may be retained, however, many find difficult to reconcile this with genuine parliamentarianism. Nonetheless, most commentators seem to agree that the right of the president and the Executive to dissolve Parliament should be widened. This is because the Executive should be able to terminate anomalies in the state system by initiating the calling of new elections.

The suggested solution is: Upon a motion by the Government, the President of the Republic evaluates the situation (or according to an alternative proposal, without the right to evaluate it) and decides upon dissolution of Parliament. If, however, a motion of no confidence has been submitted against the Government, no dissolution may be initiated. Parliament may not be dissolved within two years of a previous dissolution, unless Parliament passes a vote of no confidence against the Government on two occasions within one year, or the appointed prime minister is not elected within the appropriate time limit determined by the constitution. If there is no motion by the Government, the president may dissolve Parliament only in these two cases.

If Parliament fails to fill the time of its mandate by deciding its own dissolution or being dissolved by the head of state, the new Parliament starts the four-year term from the beginning. A provision has been proposed under which general elections would have to be held on the same day every four years, such as the second and fourth Sundays of March or the first and third Sundays of April, which would mean that the first sitting of the new Parliament could take place mid-May at the latest. Thus the new Government could be formed by the end of the Spring session. According to this proposal the mandate of a new Parliament after dissolution of the old one would last only until the mandate of the dissolved Parliament would have lasted. Furthermore, it is suggested that no dissolution would be allowed to take place within one year (or

alternatively, six months) before the expiry of Parliament's mandate. This concept does not support the above proposal because the undue frequency of general elections would damage the stability of Parliament.

Within three (or alternatively, two) months of the dissolution of Parliament new elections must be held. In a state of emergency Parliament may not dissolve itself and may not be dissolved; if its mandate expires in a state of emergency, it is deemed to last until termination of the state of emergency.

5. The Structure of Parliament

One of the important questions of state organisation is whether the legislative body should remain a single-chamber Parliament or should divided into two chambers to avoid undue concentration of power.

A two-chamber Parliament has considerable tradition in Hungary, since the legislative body was a two chamber Parliament until 1945, subject only to short interruptions. Most European countries also have a two-chamber Parliament. This is usually due to a federal state structure. However, several countries have changed to single-chamber Parliament in recent decades.

In Hungary, too, there are views in favour of a two-chamber Parliament. Normally the second chamber reflects interest and values different from the house of representatives which represents the parties, thus providing a balancing factor and a type of brake on the lower house. In this country arguments in favour of a second chamber would be that it would help to enforce the constitutional provision which prescribes parliamentary representation of national and ethnic minorities; in addition, it could represent municipalities, public corporations, trade unions and churches. According to some views, however, the second chamber should be created solely for representation of the municipalities.

Compared to the first chamber, the second chamber would have considerably narrower scope of authority: It would not have the right to control the

Government, rather, it would play a role mainly in creation of the constitution and acts, as well as in reaching decisions upon appointments of the head of state, judges of the Constitutional Court, etc.

According to the present legal attitude in Hungary there is no need for a second chamber. According to experience so far, trade unions should play their role in the preliminary discussions of draft bills before they are submitted. This should be stated in the constitution. The bodies outside the legislature, such as the head of state, the Constitutional Court and the State Audit Office can carry out appropriate controls over decisions of the representatives. Thus, in line with the Government's manifesto this concept rejects the idea of a second chamber.

V. The Legislatory Process

1. The Position of the Provisions on the Legislatory Process within the Constitution

The Constitution should determine the legislatory organs and the fundamental rules of the legislatory process. If the provisions in the Constitution are sufficiently detailed, no separate act regarding the legislatory process is needed. The rules of the legislatory process may be contained in a separate chapter of the Constitution, or attached to the section on each legislatory organ. In such a case the general provisions could be attached to the rules of the legislatory process. This concept favours the latter solution.

2. The Legal Rules and their Hierarchy

a. Legal rules should be subject to the following hierarchy:

- the Constitution
- acts
- Government decrees
- ministerial decrees
- municipalities' decrees .

In order to emphasise the special status of the Constitution, it should be stated that the basis of the legal system of the Hungarian Republic is the Constitution. The Constitution and all constitutional legal rules govern all citizens and state bodies, as well as foreigners under the jurisdiction of the Hungarian state. Any legal rules or other decisions contrary to the Constitution are void. The constitutional or unconstitutional nature of legal rules is decided by the Constitutional Court. All unconstitutional legal rules are binding unless and until

declared unconstitutional by the Constitutional Court. Courts of law may not review the constitutional or unconstitutional nature of legal rules but they are entitled to request .the Constitutional Court to review the constituitionality the legal rules they consider to be unconstitutional..

b. Some acts must be differentiated from others with regards to the rules of their adoption by Parliament, even though they do not have a special constitutional status. These include acts which regulate detailed issues of the most important elements of state structure, such as the courts of law, the Constitutional Court, the Parliamentary Commissioner of Citizens' Rights, the State Audit Office (if retained in its present status), public prosecution, situations endangering the country's security, the armed and police forces, the state security services and the municipalities. The acts regulating these issues must be passed by qualified majority or a special process (so-called organic acts). The same should apply to acts on the election system, referenda and the Rules of the House of Parliament. With regards to the requirement of a qualified majority, two proposals have been put forward: Firstly, the present rule may be retained, under which the affirmative votes of two-thirds of the parliamentary representatives present are needed to adopt these acts. Secondly, the acts may be subject to affirmative votes by more than half of all parliamentary representatives. This concept proposes adoption of the first solution.

c. Due to provisions of the Act on the Legislatory Process the legislatory competence of Parliament is far too wide. This slows down decision-making and hinders the Government's freedom to act even in matters where it does not seem to be necessary to retain the exclusive decision-making right of Parliament. (Years ago the Act on the Legislatory Process protected Parliament against the Presidential Commission, since previously the Presidential Commission had been able to create "decrees of legal force" in all matters apart from the Constitution.) Thus the legislatory competence of Parliament and Government must be made more balanced. One solution would be for the Constitution to include a list of all matters in which Parliament has exclusive legislatory

competence. Thus the Government's right to pass decrees regarding unlisted matters could be enforced on a wider basis. In contrast, in matters exclusively reserved to Parliament the Government would be able to pass decrees only if expressly authorised to do so in the act and only if this is not expressly prohibited by the Constitution, such as in criminal law cases.

Nonetheless, Parliament must be given the right to legislate in matters not exclusively reserved for its competence, otherwise the legislatory function of Parliament, and thus the scope of legislation passed before the public and with the co-operation of the parliamentary opposition would be unduly reduced. Since acts may be passed only if initiated by the Government and (even if initiated by a representative) only with the agreement of the majority in Parliament, in effect the Government would decide at what level legislation regarding particular issues should be created.

d. The introduction of "act-substituting decrees" should be considered. The constitution should authorize the Government to amend or repeal existing acts (decrees of legal force) not on matters exclusively reserved for Parliament, subject to the subsequent approval of Parliament. If Parliament does not approve the creation of the decree, it must not be published. (The right of approval may be exercised by a parliamentary commission).

e. Whether Parliament should have the right under the constitution to authorise the Government to issue act-substituting decrees in matters exclusively reserved for Parliament (determining the particular subject and duration), is a matter to be considered separately. Such a decree would have the same force as acts. After expiry of the duration determined in the authorisation the decree would automatically lose its force, unless expressly kept in force by Parliament. This concept does not agree to the institution of act-substituting decrees because of the need to protect the exclusive competence of Parliament to create acts.

f. In conformity with decisions of the Constitutional Court, the constitution should state the rule that even in matters exclusively reserved for Parliament not all questions of detail need to be regulated in the act. Thus the act should contain issues of constitutional guarantees, while rules of law on enforcement would deal with particular details.

3. Rules regarding the Creation of Acts

a. The constitution should provide a list of persons with the right to initiate acts. This would mean both the right to submit a bill and a wider right to submit a motion indicating the regulatory principles of an act to be created. Since the latter method is not used in practice (even though the Act on the Legislatory Process contains detailed provisions regarding this method), in the future the initiation of an act should simply mean the submission of a bill.

At present acts may be initiated by the President of the Republic. the Government, all parliamentary commissions and parliamentary .representatives. This list should be both widened and narrowed.

The balancing function of the President of the Republic does not conform to his right to initiate acts. In order to fulfil his constitutional tasks, his present right to review acts passed by Parliament is sufficient. Nor is it justified to confer such a right on parliamentary commissions. Under the present Rules of the House the appropriate commission according to the subject-matter carries out the evaluation of bills and amendment proposals submitted, thus putting the wording of the bill into its final form. If the same body were both to initiate and review particular bills, this would cause an anomalous situation. This does not prevent the forming of parliamentary commissions for the preparation of particular acts, but the bills thus prepared would be submitted by parliamentary representatives. (This is what happened when the Rules of the House were passed.) The Rules of the House may subject to conditions the debate of a bill submitted by a representative .

On the other hand, there are organisations independent from the Government, for which the present acts provide that they should submit bills regarding their own organisation (e.g. the Constitutional Court's agenda) or their budget (e.g. the social service municipalities) themselves, without intervention by the Government. It has been suggested that the constitution should be amended to solve the contradiction between the said acts and the constitution, or even to give other bodies the right to submit bills regarding themselves (e.g. the Hungarian National Bank). According to a proposal the different bodies need not be listed in the constitution, it would suffice to state that a separate act may authorise other bodies to initiate acts on particular subject-matters. This proposal is based on practical considerations, nonetheless seems to contradict an important principle of parliamentary democracies, under which only members of the legislature or the Executive may initiate acts. Therefore this concept is against the adoption of the above proposal.

However, provisions should be included to regulate the initiation of acts by the public. This would mean a collective right exercisable by least 50,000 citizens. No acts may be initiated by the public with regards to the restriction of fundamental rights, revenues, the central budget, the right to acquire property or general amnesty. (Under some proposals public initiation of amendments to the constitution or to the act on state organisation, as well as referenda on these matters should also be outlawed. This concept is against the proposal, as citizens may not be forfeited their right to express their views on questions of major importance.) Furthermore, the constitution should make clear that any initiation by the public may not concern any decision by Parliament, only the initiation of acts. Representatives of initiators have certain rights in the legislatory process. The detailed rules of public initiation are contained in the Act on Referenda, and the provisions regarding the initiation of acts in general are spelt out in the Rules of the House.

b. Taking the present Rules of the House as its basis, the constitution should provide more detailed provisions regarding the legislatory

process, including the order of decisions, the legislatory role of the commissions, as well as the rights of the parliamentary minority. The constitution should also contain regulations regarding the so-called exceptional procedure, under which the detailed debate of particular bills and the vote on amendment proposals is carried out in the commission. (Further possibilities of legislation by commissions should also be examined.)

c. A simplified legislatory procedure would be the case where the Government requests Parliament to pass the bill without amendments by treating it as an issue of confidence, that is, asking a vote of confidence with regards to the bill.

4. Rules regarding the Creation of Decrees

a. The Government may issue decrees as primary legislation in matters not exclusively reserved for regulation by acts, and decrees as secondary legislation, if expressly authorised by an act to enforce the act in question. Government decrees are signed by the Prime Minister and must be published in the official journal. Apart from act-substituting decrees, Government decrees may not be contrary to acts.

b. The Prime Minister and ministers may, in the scope of fulfilling their jobs, issue decrees to enforce an act or a Government decree on the basis of authorisation by such an act or decree. The official decree is signed by the member of the Government issuing it and it must be published in an official journal. The decree may not be contrary to acts or Government decrees.

c. The local body of representatives or the general meeting may issue a decree within its line of duty, which may not be contrary to acts, Government decrees or ministerial decrees. However, Government decrees or ministerial decrees may not contain provisions regarding an issue which has been delegated to municipalities by an act. Decrees by

municipalities are signed by the mayor (chief mayor, president of the body of representatives) and the notary (chief notary). Decrees must be published by the method normally used in the particular locality.

d. Each decree must state the superior rule (the constitution, act or Government decree) which has authorised the legislator to create the decree.

5. General Provisions Regarding the Legislatory Process

a. For reasons of guarantees, the constitution must state that rules with retrospective effect may be made only in justified cases, and only if this is favourable for the persons subject to the rules and is not prejudicial to others. An act or omission by a person may not be rendered unlawful retrospectively No obligation or rule which is stricter than previously may be entered into force retrospectively.

The following general principle of the interpretation and application of law should be stated: Higher-level rules prevail over lower-level rules, amongst rules of the same level particular rules prevail over general rules and rules made later in time prevail over earlier rules. The constitution should also declare that disputes regarding the interpretation and application of law will be eventually decided by the Constitutional Court and the courts of law. (Thus the possibility of interpretation outside the act by the legislator is terminated).

b. The constitution may state that Parliament, the President of the Republic or the Government may pass general decisions in matters in their scope of duty which do not require the creation of legal rules; such decisions may be published in the official journal. Those normative decisions which, though not directly applicable to citizens, will later be the basis of obligatory rules through further legal acts, must be published (the affirmation or approval of international agreements, publication of a state of emergency, peace treaty etc.).

It is unnecessary to list other legal means of state control which are not considered legal rules; these may be regulated by Government decrees. These may impose duties or confer rights only upon inferior bodies, but (unless they are confidential) must be made accessible to citizens upon request.

c. The official journal of the Hungarian Republic is the Hungarian Gazette. The Government shall determine in a decree the principles of editing the Hungarian Gazette, the scope of miscellaneous decisions and notices to be published in it, as well as the rules of rectification and of editing the legal rules.

d. Legal rules enter into force upon publication. This means that all rules of law must be published. Any unpublished legal rule shall not be binding, the application of which the court shall refuse.

   In cases of acts publication shall be effected by the President of the Republic, in cases of Government decrees, ministerial decrees and municipalities' decrees by the legislator. It has been suggested that the President of the Republic should include a note of publication on acts, in which the constitutional competence of the head of state would be expressed. This is a suggestion to be considered.

e. Every rule must state the date of its commencement. According to a proposal the constitution should provide: A minimum of 15 days must elapse between the publication and commencement of a legal rule; this period is increased to 3 months in cases of longer rules and rules introducing new legal institutions or requiring more preparation by the persons applying the law. However, this rule should not be applied too rigidly and the possibility of departure from the rule must be retained. Nevertheless, it would be rather difficult to phrase such a provision and therefore perhaps it should be omitted.

6. Referendum

In a parliamentary democracy (within the constitutional framework) referenda serve the purposes of supplementing and influencing the exercise of power by representatives and of correcting decisions by the representative body. The most important rules of referenda must be recorded in the constitution. (Our present constitution merely mentions this legal institution and delegates its detailed regulation to an act to be passed by a two-thirds majority.)

The present enacted rules should be re-developed according to international experience, as well as the decisions of the Constitutional Court. The differentiation between the types of referenda should be upheld: referenda with a consultative purpose and referenda to decide an issue. The number of signatures necessary to put an issue to referendum should be increased from the present 100.000.

Accordingly, 300.000 citizens, Parliament or the Government may request a referendum on any important political issue. The result of a referendum does not legally bind the decision-maker but must be obviously taken into account due to its political importance.

The Hungarian provisions allow the holding of a referendum to decide an issue in nearly all matters in the Parliament's scope of competence; these provisions are far more wide-reaching than most constitutions of European countries. This should be changed and its application narrowed down to acts. Referenda should be prohibited in the same issues as public initiation of acts. In order to protect the institutions of direct democracy, the number of persons entitled to request a referendum must not be changed considerably. This concept proposes the following provisions:

A referendum with obligatory force may be held against an act passed by Parliament. Such a referendum may be requested by 300.000 citizens or one-fifth of the parliamentary representatives.

Parliament may request a referendum in order to affirm an act passed by it.

The constitution may subject the validity of certain decisions by Parliament to affirmation by a referendum. (In such matters the holding of a referendum would be obligatory.)

A referendum requested by citizens must be announced to the President of the Republic and the collected signatures must be handed over to him. Such a request will be valid only if the appropriate number of signatures is collected within 60 days of the acceptance of the request by the head of state. The President of the Republic shall declare the validity or otherwise of the signatures.

The President of the Republic sets the time of the referendum for a day not earlier than 30 days but no later than 60 days after the announcement. A referendum may be called to decide more than one question at the same time and may coincide with the holding of national elections.

If the President of the Republic declares the request for a referendum - or any question in the request - unconstitutional, he shall turn to the Constitutional Court within 15 days to seek its opinion. The opinion of the Constitutional Court shall be binding upon the President of the Republic. If, according to the opinion of the Constitutional Court the request is wholly or partly unconstitutional, the President of the Republic shall refuse the holding of a referendum in the relevant subject-matter and shall not allow the collection of signatures. Otherwise he shall hold a referendum, he has no right of evaluation. The President of the Republic may refuse to hold a referendum without an opinion by the Constitutional Court, if the necessary number of signatures has not been collected or has been collected outside the prescribed time-limit or the number of parliamentary representatives requesting the referendum has been less than the prescribed figure.

The referendum shall be valid if more than half of the persons entitled to vote have casted a valid vote. The proposition put to the referendum shall be deemed to be accepted if the majority of valid votes has been in favour of it. The President of the Republic shall declare the result of a referendum to repeal (wholly or partly) a valid act, and if successful, the annulment or part-annulment of the act in question.

A proposition which has been rejected may not be the subject of a referendum, public initiation or a bill for three years, if its substance is the same. An act affirmed by referendum may not be amended for three years. An exception to both cases is if the circumstances have substantially changed. Whether the circumstances have changed substantially shall be determined by the Constitutional Court upon a proposal by Parliament or the Government.

According to an alternative suggestion referenda should not be subject to a validity threshold. This would motivate all political forces to actively participate in the referendum, since the issues would be decided by the votes of participants and the success would not depend on the number of people absent. In such a case, however, the figure required to request a referendum should be raised: In case of a request by citizens this number should be 300.000 and if requested by Parliament, two-fifths of the representatives.

Most European countries provide for a validity threshold, thus this concept prefers the first version.

VI. International Agreements

1. The Relationship between International Law and Hungarian Law

a. The countries of the world have found two distinct ways of dealing with the relationship between international law and their domestic laws in their constitutions. Under the constitutions of countries following the so-called dualist principle rules of international law may have effects in their internal legal system only if they have been published by incorporation into some domestic legal rule; the level of the domestic rule also determines the level of force of the international legal rule. Under the monistic principle no such transformation is necessary: international law becomes domestic law through publication in the official journal and (under the general principle) prevails over all domestic legal norms apart from the constitution. This is supported by the argument that in inter-state relationships no country may justify its non-enforcement of some international legal norm with the argument that it is contrary to some domestic legal rule.

The differences between the dualistic and monistic principle are only relevant in cases of bilateral and multilateral international agreements. This is because under the generally binding international treaties concluded under the auspices of the United Nations the generally acknowledged principles and rules of international law (even if their exact scope and contents are sometimes not clear) are still binding on member states even if not formally incorporated into the domestic laws. The other automatically binding international legal rules apply if the country is a member of an international organisation, such as the European Union, and upon joining that organisation gives up part of its sovereignty . In such a case the decision or recommendation of the responsible body of the international organisation applies as automatically binding. Therefore in these two areas incorporation of the international rule as domestic law is not necessary.

Regardless of the establishment of the integration bodies, the world is becoming more and more international and more and more bilateral or multilateral international agreements are concluded which are directly applicable to citizens and legal persons. Thus the development of law in Europe shows clear signs of accepting the monistic principle since this is the simpler, quicker and clearer method of adopting international legal norms.

b. In the light of the above the constitution should firstly record that the Hungarian Republic respects the generally acknowledged principles of international law and secures their *bona fide* application. The most important rule regarding the relationship between international law and domestic law should also be stated, namely, that the valid international agreements entered into by the Hungarian state and published in Hungary form part of Hungarian Law. In the order of legal rules these agreements follow the constitution and prevail over acts. (Their is a view according to which the application of international agreements should be subject to the condition of mutuality. This means that out of the valid international agreements those where a state fails to fulfil its duties towards Hungary, whether based on the agreement in question, or

flowing from international law in general, should not be applied towards that state. Most constitutions do not contain such a condition since it can be deduced from the rules of international law at any rate, thus this concept does not favour this view.)

Publication is effected not in the form of a legal rule but by simple publication in the official journal. Publication is the duty of the Government. There has been a suggestion under which agreements directly effecting the rights or duties of citizens (e.g. agreements on double taxation and criminal legal aid) should be published in the form of an act. This would make it easier for citizens to apply the law as they would not have to keep an eye on all international agreements, only on those published by an act. The adoption of such a suggestion should therefore be considered.

No legal rule may be contrary to a valid, published international agreement entered into by the Hungarian state. If an international agreement and a domestic rule (other than the constitution) conflict, the international agreement must be applied.

c In order that our domestic law and international agreements are in conformity, a mechanism of control to be used for the conclusion of international agreements should be established. It should be noted that Hungary has the sovereign right to conclude international agreements, thus Hungary may enter into any agreement or international treaty it deems necessary. If internal political or legal problems arise in connection with some provision of the agreement, these may be solved in the course of preparation, through involvement of the parliamentary commissions. Some multilateral agreements allow countries to join subject to the subsequent fulfilment of conditions. The legal rules on enforcement of the treaty may fine-tune the connection of the treaty into the domestic system.

d. In view of the connection between international agreements and the constitution, the constitution should state that if the international agreement to be concluded contains provisions contrary to the

constitution, the agreement must not be entered into, or its conclusion will be possible only after or contemporaneously with amendment of the constitution.

e. Apart from the relationship between international agreements and domestic law a further issue to be regulated is the handing over of our sovereignty to international organisations and the validity of the decisions and provisions of international bodies. In connection with this it should be stated that only an international agreement affirmed by Parliament or an act based thereon may hand over to an international body any legislatory, executive or judicial competence. The exercise of competence determined by the constitution may be handed over only by a decision adopted by qualified majority. The decision (recommendation or provision) of an international body may be generally binding in Hungary only if it has been published in Hungary.

2. The Conclusion of International Agreements

a. International agreements are prepared by the Government. They are concluded through the affirmation of the President of the Republic or the approving decision of Parliament.

Parliament makes decisions on international agreements which

- are of exceptional importance in view of the external relations of the Republic of Hungary or its constitutional order, and/or
- concern a state of war or a peace treaty, basic and extensive issues of the armed defence of the nation, the application of the armed forces abroad for fighting activities, the transit, deployment or stationing of foreign armed forces for the purposes of fighting, or the state border or territory;
- concern an issue which needs to be enacted or requires the creation, amendment or repeal of an act;

- contains considerable unplanned financial obligations for the state.

Those international agreements for which the constitution prescribes a decision by qualified majority, (such as peace treaties or agreements regarding the country's physical integrity or the change of its borders) must be affirmed by qualified majority. A provision should be considered under which in certain matters the constitution would subject the validity of Parliament's decision to affirmation by referendum. These matters would be those mostly concerning state sovereignty, such as changing the state territory, joining a military or political organisation etc.

b. If the international agreement does not belong to the competence of Parliament but provides for a requirement of affirmation, the President of the Republic shall conclude the agreement. In connection with conclusion of the agreement the President of the Republic would have the same competence as with the signature of acts: In case of a problem regarding the constitutionality of the agreement he may ask for the opinion of the Constitutional Court or may send back the agreement to the Government once for re-consideration, stating his opinion. He must sign the agreement if sent to him again for affirmative signature.

   The Government shall decide upon the conclusion of acts not requiring affirmation, in matters belonging to its scope of duty.

c. The Government shall act with special care in the course of preparing international agreements in order that the agreement conforms to the constitution. Prior to conclusion of the agreement the Constitutional Court states its opinion if requested by the Government or the organ entitled to conclude the agreement.

   The detailed rules of concluding international agreements are contained in an act.

3. International Law Provisions in the Constitution

The provisions regarding the relationship between international law and domestic law and the conclusion of international agreements may be placed in a separate chapter of the constitution, however this concept suggests that the rules regarding the relationship should be contained among the general provisions and the rules of competence regarding the conclusion of agreements should be among the rules of each state body, similar to the rules on legislation.

VII. The President of the Republic

1. The Position of the President of the Republic in the System of Power, the Nature of the Post of Head of State

Following the existing constitution, this concept favours the retention of a parliamentary republic and does not propose to change the position of the head of state within the system of separation of powers. Thus, as presently provided, Hungary's head of state is the President of the Republic who expresses the unity of the nation and guards the democratic workings of the state organisation. The President of the Republic does not participate in the legislative or executive power but fulfils a balancing role and thus has autonomous scopes of duty and rights, separate from the individual branches of power. In contrast to the phraseology of the existing constitution these rights not only ensure the balance between Parliament and the Government but concern the workings of all branches of power.

2. The Election, Oath and Substitution of the President of the Republic

a. The balancing role of the head of state presumes that he does not gain his mandate from the current parliamentary majority. Accordingly this concept does not adopt the current constitutional provisions under which in the course of elections by Parliament the post of president could be gained through relative majority in the third round, but puts forward three versions,

all of which ensure that the election of the head of state is based on wide consensus.

According to the first version the President of the Republic gains his mandate by direct election.This is the solution which is most effective in securing the widest backing of the president. It does not mean a step towards a presidential or semi-presidential form of Government since there is no close connection between the method of electing the President of the Republic and the type and extent of his rights. (The directly elected presidents of western- and southern-European countries are partly heads of the Executive and participate on the exercise of executive powers, partly have a balancing role, as in Hungary.)

Every Hungarian citizen over the age of 35 may run for President if he or she has collected valid nominations from at least 100.000 citizens entitled to vote. (It has been suggested that the number of persons to nominate a candidate should be reduced. This concept is against the suggestion since it is desirable that only well-known persons with considerable support should become candidates.) In the interests of wide public support the head of state is elected through absolute majority; if no candidate obtains more than half of the votes in the first round, the two candidates with the highest number of votes get into the second round. The head of state has a mandate for five (six) years and may be re-elected once only.

The second version is based on the method used in countries with a federal or regional state structure. In these countries the persons electing the president include not only the legislature but also representatives of member states or regions, so that the principle of territorial autonomy is complied with and wide consensus is reached. Due to the unitarian state structure, the body electing the Hungarian president should also include delegates from municipalities, as well as representatives of trade unions and public bodies. (However, some are in favour of a body solely made up from delegates of municipalities.)

Under this version the President of the Republic is elected by Parliament and an additional 150 delegates from local municipalities, the national

organisations of national and ethnic minorities, the trade unions of employers and employees, the economical and professional societies, the Hungarian Academy of Sciences, the universities and polytechnics. Any Hungarian citizen over the age of 35 may run for president if he or she has obtained the written nominations of at least 80 parliamentary representatives or delegates. The nomination must be handed in to the President of Parliament before the election is announced. Each parliamentary representative or delegate may nominate one delegate only.

The head of state is elected by Parliament and the delegates by secret ballot. In the first round the delegate who receives the votes of two-thirds of the representatives and delegates gets the post of president. If no candidate achieves this majority, new voting must be held on the basis of new nominations. In the second round, too, the votes of two-thirds of the representatives and delegates are needed to win.

If the second vote is also unsuccessful, a third round must be held. Here only the winner and the runner-up of the second round may be voted for. In the third round the delegate obtaining a relative majority of votes is elected. The head of state is elected for five years and may be re-elected once only.

The third version re-develops the existing rules of election and aims to ensure that the president's support is wider than just the parliamentary majority by subjecting his election to a qualified majority vote until the sixth round. This alternative provides for dissolution of the Legislative after three unsuccessful votes. (Within western- and southern-Europe Greece is the only country where the President of the Republic is elected by a single-chamber Parliament and this version is used there.)

According to this alternative the head of state is elected by Parliament on the basis of nominations from 50 representatives, in a secret ballot. In the first round the delegate who obtains the votes of two-thirds of the representatives wins. If no delegate obtains this majority in the first round, a new vote must be held. In the second round, too, a two-thirds majority vote is required to be elected. If the second round is also unsuccessful, a third

round must be held on the basis of new nominations and the person who obtains the votes of three-fifths of the representatives is elected.

If the third round also brings no result, the head of state in office dissolves Parliament (without the request or counter-signature of the Prime Minister or ministers) and calls new general elections. On the basis of new nominations the newly elected Parliament holds a new vote on the day following its first sitting. in this vote the person obtaining the votes of three-fifths of the representatives is elected.

If the fourth vote is also unsuccessful, a fifth round must be held on the basis of new nominations where the delegates who obtains the votes of more than half of the representatives wins. If nobody attains this majority, the vote is repeated for the sixth time. This time only the winner and the runner-up of the fifth round may be voted for. In the sixth round the person who obtains the relative majority of votes wins. The head of state gets a mandate for five years and may be re-elected once only.

b. The President of the Republic is elected at least 30 days before the mandate of his predecessor expires (in case of direct election 60 at least 60 days before that date). If the mandate of his predecessor was prematurely terminated, the election must be held within 30 (60) days of the termination. The date of the election is determined by the President of Parliament. In case of election by Parliament (second and third versions),, if Parliament is dissolved or there are less than three months until the end of its term, the President shall be elected within 30 days of the first sitting of the new Parliament. Until such time the previous Parliament remains in office and if he needs to be substituted, the current president of Parliament acts as head of state. In case of the third version, if Parliament has been dissolved due to an unsuccessful third round, the head of state remains in office until the election of the new President of the Republic.

Similarly to existing provisions, the newly elected President of the Republic takes his office upon expiry of his predecessor's mandate, or if the mandate is terminated prematurely he takes his office on the day after the results of

the election are announced; prior to taking his office he swears an oath before Parliament.

c. This concept deals with the President's substitution similarly to the existing constitution. Thus if the President of the Republic is temporarily incapacitated or his mandate is terminated early for some reason, the rights of the head of state are exercised by the President of Parliament until the new President of the Republic takes office, subject to the restriction that he may not submit any act to Parliament for consideration or to the Constitutional Court for examination and may not dissolve Parliament (except for the case in the third version). In contrast to existing provisions, a provisional President of the Republic must not exercise those rights of appointment for which no counter-signature from the prime minister (minister) is needed; he may, however exercise his right of individual mercy. Thus the President of Parliament acting for the head of state does not have the rights which are most important to his balancing role.

3. Rules of Incompatibility regarding the President

This concept contains rules of incompatibility which are stricter than the existing provisions. Under the new rules the post of President of the Republic is incompatible with any other state, social or economic post or office. The President of the Republic may not be in other gainful employment and may not accept any remuneration for other activities, apart from activities under copyright protection. Thus in contrast to present constitutional rules the head of state may not fulfil economic posts, thus may not be a director or member of the supervisory board of any state- or private-owned companies. An even stricter rule could also be considered under which the president would not even be allowed to accept remuneration for activities under copyright protection.

4. The scope of Duty and Competence of the President of the Republic

This concept deals with the presidential rights regarding each branch of power individually.Thus the rights originating from the balancing role of the President may be separated from his formal rights, the exercise of which require the recommendation and counter-signature of the Prime Minister (minister). The separation of symbolic and proper functions also fulfils the requirement of the Executive's unity. This, of course does not mean that the rules will all be in the same chapter (the chapter on the head of state) since the subject-matter most of these provisions fits into chapters on certain elements of the state system.

a. The President's Scope of Duty and Competence regarding the Functioning of Parliament

Subject to minor amendments, this concept retains the existing provisions regarding the presidential rights in connection with the functioning of Parliament. Accordingly the President convenes and opens the first sitting of Parliament within one month following the elections. If requested by the head of state, an extraordinary sitting of Parliament shall be called. The request shall contain the reason for calling a sitting, as well as the suggested time and agenda.

The concept contains two versions regarding the adjournment of a parliamentary sitting.

In order to emphasise the balancing role of the President, the first version prohibits the calling of a parliamentary sitting during the adjournment. This is because the President normally exercises his right to adjourn in order to make time to reach consensus within Parliament, or slow down or stop Parliament from reaching a decision he considers unfavourable.

As presently, under the second version the President of the Republic may adjourn the sitting of Parliament once in a parliamentary term; however, during the adjournment the President of Parliament must call a parliamentary sitting if requested in writing by one-fifth of the representatives.

The President of the Republic may participate and take the floor at parliamentary sittings and sittings of parliamentary commissions. As a new development, he may send a message to Parliament regarding the general political situation or other important issues. Parliament may not debate such a message.

b. The President's Scope of Duty and Competence in the Legislatory Process (and other parliamentary decisions).

Under the concept the President of the Republic does not participate in the exercise of the executive or legislative powers; thus his legislatory role is considerably narrowed. In contrast to existing provisions, the head of state may not submit bills (draft acts) to Parliament and may not propose that a parliamentary decision is reached or a political declaration accepted. However, instead of Parliament, the President of the Republic enjoys the right to call a referendum.

At the same time, in the light of his balancing role the President may still send back an adopted act to Parliament once for consideration, indicating his observations. He may also send an act to the Constitutional Court for review before signature if he has problems regarding its constitutionality.

It has been suggested that similarly to foreign rules, the presidential veto should be emphasised by a requirement of qualified majority: Parliament would be able to pass an act sent back by the President only by the votes of more than half of all representatives (unless the constitution provides for a stricter qualified majority). The concept is against this suggestion as it would unduly strengthen the presidential power.

c. The President's Scope of Duty and Competence regarding the Executive

According to the concept only the Government may exercise executive power. Thus the Parliament's activities in this sphere are limited: He may co-operate when the Government is formed and dissolve Parliament if

there is not a parliamentary majority. When officers of the Executive are appointed, the head of state may not consider the nominations since the Prime Minister assumes responsibility for this through his signature. However, the President may refuse to sign the nomination if the legal conditions of the appointment are not fulfilled.

d. The President's Competence in Matters of Foreign Policy

In parliamentary democracies foreign policy belongs to the Government's tasks, hence Parliament or the head of state may exercise rights in this sphere only if expressly authorised by the constitution.

As the head of state is not part of the Executive, the concept gives the Government the dominant role in matters of foreign policy. Similar to existing provisions, the President of the Republic represents the state and after the nomination and counter-signature of the Foreign Minister, appoints and receives ambassadors and ministers. The preparation, initiation and creation of international agreements is carried out by the Government. Whether such agreements should be entered into is decided by Parliament, the President of the Republic or the Government, according to the rules of competence spelt out in the constitution. The head of state concludes international agreements which require affirmation but do not belong to the competence of Parliament. Owing to the Government's responsibility in foreign matters the President of the Republic affirms international agreements after the proposition and counter-signature of the Foreign Minister.

e. The President's Competence regarding Supervision of the Armed Forces

Similarly to current rules, the concept allocates rights in connection with supervision of the armed forces to both Parliament, the President of the Republic and the Government and continues to confer the post of Commander-in-Chief of the Armed Forces upon the head of state. The head of state does not fulfil this traditional presidential function as a member of the Executive. Rather, the post flows from the President's role to provide a balance between the branches of power which is particularly important in the supervising the armed forces. Thus, similarly to Parliament, the head of state influences the Government's supervisory activities from "outside" and so the exercise of his rights as Commander-in-chief cannot lead to duplication of the executive power.

The President of the Republic chairs the Defence Commission as Commander-in-Chief.

The concept outlines the President's rights of appointment and dismissal in the armed forces, upholding the provisions of the existing constitution and the Defence Act. The President of the Republic shall continue to appoint and promote generals, appoint and dismiss the commander and chief of staff of the army. Unless the border protection forces of the Border Guards are integrated into the Hungarian Army, the President shall also continue to appoint and dismiss the national commander of the Border Guards. The head of state shall decide upon appointments and dismissals after the nominations and signatures of the Defence Minister or the Minster of the Interior; before signing the nominations he shall examine if they comply with legal requirements and whether their performance damages the democratic workings of the state system.

The constitution shall also contain the provision presently spelt out in the Defence Act, under which the President of the Republic approves the Defence Plan of the country. The Defence Plan of the country is an aggregate system of plans which includes the mobilization plan, the plan of armed defence and the state of emergency plan of the country.

f. The President's Rights Concerning Municipalities and the Division of the State's Territory

On the one hand the concept retains existing provisions of the constitution, on the other hand it raises particular rules of the Act on Municipalities to the level of constitutional rules. Accordingly, the President of the Republic calls the general elections of municipalities' representatives and mayors. If Parliament dissolves the local body of representatives, the President appoints a municipality commissioner (currently called commissioner of the republic) to fulfil certain tasks of the municipalities and administrative duties. Furthermore, upon request by the municipalities the President determines whether to grant the status of town, decides upon the establishment of a parish, the unification of parishes, the termination of unified parishes as well as on naming localities. The head of state determines the day of elections autonomously, without the need for a proposition and counter-signature by a minister; whereas he appoints the commissioners of the republic upon a proposition and counter-signature of the Minister of the Interior. In matters of territorial divisions the local municipalities submits the proposition to the President via the minister of the interior; in such cases the head of state decides without the minister's counter-signature since he is merely confirming the will of local citizens already expressed in a referendum or other form.

g. The President's. Competence Regarding the Administration of Justice and Protection of the Constitution

Due to his neutral position of power, the President can vouch for the fair exercise of his rights of appointing or nominating judges, judges of the Constitutional Court, commissioners of rights and leaders of the public prosecution, regardless of current political interest. This concept suggests a new method of appointment regarding mainly judges, the Public Prosecutor and his deputies, by establishing the National Council of the Administration of Justice. This body would be chaired by the President of the Republic and

in future it would decide upon appointments, promotions and dismissals of judges.

As one alternative, the concept suggests new rules of appointing judges of the Constitutional Court. Under this alternative the President of the Republic would appoint judges of the Constitutional Court on the basis of three factors. His decision would be based firstly on the Parliament's proposal, secondly, on proposals of professional bodies, thirdly on the results of his own consultations. The present rules of appointing and electing parliamentary commissioners would remain unchanged.

h. The President's Competence regarding National Bodies independent from the Executive

Out of the national organisations independent from the Executive and not part of either branch of power the Hungarian National Bank is the only one for which the present constitution contains provisions. The concept considerably widens the scope of organisations independent from the Executive and in order to secure public interests, confers upon the President the right to appoint and dismiss the leaders of this bodies.

The constitution includes two alternatives regarding the scope of the bodies in question.

Under the first alternative the bodies independent from the Executive would include the Hungarian National Bank, state universities, the Hungarian Academy of Sciences, the Economic Competition Office and the central Statistical Office. The President decides the appointment, dismissal or affirmation of the leaders of these bodies without the need for a proposition or counter-signature by the Prime Minister (minister), on the basis of his own consultations, or upon the request of certain organisations defined in a separate act.

The President of the Republic also supervises the bodies which carry out public administration tasks, such as the Economic Competition Office and

the Central Statistical Office. By virtue of this function in exceptional cases the President may give employer's orders to the chairmen of these bodies, in order to ensure their lawful functioning.

With regards to the President's rights the second alternative gives the scope of bodies independent from the Executive a much narrower definition. Under this version because the Economic Competition Office and the Central Statistical Office have public administration tasks, their chairmen should be appointed and dismissed by the Prime Minister, rather than the President and the Prime Minister, rather than the head of state would have the above limited powers of supervising these bodies.

As a new provision, the constitution would state that the Parliament would determine the internal organisational rules of the Office of the President of the Republic, as well as appoint and dismiss the top officers of the Office. (The adoption of the act regulating the President's remuneration and allowances as well as his Office would not require qualified majority.)

i. The President's Miscellaneous Competence

This concept contains rules similar to the current constitution regarding the traditional presidential rights not connected to the branches or organisations of power. Accordingly, the President of the Republic continues to award the orders, honours and titles defined by an act, grants permissions to wear the orders of foreign states, exercises the right to grant mercy and decides matters of citizenship. Furthermore, he decides in all matters exclusively for his competence by a separate act. The head of state exercises these rights on the basis of propositions by the Prime Minister (Minister), however only matters of citizenship require counter-signature.

In the traditional model of parliamentary republics, the President of the Republic exercises executive power through the Government, thus his acts are valid only after counter-signature by the Prime Minister or appropriate

Minister. Through the counter-signature the Prime Minister (Minister) takes political responsibility for decisions of the President of the Republic and ensures that the formally divided Executive functions in a uniform way and that presidential acts do not conflict with the Government's political attitude. In this system, the President's scope of movement is further restricted by the fact that he usually exercises his rights not on his own initiative but on the basis of propositions by the Prime Minister (Ministers); thus propositions and counter-signatures are usually closely connected to each other.

Keeping the present constitutional structure, the concept establishes the modern form of parliamentary Government, in which - as referred to above - the head of state is separate from the Executive and the Legislative and has autonomous competence. However, contrary to the nature of the presidential post, as a main rule, the current provisions subject the exercise of presidential rights to counter-signature and list the decisions not requiring counter-signature as an exception (Nonetheless, presidential acts contained in other chapters of the constitution do not require counter-signature.) In order to solve this anomaly, as a general principle, the concept treats presidential acts as autonomous political decisions and only subjects presidential decisions to propositions and counter-signature by the Prime Minister (Minister) if such decisions directly concern the Executive. Accordingly, the President of the Republic requires the proposition and counter-signature of the Prime Minister (Minister) for the exercise of his rights to appoint, promote or dismiss Ministers, state secretaries, ambassadors, generals and the leaders of the army, for affirmation of international agreements and for decisions on matters of citizenship. In such cases, the head of state usually merely examines whether the proposition fulfils legal requirements and ensures that its performance will not jeopardize the democratic functioning of the state. If the proposition fulfils the formal and substantial requirements, the President of the Republic shall sign it within 15 days of its receipt and hand it over to the Prime Minister (Minister) for counter-signature.

The head of state makes decisions on issues not directly concerning the Executive on the basis of his own consultations or initiation by certain bodies defined in a separate act; no counter-signature is required for the validity of such decisions. Thus the President's rights flowing from his balancing role are exercised without the assumption of political responsibility by the Government. This, however does not mean a lack of responsibility, since the President of the Republic takes constitutional responsibility for his acts; if Parliament commences an impeachment procedure, it does so partly for political reasons. (As a consequence of the system of motions of no confidence, the determination of the Government's political responsibility is also restricted to exceptional occasions.

It should be noted that many suggest the retention of the present rule under which presidential acts generally need counter-signature by ministers. Others are of the view that counter-signature has no purpose in all cases where the presidential decision is made on the basis of a proposition by the person who counter-signs, since he would obviously not refuse to counter-sign a decision suggested by him. This concept has taken these views into account but suggests a different solution in view of the above arguments.

6. Termination of the Presidential Mandate

The concept contains regulations on termination of the presidential mandate similar to present provisions of the constitution. Accordingly, the presidential mandate terminates upon its expiry, the President's death, a situation where the president is unable to carry out his duties for over 90 days, a declaration of incompatibility, his resignation and dismissal from the office of President. The President's mandate expires on the day five (six) years after the day he took office.

At present it is the Parliament's task to determine the existence of a situation where the President is unable to carry out his duties, as well as incompatibility. However, these provisions are worrying since it enables a n indirect means of political impeachment. Therefore the concept entitles Parliament to initiate a

decision only and delegates the exercise of these rights to the Constitutional Court.

The head of state may resign from his post in a declaration addressed to Parliament. Parliament may, within 15 days ask the President of the Republic to reconsider his decision. If the President maintains his decision, Parliament may not refuse to acknowledge the resignation.

The President of the Republic may be dismissed from his post if he breaches the constitution or any other act in the exercise of his powers.

7. Impeachment of the President of the Republic

Keeping the existing provisions, the concept acknowledges only the legal responsibility of the head of state and entitles Parliament to commence an impeachment procedure and the Constitutional Court to determine the President's responsibility. If the President was directly elected, this would not concern the method of determining his constitutional responsibility since this is based on legal considerations. At the same time, direct election in itself does not give reason for any special political responsibility of the President which may be signified by his dismissal by way of referendum.

Thus under this concept one-fifth of parliamentary representatives may initiate the impeachment of the President of the Republic if he has been in breach of the constitution or other act in the course of exercising his powers. In order to commence the impeachment procedure the affirmative vote of two-thirds of the representatives is necessary by way of secret ballot. The President may not exercise his rights from the time the decision of Parliament is passed until conclusion of the impeachment procedure.

The Constitutional Court is competent to adjudicate upon the act in question. If, as a result of the procedure, the Constitutional Court determines that the law has been breached, it shall dismiss the President of the Republic from his office. (The present rules confer upon the Constitutional Court a right to evaiuate the situation, enabling the Constitutional Court to refrain from

dismissing the President, while determining a breach of the law.) If the Constitutional Court does not determine that the law has been breached, the President shall resume the exercise of his powers, unless his mandate has expired in the meantime.

The rules concerning the liability of the President in criminal law remain unchanged., subject to the difference that in case the Constitutional Court determines the criminal liability of the President, it must dismiss him from his office.

VIII. The Government and Public Administration

1. The Subject-Matters of the Provisions

a. This chapter of the constitution should contain provisions on two subject-matters. Firstly, the norms concerning the Government should be stated, including those regulating the relationship of Parliament and Government.

   In view of the fact that the present constitution's chapter on the Government includes nearly all subjects contained in modern European constitutions and no change in the Government system or the constitutional position and role of the Government has been suggested, here the provisions may be updated on the basis of practical experience.

   The second part of the chapter should include the currently missing provisions on public administration. Here the subjects to be regulated would be similar to those in most European constitutions: the most important organs and principles of public administration, as well as the basic rules of public service.

b. From the chapter of the current constitution on the Government the provision conferring a general right on the Government to review acts of inferior bodies should be omitted, as well as the rule enabling the Government to deprive a body of its competence to act in any issue of public administration.Te latter provision should not be allowed even in

public administration in its narrow sense, let alone with public administration rights of municipalities.

The right to review acts of bodies should be established by different means and the prohibition of the forfeiture of competence made complete.

2. Rules Concerning the Government

a. The current constitutional rule regarding the Government's composition is satisfactory. Accordingly it suffices for the constitution to state that the Government is made up from the Prime Minister and ministers. It remains unnecessary to have a separate post of Deputy Prime Minister. For purposes of constitutional law ministers without portfolios have the same status as ministers with portfolios the difference between the duties of the two types of ministers are spelt out in the Government decrees.

b. Two regulatory models are possible regarding the forming of Government.

The first version is based on current provisions but re-develops them.

The rule under which the President of the Republic makes a proposition regarding the appointment of a Prime Minister is to be upheld. However, provisions should be included as to how the President of the Republic should formulate his proposition. Here the result of the elections, the balance of power between parties and consultation with the parliamentary parties could be mentioned.

At present the constitution fails to provide appropriate regulations regarding the case where Parliament does not accept the President's proposition. There is no procedural rule as to what happens in such a case and whether the President must propose a different person. All the constitution provides is that if, within 40 days no Prime Minister is elected, the President of the Republic may dissolve Parliament. If this is what the President seeks to achieve, all he needs to do is to keep proposing persons unacceptable to

the parliamentary majority. Therefore for reasons of guarantees clearer and more detailed rules are needed.

Therefore the first version suggests the following procedure: Upon the President's proposition the Prime Minister is elected by a majority of votes of parliamentary representatives. If the proposed person fails to be elected, Parliament may, within 14 days of the election, elect a Prime Minister on the basis of its own nomination by majority of its members' votes. If no Prime Minister is elected within this deadline, a new vote must be held without delay, in which the person obtaining most votes will be deemed to win. If the elected person has gained the votes of the majority of Parliament's members, the President of the Republic shall appoint him within seven days of the election. If the elected person has not gained such a majority, the President of the Republic may consider whether to appoint the person within seven days or dissolve Parliament.

Our present constitution provides that Parliament decides upon the Prime Minister's election and adoption of the Government's programme at the same time. In view of the dominant role of the Prime Minister this provision may be upheld, even though different suggestions have also been made. For instance if the two decision were separated and the adoption of the Government's programme postponed until after the Government is formed, this would emphasise the role of the Government as a body. It would also provide a solution for the case where a Prime Minister gains his appointment as a result of a vote of no confidence.

Another alternative would be for the Prime Minister not to submit formally a Government programme to Parliament. Among others, this would be justified by the fact that usually the period between the time when the winner is requested to form a Government and when the Prime Minister is appointed is short, therefore it is difficult to create a proper Government programme. At the same time political tradition would force the winner to draft and publish such a programme anyway.

Ministers are appointed and dismissed by the President of the Republic upon the proposition of the Prime Minister. Following the election of the

Prime Minister and the appointment of ministers the Government swears an oath before Parliament.

According to the second model the President of the Republic, after consultation with the party leaders requests the Prime Minister appointed by him to form a Government, taking into account the results of the elections. The Prime Minister submits a proposal regarding the ministers and the President of the Republic appoints the Prime Minister and the Government members. Thereafter the Prime Minister submits a Government programme to Parliament within 30 days and requests a vote of confidence. If the vote of confidence rejects the Government programme, the Prime Minister resigns and the President of the Republic appoints a different person as Prime Minister. Should Parliament reject his programme, too, the President dissolves Parliament and calls new elections.

The second version does not contain satisfactory guarantees to prevent abuse of the rules by the President, thus the concept favours the first version.

c. The rule of substituting an absent Prime Minister should be retained: the minister appointed by the Prime Minister should act as his deputy. Possibly this minister may be entitled to use the title of Deputy Prime Minister

According to some views the constitution should also provide for the substitution of ministers. Two solutions have been put forward. Under the first, the minister would be substituted by another minister determined in the Government's order of procedure. Under the other solution the minister would be substituted by his political state secretary, including in Government meetings. Because of the responsibilities of ministers towards their departments and the natural conflicts between them the latter solution seems more appropriate.

According to others the issue o substituting ministers should not be covered by the constitution, it suffices to regulate this issue in the Government's order of procedure or in the act regulating the legal status of

ministers. Nevertheless, the concept suggests that the question be dealt with in the constitution.

d. The Government's mandate should continue to be dependent upon the Prime Minister's mandate. Thus if the Prime Minister resigns, loses his right to vote, dies, incompatibility is declared against him or Parliament passes a vote of no confidence against hi,, the Government's mandate also terminates. Furthermore, the Government's mandate terminates when a newly elected Parliament is formed or the Government resigns as a body.

   In the period between the termination of the Government's mandate and the forming of the new Government the old Government remains in office and exercises all rights conferred upon the Government; however, it may not conclude international agreements or and may not issue decrees unless expressly authorized by an act.

e. In principle, there are numerous ways of defining the Government's constitutional duties. The constitution may contain a detailed list aiming to be exhaustive, may just indicate the most important tasks or simply contain a few sentences determining the Government's function under the separation of powers.

   Since apart from the relatively permanent governmental functions, its tasks are due to significant changes owing to rapid changes in society, the best solution seems to be to simply record the Government's general duties.

   As provided by certain European constitutions, the constitution should state first of all that the Government's main duty is to determine and control the country's (nation's) general policy.

   Accordingly, the Government's tasks may be divided into two main categories: governmental tasks and those flowing from the Government's position as the central organ of public administration. After such provisions the constitution may (but does not have to) detail the Government's general duties as follows:

- the running of the Government system, its reformation and adjustment to changing needs, the development of local forms of the exercise of power;

- development of the economy, securing a satisfactory pace of development, the influencing of investments both in the state and the private sphere by way of financial controls and incentives;

- stabilisation of the economy, including regulation of the growth rate, control of inflation and ensuring the balance of payments;

- ensuring social welfare, including the fulfilment of educational, cultural, medical and social duties;

- protection of the quality of life: tackling of industrial and urbanisation damage, protection of natural resources, environmental protection;

- fulfilment of duties regarding external and internal state security.

f. The most important of the Prime Minister's tasks to be recorded are his duty to control the Government's general policy in order to carry out the Government programme and his acceptance of responsibility for the programme. Furthermore, the pm and his acceptance of responsibility for the programme. Furthermore, through harmonisation of the ministers' activities, the Prime Minister ensures the political and administrative uniformity of the Government's work.

This role of co-ordination is one of the main elements of the Prime Minister's activity and therefore must be recorded in the constitution.

Our present constitution defines the Prime Minister's tasks as leading the meetings of Government and carrying out Government decrees and decisions.These tasks may also be contained in the new constitution.

Our current constitution contains brief but intelligible provisions regarding the duties of ministers. Their main duty is controlling their branches of public administration and supervising the organs under their authority in

compliance with legal rules and Government decisions. Minister without portfolios carry out the tasks determined by Government.

Only two things should be added to these provisions. Firstly, under the constitutions of most European countries (those which deal with this issue at all) it is the Prime Minister, not the Government who determines the ministers' tasks. This solution evidently flows from a stronger position of the Prime Minister and would be more appropriate for our Government structure. As a general task of all ministers, they should be required to establish and maintain a general relationship between the Government and other state and social organisations and unions belonging to their scope of authority.

g. The rules of incompatibility regarding the Prime Minister and ministers may be of two basic types: one is based on the principle of the separation of powers, the other is of economic nature.

The first issue is whether the Prime Minister or minister should at the same time be a parliamentary representative.

This problem may be decided on the basis of political rather than professional considerations. In Hungary the practice of allowing the fulfilment of both posts is traditional, furthermore, numerous well-functioning democratic countries have a similar mechanism, thus such a reason of incompatibility should not be formulated.

Under the heading of economic incompatibility the post of Prime Minister or minister should exclude other offices, professions or posts with remuneration, professional, economic and trade activity and membership of the Board of Directors or Supervisory Board of corporate entities. Two provisions could be contained to prohibit such activities.

The first of these provisions is contained is currents acts and prohibits further employment. In the cases of ministers and the Prime Minister the usual exceptions can be stated: scientific, teaching or artistic activities and activities protected by copyrights. It should be considered, however, that

similarly to the President of the Republic the acceptance of remuneration for these activities should be outlawed.

The second rule would prohibit members of the Government from being members of Boards of Directors or Supervisory Boards or fulfilling major offices in corporate entities. According to international experience a provision should also be considered which would prevent Government members from owning companies during the term of their office. In order to protect the "chastity" of public life the above grounds of incompatibility should be spelt out in the constitution.

h. The relationship between the Government and Parliament comprises three separate issues. These are: the responsibility of the Government and its members to Parliament; the participation by the Prime Minister and ministers in plenary sessions of Parliament and in meetings of parliamentary commissions' and finally the Government's right to initiate Parliament's dissolution. The latter issue has been the subject of detailed consideration above, thus here only the first and second issued will be discussed.

The Prime Minister and through him the Government are responsible to Parliament. Under current rules this responsibility may be enforced by way of a motion of no confidence. SA motion of no confidence may be submitted by one-fifth of parliamentary representatives, indicating the person nominated for the post of Prime Minister. Any motion of no confidence submitted against the Prime Minister shall be treated as a motion of no confidence against the Government. A vote in favour of the motion of no confidence means at the same time the election of the new Prime Minister. The Government may request a vote of no confidence itself. If the constitution should provide for appointment of the Prime Minister by the President of the Republic, rather than by Parliament, then in case of a successful vote of no confidence by Parliament dismissing the Prime Minister from his post, the President shall dismiss the Prime Minister and appoint the person named in the motion of no confidence as Prime Minister. If under constitutional provisions a vote must be held on the

Government programme, in such a case, too, the newly appointed Prime Minister shall, within 30 days present himself to Parliament for a further vote of confidence, together with his Government programme.

At present no motion of no confidence may be submitted against ministers. The responsibility of ministers to Parliament is manifested in the rules providing for questions to be put to them, and in the aright of parliamentary commissions to summons and hear them, even in public.

Many have suggested that a motion of no confidence against ministers should be introduced. One of the aims of the Government programme is in fact the strengthening of ministerial responsibility.

The strong position of the Prime Minister may be reconciled with a motion of no confidence against ministers only if after a successful motion the Prime Minister has the right to consider whether to propose to the President of the Republic to dismiss the minister in question. If he does not wish to do so, he must supply the reasons for his decision to Parliament. However, the reasons must not subject to debate by Parliament and Parliament must not pass any decision upon such an issue. As an alternative, the constitution could provide that Parliament debates the Prime Minister's decision, and following its decision by qualified majority, submits a proposal to the Prime Minister to dismiss the minister in question. Nonetheless, the final decision would still be in the hands of the Prime Minister, subject to his obligation to supply the reasons for his decision.

Nevertheless, the possibility of a motion of no confidence against a minister would still weaken the special role of the Prime Minister within the Government and open the way for serious political clashes between the coalition parties. In the interests of maintaining the stability of Government, therefore the concept is against the suggestion.

Participation by Government members in plenary sessions of Parliament and meetings of parliamentary commissions should be more thoroughly regulated by constitution. Our present constitution merely mentions

participation in plenary sessions. Provisions should be included to the effect that participation in meetings of parliamentary commissions and representation of the Government's views are also justified.

It seems unnecessary to impose upon the Government a duty to report to Parliament on a regular basis. Parliament may observe the Government's work without such reports during the debate of the budget and of the Appropriation Accounts, as well as on "days of political debate". Furthermore Parliament can request information by way of putting questions to the Government, nay hold hearings before commissions or pass a vote of no confidence against the Government.

3. The Fundamental Organs and Principles of Public Administration

a. Most European contain only very brief provisions regarding issues of public administration and these are usually confined to the declaration of certain principles and a few sentences on public servants and public officials.

Still, some norms regarding the most important organs of public administration should be included in the constitution.

Hence, firstly it may be stated that the Government is aided in its work by ministries and the highest national authorities (administrative bodies with nationwide authority and central offices).

There is one great difference in the establishment of these organisations: Ministries may be establishes by Parliament only whereas the highest national authorities may be established by either Parliament or the Government.

The hierarchy of different bodies should also be determined. Ministries are directly subordinate to the Government through Government ministers. The highest national authorities may function in two sorts of subordinate position, according to their importance in society and the public

administration. Administrative bodies with nationwide authority are directly subordinate to the Government, the appropriate ministers supervise these bodies on behalf of the Government. In contrast, activities of central offices belong to the scope of duty of ministers, thus ministers not only supervise but control these bodies and accept full responsibility for their acts.

It is not crucial for the constitution to contain provisions on ministerial offices which may be internal units of ministries or organs independent from the ministries. However, rules must be included concerning the public administration bodies independent from and not controlled by the Government. (These include at present the Hungarian National Bank which functions as a company limited by shares but also fulfils tasks of public administration, as well as the Economic Competition Office). The concept suggests that these organisations should be supervise by the President of the Republic.

b There are two methods by which the constitution could provide for the bodies which assist the Government and have tasks of consultation, co-ordination and the preparation of decisions.

In the first version the constitution merely states that in order to assist the Government in its work, commissions or other bodies may be established with tasks of preparation of decisions, co-ordination, consultation, control and in certain cases decision-making. The second version of the constitution would actually name the most important of these organs (cabinets, Government commissions, interdepartmental commissions, the Office of the Prime Minister.

The concept does not deem it necessary to list the above bodies in the constitution.

Finally, some constitution provisions could be included regarding the centrally controlled but decentralised bodies. It could be stated that ministers or leaders of highest national authorities may establish decentralised bodies in order to assist them in the exercise of their duties; however, this may be done in special cases only. The establishment and

functioning of these bodies must not lead to forfeiture of the municipalities' duties and competence. (The latter statement is also necessary in order to emphasise in the constitution that local public administration tasks are primarily to be carried out by municipalities.) Therefore it can be stated that only the Government may established decentralised bodies. Finally, it could be recorded that decentralised bodies may differ from the traditional territorial division of the country and may be established as so-called inter-territorial bodies.

c. Public administration bodies generally carry out three forms of activity and thus must have the rights and duties connected to these activities. These forms of activity include (1) organisational public administration, (2) public administration providing services and (3) public administration carrying out transactions of public affairs. Some general principles of the functioning of public administration may also be worded in the new constitution. These are the following:

- The democratic nature of the functioning of public administration. This means that public administration bodies serve the public interest, allow public participation, comply and make others comply with provisions of the constitution, other acts and legal rules and are open to anyone wishing to work in public administration and fulfils the necessary conditions of employment.

- The public nature of the functioning of public administration means that citizens and public organisations have access to information of public interest held by public administration bodies, that the functioning of these bodies is controllable and citizens can have access to all documents and data made up in connection with their case.

- The efficiency of public administration, meaning that in fulfilling their tasks of public organisation and the fulfilment of public needs public administration bodies must supply services of the highest standard at the lowest possible cost and work in a quick, non-bureaucratic and neutral manner.

- Provisions regulating public administration procedure are crucial. Since in the course of public administration procedure citizens (or organisations) come into contact with bodies exercising public power who may apply coercive measures, citizens must have rights under an act in the course of such procedure and their duties must also be recorded by an act. The principle should be stated under which the discretionary rights of public administration bodies must be minimised.

- The possibility of judicial review. This may be phrased as part of the previous principle or included among the general principles. The principle provides that citizens may turn to courts of law for judicial review of decisions by public administration bodies if they are of the view that these contravene the law.

The rules of public administration procedure are contained in an act.

d Only the most basic rules regarding the legal position of public servants working in public administration may be recorded in the constitution.

It should be sated that a separate act regulates the legal position of public servants. It is crucial to record that public servants must carry out their duties independently from party politics, must be loyal to the group having political power at all times and must always observe legal rules and the rules of their profession.

Public servants must be chosen from applicants on the basis of merit (education, professional qualifications, experience etc.), following an advertisement for the vacancy.

Public servants must be continually promoted in their jobs on the basis of their achievements and must receive remuneration according to their position.

They may be impeached only by a properly regulated procedure which provides for their legal representation.

The legal position of public servants should be stable, therefore their employment may be terminated for reasons determined by an act only. Public servants may appeal to a court of law against significant decisions of their employers effecting their employment in the public service.

IX. The Armed Forces, Protection of Public Order and Public Security

1. The Armed Forces

a. The nature of the Border Guards as an armed force and a policing body should be reviewed and decided and this review will determine the new rules.

The Border Guards fulfil a dual task. In their first task, as an armed force, they provide the border protection forces with servicemen in military service as well as professional servicemen and participate in protection of the frontiers in case of an attack. In their other task, as a policing body, they control border traffic and maintain the order at frontiers through servicemen in military service and as professional servicemen.

Apart from the cases defined by the constitution, the policing tasks cannot be constitute the duty of the armed forces since they are tasks relating to the maintenance of order. Therefore the new constitution must clarify whether the Border Guards form part of the armed forces along with the Hungarian Army, or alternatively, whether the Border Guards actually form part of the Hungarian Army itself. In case of the latter version the Border Guards would be under the authority of the Minister of the Interior as a policing body. The concept deems both versions possible but suggests that the second version is adopted because it would mean clearer positions of authority and control.

b The fundamental duty of the armed forces lies in protection of the country. Apart form this duty they participate in combating armed action aimed at overthrowing constitutional order or at obtaining exclusive power and in repelling serious violent acts endangering the life or property of citizens *en*

mass. The armed forces also provide assistance in clearing up the consequences of great natural and industrial disasters.

The armed forces are a regular army based on citizens in military service and professional servicemen.

The number of troops, weapons and the budget necessary to maintain and develop the army are determined by Parliament., as well as the structure and hierarchy of the armed forces.

Unless an international agreement provides otherwise, the armed forces may be controlled by Parliament, the President of the Republic, the Defence Commission and the competent minister, subject to legal rules contained in an act.

c. In order to make it mutually easier for small groups of armed forces to cross the borders for particular purposes, the present rules must be amended.

Apart from military manoeuvres under international agreements or peace-keeping activities carried out under UN-egis, the current constitution does not allow smaller forces to go abroad for other types of exercise, shows or other co-operation without permission by Parliament. Similarly, in the absence of a valid international agreement to this effect, foreign armed forces may not cross the country's territory, may not be used or stationed in Hungary without parliamentary permission. The present rules should be maintained only for cases of armed forces or larger units crossing the state border. However, it must be made possible for units not exceeding the size determined by military co-operation agreements (e.g. 1000-1200 troops) to cross the border with regular arms and ammunition, for purposes of training, exercise, shows or other co-operation without prior parliamentary permission.

A further condition should be to limit the time which the troops may spend abroad/in this country to 30 days or less.

The Government should take decisions on whether the troops may cross the border. Nonetheless, Parliament should be informed of the permissions supplied by Government.

2. Military Conscription

a. The constitution should state that the defence duty of is a general duty of citizens, on the basis of which everybody may be ordered to assist defence tasks according to their strength, age and possibilities;

However, the rules should provide that all forms of this duty must relate to fulfilling the constitutional tasks of the armed forces or of the civil defence organisations

Accordingly, as a rule which applies to both men and women, the constitution should continue to provide that it is the duty of every citizen of the Hungarian Republic to defend the country. This in itself means a defence duty. All further rules must be specifically determined in the light of this universal duty, as follows:

The following personal defence duties are imposed on citizens:

- the duty to enter military service;

-the duty to enter civil service;

- the duty to join the Civil Guards;

- the duty to carry out military work.

Every male Hungarian citizen resident in Hungary must carry out armed or un-armed military service on the basis of the general duty to defend.

Citizens are under a duty to provide economic and financial assistance in the interests of defence.

Duties to carry out specific economic acts and provide services may be imposed on legal persons in the interests of defence. However, such duties may not impose a disproportionate burden and (in conformity with the constitution protection of the ownership of property) institutional forms of remedies and compensation must be established for such persons.

b. On the basis of a contractual relationship with the state citizens may join the armed forces as servicemen in professional employment. Special rules regarding the behaviour and responsibilities of professional servicemen may be determined. These rules should regulate, among others, the membership in political parties and other political activities by professional servicemen. While the prohibition against joining a political party should be upheld, an absolute bar on political activity does not seem justified. Such a prohibition should apply only to the locality where the person is in service and to tasks connected with their employment as a serviceman.

The rules regarding defence and the armed forces are contained in an act to be adopted by qualified majority.

3. The Police and the Border Guards

Subject to exceptions contained in an act, the prevention and investigation of crime, as well as protection of public order and public security are duties of the police.

The Border Guards fulfil the tasks of border traffic control and the maintenance of order at borders.

The police and border Guards are supervise by the competent minister.

The detailed provisions regarding the police and the Border Guards shall be determined by an act adopted by qualified majority.

4. State security Services

The tasks of the state security services include the investigation and combating of the activities of foreign intelligence services endangering the independence and national interests of the Hungarian Republic, the investigation and prevention of activities against constitutional order and the provision of assistance to the Government through the acquisition, assessment and evaluation of confidential information.

According to the division of tasks under the act, the Government and the competent minister are entitled to control the state security services.

Parliament exercises continuous controls over the activities of the state security services.

The detailed rules regarding the state security services are determined by an act to be adopted by qualified majority.

X. Situations Endangering the Country's Security

a. Situations endangering the country's security (hereafter: "exceptional situation") mean situations where the constitutional order, sovereignty, territorial integrity or the personal or material security of the inhabitants are threatened by a social or public danger or natural force, which cannot be fought through normal governmental means. The period from the constitutional declaration of the exceptional situation until its termination shall be called an exceptional period.

In exceptional situations only deviations from the normal peacetime workings of the state are allowed which are absolutely necessary and the extent of which is proportional to the combating of the danger. The efficiency of the defence measures must be increased not by forfeiting the Government of its competence but through transferring Parliament's rights in connection with defence to organs and bodies who, due to their numbers are able to make swift, immediate decisions. Contemporaneously with centralising the rights, the institutions and means of constitutional control must be established.

The detailed rules of exceptional situations are contained in an act to be adopted by qualified majority.

b. The present constitution's provisions on exceptional situations are nor detailed enough, are not divided from each other according to their theoretical basis and lack an appropriate structure.

The concept categorises exceptional situations according to their source Accordingly we differentiate between:

- defence situations

- emergency situations

- states of disaster.

The rules of exceptional situations should be contained in a separate chapter of the constitution.

2.Defence Situations

A defence situation means that the sovereignty or territorial integrity of the country is being threatened or subject to armed attack by an external, foreign power or external armed group, or the direct danger of such attack. In accordance with the United Nations Charter, in a defence situation the state is entitled to take counter-measures of individual or collective protection.

Defence situations may be divided in two separate phases:

a. A preventive defence situation occurs in case of grave threats by a foreign power or the unexpected invasion by an external armed group.

   The Government determines a preventive defence situation and announces a state of preventive defence by a decree. at the same time it informs the President of the Republic and the President of Parliament of its decision. During a preventive defence situation the defence commission of Parliament calls a meeting and holds continuous sittings.

   Following the announcement of a state of preventive defence, according to the state protection plan approved by the President of the Republic, the Government may do the following:

   - in case of threats against the country, take preventive measures proportional to the expected attack (in case of danger of a terrorist activity, use appointed units of the armed forces to protect appointed buildings, to control and supervise traffic and travel; after detection of a threat against state sovereignty, the Government may order that the armed forces be placed in higher alert, the defence administration be activated, the plans of measures be updated and economic mobilisation processes be commenced).

- take immediate measures necessary to combat an unexpected attack (Government may order the employment of appointed units of the armed forces, including the Border Guards, as well as of ground and air forces of the defence; order the introduction of necessary extraordinary measures, such as evacuation, relocation, black-out, traffic restrictions and the immediate use of services).

Upon the initiative of the defence commission of Parliament, Parliament decides upon the legality and necessity of the Government measures immediately or within 14 (30) days of the announcement of the state of preventive defence. The above preventive measures may be maintained beyond 14 (30) days of the announcement only with permission by Parliament.

b A situation of armed defence (state of war) lasts from the immediate danger of attack by a foreign power (war danger), the declaration of a state of war or an actual attack by some foreign power until the termination of hostilities through a peace agreement or permanent cease-fire.

Parliament is entitled to declare a state of armed defence, announce a state of emergency, declare a state of war, as well as declare the termination of a state of emergency and conclude a peace treaty. Such decisions must be passed by a two-thirds majority of votes cast by parliamentary representatives. If Parliament is incapacitated from declaring an exceptional situation, the necessary decision shall be made by the President of the Republic after fact of Parliament's incapacity is declared jointly by the President of Parliament, the Prime Minister and the president of the Constitutional Court.

A state of armed defence requires the most efficient concentration and use of the country's human and financial sources of power. Therefore contemporaneously with declaring and announcing a state of armed defence Parliament (or if it is incapacitated, the President of the Republic) declares a state of emergency and assigns the control of the state's defence to the Defence Commission.

In contrast to present provisions, the Defence Commission would function in peace-time, too, in order that through its continuous work it may prepare for its tasks in states of emergency. However, the Commission would have no rights of decision in peace-time; it still would assist the President of the Republic in his decisions taken as the Commander-in-Chief of the armed forces.

In a state of emergency the Defence Commission exercises the rights of Parliament, the President of the Republic and the Government, thus takes strategic decisions in connection with defence. Hence the Defence Commission decides to employ the armed forces, grants permission to the armed forces to cross state borders, gives permission to foreign armed forces to be present in or pass through Hungarian territory, decides on the introduction of emergency measures defined in a separate act and may issue decrees in which it exercises the legislative rights transferred from Parliament.

In its decrees the Defence Commission may suspend the application of certain acts, may depart from provisions of acts, may take other special measures but must not suspend the application of the constitution. Decrees of the Defence Commission lose their force upon termination of the state of emergency, unless their force is prolonged by Parliament. The functioning of the Constitutional Court may not be restricted even in a state of emergency.

The Government shall prepare and enforce decisions of the Defence Commission and shall ensure the conditions for the functioning of the Commission.

At its present number of about 30 members the Defence Commission is not suitable for the making of operative decisions necessary for the country's defence. Therefore the Defence Commission should be established with fewer members so that it continues to represent Parliament, the head of state and Government in appropriate proportions.

The concept suggests that the Defence Commission should be compose of the following persons: its chairman should be the President of the Republic, its members the President of Parliament, the Prime Minister, the leaders of party groups in Parliament, the Minister of the Interior, the Defence Minister, The Foreign Minister, the Finance Minister, the minister without portfolio in charge of the intelligence service, as well as the commander of the Hungarian Armed Forces.

3) Emergency Situations

An emergency situation means a situation originating inside the country which puts the constitutional order and functioning of state, as well as personal and material security in grave danger

The following forms of emergency situations exist:

a. violent acts aimed at bringing down the constitutional order of the state, the obstruction of its functioning or at gaining exclusive state power;

b. terrorist acts seriously harming the security of life and property or posing a direct threat of such harm or committed *en masse* or in series;

c. acts against public order and public security, committed *en masse* and with the use of arms, seriously harming the security of life and property, or posing a direct threat of such harm.

In order to terminate or combat the acts causing the emergency situation the Government shall take the necessary measures using the policing organs authorised (police, secret service).

In case the available peace-time means are inadequate, upon the Government;s initiative Parliament (in case of its incapacity, the President of the Republic) shall declare a state of emergency and grant its permission to the employment of the armed forces according to the policing plan. Upon Government initiative Parliament may introduce

extraordinary measures which are both necessary for combating the acts causing the state of emergency and proportional to these acts, either for the entire country or particular regions. If Parliament is incapacitated, the President of the Republic may introduce the same measures by a decree.

Parliament shall declare the termination of an emergency situation.

4. State of Disaster

State of Disaster means situations caused by acts of public, technical or natural origin seriously harming or endangering the security of life and property, where the acts cannot be overcome in a peace-time state structure and they can be combated only under central or regional state control, or by using the human and technical resources of more than one region or the whole country.

The Government declares a State of Disaster and at the same time to its announcement declares the particular administrative region a disaster area.

The Government may pass decrees to introduce measures different from rules of law and may order the deployment of appointed units of the armed forces.

In an unexpected State of Disaster the local defence administration organs may take immediate measures to protect life and property until a Government decision.

5. Situations of Economic Emergency

Two types of situation may provide the grounds for a situation of economic emergency. Firstly, such an emergency may arise in connection with difficulties of public supply due to major industrial action or other, possibly acts., Secondly, such an emergency may occur due to urgent measures that need to be taken due to the state of the country's finances or the economical situation. In the latter case the introduction of necessary rules and other

measures may be so urgent that to observe the constitutional order - for example due to the lengthy nature of the legislatory process - would have serious consequences and therefore immediate Government measures are needed. For this reason the institution of an of economic emergency situation should be considered. The necessary provisions may be spelt out in the chapter on State Finances which would mean that no constitutional right would need to be suspended.

XI. State Finances

1. Introduction

Chapter VI comprising paragraphs 32/C and 32/D of the constitution following the constitutional reform of 1989 contains two important elements of state finances: the basic decrees pertaining to the Hungarian National Bank and the State Audit Office. That, however, is insufficient as - similarly to the majority of European constitutions - the essence of the operation of state finances, the guarantee regulations of the central budget build-up and the basic norms of taxpaying obligations should be provided.

The conception suggests keeping the most important elements of the current regulations of the constitution but extends them, integrating the most significant decrees of the state finances law of 1992 into the basic law.

2. The revenues of state finances

The financial sources of the operation of the state are primarily provided by the budget transactions prescribed on the benefit of state finances. Therefore it is necessary to prescribe the liability to pay in the constitution itself.

Thus it is necessary to lay down that legal persons and organisations without legal personality operating on the territory of the Republic of Hungary and/or possessing income, revenue or property, as well as domestic and foreign natural persons possessing income, revenue or property may be obliged to make contributions towards the responsibilities in the sphere of state finances and to be provided for from the budgets of the subsystems of state finances. Public encumbrances should be specified in a way not to endanger the subsistence of natural persons or the operation or subsistence of legal persons.

It is necessary to regulate the kinds of taxpaying obligations: payment obligations can be prescribed in the form of taxes, dues, duties, extras, contributions, fines and fees.

Payment obligations, the group of those obliged to pay, the extent of the payment obligations, the group and extent of concessions and exemption, as well as the advance payment obligations - except for fees - may only be prescribed by law. (The exception in the case of fees is due to the fact that these revenues are not payments without consideration but should be considered as the valence paid for the voluntary use of some state service.)

The legal basis of imposing local taxes is also to be laid down in the constitution; the representative body of local governments may set up tax kinds and may impose local taxes in its sphere of competence for the performance of its responsibilities set out by decrees and law, in a way defined by law. Also, local government decrees may decide about fines, cost compensations, extras and contributions.

3. The administration of public funds

The state uses the money of the taxpayers so it is necessary to have strict guarantees in its operations to ensure effective use of funds obtained primarily by public authority and to take only the least possible extent of taxpayers' income. Parallel with the formulation of the market economy, competition and capital efficiency becomes more and more important. However, the state must operate within different economic conditions than the other participants of the economy, the role of competition is minor and the most important aim for the state is to use the least possible resources for fulfilling its responsibilities prescribed by law on a high level.

Differing aims as well as the protection of taxpayers' money and the various rules pertaining to enterprises necessitate the use of a strict and controllable system that assigns the most important financial decisions into the authority of top state and local representative bodies.

The guarantees of the effective use of public funds by the state, characteristic of democratic states, must be established. That requires a transparent system of state finances meeting the requirements of publicity,

governed and controlled by the decisions of democratically elected representatives. State finances is the economic system of the central government, the separate state funds, the local governments and social security system, performing and financing state tasks. The contents and the interrelationships of the above mentioned subsystems of state finances should be regulated in the constitution. The detailed rules pertaining to state finances are described by law.

State tasks are matched by financial obligations, the exact contents of which are specified by the laws relevant to each area. Public expenditures, being direct state responsibilities, should b specified each year in the annual budget law, in accordance with the above laws. Budget is the economic plan of the state for a year, containing all the revenues and expenses necessary for the performance of state tasks during that year. The structure and the order of chapters of the central annual budget are defined by the budget law. It is justified to lay down in the constitution that budget laws are submitted to Parliament by the government and amendments increasing expenses may only be added if specifying the sources.

The constitution should also provide for what is to be done if Parliament has failed to create the annual budget law by the beginning of the budget year. In that case the government must submit a bill on transitory economy. On that basis Parliament may create a law authorising the government to continually collect the revenues of the central budget and pay its expenses and defining what other measures the government may take. The law on transitory economy should define the authorisation period. The authorisation becomes ineffective latest on the day the new budget law becomes effective. If Parliament has not made a law on transitory economy or if it has become ineffective and no new budget law has been created, the government is authorised to collect revenues due for the budget according to the effective legal rules and to cover expenses by periods of time as set out by the previous year's estimates.

The fulfilment of the budget law should be reported in the final settlement and its approval should be decided on by Parliament until the end of the year following the budget year the latest.

4. Guarantees of public property

Some guarantee rules in respect of the subsystems of state finances and serving public interests should be regulated in the constitution. Thus it should be stated that Parliament provides about property by law. The contents of the publicity principle ensure that the general public and citizens receive the necessary information about the changes in property.

The notion of treasury property should also be defined: it is the assets directly providing for the performance of state responsibilities, with direct control - as the subject of a property right relationship - by the state. The statement that treasury property should be used for the right purposes in a responsible way is supported by basic interests.

There should be constitutional guarantees preventing public funds from becoming private property against the law, for example by transfer into foundations.

It would also be important to set out in the constitution the limits of unfunded debt and of credits to be drawn.

5. The Hungarian National Bank

The Hungarian National Bank is the bank of issue of the Republic of Hungary and the central bank of the national economy. The bank of issue is independent of the government but must serve its economic political aims. Therefore it must collaborate with the government and prescribe its conciliation obligations in certain areas.

Parliament is authorised to determine and change the financial system of the country. The basic task of the bank of issue is to protect the internal and external purchasing power of the national currency. The Hungarian National Bank is exclusively authorised to issue bank notes and coins.

The Hungarian National Bank formulates the national payment and accounting system and regulates money circulation. The Hungarian National Bank is the central organ of foreign currency management.

The president and vice-presidents of the Hungarian National Bank are appointed by the President for a six-year term. The president of the Hungarian National Bank annually reports the activities of the Hungarian National Bank to Parliament. Representatives may ask questions from the president of the Hungarian National Bank.

The most important rules about the Hungarian National Bank should be contained in the constitution. The detailed responsibilities and the sphere of authority of the bank of issue are regulated by law.

6. The State Audit Office

The State Audit Office is the financial-economic control organ of Parliament, the main organ of financial and economic control with general authority. It performs its control function exclusively in subjugation to law.

The sphere of responsibilities of the State Audit Office includes the control, from legal, expediency and profitability points of view, of the operation, budget and final settlement of the subsystems of state finances, the use of the assets of state finances outside state finances, the handling of state property, and also the performance of other tasks assigned into its sphere if authority by law.

The State Audit Office informs Parliament about the control performed by them. The State Audit Office also publishes the report. The published reports must not contain state, bank or tax secrets. Representatives may ask questions from the president of the State Audit Office.

According to the operation experience of the State Audit Office its sphere of authority should be strengthened so as to make its activities more effective. In the matters in which it performs legal control it should be authorised to have court-like sanctioning decision making rights. Supervisory claims against its decisions may be submitted to the Supreme Court (as the highest level administrative court).

It is not necessary to change but it should be laid down in the constitution that the president and the vice-presidents of the State Audit Office are elected by Parliament for a 12-year term. The elected heads of the State Audit Office may not be the members of any party, nor may they perform any activities involving public appearance on behalf of or in the interest of any party.

The detailed responsibilities and the basic organisational and operational principles of the State Audit Office, the legal position and the compensation of the auditors are regulated by a separate law. The annual budget of the State Audit Office is defined by Parliament, based on the suggestion of the relevant parliamentary committee, in the central budget law on the annual budget of state finances subsystems, but separately from other chapters, even from the chapter on Parliament.

XII. The Administration of Justice

1. Court Organisation

a) It is necessary to lay down the basic principle arising from the principle of the division of the branches of state power, according to which jurisdiction in Hungary is performed by courts. In cases defined by law - civil law cases - judgement may be made by non-state arbitration courts, but the state court may, upon request, perform control over their decisions.

b) The constitution must define the individual elements of the court organisational structure, that is, which courts perform jurisdiction. The formulation of the court organisation depends on how administrative jurisdiction and labour jurisdiction are integrated into the judicial system and what legal remedy system is established by criminal procedure and civil procedure.

The formulation of the court organisation should start from the principle that jurisdiction should be unified and no one may be withdrawn from the court having competence and/or relevance in the given matter (in this respect the only exception is the impeachment of the President). For guarantee reasons it should be considered whether to extend the same principle for judges as well as courts, although because of the requirement of specialisation a more differentiated regulation is needed in this case.

Thus no separate courts - excluding the Constitutional Court with its special public jurisdictional functions - should be created. In accordance with that, it is expedient to perform administrative jurisdiction within the regular court organisation. Mention must be made that several people recommend the establishment of independent administrative courts, operating as special courts. The

administrative courts would operate regionally, with authority over several counties, and the Supreme Administrative Court would take the role of the forum of remedy, which would be created from the current Administrative College of the Supreme Court. The conception does not support this proposal as it considers the principle of a unified court organisation as indispensable, for guarantee reasons. However, the forum system of administrative jurisdiction should be simplified even in the case of preserving the current organisational form. The single-stage court procedure under the authority of the county court and the supervisory procedure by the Supreme Court, for cases and on conditions specified by law, would suffice. However, these rules should be contained not in the constitution but in the law about courts and the reformed Code of Civil Procedures.

Labour courts, currently functioning as special courts at the first instance, should be integrated into the regular court structure and in labour actions the authority of county courts should be defined at the first instance. As preliminary arbitrary court procedures have been recently eliminated from the forum system of settling labour legal disputes, a three-step procedure is necessary in the case of labour - as well as co-operative membership - disputes.

The conception dismisses the possibility of forming special courts, but with respect to the fact that in administrative and labour actions special financial and procedural regulations must be used, these cases should be decided by appointed judges, just like it is the case with some criminal issues, e.g. in issues of the underaged and in military crime.

As a result of the prohibition to set up special courts it is forbidden to set up criminal courts with special authority even in the case of the

proclamation of special conditions, rather, the regular court organisation or its individual courts must be given special authority.

One of the Constitutional Court decisions resulted in a significant legal development in the system of court procedures. Following the declaration about the unconstitutional nature of legal protest a new possibility of legal remedy in criminal and civil procedures, available as a basic right since 1993, is the institution of the supervisory procedure. Operational experience so far has shown that its rules should be further developed, which effects the organisational structure of courts.

Supervisory procedures are now used after a definitive court judgement as special legal remedy. It was proposed that the principle of legal security would be better met if a supervisory claim would be the normal secondary legal remedy, with legal authority attached to the supervisory decision. As opposed to that, others argue that this would significantly increase procedure time, doing even more harm to legal security. The conception agrees with the latter idea and proposes to keep the current rule.

At present, the Supreme Court proceeds on the second instance in some cases and makes judgements in all cases as supervisory court. This is unacceptable from a guarantee point of view, even if the same judge may naturally not participate in the procedures on both instances. A problem of at least the same scope as that of guarantee issues is the fact that local courts are unable to cope with the quantity of submitted cases and despite the increase in the number of judges the number of cases settled in more than a year - often in several years - has sharply increased over recent years. In order to increase

the speed and efficiency of jurisdiction, with respect to guarantee issues, a four-level court system is to be developed.

According to the proposed new solution, local courts would proceed in simple criminal and civil cases on the first instance and the county court would serve as a forum of appeal. In more consequential cases or cases requiring special expert knowledge the court of the first instance would be the county court and the court of the second instance would be the upper court with authority over several counties, to be formulated. The creation of upper courts would take place step by step, depending on the financial capability of the country. First one such court would be created for the whole country in Budapest, in the building of the Supreme Court and comprising some of its judges as the upper court would ease the load primarily of that court, by taking over cases of appeal. The Supreme Court would act as supervisory court in all cases, thus gaining general insight into the judgement of lower courts, which would create the basis for its principal directing activity.

However, the manner and the instruments of principal direction need to be changed. It is justified to eliminate the right of issue of guidelines and principal decisions, currently performed by the Supreme Court as declared in the constitution, to be mandatorily followed.

The instrument of principal direction could remain the college statement or the new institution of legal unit decision could be introduced. In the latter case, principal direction would not mean general legal practice expectations or methods but would be related to disputed principal questions arising from concrete cases. The legal unit procedure would be a procedural institution, the performance of which

would be restricted to the special council of the Supreme Court only. The procedure could be initiated by the council of the Supreme Court, its president and the general prosecutor. As an instrument of principal direction, the conception proposes the procedures by legal units.

Supreme Court decisions made in supervisory procedures would also serve as a guideline for courts in order to carry out consistent judgements.

2. Judicial independence

a) The constitutional principle that while performing their task in jurisdiction, judges are independent and only subordinated to legal regulations, should be sustained and reinforced. Its personal and organisational guarantees should also be contained in the constitution. First, it must be declared that the violation of judicial independence is strictly punished by law. It should also be laid down that the competence of jurisdiction is independent of all other authorities.

b) A basic guarantee of judicial independence is the complete separation of executive and judicial authority. To ensure that, the personnel and court economy authorisations of the Minister of Justice would be transferred to the National Jurisdiction Council, consisting of 16 people, a new institution guaranteeing the independence of courts and the effective operation of the judicial self-government. Due to its balancing and equating function, the National Jurisdiction Council is headed by the President of the Republic, and the Minister of Justice, the president of the Supreme Court and the general prosecutor are its members by their office. The other members of the council are elected

by Parliament, the body of judges and of prosecutors, in a one-third proportion, respectively, and/or appointed by the President. The National Jurisdiction Council elects a vice-president from its members.

County judicial councils, consisting solely of judges, operate as the local organs of the judicial self-government. Besides that, further professional bodies may be set up. The head of the court may not be appointed to this post against the statement of the professional body. The National Jurisdiction Council decides on judges' appointment, position, transfer and promotion, as well as on starting disciplinary procedure against them. The president and vice-president of the Supreme Court are appointed by the President of the Republic, by the recommendation of the National Jurisdiction Council.

c) As a further rule to guarantee judicial independence it should be stated that criminal procedures may only be started against judges with the consent of the organ authorised for their appointment or election.

d) The personal guarantees of judicial independence should also be reinforced by regulating the decrees pertaining to the legal status of judges. The appointment or election of judges is for an indefinite period. The cases of dismissal of the president or vice-president of the Supreme Court must be contained in the constitution. Cases of dismissal would essentially be restricted to becoming unsuitable, or reaching the given age, or condemnation for committing an illegal act.

Judges may not undertake another public office, may not be elected as representatives, may not perform political activities, may not be party

members and may not perform any earning activity other than academic, lecturing and copyright activities.

e) Judges should be provided wages and a promotion system serving their independence.

f) Connected to the issue of judicial independence is the issue of the immobility of judges. In that issue the constitution must state that against their will, judges may only be dismissed, suspended, transferred or sent to pension by the recommendation of the relevant judicial organ and for the reasons specified in the Court Law.

g) The constitution should also state that the Court Law specifies an age limit, upon reaching which judges retire. Because of its general nature, this rule is effective for all judges, including the president of the Supreme Court.

h) The constitutional statement that the expenses of jurisdiction are ensured by the central budget in a separate budget section, also serves as a guarantee for judicial independence.

3. The principles of jurisdiction

In the constitution we must differentiate between the basic human rights to be provided in jurisdiction and the principles of jurisdiction, which are to be

enforced in all court procedures. The former should be included in the section on basic rights, while the latter should be in the chapter entitled jurisdiction.

Of the general principles of jurisdiction, the following should be included in the constitution:

a) the obligation to turn to the Constitutional Court in case the legal regulation to be used is unconstitutional;

b) the principle of hearing both parties,

c) the principle of oralness and directness,

d) the principle of free proof and the free evaluation of proofs,

e) the obligation to give the reason of the judicial decision.

The effective constitution states joint jurisdiction as a basic principle, but laws allow numerous, practically well-usable exceptions. Therefore it is unjustified to treat joint jurisdiction as a basic principle in the future. Instead, the constitution should declare that jurisdiction is performed by a professional judge or the judicial council and the operation of the latter should involve lay assessors and/or specialised judges in cases determined by law.

Courts and the legal status of judges is provided in a law to be accepted by a qualified majority, the promotional and wage system of judges, as well as the rules of criminal and civil procedures should be provided by law.

XIII. Public prosecution

1. The constitutional situation of prosecution

When defining the constitutional situation of the prosecution several models are conceivable, however, on the basis of the experiences so far two basic trends seem to be formulating. There are basic differences between the two main models so choosing between them will have a significant effect on the content of some constitutional institutions.

The two basic models can be outlined as follows:

a) One of the two models leaves the current responsibilities, organisation and constitutional situation of the prosecution basically unchanged. In accordance with that, the prosecution is independent of all other state organs and is a hierarchically arranged organisation with complex responsibilities, in which beside criminal procedures there are possibilities of acting in the interest of persons unable to protect their own rights, as well as public interest activities in civil (economic, labour and family rights) actions and administrative cases.

b) According to the other basic concept the function of the prosecution is restricted to criminal procedures and primarily investigation supervision and representing the prosecution. In this alternative the omitted responsibilities of the prosecution should be performed by other organs because experience shows that they cannot be eliminated even today (such as the supervision of the enforcement of punishment, individual legal protection of citizens and public representation in civil actions and administrative cases). According to this conception the prosecution with reduced functions is to execute the criminal policy of the government - or "the state" -, is an organ subordinated to the government, and in the case of tasks where legal protection necessitates organisational independence from the government, independent constitutional bodies (like the commissioner of civil rights or courts) would take action. (If this alternative is accepted, the sphere of rights of the parliamentary commissioner should be altered by providing him/her with the operative instruments of individual citizens' legal protection, e.g. with the possibility to act in civil and administrative cases and the right to start public interest action in certain cases).

The above mentioned two basic models may influence the structure of the constitution in that only the prosecution in the first alternative requires an independent constitutional status. Organisational independence may be reflected by devoting a separate chapter to prosecution in the constitution, but neither is independence curbed if courts and the prosecution are mentioned together in the chapter called jurisdiction.

If the second alternative is accepted, prosecution representing the charges may be included in the chapter on government by saying that the government performs its tasks concerning criminal policy through the subordinated prosecution. In that case no further detailed regulation of the

sphere of responsibilities is needed in the constitution but the legal status of the head of the prosecution must be clarified with respect to the creation of that office. It is sufficient to declare that the general prosecutor is appointed and relieved by the President upon the recommendation of the Prime Minister. In this alternative the office term of the general prosecutor is the same as the term of the government. In this case the organisation of the prosecution would be an organ with national authority directed by the Minister of Justice through the general prosecutor. The minister would have the right of order towards the general prosecutor but that could only concern positive action activities (starting an investigation, accusation, etc.).

The prosecution of the second alternative is realised in several Western European countries. Earlier the same alternative was used in Hungary as well. However, one cannot consider this model as the democratic one and the model formulated here in the 1950s and currently being used as the Stalinist one.

The operability of the current prosecution organisation and spheres of responsibilities has been basically proved by time and there is no imperative need to change them radically. It can be said against the second alternative that the definition and direction of criminal policy is not simply a governmental - and for its contents, political - issue. Therefore, it is not expedient to give the monopoly of accusation into the hands of the organ of political governing. If we accept that the new constitution should not contain theoretically correct but practically unnecessary changes, the current prosecution model should be left unaltered. So this is the alternative the conception proposes.

2. The tasks of the prosecution

The prosecution conception of the new constitution is based on the idea that a prosecution with a complex sphere of responsibilities is needed, which has special tasks (e.g. representing the charge) but has also tasks in the performance of which it is connected to other "legal protection" organs. In respect of the latter, the existence of a prosecution with a complex sphere of responsibilities does not make the institution of the parliamentary commissioner superfluous. In the case of prosecution, measures serving the prevention of individual grievances, based on the informal mechanisms of co-ordination, are mainly missing.

It is by no means possible to retain the definition of the responsibilities of the prosecution as that ensuring the persecution of behaviours violating constitutional order or the security and independence of the country. That is a task with political overtones implying activities of a different kind, as if it was the illegal, legally violating nature of the said behaviours that was centre of responsibilities. Therefore it is important to state that the tasks of prosecution - that is, acting against illegal behaviours - are based on the principle of public interest.

Apart from the general mapping of responsibilities the individual prosecution tasks should also be specified as procedures with a legal point of view are not realised in all respects. That is, prosecution is not the main, or general, guard of legality.

The criminal tasks of prosecution (performing investigations in certain cases, supervising the legal nature of investigations, representing charge in court procedures and supervising the legality of penalty performance) should be left unaltered.

However, in civil and administrative cases it should be made obvious that the task of the prosecution is to take measures against behaviour violating law in its sphere of authority, if the legal grievances concern persons unable to enforce their rights or if the grievances are a consequence of the violation of children's rights, consumers' rights or environmental rights. Actions of public interest should be initiated against all illegal or prohibited legal cases. In the latter case the function of the procedure is to bring into daylight the violation of law, not necessarily criminal, which would otherwise be a secret, by clients violating public interest or by administrative organs, and for the court to remedy the violated legal order. In those cases the prosecution is not a decisive organ but only the organ initiating court decision.

3. The organisation of prosecution

a) The basis of the organisational structure is an issue to be addressed in the constitution. It should be decided whether the constitutional rights are held by the prosecution or the general prosecutor. The first alternative emphasises prosecutors' (relative) independence, while the second emphasises centralisation.

The conception proposes that the tasks should concern the prosecution as an organ but the right of direction of the general prosecutor should also be specified. So the ambiguity of the current wording should be avoided, naming the general prosecutor and the prosecution together as the performers of the tasks. The content of the right of direction should be defined as saying the general prosecutor may give orders concerning the manner of leading the procedure and exercising spheres of rights but that cannot be directed at dismissing the procedure. Another limitation to the right of order is that it can only be exercised within the framework of legal regulations.

b) The authority of the National Jurisdiction Council would entail prosecution. In accordance with that, the general prosecutor and his/her deputies are to be appointed by the President, upon the proposal of the National Jurisdiction Council, for a six-year term.

However, the general prosecutor would still keep contact with Parliament. Parliament may not oblige or "order" the general prosecutor by a concrete decision. The interpellatability of the general prosecutor should be eliminated. However, it is possible to ask him questions and the general prosecutor has to report to Parliament about the annual activities of his organisation. It should be considered whether the constitution should specify the cases of the termination of the general prosecutor's office. In that case - apart from general causes - the possibility of dismissal is to be considered. In order to protect independence dismissal can only take place if the general prosecutor violated the law in connection with his authorities, which was stated by court.

c) The division of the prosecution organisation follows the judicial organisation. In case of a four-level judicial system the prosecution must be of the same form. That means a minor modification in the names of the individual levels: there would be town prosecutions, county prosecutions, general prosecutions with specified regional authority (one at the beginning) and the Supreme Prosecution.

3. Prosecutors

a) Prosecution is a hierarchical organisation in which the superior prosecutor may give orders to the subordinate prosecutor. Prosecution activities are highly responsible professional activities in the performance of which it is especially important that prosecutors could work free of politics, following their professional conscience. Therefore, it is important for the constitution to state that prosecutors in performing their official obligations are only subjected to legal regulations and their legal convictions. If a superior prosecutor gives an order, the performance of which is in discord with legal regulations or the prosecutor's legal convictions, he/she may ask for exemption from performing the order. The superior prosecutor may not refuse to fulfil such a request.

b) The relative independence of prosecutors' activities requires the creation of professional bodies of prosecutors - like those of judges - that exercise the rights of consent or opinion in personal, organisational and economic matters, with respect to the decisions of prosecution leaders of various levels. This institution has recently been created by the law on prosecution service relations, so it will suffice to refer the existence and the general tasks of those bodies in the constitution. However, it is justified to separately specify that the general prosecutor is authorised to appoint, transfer and relieve prosecutors knowing the opinion of the relevant prosecution body.

XIV. Municipalities

1. Municipalities in the system of the branches of power and the nature of municipalities

The conception does not change the place municipalities take in the system of the subdivision of power. Municipalities are parts of the state organisation and continue to operate as relatively independent institutions, which are separated from executive power both from an organisational and a direction point of view. So administration continues to be divided into two relatively independent systems of institutions, state administration and municipality administration, and the direct ordering power of the government concerns only the former.

The conception defines the nature of municipalities in accordance with the effective constitution. According to that, the community of electors of villages, towns, the capital and its districts are still endowed with the right of self-government. The equality of local and county (regional) municipalities is also retained as the collective legal concept in principle excludes legal differences and/or subordinate/superior relations between the various levels. The content of municipalities is unaltered as well; the essence of local self-governing remains to be the independent, democratic management of local public issues.

In order to protect the principle of wide-range responsibility, the conception raises the decrees of the law on municipalities pertaining to local public issues to constitutional level. According to that, the group of public issues includes the provision of residents with public utilities, the municipal exercise of public power and providing the organisational, personal and financial conditions necessary to perform those tasks. The activities of municipalities involve a wide range of local public issues; the law may transfer a local public issue to the sphere of responsibilities and authority of another organisation only as an exception.

2. The forms of self-governing (elected body of representatives, local referendum)

According to the conception, the community of electors continues to exercise self-governing through elected representatives and/or directly. In accordance with that, decisions in local public issues may be made by the body of representatives (as an exception, by the mayor) and by local referendum. For guarantee reasons, as opposed to the effective regulations, decrees pertaining to calling a referendum are contained not in the law on municipalities but in the constitution. The local referendum is called for by the body of representatives; they must order a referendum if it is prescribed by law or if it is initiated by 10 % of the electors. The community of electors of the village or the county cannot directly decide on budgetary and tax issues or organisational, operational and personal issues in the authority of the body of representatives, nor can it declare the dissolution of the body.

3. Local suffrage and the principles of elections; the term of the body of representatives; the self-dissolution of the body

The conception, in opposition to the effective constitution, includes the special decrees on local elections in the chapter on municipalities. However, the principles of local elections are unchanged. Electors elect local government representatives and mayors as well as a lord mayor on the basis of the universal and equal suffrage, by direct and secret ballot, and the same principles are used in the case of a local referendum. The president of the county assembly is elected by the members of the assembly by secret ballot.

The rules pertaining to the term of the body of representatives is unchanged, too. The members of the body and the mayors are elected for a four-year period, except for extraordinary elections, and their appointment lasts until the first meeting of the new body of representatives or the election of the new mayor, respectively. The local municipality body may declare its dissolution before the end of its term - according to the conditions specified in the law on municipalities - and Parliament may dissolve bodies of representatives operating in an unconstitutional way. The dissolution also terminates the mandate of the mayor. (In the case of dissolution - until the first meeting of the new body or the election of the new mayor - the President appoints a municipality commissioner to regulate the execution of certain municipality and administrative tasks.)

The conception follows the effective regulation also in not containing the principles of the local election system. Local municipality representatives are in fact elected in three very different ways, depending on the size of the town and the level of municipality, thus the inclusion of the principles of the election system would conserve the current solution in an unjustified way and would cause structural imbalance. The conception wishes to substitute constitutional guarantees by relating the acceptance of the law on the election of municipality representatives and mayors to the vote of the qualified majority of parliamentary representatives.

4. The basic rights of municipalities

Following the effective regulations, the conception lays down the individual spheres and authority groups of autonomy as a basic right of municipalities. In accordance with that, the regulatory, taxation, economic, political and associative independence of representative bodies are declared basic rights, i.e. all the important elements of municipalities. Thus the limits of

autonomy appear as the restriction of basic rights, so for guarantee reasons their important contents may only be narrowed by a law on municipalities, passed with a qualified majority vote of parliamentary representatives. In accordance with the collective legal concept, the basic rights of municipalities are equal, but their obligations may differ.

Following the effective constitution, the conception gives an accurate list of the basic rights of municipalities. The local body of representatives, and/or the general assembly exercises its basic rights when

- it independently regulates and directs municipality issues and its decisions may only be supervised for reasons of legality (autonomy of regulation);

- it independently formulates its organisation and operational order (organisational and personnel autonomy);

- in case of municipality property it exercises owners' rights and may independently enterprise;

- decides on the kinds and extent of local taxes (taxation autonomy);

- is authorised to have its own or divided revenues and state subvention and uses its revenues independently (economic autonomy);

- independently or through its interest groups participates in the formulation of municipality policies; in public matters concerning the local community it may put in an initiative to the organ authorised to make a decision, it may create municipality symbols and may found local awards and acknowledging titles (political autonomy);

- may freely associate with other representative bodies, it may create a municipality interest association for the protection of its interests, it may cooperate with the municipalities of other countries in its sphere and may be the member of international municipality organisations (association autonomy).

The conception provides the basic and other rights of municipalities, as well as the legal exercise of municipality tasks, with the protection of the constitutional court and/or the courts. In order to enforce their rights, municipalities may apply to the constitutional court for the subsequent norm control of legal regulations and may appeal to court against the other legal instruments of state direction and the individual decisions of the authorities. In those cases, as opposed to the effective regulations, the constitutional court or the courts make their decisions in extraordinary procedures.

5. The sphere of responsibilities and authority of municipalities

The conception, as opposed to the effective constitution, differentiates not only between the tasks of municipalities and state administrative responsibilities but also adopts the decrees of the law on municipalities concerning mandatory and elective responsibilities. According to that, law can define the mandatory and sphere of responsibilities and authority for municipalities and those obligations may differ on the basis of the size of

the municipality, the number of inhabitants and other conditions. Beside mandatory responsibilities, municipalities may voluntarily undertake the independent solution of all local public issues that are not assigned to the sphere of responsibilities and authority of other organs by law. The municipalities may do everything in voluntarily undertaken local public issues that does not involve the violation of legal regulations, but their activities may not endanger the performance of the mandatory spheres of responsibilities and authority. Thus, the spheres of responsibility and authority of municipalities may still be defined exclusively by law or the decision of the municipalities.

The spheres of responsibility and authority of municipalities are due to the representative body, or in exceptional cases, to the mayor (the lord mayor, the president of the county general assembly). The primary exerciser of administrative spheres of responsibility and authority are still exercised by the parish clerk (the chief clerk) but in exceptional cases a law or a governmental decree based on law may authorise a mayor (lord mayor, the president of the county general assembly) with administrative spheres of responsibility and authority. So the primary officer of the municipalities still has a double role, that of municipalities and state administration.

The conception, in accordance with the effective regulations, does not give a list of the spheres of responsibility and authority of municipalities, not even in an exemplary way. The only exception to that is adopting the decrees on the right of proposal of the law on municipalities. According to that the representative body may turn to the head of any relevant state organ with questions concerning municipality rights and the spheres of responsibility and authority, it may ask for information, put in proposals, initiate measures and may object to the decisions of the organisation in question and may initiate their alteration or dissolution. The head of the contacted state organ must give a genuine answer to the proposal within 30 days.

6. Municipality legislation

To ensure the global constitutional regulation of legislation, the conception adopts the municipality decrees of the local municipality law in a somewhat modified way. It does not restrict the legislative right of the municipality for the social relations not regulated by law and prescribes only that the municipality decree should not be contradictory to legal regulations of a higher level.

7. The organisational structure of local municipalities

The conception adopts the effective regulations with the difference that the autonomy of local municipalities may only be restricted by the local municipality law. Thus, the president of the local municipality is the mayor (the lord mayor or the president of the county general assembly) and the municipalities may freely elect committees in the future as well. The creation of the mayor's office is also regulated by the constitution and the other basic elements of the organisation are institutionalised by the municipality law, in accordance with the current regulations. So organisational autonomy is primarily enforced in deciding on the number of vice mayors (vice lord mayors or vice-presidents of the county general assembly) and in the independent creation of the system of committees. In addition, municipalities may naturally also create organisations not named in the law.

8. The property and economy of municipalities

The effective constitution, in ensuring the right to property, accepts municipality property and the exercise of owners' rights and declares enterprising at their own responsibility a basic right of municipalities. The conception adopts that regulation with the difference that, for guarantee reasons, the individual decrees of the municipality law concerning property and enterprising are raised to constitutional level. In accordance with that, the constitution states that municipality property is divided into basic capital and operating capital and local municipalities are entitled to the same rights and are obliged by the same liabilities as any other owner. (This also means that local municipalities have legal personalities both in public law and in private law.) Because of the public nature of its activities, the enterprise of the local municipality may not endanger the fulfilment of mandatory tasks and the local municipality may only participate in enterprises in which its responsibility does not exceed the extent of its capital contribution. It is necessary to specify constitutional guarantees for enforcing the credit policy of local municipalities with suitable control.

The current legislation declares taxation and economic autonomy also a basic right of local municipalities. The conception adopts that with minor modifications in the contents of the basic rights and contains new decrees of a guarantee nature to protect economic safety. According to those, municipalities would get a share in state revenues, their mandatory tasks could only be extended in case the necessary financial assets are provided and their state administrative activities are only financed from state subsidies. A new element is the principle of regional equilibrium, on the basis of which the state gives special support to backwards regions or regions in crisis.

9. The associations of local municipalities

The constitution regulates the associations of municipalities following the constitution in effect, with the difference that it also adopts the basic regulations of the municipality law concerning associations. In accordance with that it states that local municipalities may create official administrative and institution directing associations, joint representative bodies and any other association form, the activities of which do not violate the municipality rights of the participants. Forced associations may be prescribed by law for managing administrative official matters. The central budget may stimulate the creation and operation of associations with financial benefits. Disputes arising during the operation of associations are decided by court.

For guarantee reasons the conception also contains the decree of the municipality law concerning associations of interest. According to that, national interest organs express their opinions on the proposals of legal regulations and other state decisions involving municipalities and their stance must be communicated to the decision-making organ.

10. The legality control of the activities of local municipalities

As opposed to the effective constitution, the conception not only mentions the legality control of local municipalities but contains decrees pertaining to the subject, extent, content and instruments of that activity. According to that, the government, with the co-operation of the minister of interior, provides legality control over local municipalities through the capital or county administrative offices. within the legality control, the head of the administrative office asks the relevant municipality to eliminate the violation of law and if that proves unsuccessful he/she may initiate the supervision of the unlawful municipality decree at the constitutional court or the supervision of the unlawful decree at court. On the basis of its experience

obtained during legality control, the office may ask the State Audit Office to perform an investigation involving the economy of the municipality.

The conception regulates the dissolution of the representative body following the effective constitution, with the difference that the constitutional court gives its opinion not on the governmental proposal of the dissolution of the representative body but may review the parliamentary decision on the matter, upon the request of the municipality.

11. The financial control of local municipalities

As opposed to the current regulation, the conception raises the basic decrees concerning the financial control of municipalities to the constitutional level. The economy of local municipalities is controlled by the State Audit Office and within that framework it examines the legality, expediency and effectiveness of the economic activities. It informs the mayor, or the head of the capital or county office, of the findings of the examination in a report. The representative body discusses the report and informs the Audit Office about its stance. If the representative body disregards the legality points, the State Audit Office informs the head of the administrative office about the omission.

The financial control of own institutions in towns with over 3,000 inhabitants is performed by the local municipality through the financial committee, which immediately informs the representative body about the findings of its survey. If the body disagrees with the results they send the examination records along with their remarks to the Audit Office.

XV. Public societies

Public societies are another special organisation type of municipalities apart from local municipalities. Their global regulations are presently to be found in the Civil Code. Individual public societies (chambers of economy and employment and the Hungarian Academy of Science) are regulated by individual laws. This regulation is not adequate as the status and nature of public societies require their presentation in the constitution.

The constitutional regulation of public societies may take two forms:

- under the title of municipalities, together with local municipalities;

- under an individual title, without regulations, mentioning individual important public societies under those decrees of the constitution that regulate the issues in question.

The conception recommends the first alternative. According to that, the following decrees should be placed under the title of public societies.

a) Public societies are organisations with autonomy and a registered membership, created by law or by a person or persons authorised to found a public society by law. Public societies perform public tasks related to their membership or the activities of their membership.

b) Public societies are especially the Hungarian Academy of Science and economic and professional chambers.

c) Legal regulations may specify public tasks that a public society must perform. Public societies have the licences, specified by legal regulations, necessary for performing their public tasks and enforce them by their self-governing activity.

d) It may be required by law that certain public tasks may only be performed by public societies and/or that certain activities can only be exercised as a member of a public society.

e) Public societies perform their activities according to their own rules - within legal boundaries - and use their capital independently.

f) Public societies are legally controlled by the state. Public societies may turn to court against important supervisory measures.

XVI. The Economic and Social Council

The conception proposes to set up an Economic and Social Council. This organ, comprising the representatives of employees and employers, would have a consultancy role beside Parliament and the government. Its members would be appointed by the President upon the nomination of individual organisations. The Council would express their opinion about bills

but would not have a right of decision. The law-makers must listen to their opinion but their statements do not have a binding force over the law-makers. The Council would in some sense replace the secondary chamber, but it would make the creation of a possible corporate chamber redundant. The composition, sphere of authority and decision procedures are regulated in a separate law.

XVII. The Constitutional Court

1. The place of rules on the Constitutional Court in the constitution

The Constitutional Court may be placed in the structure of the constitution in several ways. First, it is possible that the Constitutional Court is treated in a separate chapter after Parliament, the President and the government. According to the second alternative, the Constitutional Court and the judicial body performing jurisdiction would be treated together under the title of jurisdiction. The third alternative is that the Constitutional Court would be placed in a new chapter entitled 'The protection of the constitution', following the regulations of state structure. The conception proposes this third alternative because that would also constitutionally define the nature and constitutional quality of the Constitutional Court. In that case, of course, the chapter would not only treat the Constitutional Court and its institutions, but it would also provide the means for the regulation of the modification of the constitution and the principles of interpreting the constitution.

2. The scope of the Constitutional Court

It should be primarily stated about the authority of the Constitutional Court that the basic task of the Constitutional Court is to guard the realisation of the orders of the constitution. That is, the Constitutional Court is bound by the (currently existing) orders of the detailed constitution. If the Constitutional Court bases its decisions on some other legal regulation, it acknowledges the constitutionality of that regulation. As opposed to this "silent" acknowledgement of constitutionality, the unconstitutionality of each legal regulation must be stated individually.

a) Subsequent norm control

The Constitutional Court examines the harmony of the declared legal regulations with the constitution. BY legal regulation is meant what the constitution lists as legal regulations. For the sake of unambiguity it is useful to specify that the Constitutional Court may examine the legality of laws, governmental decrees, ministerial decrees and municipality decrees.

The concept of legal regulations includes all legal decrees with a general effect, so it is only the other legal means of state direction that the Constitutional Court omits examining. The latter group belongs to the sphere of administrative jurisdiction.

The above mentioned "harmony with the government" is to be understood loosely, including the requirement to sustain the hierarchy of legal sources. Because of that, during the subsequent norm control it may be a standard of examination whether, for example, a ministerial decree is in accordance with a governmental decree of a higher level. The

examination of the "harmony with the constitution" means the examination both of contents and of the form.

b) The constitutionality examination of the amendment of the constitution

The Constitutional Court may exercise this authority only on the basis of formal criteria. The content control of the amendment is forbidden, even on the basis of earlier Constitutional Court decisions.

c) The examination of the effective creation of international contracts

The new constitution must be based on the notion that international contracts do not surpass the constitution. International contracts may only be made according to the authority rules and contents in accordance with the decrees of the constitution. If an international contract fails to meet these criteria, it is unconstitutional and may not be executed, from an internal legal point of view. The examination and statement thereof is an important responsibility of the Constitutional Court. If the Constitutional Court declares an international contract unconstitutional, it suspends the execution of the contract in Hungary and asks the relevant body to eliminate the unconstitutionality within a given time. The unconstitutionality may be eliminated by amending the contract (with the consent of the other contracting party/parties), or by abrogating it (if it is possible by the contract or by other rules of international law), or by amending the constitution, but these ways need not be regulated by the Constitutional Court.

As an alternative, a proposal could say that the Constitutional Court would not be authorised to exercise those rights. This argument is based on the clause of the Vienna Agreement on international contract rights according to which in the case of failing to perform the obligations of international contracts no state can argue that their internal laws prevent the performance. This argument is too expansive for the constitution and would make practically all internal democratic and constitutional legal technical procedures redundant in relation to international contracts. Thus the above mentioned alternative could eliminate all internal legislation constitutional guarantees. According to the conception it is therefore justified, in opposition to the alternative proposal, that the Constitutional Court should examine the legality ("effectiveness") of international contracts.

d) The examination of the harmony of international law and internal law

The so-called primacy of international law means that the effectively made international contracts may not be terminated or amended by unilateral internal state legislation, only by the relevant international procedures. If an international contract has constitutionally been made ("it is effective"), internal law must be adjusted to it for the period of its effectiveness.

Thus, the Constitutional Court may state the unconstitutionality of an internal legal regulation on the basis of not being in harmony with the international contract which is effective according to the constitution.

e) Stating unconstitutionality by default

If the organ authorised to create legal regulations is bound to make regulations by international contract or internal legal authorisation and/or order and fails to meet that task, the violation of the constitution takes the form of default. This condition may be stated by the Constitutional Court. The remedy of the unconstitutionality is making the legal regulation.

f) The judgement of constitutional complaints

The basic rights included in the constitution are (partly) directly binding legal regulations so they can be violated not only by legislation but also by individual state decisions. If somebody suffers such a case of injury of basic rights they may ask for individual remedy from the Constitutional Court in a constitutional complaint, according to one possible alternative.

However, constitutional complaints may only be employed if the other possibilities of court remedy on the basis of other legal regulations have been tried or if there is no other possibility for remedy other than the constitution, for lack of other legal regulations.

According to the other possible alternative the so-called basic right jurisdiction is the task of regular courts. In that system, the basic constitutional rights can be sued directly (in a regular court procedure), essentially as in article 70/K of the current constitution. Within the alternative there are two sub-alternatives. According to one, following procedural regulations a certain court would take action in the first instance and a higher court in the second and third instances. According to the other sub-alternative, basic right jurisdiction would completely (i.e.,

excluding all other regular court levels) be referred to the authorities of the Supreme Court. In both cases of the second alternative constitutionality complaints would obviously not be handled by the Constitutional Court. There would only be a possibility in the case of basic rights injuries for subsequent norm control by the Constitutional Court (i.e., a procedure different in its nature).

Several arguments can be made in defence of the alternative solution. One is that the jurisdiction of the Constitutional Court in basic rights would result in a "supercourt" above the Supreme Court, with excessive power. Another argument is that the procedure of the Constitutional Court (in general) is free from the contradictory elements of court procedures. A third argument is that after a three-step court procedure the procedure of a fourth forum is necessitated neither by reasons of time nor reasons of guarantee.

As opposed to these argument, basic right jurisdiction by the Constitutional Court is supported by the fact that at the forum of basic rights that can be contacted after the three steps of regular court legal protection, i.e. the Constitutional Court, typical contradictory procedures are not indispensable. The Constitutional Court can rely on a large volume of previous contradictory material and is not obliged to eliminate such procedures.

g) Authority jurisdiction

With the exception of authority disputes between purely administrative organs, decision of all other authority disputes between state organs is in the competence of the Constitutional Court.

h) Performing state court tasks

The establishment of the President's legal responsibility for purposefully violating the constitution or laws is the task of the Constitutional Court.

i) The sphere of responsibilities related to the judgement of the constitutionality of a referendum

Upon the President's request, the Constitutional Court examines the harmony of questions to be put to referendum with the constitution. If the constitution or the laws were severely violated in writing out or conducting a referendum, the Constitutional Court is authorised to annul the results of the referendum.

j) Responsibilities related to certain elections and appointments

A proposal was made that the Constitutional Court should be authorised to make a formal examination of the constitutionality of appointments in the sphere of authority of Parliament, the President or the Prime Minister. However, questions of the constitutionality of contents, or questions of constitutionality to be evaluated, would not belong into the scope of the Constitutional Court.

A counter-argument against this proposal was that the Constitutional Court should not take over the responsibility of the proposer and the

appointer, i.e. that it should not exercise such authority. However, the conception considers it important to have a forum that may revise unconstitutional personal decisions on a legal basis, because it is public interest that not only unconstitutional legal regulations but also unconstitutional personal decisions would be prevented from becoming effective. Thus the conception refused the counter-argument.

k) Responsibilities stated in other laws

New spheres of authority of the Constitutional Court may only be assigned by law. The constitutionality of the law assigning the authority can be examined by the Constitutional Court.

3. The structure of the Constitutional Court

From the range of issues related to the structure of the Constitutional Court it is only the most basic issues of guarantee that concern the constitution. Detailed rules should be contained in the law on the Constitutional Court and/or the structural and operational regulations of the Constitutional Court. the basic elements to be regulated by the constitution are the following:

a) The number of staff and the personal composition of the Constitutional Court

The body consists of a president, vice-presidents and constitutional judges. It may be proposed that the Constitutional Court should consist of

12 people, or, as in the current rules, 11 people. As opposed to the staff of an odd number, a staff of 12 would ensure several channel nomination more.

b) Organisational forms authorised to exercise the authorities of the Constitutional Court

Two organisations can be considered in this issue, the full meeting and the councils with three members. The full meeting exercises the spheres of authority related to the subsequent norm control of laws, the constitutionality of the amendments of the constitution, the examination of the effectiveness of international contracts, the harmony of international law and internal law, the statement of the violation of the constitution by default by Parliament, the examination of the constitutionality of a referendum and the fulfilment of state court responsibilities. As for other authorities stated by law, the law specifying authority may specify further subjects to be decided by the full meeting. Other cases of the Constitutional Court are handled by councils of three.

4. The main rules of Constitutional Court procedures

The constitutional decrees related to Constitutional Court procedures entail several elements.

a) It must be laid down that the Constitutional Court takes action only upon motion of those authorised but not ex officio. However, the procedure may be extended (as the "ex officio" element) if the Constitutional Court bases its decision in connection with the proposal on a legal regulation

that is considered ambiguous from the constitution on a legal regulation that is considered ambiguous from the constitutionality point of view, although the proposal was not directed at the examination of that.

b) The group of those authorised to make a motion must be specified by spheres of authority, with the aim that "popularity" is restricted to the smallest possible group. In the light of that, the group of those authorised to make a motion is the following:

- in the case of subsequent norm control, statements of the constitutionality of the amendments of the constitution, the statement of the effectiveness of international contracts, the examination of the harmony of international law and internal law, the statement of the violation of the constitution by default, the examination of the constitutionality of the results of a referendum, the examination of the constitutionality of certain elections and appointments, at least 50 representatives, the President, the Prime Minister, the president of the Supreme Court, the general prosecutor, the parliamentary commissioners of citizens' rights, the representative body of any local municipality concerning the legal regulations related to them, and the court in the case of a procedure under way;

- in the case of the constitutionality examination of a municipality decree, the relevant prosecutor and a specified number of municipality representatives;

- in the case of constitutional complaints - if the procedure is taken to the authority of the Constitutional Court - those citizens and organisations

whose basic interests are concerned in the procedure leading to the violation of basic rights;

- in the case of authority disputes, those between whom the dispute arose;

- in the case of state jurisdiction, Parliament with a (qualified) majority vote;

- in other cases, those specified in separate laws.

c) The issue of quorum is to be settled by the constitution. The full meeting has a quorum if there are at least eight constitutional judges present, including the president or vice-president. The council of three has a quorum only if all its members are present. The Constitutional Court makes its decisions by simple majority vote.

d) Motions should be evaluated within reasonable time. Decisions can declare the results of unconstitutionality as of the date they are published. There are two exceptions from the main rule. On the one hand, the results of unconstitutionality stated for formal reasons have a retroactive effect. On the other hand, if for some serious reason the Constitutional Court states the realisation of the results of unconstitutionality as of a later date, the delay cannot exceed one year. As for the time limits of decisions, the decree should be included in the constitution that after three years it is possible to make a motion to revise a previous Constitutional Court decision.

5. The legal status of constitutional judges

a) The regulation of the legal status of constitutional judges should be based on the notion that constitutional judges are only subjected to the decrees of the constitution but decisions can be based on other legal regulations as well. A related notion is that constitutional judges are independent and during their period of commission irremovable. Two proposals seem acceptable for the election of constitutional judges. According to one, the current way would be sustained, i.e., election by Parliament on the basis of a proposal by the nominating committee, consisting of the representatives of the fraction. This proposal is in harmony with the Constitutional Court consisting of 11 members.

b) According to the other alternative, the 12 members of the Constitutional Court would be appointed by the President. Constitutional judges are proposed by fraction leaders of the parties with representatives in Parliament, the court municipality, the Supreme Court, the National Chamber of Lawyers and legal higher education institution, in a one-third ratio, and four constitutional judges are appointed by the head of state, on the basis of his consultations, without nomination. The President exercises his right of appointment without the prime minister's (minister's) countersignature.

The conception proposes to accept the second alternative.

c) A constitutional judge may become, through election or appointment, an able Hungarian citizen with no criminal record, over the age of 45, with

legal qualifications, an appointed university professor or meets the criteria of appointment to university professor (habilitation), and/or has a 20-year professional experience in a sphere for which a degree from the University of State and Legal Sciences is required. The president and vice-president of the Constitutional Court are elected by the constitutional judges from their group by a simple majority secret ballot and they can be repeatedly re-elected during their commission as constitutional judges.

There are strict incompatibility rules concerning constitutional judges. This post is incompatible with all other political, state, social or economic post or commission. Constitutional judges may not perform any other earning activities and may not accept compensation for any other activities, with the exception of teaching and copyright activities.

The post of a constitutional judge is terminated by the constitutional judge's death, by losing the conditions of eligibility, resignation, exclusion or by reaching the age of 70.

The detailed rules concerning the structure and procedure of the Constitutional Court are to be found in a law to be passed with qualified majority.

XVIII. The parliamentary commissioner of citizens' rights

a) The constitution must list in the first place what parliamentary commissioners serve the protection of citizens' rights. They are: the (general) parliamentary commissioner of citizens' rights and his deputy, as well as data protection and minority (specialised) parliamentary

commissioners. It is unnecessary to elect further specific commissioners as the general commissioner and his deputy can handle the tasks.

b) The parliamentary commissioners of citizens' rights are elected by Parliament upon the proposal of the President by a two-third vote of all its members, for a six-year term. Their re-election is allowed on one occasion.

c) The task of the parliamentary commissioners of citizens' rights are to perform or have performed investigations to eliminate constitutional irregularities known to them, make remarks and proposals, initiate the procedure of certain organs and submit an annual summary report on the situation of citizens' rights to Parliament. The report must be published every year.

d) The procedure of the parliamentary commissioners of citizens' rights can be initiated by anyone (persons or organisations) if there is no regular way of legal remedy available or it has been tried. However, the parliamentary commissioners of citizens' rights handle the received applications at their merits if the applicant proves his/her legal interest related to the constitutional irregularity. Besides, parliamentary commissioner of citizens' rights may perform procedures by their own initiative (ex officio).

e) Procedures of the parliamentary commissioners of citizens' rights include the entire administration except for the government. They also include economic organisations providing public services and being in a monopolistic situation. Their activities essentially entail the entire current sphere of authority of legal supervision of the prosecution. By modifying the effective laws, the sphere of authority must be transferred to the commissioners of the rights.

f) The constitution must include the authorisation that the detailed rules related to the tasks, procedures and legal status of parliamentary commissioners of citizens' rights are defined by a separate law.

XIX. Amending the constitution

1. The substantive law and procedural law conditions of amending the constitution

a) The constitutions of various countries formulated diverse substantive law and procedural law conditions for amending the constitution of their country in order to ensure the stability of the constitution and a thoughtful creation of the constitution, relying on a social discussion of a wider range.

b) In some countries the constitutional and the legislative powers are separated and the constitutional power appears as the restriction of the legislative power. That is necessary so as to ensure the stability of constitutional institutions and so that the legislative power, changing from

cycle to cycle, cannot keep amending the constitution. There are several ways of realising that, but normally the following techniques are used:

- confirming the amendment of the constitution by referendum,

- involving other bodies in the creation of the constitution, other than Parliament,

- confirmation by the next Parliament, often combined with dismissing the Parliament having passed the constitution.

In other countries the constitutional and the legislative powers are not separated but a specific qualified majority decision is required for amending the constitution and there are special procedural law requirements, e.g. procedures of several phases, requiring more consideration and care.

b) The Hungarian constitution is one of the most easily amendable constitutions. Although a referendum is necessary for confirming the new constitution, according to the law on referendum, nut the constitution may be amended by the two-third majority of all members of the single-chamber Parliament. These rules ensure neither the stability of the constitution nor the inclusion of society into the creation of the constitution, but rather they allow for the governmental majority to be the same as the constitutional power.

The conception takes as a starting point that the new constitution under preparation will be formulated in accordance with the current rules, i.e. Parliament will accept it by a two-third majority of its members, which will have to be confirmed by referendum. (it must be mentioned that many consider the confirmation of the constitution by referendum dangerous because that way, on the basis of the atmosphere, some rules the public objects to, like eliminating capital punishment, may lead to the refusal of the entire constitution. However, the conception does not propose the amendment of the current rule because on the one hand that would mean a retreat from the entire nation, and on the other hand the new constitution may get its strongest legitimacy by the referendum. It is through informative and educational efforts that a more positive opinion should be developed among citizens.

The new constitution should seek solutions better guaranteeing the stability of the constitution. In that respect, the conception includes three alternatives.

The first alternative considers that although stricter rules should be introduced for the amendment of the constitution than the current ones, but the constitution cannot be made too rigid because, due to the continually changing social relations, the need for the amendment of the constitution in the near future cannot be excluded. Therefore, the current rules would basically be kept but would be supplemented by new procedural orders. Those procedural orders would be contained in the constitution itself or the house rules of Parliament. According to that, for example, apart from the g. According to that, for example, apart from the government only a specific number of representatives could initiate the amendment of the constitution. Parliament discuss the amendment of the constitution in two stages: first they would discuss the conception of the amendment of the constitution, and having accepted that, the norm text of the constitution. A longer period of time must elapse between the initiative

and the discussion of the bill, just as between the general and the detailed discussion.

The requirements of both stability and social acceptance would be met if the amendment of the constitution was supplemented by the possibility of social veto. Thus the constitution, accepted by referendum, would be amendable by a legislative act, but the amending law could not be promulgated for a given period of time, e.g. three months. During the period considered as in abeyance from the point of view of promulgation, those authorised by the rules of referendum may initiate the invalidation of the amending law by referendum. The lack of the initiation of referendum and/or the acceptance by referendum would automatically allow the promulgation and coming into force of the amending law, with its original text. The formulation of a completely new constitution would continue to require confirmation by referendum.

The second alternative wishes to provide greater stability for the constitution by separating the constitutional and legislative powers. Following the amendment of the constitution by Parliament and/or the acceptance of a new constitution, the procedural rules of which may be the same as above, what is necessary is not a possible or mandatory confirmation by referendum, but a confirmation by the qualified majority of an organ representing the various forces of society. This organ would be the same as the organ of 150 people participating in the election of the President, according to one alternative mentioned there. Its members would be either exclusively the representatives of local governments, or apart from them the representatives of the national local governments of national and ethnic minorities, the national interest organisations, the economic and employment chambers, the Hungarian Academy of Science, universities and colleges.

The third alternative would not allow the submission of a new amendment bill within a specified period from the last amendment. It requires a four-fifths vote of all representatives for the amendment of the constitution.

The concept recommends the acceptance of the first alternative because it considers the creation of the constitution by the direct participation of the people as the strongest form of legitimisation.

2. The unalterable rules of the constitution

Some constitutions include a decree specifying which rules of the constitution are unalterable by amendment. They are for example the acknowledgement of human rights, the form of state and government, the prohibition of acquiring or exercising state power by violence and the related right of opposition. These rules were included in the constitution in some countries because of concrete social reasons. It is obvious that these decrees only have a declarative power because if a political force obtains unrestricted power by violence, it can dismiss any and all decrees of the constitution. However, those making the constitution can declare what values they consider outstandingly important so that they can be changed in a completely new constitution but not by amendments. therefore, it would be expedient to declare the unalterable nature of the mentioned decrees.

XX. The structure of the constitution

The final structure of the constitution can be decided on only after deciding on the conceptional issues. At the present stage of preparations the

following structure can be recommended, with respect to the supported alternatives.

Preamble

Part I General provisions

The State's constitutional form

The constitutional base values

The principle of the people's supremacy

Defence of the people and homeland

The geographical division of the state's territory

Citizenship

National symbols

Prohibition of exercising power by force

Principles of foreign policy

International Agreements

Part II Base rights

Chapter 1. The rights

Legal rights and the impartiality of the law

Human dignity

The right to live

Personal freedom and safety

Prohibition of slavery

The prohibition of restriction of freedom in retaliation of breach of contract

Legal capacity and ability to act

Equality in law

Freedom of movement

Protection of reputation and privacy

Freedom of religion and conscience

The right to marry and begetting children

Rights of the child

Freedom of the press and communicating ideas

Freedom of science, education and arts

The entitlement to administration of justice, legal courts and to a judge apponted by the law

The entitlement to independent and impartial court

The right to use one's mother toungue

The right of the entitlement to legal remedy

The principle of 'everybody is only responsible for his

action that is to be punished by the law' and of 'everybody can only be punished to the extent determined by the law'.

The assumption of innocence until proven guilty

The right of protection

The right of being heard in person

The right to know the allegation and evidence

The prohibition of imposing punishment on several occasion for the same action

The entitlement to compensation for being wrongly punished (imprisoned)

The right of assembly

The right of association

The right of application and complaint

The right of access to information of public interest

Freedom of property, inheritance, trade and industry, protection of fair market competition

The right to work and to the free choice in employment

The right to fair and equal working conditions

The right to organise in the workplace

The right to strike

Chapter 1. Parliament

Parliament's tasks and competence

Election of members of Parliament

Rights and duties of members of Parliament

Discontinuation of Parliamentary members' mandate

Sessions and sittings of Parliament

Rules of making a resolution

The start and finish of Parliament's operation

The procedure of legislation

Chapter 2. The President of the Republic

The head of State's status in public law

Election of the President of the Republic

The President of the Republic's start of office

Standing in for the President of the Republic

Incompatibility

The tasks and competence of the President of the Republic

Discontinuation of the President of the Republic's mandate

Protection and accountability of the President of the