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Some Values and Guarantees in the Ten-Year-Old Hungarian Constitution, With a Look at the Constitutional Arrangements of the Countries Founding the European Integration

- **ABSTRACT:** *In this study, certain values and guarantee institutions of the Hungarian Fundamental Law are analysed in the light of the constitutions of the countries that have established European integration – Germany, France, Italy, and Belgium. Among the value systems, Christian culture and the family have been examined, while the study has also focused on the guarantees important for living conditions, such as strict public finance provisions, rules on emergency powers, and provisions guaranteeing a high level of protection for future generations and the environment. In addition to the analysis of the constitutions, the study makes several references to the jurisprudence of the countries concerned and to the most important aspects of constitutional developments in recent years.*
- **KEYWORDS:** constitutional values, human rights, public finance, emergency powers, future generations.

“The Hungarian Constitution suffers from shortcomings in the concept of the common good and in the definition of moral values.”

Ferenc Mádl²

The above words of former President of the Republic Ferenc Mádl referred to the constitution, which was repealed in 2012. What would he say today on the occasion of the tenth anniversary of the adoption of the current Hungarian Constitution, the Fundamental Law? Does the Hungarian Fundamental Law reflect such a specific

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2 Mádl, 2011, p. 23.



concept of values and the common good? On the occasion of this anniversary, in this study³ we will try to present certain rules and specific features of the Fundamental Law, looking at the constitutions of other countries. However, given the limitations of this study, this presentation can only be arbitrary, in terms of the constitutional provisions highlighted for analysis, the scope of the countries used for comparison and the depth of the analysis. Nevertheless, we believe that this brief summary can also serve as a testimony to the uniqueness and distinctiveness of the Fundamental Law on the tenth anniversary of its adoption, and to the fact that the Fundamental Law itself is an important and valuable piece of our national identity.⁴

Starting from the fact that in the past decade some provisions of our young constitution have often been analysed in the light of the constitutional rules of other countries, the ideas of decision-makers in other countries and the representatives of international organisations,⁵ this has prompted us to examine in this paper, from a reverse perspective, how some of the achievements of the Fundamental Law that we consider important have been regulated in the constitutions of other countries.⁶ In the comparison, we focus primarily on the normative text of the constitutions themselves, but – within the limits of the scope of the report – we also try to take into account the constitutional jurisprudence woven around them and the legislation detailing the provisions of the constitutions, knowing that without them we would only get a half-formed, false picture.⁷ Our comparison also includes some values that are important elements of our identity, as well as safeguards to ensure that we can continue to provide a framework and conditions for living our identity. The comparison focuses on two important values of the Fundamental Law that need to be protected, namely the family and Christian heritage and culture⁸. The comparison focuses on three specific elements of the guarantees provided by the Fundamental Law: firstly, the provisions on the protection of public funds, which are unique in certain respects; secondly, the guarantees that safeguard the living conditions and

3 I would like to take this opportunity to thank the staff of the Mádl Ferenc Institute of Comparative Law (MFI) for their help in writing the paper, especially Márta Benyusz and Zoltán Nagy, the heads of the MFI's departments, Attila Horváth, the MFI's senior researcher, as well as Noémi Suri and Flóra Orosz, the MFI's researchers.

4 Cf. Varga, 2021, pp. 155–178.

5 Examples are given of the scrutiny of the Fundamental Law by EU and international organisations, and the positions of French politicians in: Trócsányi, 2021, pp. 135–139, 141–142.: The Dutch Parliament, for example, has examined the state of the rule of law, and thus our constitutional system and legal practice: Serdült, 2019.

6 As for date of reference, we have set April 2011, i.e. the date of adoption of the Fundamental Law.

7 On the same see Badó and Mezei, 2016, p. 145.

8 Similarly, these two characteristic values are highlighted by Varga, 2021, pp. 303–321. A 2020 survey of other EU Member States on 'respect for identity, culture and traditions' under the comparative perspective brought up five 'key themes', three of which (if not coincide, but) overlap with two of the value elements of our present study: 'national identity', 'interpretation of religious freedom', 'main measures and philosophy of family policy'; see Trócsányi and Lovász, 2020, pp. 15–16.

security of our present generation in specific situations⁹ and, thirdly, the guarantees that are intended to ensure that future generations have adequate opportunities in the face of the environmental challenges of the 21st century. And the countries whose legislation is examined in this study are among the states that have established the European integration, namely Germany, France, Italy and the Benelux State of Belgium.

1. Christian tradition and the family as a value in some European constitutions

Constitutions can reflect a wide range of values, many of which can be considered universal, others European, and others national. Moreover, different values can be regulated in different forms and textual contexts. In our view, one or another constitution cannot be considered inferior per se because a particular value is not reflected in it or not the way as in the constitution of another nation.¹⁰ Therefore, after all this introduction, we can state as a fact that family and Christian heritage and culture are characteristically represented as values in the Fundamental Law;¹¹ in the following, we will look at how these are reflected in the constitutions of the other countries under review.¹²

■ 1.1. Christianity as a value in European constitutions

It is not surprising that Hungary, as a country roughly one third of whose area was part of a Muslim (Ottoman) world empire for 150 years against the will of its people, and in which the communist dictatorship of the 20th century was explicitly hostile to Christian culture and its carriers, should regard its thousand-year-old Christian traditions as an element of its identity to be emphasised, protected and preserved, as part of its culture. Accordingly, the Fundamental Law of Hungary states Christianity *expressis verbis* as a value to be protected.¹³ In the preamble to the Fundamental Law, the National Avowal, the adopter of the constitution declares with “pride” that our country has become “part of Christian Europe” and has recognised “the role of Christianity in preserving nationhood”. Besides the fact that the symbols of the Hungarian state, as enshrined in the Fundamental Law, are imbued with Christian symbols and

9 On the importance of values and their exercise in a special legal order, see Schanda, 2021.

10 Cf. Badó and Mezei, 2016, pp. 156–157.

11 See Trócsányi, 2021, pp. 141–142.

12 An important starting point for writing this chapter is provided by: Benyusz et al., 2021.

13 It does not fall within the scope of the study, but it is important to mention the Greek and Polish constitutions, which have, although not the same, but a similar character of Christianity as a value; Benyusz et al., 2021, Appendices I and II. On the special features of Hungarian legislation in comparison with other Central European countries, see Sobczyk, 2021.

language,¹⁴ in Article R) of the Foundation, the Seventh Amendment to the Fundamental Law¹⁵ makes it the duty of all organs of the state to protect “the constitutional identity and Christian culture of Hungary”. And with the Ninth Amendment to the Fundamental Law, Article XVI of the section entitled Freedom and Responsibility, Hungary provides children with an upbringing “that is in accordance with the values based on the constitutional identity and Christian culture of our country”. The current text of the Belgian Constitution of 1831, the French Constitution of 1958 and the Basic Law of the Federal Republic of Germany¹⁶ do not mention Christian traditions *expressis verbis* as a value to be protected.¹⁷ The Italian Constitution of 1947 does not itself contain a direct reference to Christianity as a value to be protected, but in Article 7 of the constitution, which regulates the relationship between the State and the Holy See, it does mention the Lateran Treaty, which is an atypical source of Italian law, but an important one, despite the fact that it is not considered to have constitutional status. Article 9 of the text of the Lateran Treaty, as in force in 1984, states that the Italian State recognises the importance of religious culture and that “the principles of Catholicism are a part of the historical heritage of the Italian people”.¹⁸

Countries regulate their relations with Christian (and other) churches in accordance with their models of church regulation or (in the case of France, for example) do not regulate them in their constitutions. These are – based on the categorisation¹⁹ of Balázs Schanda – the following: in the case of Hungary, which actively wishes to preserve Christianity as a cultural value, and Germany, which prohibits the state church in its constitution *expressis verbis*, the so-called related model regulates the relationship

14 In the Fundamental Law, the “patriarchal cross” and the “Holy Crown” are visibly embodied in the coat of arms of Hungary in a visualised form in Article I(1) of the Fundamental Law; the anthem of Hungary is a prayer to God (Article I(3) of the Fundamental Law); and King Stephen is also referred to as “Saint”, not “I” (Article J of the Fundamental Law). The National Avowal is preceded by the first line of the national anthem (“God bless the Hungarians”); and in the postamble of the Fundamental Law, the “Members of the National Assembly”, “being aware of” their “responsibility before God and man”, adopted the country’s first Fundamental Law. And in the National Avowal, “love” (God is love; 1 John 4:7–21), among other things, is established as a fundamental cohesive value.

15 For the significance and interpretation of the relevant parts of the amendment, see Schanda, 2018.

16 Germany is a federal state, and it is also true for the subject of our analysis that beyond the federal level, the Land level is also of decisive importance (for example, in the recognition of certain churches as public bodies or in the normative state support of certain churches); however, we will not discuss the Länder constitutions in this section.

17 It is interesting to note that there has been (for example in 2016) and is currently (2021) a French amendment pending on this issue, which would refer to France’s pride in its “Judeo-Christian roots”. At the same time, the German Basic Law can be seen as an indirect reference to certain Christian traditions, for example, according to its preamble, the German Basic Law is adopted in awareness of the “responsibility before God and man”. Benyusz et al., 2021, pp. 6, 9 and 12. For more on these countries, see also Benyusz, Pék and Marinkás, 2020, pp. 148–173.

18 The Italian Constitutional Court Decision 203/1989, interpreting the 1984 amendment to the Lateran Treaty, states as a fundamental principle that the principles of Catholicism are part of the historical tradition of the Italian people. Benyusz et al., 2021, pp. 16, 18–19.

19 Schanda, 2019.

between the state and the churches; France, which has no constitutional provision on the relationship between the state and the church and professes the principle of full laicisation, follows the so-called “radical separation” model; in relation to the Catholic Church, Italy follows the so-called “cooperative separation” model, and in the case of Belgium, which, in its constitution, only indirectly establishes the separation of church and state in comparison to Hungary, there is a kind of hybrid²⁰ model similar to the separation and related models. All these different models provide different opportunities for the transmission of Christian faith and culture (for example through education).

■ 1.2. *The family as a value in European constitutions*

The Fundamental Law provides for a distinctive concept of family and marriage and for the protection and support of the family, marriage and children.²¹ In the National Avowal, the family is defined alongside the nation as the “principal framework of our coexistence”. Article L(1) of the Foundation, as amended by the Ninth Amendment, states that Hungary shall protect “the family as the basis of the survival of the nation”. In this same paragraph, the adopter of the constitution defines marriage and the relationship between parents and children as the basis of family ties. Marriage, as the family form clearly favoured by the Fundamental Law, is given a concrete definition in the Fundamental Law, which states that marriage is “the union of one man and one woman established by voluntary decision”. The Fundamental Law also gives a strict definition of parents, i.e. the “mother shall be a woman, the father shall be a man”. These provisions provide clear guidance on the concepts of family and marriage (their constituent elements) and their relationship to each other in a complex way compared to the constitutions presented below.²² Our Fundamental Law contains several provisions on family protection and family support:²³ Article L(1)-(2) provides that Hungary supports childbearing and regulates the protection of families in a special, cardinal law²⁴; Article XV(5) of the Fundamental Law, as amended by the Fourth Amendment, provides that “[b]y means of separate measures, Hungary shall protect families, children”; Article XVIII(2) provides that “[b]y means of separate measures, Hungary shall ensure the protection of [...] parents at work”; and Article XXX(2) on public support provides that “[f]or persons raising children, the extent of their contribution to covering common needs must be determined while taking the costs of raising children into consideration.” In addition to the protection of private life, Article VI of the Fundamental Law also provides for the protection of family life;

20 Sägerser, 2011, p. 13.; Benyusz et al., 2021, p. 6.

21 On the model characteristics of the Hungarian Fundamental Law and the legal regulation based on it in comparison with other Central European countries, see Heinerné Barzó and Lenkovics, 2021.

22 Benyusz et al., 2021, pp. 20-35.

23 As a point of interest, I note that under Article P(2), “family farms” in agriculture are also considered as a supported form.

24 Namely Act CCXI of 2011 on the Protection of Families.

the combination of these two elements is not unique in Europe. The Fundamental Law provides *expressis verbis* for children's rights, although not in a general sense, but emphasising the protection and care aspect in Article XVI(1) of the Fundamental Law, as shaped by the Ninth Amendment: "[e]very child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country." A specific feature of the Fundamental Law is that it contains specific provisions on parent-child relations. On the one hand, Article XVI(2)-(3) sets out the rights and duties of parents towards their children: "[p]arents shall have the right to choose the upbringing to be given to their children" and "[p]arents shall be obliged to take care of their minor children. This obligation shall include the provision of schooling for their children." On the other hand, it also provides guidance on the obligations of children towards their parents, which is unique compared to the other constitutions examined (in other countries, this obligation is mostly found in civil codes);²⁵ Article XVI(2) to (3) of the Fundamental Law states that "[a]dult children shall be obliged to take care of their parents if they are in need."

The Belgian Constitution also protects the family in the context of the right to privacy, but does not provide a constitutional definition of the family, nor does it give guidance on some of its components. The Belgian Constitution is similarly silent on marriage. Both the definition of the family and the definition of marriage are only found in lower-level legislation; under the Belgian Civil Code, opposite-sex and same-sex couples can marry, same-sex couples can adopt and female couples can also engage in artificial insemination.²⁶ At the same time, Article 23 of the Belgian Constitution establishes the right to a family allowance (which can be seen as a kind of family support institution) and Article 24 of the constitution defines school choice as a right of parents. However, the Belgian Constitution does not guarantee a child's right to be supported by his or her parents (this is provided for in the Belgian Civil Code), nor is there any provision in the Belgian Constitution (or under their Civil Code) for an adult child's obligation to support his or her parents. An amendment in 2008 made certain child protection provisions part of the Belgian Constitution (Article 22/A). On the one hand, every child has the right to moral, physical, mental and sexual integrity (the latter does not mean the right to the sex of birth, but protects against rape and indecent assault²⁷). On the other hand, every child has the right to express his or her views on all matters that concern him or her; his or her opinion must be taken into account.

The French Constitution declares the protection of family life indirectly: the preamble to the French Constitution of 1958 provides that the preamble to the Constitution

25 Benyusz et al., 2021, p. 21.

26 Ibid., p. 22.

27 Ibid., p. 23.

of 1946 remains in force, and the Constitutional Council in 1993²⁸ bases the right to a normal family life on paragraph 10 of the preamble to the Constitution of 1946, which is inseparable from the right to respect for private life. The concept of family is not defined in the French Constitution; in this regard, a 2004 interpretation by the Constitutional Council²⁹ can give some guidance: the family is first and foremost a married couple, a couple and then children.³⁰ The French Constitution does not define marriage either; same-sex marriage is provided for in the law of 17 May 2013³¹. According to Article 143 of the French Civil Code, marriage is contracted by two people of different or the same sex, and according to Article 6-1, marriage (including adoption) has the same legal effects if it is contracted by people of the same sex as if they are of different sexes. A same-sex spouse can adopt the child of his or her spouse. The French Constitution does not contain any rules on the rights of the child (but the Constitutional Council's practice³² suggests that, for example, the best interests of the child are constitutionally protected) and other elements of the child-parent relationship are covered by the French Civil Code (including parental and child maintenance obligations).

According to Article 6 of the German Basic Law (*Grundgesetz*), marriage and the family are under the special protection of the state; the care and upbringing of the child is primarily the right and duty of the parents, which is guarded by the state community; children can only be taken from the family by law. The German Basic Law does not define the concepts of family and marriage *expressis verbis* by defining their constitutive actors (spouses, parents), but the German Federal Constitutional Court in its 1959³³ (and later in 1980³⁴) decision deduced from Article 6 that marriage is a union of man and woman. The practice of the Constitutional Court subsequently changed, and in a 2013 decision the German Federal Constitutional Court³⁵ ruled that parents in a registered partnership are also considered a family under Article 6 of the German Basic Law if the child is adopted by the registered partner of the child's biological parent (but did not extend a similar level of protection to non-registered partnerships³⁶). Legislation³⁷ allowed registered partnerships for same-sex couples in 2001.³⁸ In 2002, the German Federal Constitutional Court³⁹ first declared the related law

28 Décision 93-325 DC – 13 août 1993 – Loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France.

29 Hauser, 2004.

30 Benyusz et al., 2021, p. 24.

31 LOI n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe.

32 See: Décision n° 2018-768 QPC du 21 mars 2019; Décision n° 2013-669 DC du 17 mai 2013. In the latter decision, the Constitutional Council allowed same-sex couples to adopt a child, putting the best interests of the child first; see also Benyusz et al., 2021, p. 25.

33 Bundesverfassungsgericht Urteil vom 29 July 1959, 1 BvR 205/58.

34 Bundesverfassungsgericht Urteil vom 28 Februar 1980, 1 BvL 136/78.

35 BVerfG, Urteil des Ersten Senats vom 19. Februar 2013 – 1 BvL 1/11 -, Rn. 1-110.

36 Benyusz et al., 2021, p. 27.

37 Gesetz über die Eingetragene Lebenspartnerschaft vom 16. Februar 2001 (BGBl. I S. 266).

38 For an interesting account of the process and controversy surrounding the adoption of the law, see: Sanders, 2016, pp. 490-491.; also Benyusz et al., 2021, pp. 27-28.

39 BVerfG, Urteil des Ersten Senats vom 17. Juli 2002 – 1 BvF 1/01 -, Rn. 1-147.

constitutional precisely because of the differences between marriage and registered partnerships, and later, based on Article 3 of the German Basic Law guaranteeing equality before the law, gradually declared the same differences unconstitutional,⁴⁰ at the end of which the legislature, by amending the Civil Code (BGB) in 2017⁴¹, made same-sex marriage possible (while abolishing the possibility of registered partnerships). In the case of unmarried same-sex couples, a law passed after the German Federal Constitutional Court's 2019 ruling⁴² allowed one member of the couple to adopt the biological or adopted child of their partner.⁴³ For the time being, a child cannot have two mothers or two fathers on the birth certificate, but the German government has already proposed a Scandinavian-style co-motherhood arrangement in August 2020.⁴⁴ The current text of the German Basic Law (beyond the equal status of children born out of wedlock) does not provide for children's rights, however, the German government has submitted a proposed amendment⁴⁵ to Article 6 of the German Basic Law in January 2021. The obligation to maintain or bring up children and the parental responsibility are not covered by the German Basic Law, but by the German Civil Code.

Articles 29–31 of the Italian Constitution deal with the family and children in several important points, and the interpretation of these provisions has been a central theme of the activities of the competent Italian forums in the last decade. According to Article 29 of the Italian Constitution, the Italian State recognises the rights of the family as a natural community based on marriage, and the same article provides for equality between spouses. Under Article 31 of the Italian Constitution, the state also provides financial support and other measures to help start a family and protect motherhood and children. Article 30 of the Italian Constitution contains provisions on the parent-child relationship, namely with regard to parents, according to which parents have the duty and the right to maintain, educate and bring up their children, and if they are unable to do so, the law shall provide for the exercise of these duties. The Italian Constitutional Court, through a strict interpretation of Article 29 of the Constitution, had for a long time⁴⁶ given priority to relationships based on marriage when defining the family, without granting to cohabitation outside marriage the same

40 On this see Grünberger, 2010, pp. 203-208.; Benyusz et al., 2021, p. 28.

41 Gesetz zur Umsetzung des Gesetzes zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts. Gesetz 18.12.2018 (Bundesgesetzblatt Jahrgang 2018 Teil I Nr. 48, ausgegeben am 21.12.2018, Seite 2639).

42 BVerfG, Beschluss des Ersten Senats vom 26. März 2019 – 1 BvR 673/17 -, Rn. 1–134.

43 On this see Gössl, 2020.; Benyusz et al., 2021, p. 30.

44 Benyusz et al., 2021, p. 29.

45 “The Basic Law recognises and protects the constitutional rights of children, including the right to grow up to be responsible adults. The best interests of the child shall be duly taken into account.[...] This provision does not diminish the primary right of parents.” Bundesregierung (20 January 2021): Change in legislation: Children's rights to be enshrined in the German Basic Law, <https://www.bundesregierung.de/breg-en/news/rights-of-child-in-basic-law-1841338>; translation Benyusz et al., 2021, p. 30.

46 C.f. Corte costituzionale, Sentenza n. 79 del 1969.

constitutional conditions as marriage. A significant change⁴⁷ in the concept of family was brought about by the 2010 decision of the Constitutional Court,⁴⁸ which ruled that although the rules on marriage presuppose the different sexes of the spouses, same-sex couples' relationships are also included in the concept of family as defined in Article 29 of the Constitution, since such relationships also enjoy constitutional protection as social organisations under Article 2 of the Constitution. In 2012, the Court of Cassation also ruled in a decision⁴⁹ that same-sex couples have the same right to family life as married couples. As a result of this, and an ECtHR judgment⁵⁰ (in which Italy was condemned by the Strasbourg Court for failing to regulate same-sex couples), Italy adopted in 2016 a law regulating same-sex couples' relationships⁵¹ which guarantees same-sex couples all the social, financial and property rights that the Civil Code grants to married couples. Just as the Italian Constitution contains no provisions on the sex of spouses, it is silent on the sex of parents. The Italian Constitutional Court and the Court of Cassation have played a major role in shaping the jurisprudence on adoption by same-sex couples.⁵² In a 2013 decision⁵³ the Court of Cassation ruled that refusal of eligibility for adoption on the basis of sexual orientation is discriminatory, and in a 2016 decision⁵⁴ it ruled that a partner's child is adoptable by same-sex couples. In the latter decisions, it is important to point out that they did not allow same-sex couples to adopt children as a couple. In 2021, the Constitutional Court, considering the possibilities offered by the adoption rules alone to be insufficient, issued two decisions⁵⁵ calling on the legislator to take further steps to protect children born of same-sex couples, namely to draft legislation "to ensure that children born to same-sex couples have the same rights as other children and that they have the right to parents in respect of both parents".⁵⁶

2. Certain constitutional guarantees for the enjoyment of values

Each constitution guarantees the protection of the values they enshrine in a number of ways. Among these, this paper focuses on some of the safeguards that also make the Hungarian Fundamental Law unique compared to the constitutions of other countries.

47 See about this Benyusz et al., 2021, pp. 32–33.

48 Corte costituzionale, Sentenza n. 138 del 2010.

49 Corte di Cassazione n. 418 del 2012.

50 ECtHR, *Oliari and Others v Italy*, no. 18766/11 and 36030/11, judgment of 21 July 2015.

51 Legge 20 maggio 2016 n. 76 Regolamentazione delle unioni civili tra persone dello stesso sesso e disciplina delle convivenze.

52 See about this Benyusz et al., 2021, pp. 34–35.

53 Corte di Cassazione n. 601 del 2013.

54 Corte di Cassazione n. 12962 del 2016.

55 Corte costituzionale, Sentenza 32/2021, Sentenza 33/2021.

56 Benyusz et al., 2021, p. 35.

■ 2.1. *Constitutional guarantees for responsible public finances*

The Fundamental Law was born at a time when the financial and then economic crisis of 2008 was an important shaper, so the provisions on public finances were a priority. Ten years after the Fundamental Law, and in the midst of the financial and economic challenges caused by the COVID epidemic, these public finance provisions are now back in the spotlight and we have the opportunity to reinterpret them in a real-life situation.⁵⁷

Our Fundamental Law contains several types of provisions on public money. For example, Article N) of the Fundamental Law sets out the principles of budgetary management, namely the principles of equilibrium, transparency and sustainability.⁵⁸ However, fiscal management principles can also be found in other constitutions, such as the German or the French, and in our view, what makes the Fundamental Law really special compared to the constitutions of the countries analysed in this study are the rather strict rules on government debt and the strong powers of the constitutional body for enforcing them, the Fiscal Council. The aims of the Fundamental Law are quite clear with these provisions: the sovereignty of a country in drastic debt is very limited, and not only does this situation affect the present generations, but it also has serious consequences for the future generations' life chances. According to Article 36 of the Fundamental Law, the National Assembly may not adopt a central budget law that would result in the government debt exceeding half of the total gross domestic product, and as long as the government debt exceeds half of the total gross domestic product, the National Assembly may only adopt a central budget law that includes a reduction of the ratio of the government debt to the total gross domestic product. However, the Fundamental Law also provides for the possibility of derogation from these rules, while also specifying the extent of the derogation: only in times of special legal order, to the extent necessary to mitigate the consequences of the circumstances giving rise to it, or in the event of a lasting and significant downturn in the national economy, to the extent necessary to restore the balance of the national economy. However, these rules would be difficult to enforce without the associated organisational guarantees. To this end, Article 44 of the Fundamental Law establishes a strong institution, the Fiscal Council,⁵⁹ which is a body supporting the legislative activity of the National Assembly and examining the soundness of the central budget, and which, in this capacity, contributes to the preparation of the law on the central budget. The strongest power⁶⁰ it has in all these activities is that the adoption of the law on the central budget requires the prior approval of the three-member Fiscal Council in order to comply with the provisions mentioned in Article 36. The government debt target set in Article 36 of the Fundamental Law, i.e. that Hungarian government debt should not exceed half of the

57 Nagy, 2021, pp. 176–177. An important starting point for writing this sub-chapter was provided by: Nagy et al., 2021.

58 For a more detailed description, see Nagy, 2014, pp. 12–13.

59 Kovács, 2016, pp. 320–337.

60 The cardinal law setting out the detailed rules for its operation: Act CXCV of 2011 on the Economic Stability of Hungary.

total gross domestic product (i.e. 50%), is stricter than the 60% level of the convergence criteria of the European Union.⁶¹

There is no similar independent institution in the Belgian Constitution that has a degree of control over the legislature in adopting the budget, but there is an institution created by a Royal Decree⁶² of 2018, the Supreme Finance Council (*Conseil supérieur des Finances*), an independent body of experts whose task is to give opinions on federal and other budgets. However, this Supreme Finance Council may also have a role in other matters, namely to ensure budgetary cooperation between the various levels of the Belgian state system, federal, regional and other communities. In the event of a breach of the relevant provisions, including those relating to debts, if the Council of the European Union imposes a fine, the parties shall jointly bear the liability for that, in the proportion of their default determined by the Supreme Finance Council.⁶³

The French Constitution does not have such a clear and strict provision on the possible level of government debt as the Hungarian one, nor an institution to guarantee its implementation. A body under the Court of Auditors, the High Council of Public Finances (*Haut Conseil aux Finances Publiques*), was created to ensure the implementation of the organic law on the programming and management of public finances⁶⁴, with the important task of examining national public finances and France's European commitments. It should be stressed, however, that this Council is only an advisory body and that its opinion could be taken into account by the Constitutional Council when assessing the appropriateness of the budget⁶⁵ (but this has not been the case so far).⁶⁶

Although there are provisions in the Italian Constitution regarding government debt – for example, that debt can only be called upon in the event of an exceptional event, taking into account the effects of the economic cycle, if approved by an absolute majority of the chambers of parliament⁶⁷ – but there is no strict level requirement, nor does the constitution provide for a body such as the Hungarian Fiscal Council.⁶⁸

In the German Basic Law, finance is dealt with in a separate section (X), at some length. The separation of the federal and provincial levels and the need to make provision for their relationship with public funds may explain such level of detail. On the other hand, the German state is clearly placing a very strong emphasis on sound management. Article 109 of the German Basic Law contains an explicit reference to the management obligations arising from the rules of the European Union and makes

61 Articles 126 and 140 TFEU and Article 1 of Protocol No 12 and Protocol No 13 thereto.

62 Arrêté royal du 23 mai 2018 relatif au Conseil supérieur des Finances. On this, see also: Nagy et al., 2021, pp. 5–7.

63 Nagy et al., 2021, p. 7.

64 Loi organique n° 2012–1403 du 17 décembre 2012 relative à la programmation et à la gouvernance des finances publiques.

65 Conseil constitutionnel, Décision n° 2012–658 DC du 13 décembre 2012, *Loi organique relative à la programmation et à la gouvernance des finances publiques*.

66 Nagy et al., 2021, p. 9.

67 Article 81 of the Italian Constitution.

68 The National Economic and Labour Council mentioned there (Article 99) is not considered as such. See also Nagy et al., 2021, pp. 10–12.

compliance with these rules a constitutional obligation. In addition, there are also provisions to maintain the budgetary balance of the federal state and the provinces without borrowing. However, the German Basic Law allows an exception to this strict rule in the same place and in Article 115 on the limits to borrowing.⁶⁹ The latter provides that borrowing requires a federal law authorisation with a fixed or determinable maximum amount. Article 109/A of the German Basic Law mentions the Stability Council⁷⁰ which, at both federal and Land level, has important supervisory functions. It also has the essential function of avoiding a so-called fiscal emergency, to which end it draws up a consolidation programme and adopts countermeasures.⁷¹ Based on the above, it can be concluded that the German Basic Law regulates government debt issues and the institutions that enforce them at a constitutional level similar to Hungarian law, with similar strictness and similar organisational arrangements and structures (although not with the same tasks and powers).

■ 2.2. *Constitutional guarantees for special situations: the regulation of special legal order*

At the time of writing this section, in the midst of the COVID epidemic, there is probably no need to discuss how important it is for the constitutional functioning and viability of a country that its constitution not only provides clear guidance and institutionalised solutions for ‘normal’ peacetime situations, but also contains provisions for dealing with special challenges and situations in an effective, yet secure manner, including legal safeguards. Without going into the – otherwise justified – definition of the special legal order,⁷² we will consider below whether the young Hungarian Constitution is sufficiently thought through in this respect, whether the experiences of the rather turbulent 20th century of Hungarian history and the equally challenging first decade of the 21st century are reflected in it in comparison with other constitutions.⁷³ In the present analysis, we have examined the current text of the Fundamental Law, with only a passing reference to the Ninth Amendment to the Fundamental Law, which will significantly change the special legal order regulation from 1 July 2023.⁷⁴

69 See also Article 112 of the German Basic Law.

70 On its establishment, its tasks and its procedures, see: Gesetz zur Errichtung eines Stabilitätsrates und zur Vermeidung von Haushaltsnotlagen (StabiRatG).

71 Nagy et al., 2021, p. 15–16.

72 Trócsányi, 2021, pp. 26–36.; Horváth, 2021, pp. 624–625.; Till, 2017, pp. 55–75.

73 It is important to emphasise that this section deals mainly with situations and institutions of the special legal order regulated by constitutions, while both Hungarian and other legal systems know other special legal categories regulated below the constitutional level, typically at the level of statutes. See also Horváth et al., 2021. See also Kádár, 2021. For the regulation of other countries, including the Visegrad Group, see Hojnyák and Ungvári, 2021, pp. 305–323.

74 Horváth, 2021, pp. 122–148. See also from earlier: Horváth, 2020, pp. 17–25, 23–25.

First of all, we can say that the Hungarian Constitution⁷⁵ and the German Constitution⁷⁶ are the most detailed among the constitutions of the countries under study. Both the special legal order situations and the powers of the bodies are regulated in detail in these regulations. In contrast, the French Constitution⁷⁷ is much shorter, containing only the basic rules, the Italian⁷⁸ and Belgian⁷⁹ constitutions contain shorter references to war (i.e. they are considered to be very under-regulated), and the Belgian one also prohibits the partial or total suspension of the constitution,⁸⁰ which is thus a relative obstacle to the introduction of a special legal order at federal level.⁸¹

Regarding the nature of constitutional regulation, it can be stated that the Hungarian Fundamental Law separates the special legal order regulation from the ordinary legal order operation in a conspicuous, separate section; in other words, the “constitution in the constitution concept”, which is often referred to in English literature with the *terminus technicus* ‘*emergency constitution*’, clearly prevails in the constitution of our country.⁸² The German Basic Law regulates the special legal order in separate sections, although there is a chapter named as such (Xa), but this does not contain all the relevant constitutional provisions.⁸³ The regulation of this issue in the French Constitution is similarly fragmented.⁸⁴ The Italian and Belgian constitutions contain in one chapter each the few provisions that apply to war.⁸⁵

In terms of the number of special legal order categories, the current text of the Hungarian Fundamental Law, uniquely in Europe, names six categories, five of which (state of national crisis, state of emergency, state of preventive defence, unexpected attack, state of danger) already existed before the adoption of the Fundamental Law, and which were supplemented by the so-called state of terrorist threat from July 2016. Unlike many other constitutions, the Fundamental Law clearly sets out the names and number of special legal order categories.⁸⁶ It is important to note that from July 2023, there will only be three categories (state of war, state of emergency, state of danger). The German Basic Law is not so clear: it does not itself define the special legal order,

75 Articles 48-54 of the Hungarian Fundamental Law.

76 German Basic Law, Articles 35, 80a, 91, 115a-115l. For a detailed analysis of the German Basic Law, see De Negri, 2021, pp. 414–433.

77 French Constitution, Articles 16, 35-36. For a detailed analysis of the French Constitution, see Stollsteiner, 2021, pp. 322–340.

78 Article 78 of the Italian Constitution. For a detailed analysis of the Italian Constitution, see Ungvári, 2021, pp. 457–479.

79 Article 167 of the Belgian Constitution.

80 Article 187 of the Belgian Constitution.

81 Horváth et al., 2021, p. 1.

82 Ibid., p. 1.

83 See also Chapters VII (Federal Legislation) and VIII (Federal Enforcement) of the German Basic Law.

84 See Chapters II (President of the Republic) and V (Relations between Parliament and Government) of the French Constitution.

85 Chapter II/1 (Parliament) of the Italian Constitution and Chapter IV (International Relations) of the Belgian Constitution.

86 Horváth et al., 2021, p. 2.

or the cases that fall under it, so it is questionable what is included in the special legal order.⁸⁷ As regards the French Constitution, it is also difficult to say how many cases of special legal order are recognised: most typically, the extraordinary presidential powers (Article 16) and the state of siege (Article 36) are included; it is questionable whether the provisions on war in Article 35 can be interpreted as a separate category.⁸⁸ The Italian Constitution mentions one case as a special category of legal order, the so-called state of war (Article 78); however, the constitution also allows emergency decree government and the central withdrawal of powers (e.g. from regions) to function as such in certain aspects.⁸⁹ In the Belgian Constitution, the only category of special legal order is state of war (Article 167).

If we turn to the provisions regulating the powers of the organs during a special legal order, it can be seen that under the provisions of the Hungarian Fundamental Law currently (yet) in force, a rather complex network of powers has been established between the various actors (National Assembly, Government, President of the Republic, National Defence Council), and the “crisis manager” is different for each type of special legal order:⁹⁰ in four cases the Government, in the case of a state of national crisis the National Defence Council – which can be considered a uniquely Hungarian institution –, and in the case of a state of emergency the President of the Republic. In essence, this complexity was one of the reasons why a simpler, clearer structure was put in place from July 2023 (and the National Defence Council was removed from the ranks of crisis managers). In Germany, competences also differ according to the type of specific cases of special legal order, but it can be said that the federal legislature has the strongest competences. In France, by contrast, the executive is dominant.⁹¹ The Italian Constitution provides for the declaration (by the two chambers of Parliament), proclamation (by the President of the Republic) and exercise of special powers (by the Government) of state of war, but is silent on the cases in which state of war may be declared, and similarly does not provide any guidance on the nature of governmental powers.⁹² In the Belgian Constitution, the king determines the occurrence and end of a state of war, but the constitution is silent and does not give any guidance on all other important aspects of the special legal order.

87 Thus, while the situations of protection (Articles 115a-115l), emergency (Article 80a) and internal state of danger (Article 91) can be relatively clearly considered as situations of special legal order, the situation of disaster (Article 35) can only be called such by analogy with the Hungarian constitutional rules. However, the legislative emergency (Article 81) would not really fall into this category. Horváth et al., 2021, p. 3.

88 In relation to the French legislation, it is important to note that there is also the case of state of emergency that is only regulated by law, and the case of exceptional circumstances that has been developed by the judiciary. Horváth et al., 2021, pp. 3–4.

89 Horváth et al., 2021, p. 4.

90 Ibid., p. 5.

91 Ibid., p. 6.

92 Ibid., p. 6.

■ 2.3. *Constitutional guarantees for the protection of future generations in the light of environmental challenges*

Protecting the interests of future generations and, (also) in this context, the environment, is one of the indisputably important issues of the 21st century. The significance that a constitution attaches to the representation and resolution of this issue says a lot about the social importance of the issue in the society concerned.⁹³ However, given that environmental protection and the protection of future generations is still a relatively recent phenomenon, it cannot be concluded from the more restrictive wording of an earlier constitution that environmental protection is not important or that it is not protected, for example through constitutional jurisprudence. It is also important to say in this section that it is important to take into account certain elementary specificities of each country when analysing this issue. Thus, the *federal* structure of *Germany* and the fact that, as a consequence of this – and of the provisions of the German Basic Law on competing legislation (Articles 72 and 74) – the related provisions of the *Länder* constitutions may be equally relevant. Similarly, it is important to note that although the *French Constitution* itself is rather vague⁹⁴ on environmental protection, the Environmental Charter (*Charte de l'environnement*) adopted in 2004, which can be read as an annex to the constitution, regulates the issue in more detail.⁹⁵ Finally, in the introduction to this section, it should be noted that in this subsection we will not go into the provisions that have already been analysed in other parts of this paper. Thus, we do not analyse the mutually reinforcing potential of the relationship between *Christian heritage* and environmental protection, which is strongly reflected in the Hungarian Fundamental Law,⁹⁶ nor do we repeat the provisions of the Hungarian Fundamental Law on *public finance*⁹⁷ that are assessed in the context of the interests of future generations. We do this despite the fact (essentially due to the limitations of this paper) that one of the unique features of the Hungarian Fundamental Law in relation to the protection of future generations and the environment is precisely this particular complexity.

Turning to the analysis of the specific normative texts, the first thing to note is that the Hungarian Fundamental Law refers to *future generations* in several respects. In the Preamble of the Fundamental Law, it is declared that “[w]e bear responsibility for our descendants and therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources”. Under Article P) of the Fundamental Law, the protection of natural resources is also a

93 See also Bándi, 2020b, pp. 7–22.

94 It was essentially designated as a field of competence of the Parliament (Article 34) and a special council was also set up (Articles 69–71).

95 The normative scope of the Environmental Charter has been the subject of debate; see Mathieu, 2004. The “Constitutional Council recognised the constitutional value of this text. On the other hand, rights of general application without direct application must be implemented by law. Most of these are contained in the Environmental Code (*Code de l'environnement*), established in 2000”; Orosz et al., 2021.

96 See about this Bándi, 2020, pp. 9–33.

97 See also Szilágyi, 2021, p. 231.

duty of the state and of all others to “preserve them for future generations”, and under Article 38 of the Fundamental Law, national assets can only be managed by “taking into account the needs of future generations”. Under Article 20/A of the German Basic Law, the protection of natural living conditions and animals is precisely in the interests of responsibility for future generations.⁹⁸ At the same time, the Italian Constitution does not mention future generations. The situation is similar in France; however, the Environmental Charter mentions this issue. According to Article 7/A of the Belgian Constitution, the Belgian state, the community and the regions shall pursue the principles of sustainable development with regard to ‘intergenerational solidarity’, i.e. the category of the future generation is not explicitly mentioned, but it is implicit in the context of the text.

The Hungarian Fundamental Law also refers to sustainability⁹⁹ and *sustainable development* in several places. With regard to the latter, Article Q) of the Fundamental Law declares that “[i]n order to [...] achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world.” Sustainable development is not mentioned *expressis verbis* in the German Basic Law, nor in the Italian Constitution. In the context of the French and Belgian constitutional rules, sustainable development is also mentioned in the context of future generations, as described above.

Article 30 of the Hungarian Fundamental Law provides an important *institutional guarantee* to protect the interests of future generations. Namely, a deputy for the protection of the interests of future generations is named *expressis verbis* as one of the deputies of the Commissioner for Fundamental Rights, an institution which represents a serious guarantee, especially when compared with the constitutions of other countries analysed in this study, which do not have a similar serious ombudsman institution.¹⁰⁰ It is important to note that the environmental provisions of the Hungarian Fundamental Law have also been praised by the former Green Ombudsman, *Sándor Fülöp*, who considered his contribution to its development as the most important success of the Green Ombudsman institution¹⁰¹.

The Hungarian Fundamental Law – in addition to naming the protection of the environment in Article XX as a state task promoting the right to physical and mental

98 The naming of future generations is also known in the state constitutions (e.g. in Bavaria, Brandenburg, Lower Saxony).

99 According to Article N) of the Fundamental Law, “Hungary shall observe the principle of [...] sustainable budget management”; and pursuant to Article XVII of the Fundamental Law, “[e]mployees and employers shall cooperate with each other with a view to [...] the sustainability of the national economy, and to other community goals.”

100 At the same time, the French Constitution (Articles 69–71) refers to the Economic, Social and Environmental Council, which gives its opinion on draft legislation at the request of the Government. The Council may also consult the government and parliament on environmental issues.

101 Fülöp, 2012, p. 76.

health – in Article XXI names the ‘*right to a healthy environment*’ *expressis verbis*.¹⁰² In the German Basic Law¹⁰³ the right to a healthy environment is not found in the normative text, but instead in Article 20/A the protection of natural living conditions and animals is named as a state goal.¹⁰⁴ In the Italian Constitution, the protection of the environment is recognised as an objective of the State, as a public task (Articles 9 and 117).¹⁰⁵ There is also the right to health (Article 32) in the Italian Constitution, which is interpreted as extending to environmental protection.¹⁰⁶ The French Constitution itself does not, but the Environmental Charter mentioned above does include the right to a healthy environment. Article 23 of the Belgian Constitution declares that everyone has the right to live a life worthy of human dignity, and the constitution also guarantees the right to a healthy environment, among other rights.¹⁰⁷ In the interpretation of the relevant rights, the practice of the judicial forums of the country in question is of enormous importance, which we will not discuss in this study; however, with regard to the Hungarian aspects, we mention that just as the interpretation of the prohibition of retrogression by the Constitutional Court in the past (in relation to the constitution preceding the Fundamental Law) gave the right to a healthy environment a remarkable force, so the principle of precaution, which the Constitutional Court has developed in relation to the Hungarian Fundamental Law, is of enormous importance beyond itself.¹⁰⁸

The Hungarian Fundamental Law, in its Article XX, mentions as a state task the provision of *agriculture free of genetically modified organisms*,¹⁰⁹ and *access to drinking water*¹¹⁰ in order to promote the right to physical and mental health. These provisions are unique compared to the other countries under examination.

The Hungarian Fundamental Law addresses *the conservation of natural resources* in several places. On the one hand, in the Preamble of the Fundamental Law, the adopters undertake to “protect the living conditions of future generations by making prudent use of [...] natural resources”, on the other hand, Article P) of the Fundamental Law declares that “[n]atural resources, in particular arable land, forests and the reserves of water;

102 In the same article, the adopter of the constitution also provides for the restoration of environmental damage not specified in the previous Constitution and a ban on the import of certain waste.

103 An excellent analysis of this and related case law is provided by Fodor, 2006, pp. 71–101.

104 However, the picture is nuanced by the fact that in some Länder constitutions, environmental protection can take other forms; for example, in the Brandenburg constitution it takes the form of the right to environmental information (Article 39(7)) or the right of social organisations to participate and bring public interest actions (Article 39(8)). See also: Fodor, 2006, p. 93., Orosz et al., 2021, pp. 4–5.

105 See also, in particular, decisions 2002/407, 2003/222 and 2006/214; Orosz et al., 2021, p. 8.

106 Fodor, 2006, p. 34.

107 For an interpretation of this, see for example judgment C.C. n 34/2020, 5 mars 2020 (in which the precautionary principle is also reflected), C.C. n 6/2021, 21 janvier 2021.

108 Szilágyi, 2019, pp. 88–112.

109 For an interpretation of this see: Raisz and Szilágyi, 2021.; Fodor, 2014, pp. 113–114.; Tahyné Kovács, 2015, pp. 88–99.; Téglásiné Kovács, 2015, pp. 300–319.; Téglásiné Kovács, 2017, pp. 147–164.

110 For an interpretation of this see: Szilágyi, 2018, pp. 259–271.

biodiversity, in particular native plant and animal species; [...] shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations”, and finally, Article 38 of the Fundamental Law states that the “management and protection of national assets shall aim [*inter alia*] at [...] preserving natural resources”. Strong constitutional protection – not detailed in this study¹¹¹ – can be derived from these provisions.¹¹² A similarly strong, *expressis verbis* protection of natural resources is neither mentioned in the German Basic Law,¹¹³ nor in the Italian¹¹⁴ and Belgian constitutions. The French Environmental Charter calls for avoiding the overuse of natural resources.

3. Concluding thoughts

Béla Zsedényi, the “forgotten head of state”,¹¹⁵ who died a martyr’s death, in his speech at the first session of the Provisional National Assembly that moved from Debrecen, in Budapest on 5 September 1945, when he was still Speaker of the Hungarian Parliament, discussed how the new structure of the Hungarian state should be established. In this speech, he placed particular emphasis on how we can rely on the constitutional arrangements of other countries to set the regulatory framework for our own:

“Democracy, which this National Assembly has the task of establishing, is not a uniform that we simply put on when it is ready to wear. Democracy is a political, social and economic order of life, which we must plan and create ourselves, with great care, great expertise and far-sighted caution. We must use the best workers of the nation for this task, because the clothes of democracy must not only be new, but must also fit the body of the Hungarian people. And this is not an easy task, because the Hungarian people have never had such clothes! We have to design this democracy according to Hungarian problems, Hungarian wounds,

111 See: Szilágyi, 2016, pp. 47–49.

112 Although the term itself as ‘natural treasures’ is essentially included for example in the list of competing legislative domains (Article 74). The same article also refers to certain elements that we consider to be natural resources. The category of ‘natural living conditions’ in Article 20/A cannot be equated with the category of natural resources in our assessment, although there is an obvious overlap.

113 At the same time, the priority protection of natural resources may appear in some provincial constitutions. Thus, in the Bavarian constitution, the protection of natural resources, soil, water, air and forests is *expressis verbis* included in the constitution as a priority task of the state and local authorities. Likewise, the guarantee of certain natural resources and access to them is also included in the Brandenburg constitution. Orosz et al., 2021, pp. 4–5.

114 Article 44 of the Italian Constitution contains certain provisions to restrict private property in order to ensure the rational use of land.

115 Zsedényi is referred to as such by Péter Gantner, who wrote a monograph on him; see Gantner, 2008. On Béla Zsedényi, see furthermore Raisz, 2021, pp. 349–364.

Hungarian goals and Hungarian dreams, for which the West and the East can only give us an example, but never a model!”¹¹⁶

These “clothes tailored to the body of the Hungarian people” could not be created in Zsedényi’s time. However, looking at the provisions of the Fundamental Law and the provisions of the individual countries that founded the European integration analysed above, it seems that in the past ten years, a unique creation and a constitution with a unique set of values, rich in its guarantee system and exemplary in many elements was born in Hungary on Easter Monday, 25 April 2011.

116 Zsedényi Béla Elnök megnyitó beszéde az Ideiglenes Nemzetgyűlés budapesti összeülése alkalmából. [Opening speech of the President on the occasion of the Provisional National Assembly meeting in Budapest.] In: *Nemzetgyűlési Napló (Ideiglenes Nemzetgyűlés Naplója)*. [National Assembly Journal (Journal of the Provisional National Assembly).] Volume I, 21 December 1944 – 13 September 1945, Budapest, Athenaeum, 1946, 36.

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