

*Mariann Vízkelety*

# **Five Years of the Fundamental Law, Seventy Years of the Forint – Thoughts on the Public Finances Chapter in the Fundamental Law and the Seventy Year Jubilee of the National Currency**

## **State Secretary-Editorial Address**

On the initiative of the Ministry of Justice, the Central Bank of Hungary (Magyar Nemzeti Bank) put on a conference on 13 September 2016 with the title *5 Years of the Fundamental Law: Public Finances and the Hungarian Forint*. At this scientific event held in the central bank auditorium, László Domokos, President of the State Audit Office, Árpád Kovács, President of the Budgetary Council, György Matolcsy, Governor of the Central Bank and Mariann Vízkelety, State Secretary in the Ministry of Justice, gave presentations on the operation of institutions working towards budgetary stability, each covering their own specialist field. The State Secretary Responsible for Judicial Relations in the Ministry of Justice gave an exposé entitled *Regulations on Public Finances in the Fundamental Law*. An edited version of her presentation is published below as the editorial address, as Mariann Vízkelety has been a member of the editorial board of *Polgári Szemle* for more than ten years. Highlighting this topic recognises and respects the importance and undying significance of the confines of the Fundamental Law that has given the national economy stability and a potential for growth over the last few years. (*Csaba Lentner, Editor-in-Chief*)

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Planning a series of events commemorating the fifth anniversary since approval of the Fundamental Law, we approached Governor György Matolcsy with the proposal to host our joint event involving the other public finance institutions specified in the Fundamental Law. It may sound strange that the “ministry of the judiciary” approached the financial institutions dominated by economists on the subject of the anniversary of the Fundamental Law. The reason is manifest: it has become clear since the outbreak of the economic crisis in 2008 that the management of finances is an equally important function of the state as the external and internal defence of the country, indeed, the functions of public defence and the economy, rigidly separated at one time, appeared to be closing ranks in the field of finances.

We must recall the historic period in which the Fundamental Law was adopted. Naturally, no constitution is detached from its particular historic situation. The original XX socialist Constitution of 1949 was based on the principle that socialism, as an objective historic necessity, represented the power of the workers and farmers and tried to express this by stating that in fact this also meant the end of the class struggle, i.e. the end of history. The amended Constitution that came into force on 23 October 1989 attempted the impossible by trying to combine dictatorship and democracy when it stated that, “The Republic of Hungary is an independent, democratic state, a rule of law, equally representing the values of civil democracy and democratic socialism.” The same version of the text included another widely known statement in the preamble, according to which this Constitution was temporary. Interestingly enough, the preamble also linked this motif of a temporary nature with transition to a “social market economy”. The preamble to the text of the temporary Constitution, therefore, already included a reference to the selected economic model. That temporary text already provided for the State Audit Office, but only made a vague reference to the Central Bank of Hungary. In June 1990, the reference to democratic socialism was removed from the text and replaced by the much more acceptable and well known expression, “an independent democratic rule of law”. At that time, in 1990, the Constitution provided for the State Audit Office and the Central Bank of Hungary under the same heading.

At this point a parallel may be drawn between the original Constitution adopted in 1949 and the temporary Constitution text of 1989–1990. Reference is generally made to the fact that the only feature common to the two texts is that both state that Budapest is the capital of the country. This is not quite true. The two texts also shared the desire for moving towards some hypothetical position. In the first case this was the utopia of socialism, whilst in the second, the model to be implemented was that of an institutionalised social market economy. Both Constitution texts adjusted the system of institutions, including the financial institutions, to the then current interpretation of progress. The transitional setup over the decades since the systemic changes has provided a living to a relatively small proportion of Hungarian society within the framework of a pure market economy, the “social” factor remaining dominant for the majority. The social market economy has therefore presented the Hungarian population with the dilemma of “either social or market economy”, raising a few to the level of new capitalists, while entrusting the livelihood of broad strata of the population to

the large care systems. Consequently, Hungarian public finances were imbalanced for decades, leading to an economic crisis in the October of 2008 when it was observed that suddenly no-one wanted to buy Hungarian government securities for a few weeks.

There is an interesting parallel between the economic systems in the two former Constitutions, in that the foundation for constitutional reform in 1989 was laid by the collapse of the previous economic model. The 2011 Fundamental Law was preceded by the impossibility of maintaining public finances under the existing social market economy model in 2008–2009 when, as in the mid 1980s, Hungary had to rely on IMF assistance.

All these preliminaries are indispensable for understanding the economic and financial system in the Fundamental Law.

The Fundamental Law broke with the concept in the socialist Constitution, as well as the temporary Constitution, that the mission of a constitutional state is to lead a country from its existing condition towards some “promised land”, construed at a desk. The Fundamental Law replaced the previous approach focusing on progress with a concept of organic development. This is why the Fundamental Law evokes elements of Hungarian history and the Hungarian state, as well as the history of law, by stating that the provisions of the Fundamental Law must be interpreted in line with the historic Constitution of Hungary. In relation to the historic roots, specific references are made to the principle of “*Sacra Corona radix omnium possessionum*”, i.e. “The Sacred Crown is the root of all possessions”, according to which the land, water, air and energy resources required for sustenance constitute the collective and inalienable property of the Hungarian nation and can only be owned by a Hungarian subject. Those applying the Fundamental Law, not least the Ministry of Justice, are responsible for drawing conclusions from the historic references in the Fundamental Law which are still valid and current today.

What, then, does the organic nature of the Fundamental Law mean in terms of public finances?

It means that individuals, the state or its institutions may not pursue any policies which deplete assets, and that the economic basis of the state and society must be expanded, as must its intellectual capital. This combines a prohibition with an obligation, which together can be expressed with the concept and requirement of sustainability.

The Fundamental Law expounds the requirement for sustainability at both micro and macro levels.

The interconnection of freedom and responsibility includes the free choice of employment and occupation, the right to own property, the right to pursue enterprise and the principle of environmental sustainability. In the provisions on employment, property and enterprise, the Fundamental Law highlights that these freedoms are interconnected with the obligation to contribute to the growth of the community.

The emphasis on the system of public finance institutions in the Fundamental Law also suggests that the legislators creating the Constitution recognised that each constitutional principle is only worth the extent to which it can be enforced.

One of the best known guarantees by institutional public finance for the prohibition on depleting future funds in the Fundamental Law is Article 36 (4), which states that, “The National Assembly may not adopt an act on the central budget as a result of which state debt would exceed half of the gross domestic product,” and also paragraph (5), which states that, “As long as state debt exceeds half of the gross domestic product, the National Assembly may only adopt an act on the central budget which provides for state debt reduction in proportion to the gross domestic product.” Article 37 contains further guarantees that prohibit an increase in the state debt and are binding on the government. Articles 38–39 express the prohibition on depleting assets in relation to the tangible assets of state, national and local governments, as well as property related obligations. Article 40 creates a legal basis for a sustainable pension system and in Articles 41, 43 and 44, the institutional trio of the Central Bank of Hungary, the State Audit Office and the Budgetary Council constitute the guarantee for sustainability. The legislators drafting the Constitution modified the original text and assigned responsibility for the supervision of the financial intermediary system and the development of monetary policy to the Central Bank of Hungary, while the State Audit Office remained the financial and economic control body for the National Assembly. As a new institution, the Budgetary Council oversees the budget approved by the National Assembly with a focus on long-term sustainability.

In the Hungarian Fundamental Law, the provisions pertaining to the central institutions responsible for controlling public finances are followed by a list of classic protection organisations. From today’s perspective, we can regard this solution used in the Fundamental Law as a recognition of the fact that the economic and defence functions of the state are nowadays much more interconnected than they have been in the past.

It is important to note that the Fundamental Law also defines certain comprehensive duties for the state institutions of the public finance system. It also adopts the very important idea that there is a need for public finances that support public policies, i.e. the Fundamental Law contains comprehensive duties related to the economy that are addressed to the “state”, which also includes these institutions. Article P) paragraph (1), which states that the protection of biological assets, water reserves and cultural heritage “is an obligation of the state and of everyone”, falls into this category. According to Article XXII (2), the “state and local governments” must assist in providing people with housing where they can live with dignity. According to Article XXVI, the state must strive for efficient operation, an increase in the quality of public services, transparency in public affairs and a general improvement in equal opportunities. Following this, under the heading “The State”, the Fundamental Law provides a detailed list of the main public institutions, including public finance institutions. Logical analysis of the Fundamental Law therefore shows that, alongside other state organisations, public finance institutions must also perform their duties in making public goods which have already been produced available to large sections of society, as well as promoting the increase of these.

The Fundamental Law was created at a historic moment after it became obvious that the contradictory social market economy model which had evolved after the sys-

temic changes could not be sustained financially. The legislators drafting the Constitution grasped that moment and transplanted it into the Fundamental Law. They thus created a fundamentally new situation, after all: apart from ignoring the rules of our historic Constitution in recent times, detailed legal regulations did not include any constitutional limitation on the management of public funds. There was only an obligation falling within the scope of political responsibility. The new Constitution exploited the exceptional historic situation relating to the 2/3 majority and confined the room for manoeuvre of current policy within a final legal framework. A constitutional limit was thus set for political decision makers.

All that remains is for all of us: the National Assembly, the Government, the Central Bank of Hungary, the State Audit Office and the Budgetary Council, to implement the authority vested in us by the Fundamental Law and fulfil our obligations to promote the growth of our nation.