

The Act on the Transitional Provisions of the Fundamental Law¹

(31 December 2011)

The transition from the communist dictatorship to democracy

We, Members of the Parliament – conscious that the constitutional order’s secure functioning cannot stand on a solid foundation without acknowledging the past and the conclusions to which it leads; without naming the crimes committed against people, groups and society during communism and the perpetrators of these crimes; without condemning and prosecuting the perpetrators of these crimes with an emphasis on the responsibility of the leaders of the communist regime and at the same time the compensation of the victims of these crimes; without differentiating between democracy and dictatorship, right and wrong, and good and evil-- state the following in order to facilitate the adoption of Hungary’s first constitution according to the requirements of a rule of law state:

1. Communist dictatorship is incompatible with a state based on the rule of law and created by the will of the people through the first free elections in 1990. The current Hungarian rule of law state cannot be built on the crimes of the communist system.

2. The Hungarian Socialist Worker’s Party and its legal predecessor (the state party) are responsible
 - a. For eliminating, with the help of the Soviet Army, the democratic, multi-party effort of the post WWII years;
 - b. For a legal system based on illegality and the exclusive use of power;
 - c. For eliminating an economy based on the freedom of property and for indebting and permanently destroying the competitiveness of the economy;
 - d. For subjecting Hungary’s economy, military, foreign policy and human resources to foreign rule;
 - e. For systematically destroying traditions based on European values and undermining the nation’s identity;
 - f. For depriving or seriously limiting fundamental rights of individual citizens and certain groups, specifically
 1. For murdering, subjecting to foreign rule, unlawfully imprisoning, forcing into labor camps, torturing, and inhumanely treating people;

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2. For arbitrarily confiscating property from citizens and limiting their rights to private property;
 3. For completely depriving people of their freedom and subjecting their political opinions and expressions of will to state coercion;
 4. For negatively discriminating against people based on origin, worldview or political conviction and for obstructing their progress and self-fulfillment based on knowledge, diligence, and talent;
 6. For the self-serving intrusion of political and ideological grounds into education, cultural education, scientific life and culture;
 7. For creating and operating a secret police to illegally observe and influence people's personal lives;
 - g. For strangling in blood the October 1956 revolution in collaboration with Soviet troops, subsequently ruling based on fear and retribution and forcing 200,000 Hungarians to emigrate;
 - h. For causing a drop in Hungary's ranking among European nations and in world comparison;
 - i. For those public law crimes which were carried out for political reasons and which the justice system failed to prosecute for political reasons.
3. The Hungarian Socialist Worker's Party, its predecessors and the political organizations created in the communist ideology for their service were all criminal organizations, and their leaders are responsible without statute of limitations for maintaining a repressive system, violating rights, and betraying the nation.
 4. The Hungarian Socialist Party shares the responsibility of the state party – through the continuity in party leadership that bridged the old and the new party -- as the legal successor to the Hungarian Socialist Worker's Party, as the inheritor of the illegally amassed wealth and as the benefactor of the illegitimate advantages acquired during the transition.
 5. Under the communist dictatorship, it was impossible to prosecute crimes involving the construction and maintenance of the system nor was it possible to do so -- given that the

constitutional transition did not break legal continuity – after the first free elections. The leaders of the dictatorship were never held responsible in a legal or moral manner. As the Fundamental Law comes into effect, there is now the possibility for delivering justice.

6. Every citizen who showed resistance to the communist dictatorship, who was unjustly prosecuted or was injured in his rights and human dignity by the servants of the communist dictatorship deserves recognition and moral compensation, as long as the person did not participate in these violations of the law.
7. The communist dictatorship systematically prompted the violation of the law, but the acts were perpetrated by individuals. For the living and future generations, the memory of the crimes committed must be preserved and the perpetrators must be named.

The Parliament and other Hungarian state bodies will base their actions on the above constitutional provisions.

Article 1.

- (1) The remuneration of communist leaders, granted by the State in statute, may be reduced according to degrees defined in law.
- (2) The revenues from the reductions carried out in accordance with Paragraph (1) must be used for alleviating the injuries caused by the communist dictatorship and preserving the memory of its victims.

Article 2.

- (1) The statute of limitations cannot toll on a crime committed against Hungary or against individuals in the name or interest of the state party or with its consent during the communist dictatorship which were not prosecuted for political reasons by ignoring the penal code in effect at the time the crime was committed.
- (2) The statute of limitations for a crime defined in Paragraph (1) will be set according to the penal code in effect at the time the crime was committed and will commence 1 January 2012 if the crime's statute of limitations passed before 1 May 1990.
- (3) The statute of limitations for a crime defined in Paragraph (1) will be defined according to the penal code in effect at the time the crime was committed and will commence 1 January 2012 if the crime's statute of limitations passed between 2 May 1990 and 31 December 2011 and the perpetrator of the crime was not prosecuted.

Article 3.

- (1) In order to preserve the memory of the crimes committed in relation to communist crimes, a National Memorial Commission will be established.
- (2) The National Memorial Commission will investigate the functioning of the communist dictatorship and the role of individuals and organizations who held the powers of the communist regime. The Commission will also report on its activities and publish its results.

Article 4.

Discovering how the communist dictatorship functioned and securing society's sense of justice are both public interests. Those who held power during the communist dictatorship constitute public individuals. For the public interest, those who held power during the communist dictatorship must tolerate public statements (with the exception of deliberate and untrue statements) regarding their roles and their acts related to the communist dictatorship. . Data on personal information in relation to these roles and acts may be revealed to the public.

Transitional Provisions Pertaining to the Coming into Effect of the Fundamental Law

Article 5.

The Fundamental Law does not impact previously adopted laws, administrative measures and other legal means of state administration, individual decisions, and duties assumed in international agreements.

Article 6.

The legal successors to state bodies that served their tasks and jurisdiction according to Act XX of 1949 on the Constitution of the Republic of Hungary are bodies that serve their tasks and jurisdiction according to the Fundamental Law.

Article 7.

References to the Republic of Hungary will remain in place according to the normative acts enacted before 31 December 2011, even after the enactment of the Fundamental Law goes into effect designating the country as Hungary, as long as the transition to the new national name set in the Fundamental Law cannot be completed according to the principles of responsible resource management.

Article 8.

The coming into effect of the Fundamental Law does not impact – with the exceptions outlined in Articles 9-18 – the mandate of elected and appointed officials of Parliament, the Government, local governments, and officials appointed or elected before the Fundamental Law comes into effect.

Article 9.

- a) Articles 3 and 4 of the Fundamental Law should apply to the mandate of the Parliament and Members of Parliament in office at the time the Fundamental Law comes into effect.
- b) Articles 12 and 13 of the Fundamental Law should apply to the mandate of the President of the Republic in office at the time the Fundamental Law comes into effect.
- c) Articles 20 and 21 of the Fundamental Law should apply to the mandate of the Government and members of the Government in office at the time the Fundamental Law comes into effect.
- d) Article 27(3) of the Fundamental Law should apply to the mandate of judicial clerks serving at the time the Fundamental Law comes into effect.
- e) Article 33(2) of the Fundamental Law should apply to the mandate of regional assembly presidents in office at the time the Fundamental Law comes into effect.
- f) Article 35(3)-(6) of the Fundamental Law should apply to the mandate of local government representative bodies and mayors in office at the time the Fundamental Law comes into effect.

Article 10.

The date of reference for Article 4(3)f) of the Fundamental Law is the date the Fundamental Law comes into effect.

Article 11.

- (1) The Curia is the legal successor in matters of adjudication to the Supreme Court and the National Justice Council and the President of the National Judicial Office is their legal successor in matter of administration of the courts. .
- (2) The mandate of the President of the Supreme Court, the President and members of the National Justice Council end when the Fundamental Law comes into effect.
- (3) In order to guarantee the right to trial within a reasonable timeframe, as provided in Article XXVIII(1) of the Fundamental Law, the President of the National Judicial Office may assign any case to a court at an equal level but outside the normal court's jurisdiction, if the caseload across courts is not balanced.

- (4) In order to guarantee the right to trial within a reasonable timeframe, as provided in Article XXVIII(1) of the Fundamental Law, the Public Prosecutor, as the leader and manager of the Office of the Prosecutor based on Article 29 of the Fundamental Law, may assign any case to a court at an equal level but outside the normal court's jurisdiction, if the caseload across courts is not balanced. This does not impact the right of the President of the National Judicial Office as granted in Paragraph (3) and the right of the prosecution to assign a case to any court within their jurisdiction.

Article 12.

- (1) If a judge reaches the general retirement age, defined in Article 26(2) of the Fundamental Law, before 1 January 2012, his or her term of service will end 30 June 2012. If a judge reaches the general retirement age, defined in Article 26(2) of the Fundamental Law, between 1 January 2012 and 31 December 2012, his or her term of service will end 31 December 2012.
- (2) If a person is appointed by a specific government decision to serve as a mediator or arbitrator under Article 25(6) of the Fundamental Law, the person will be subject to the general retirement policy, outlined in Article 26(2) of the Fundamental Law, as of 1 January 2014.

Article 13.

If a prosecutor reaches the general retirement age defined in Article 29(3) of the Fundamental Law before 1 January 2012, his or her term of service will end 30 June 2012. If a prosecutor reaches the general retirement age defined in Article 29(3) of the Fundamental Law between 1 January 2012 and 31 December 2012, his or her term of service will end 31 December 2012.

Article 14.

- (1) The minimum age requirement, defined in Article 26(2) of the Fundamental Law, must be applied to judicial appointments – except in cases defined in Paragraph (2) that are based on an application process that is announced after the Fundamental Law comes into effect.
- (2) If the appointment takes place without a formal application process, the minimum age requirement must apply to judicial appointments made after the Fundamental Law comes into effect.

Article 15.

The title of the Parliamentary Commissioner for Citizen Rights will change to Commissioner for Fundamental Rights when the Fundamental Law comes into effect. The Commissioner for Fundamental Rights is the legal successor to the Parliamentary Commissioner for Citizen Rights, the Parliamentary Commissioner for National and Ethnic Rights and the Parliamentary Commissioner for the Rights of Future Generations. The serving Parliamentary Commissioner for National and Ethnic Minority Rights becomes the deputy to the Commissioner for Fundamental Rights and protects the rights of nationalities living in Hungary when the Fundamental Law comes into effect; the serving Parliamentary Commissioner for the Rights of Future Generations becomes the deputy to the Commissioner for Fundamental Rights and protects the rights of future generations when the Fundamental Law comes into effect; their mandate will end when the mandate of the Commissioner for Fundamental Rights ends.

Article 16.

The mandate of the serving Commissioner for Data Protection ends when the Fundamental Law comes into effect.

Article 17.

The title of President of a Regional Council becomes the President of the Regional Representative-body when the Fundamental Law comes into effect.

Article 18.

The serving member of the Budget Council, appointed by the President of the Republic, becomes the President of the Budget Council when the Fundamental Law comes into effect.

Article 19.

- (1) The provisions of the Fundamental Law must be applied to pending cases as well as future cases – with the exceptions outlined in Paragraphs (2)-(5).
- (2) Article 6 of the Fundamental Law must be applied beginning with the first Parliamentary session after the Fundamental Law comes into effect.
- (3) The petitions filed by individuals who do not have the right to petition to the Constitutional Court under the Fundamental Law are terminated – unless the petitions come under the jurisdiction of an organization other than the Constitutional Court after the Fundamental Law comes into effect, in which case the petition may be transferred.. An individual may file the petition again with the Constitutional Court based on the conditions outlined in cardinal act.

- (4) Articles 38(4) and 39(1) of the Fundamental Law should be applied, as defined in law, to contracts and grants in effect 1 January 2012 and negotiations of contracts and grants in process when the Fundamental Law comes into effect.
- (5) The third sentence of Article 70/E(3) of Act XX of 1949 on the Constitution of the Republic of Hungary, in effect 31 December 2011, should be applied according to the normative acts in effect 31 December 2011 to changes in the condition, nature or amount of pensions or the transformation of such pensions to other provisions until 31 December 2012.

Article 20.

Articles 26(6), 28/D, 28/E, and 31(2)-(3) of Act XX of 1949 on the Constitution of the Republic of Hungary should be applied to cases ongoing at the time the Fundamental Law takes effect.

Article 21.

- (1) Parliament, in the cardinal Act on the Status of Churches, lists the recognized churches and defines the conditions for recognizing further churches. A cardinal Act may prescribe that recognizing an organization as a church should require that the organization be in existence for a given length of time with a certain number of members and that the State take into account the general historic traditions and societal support for the organization.
- (2) Parliament, in a cardinal Act on Nationalities residing in Hungary, lists the recognized national minorities and defines the conditions for recognizing other nationalities. A cardinal Act may define the conditions for recognizing a national minority to include the length of time of residence in Hungary, the number of members of the group and the initiation of recognition of the minority group through application by a member of the minority group.

Article 22.

- (1) In applying Article 24(2)c) of the Fundamental Law, a constitutional complaint is a
 - (a) complaint submitted against a normative act that is already in effect that violates of the petitioner's rights guaranteed in the Fundamental Law and that is applied in a judicial decision, after the petitioner has exhausted all available legal remedies or no legal remedy is available, together with
 - (b) a complaint submitted against a normative act that violates the petitioner's rights guaranteed in the Fundamental Law, in an individual case with a direct effect and that is applied without a judicial decision, after the petitioner has exhausted all legal remedies or no legal remedy is available.

- (2) Applying Article 24(2)d) of the Fundamental Law, a constitutional complaint is a complaint submitted in a case where a right guaranteed in the Fundamental Law is infringed by a judicial decision or by another judicial action that closes a case, after the petitioner has exhausted all available legal remedies or there are no legal remedies.

Article 23.

- (1) The first general elections for local government representatives and mayors after the Fundamental Law comes into effect will be held in October 2014. The general elections of local government representatives and mayors will be held the same day – with the exception of the first general elections after the Fundamental Law comes into effect – as the elections for representatives to the European parliament; the time between two subsequent general elections for local government representatives and mayors may differ from the period set in Article 35(2) in order to follow the general elections for representatives to the European parliament.
- (2) The participation, in Parliament, of representatives of nationalities living in Hungary should be guaranteed, as defined in Article 2(2), in the work of the first Parliament elected after the Fundamental Law comes into effect.

Article 24.

Fundamental Law coming into effect does not affect prior decisions – in accordance with Act XX of 1949 on the Constitution of the Republic of Hungary -- of the Parliament or the Government on the deployment of the Hungarian Army in Hungary or abroad, deployment of foreign forces in or originating from Hungary or the decisions of the Hungarian Army on the deployment of Hungarian forces abroad or the deployment of foreign forces within Hungary.

Article 25.

- (a) The Fundamental Law's provisions on state of national crisis should be applied in case a state of national crisis is declared.
- (b) The Fundamental Law's provisions on state of emergency should be applied if a state of emergency is declared as a result of armed acts that aim to overthrow the constitutional order or to acquire the exclusive use of power or to commit armed or non-armed violent acts that endanger *en masse* life or property.
- (c) The Fundamental Law's provisions on state of extreme danger should be applied in case a state of national crisis is declared as a result of a natural disaster or industrial accident that endangers *en masse* life or property.
- (d) The Fundamental Law's provisions on the state of preventive defense should be applied in case a state of preventive defense is declared.

- (e) The Fundamental Law's provisions on unexpected attacks should be applied in case a situation emerges as defined in Article 19/E of Act XX of 1949 on the Constitution of the Republic of Hungary.
- (f) The Fundamental Law's provisions on state of extreme danger should be applied if a state of extreme danger is declared.

Article 26.

- (1) If, when the Fundamental Law comes into effect, a person is barred from participating in public affairs by a final court judgment, the person does not have a right to vote under the Fundamental Law.
- (2) If a person whose capacity is limited or restricted by being subject to guardianship on the basis of a final court judgment, the person does not have the right to vote until the guardianship is terminated by a court or until a court decision returns to the person the right to vote.

Article 27.

Article 37(4) of the Fundamental Law should remain in force for Acts that were promulgated when the state debt to the Gross Domestic Product ratio exceeded 50% even if the ratio no longer exceeds 50%.

Article 28.

- (1) Article 12(2) of Act XX of 1949 on the Constitution of the Republic of Hungary, in effect 31 December 2011, should be applied in case of a transfer of local government property to the state or another local government until 31 December 2013.
- (2) Article 44/B(4) of Act XX of 1949 on the Constitution of the Republic of Hungary, in effect 31 December 2011, remains in force until 31 December 2012. After 31 December 2011, a normative act authorized by an Act of Parliament may grant public administrative tasks and jurisdiction to a notary of a competent local government.
- (3) A capital or regional government office may ask a court to decide whether a local government failed in its statutory obligation to deliver a decision. If the local government does not satisfy its statutory obligation to deliver a decision within the time frame set by a court, the court may order, based on the capital or regional government office's initiative, the head of the capital or regional government office to address the failure by issuing a decree in the name of the local government.
- (4) Article 22(1) and (3)-(5) of Act XX of 1949 on the Constitution of the Republic of Hungary, in effect 31 December 2011, remains in force until the cardinal law as called for by Article 5(8) of the Fundamental Law comes in effect. Parliament will adopt the

cardinal laws according to Articles 5(8) and 7(3) of the Fundamental Law before 30 June 2012.

- (5) Until 31 December 2012 Parliament may require in a cardinal act that certain of its decisions be subject to a qualified majority.

Article 29.

- (1) As long as the public debt exceeds 50% of the Gross Domestic Product, if the Constitutional Court, the Court of the European Union, another court or other law applying that body's decision requires the state to pay a fine, and the Act on the central budget does not contain necessary reserves to pay the fine, and the amount of the fine cannot be allocated from the budget without undermining a balanced management of the budget or no other item from the budget may be eliminated to provide for the fine, a general contribution covering the common needs must be specified that relates in its name and content exclusively and explicitly to the above fine.
- (2) Those who were illegally deprived of their lives or freedom based on political factors and saw the unjust damage to their property caused by the state prior to 2 May 1990 cannot be granted financial or other material compensation in a new compensation statute.

Article 30.

- (1) A Cardinal Act, as defined in Articles 41 And 42 of the Fundamental Law, may specify that a new organization assume the tasks and jurisdiction of the organization charged with Financial Supervisory Authority and the Hungarian National Bank. The President of the Republic appoints the head of this organization according to Article 41(2) of the Fundamental Law.
- (2) In the case defined in Paragraph (1), the vice-president of the new organization, with respect to the tasks on monetary policy and central banking, is the President of the Hungarian National Bank, in office at the time the Act on the new organization comes into effect, and the vice-president of the new organization, with respect to tasks on supervising the financial sector, is the President of the Financial Supervisory Authority, in office at the time the Act on the new organization comes into effect. The vice-presidents will remain in office until their terms as President expire. Once the mandate of the vice-president ends, the President of the Republic appoints new vice-president according to Article 41(2) of the Fundamental Law.

Closing Provisions

Article 31

- (1) The Act on the Transitional Provisions of the Fundamental Law (hereinafter: Transitional provisions) comes into effect 1 January 2012.
- (2) Parliament adopts the Transitional Provisions based on Articles 19(3)a) and 24(3) of Act XX of 1949 on the Constitution of Republic of Hungary and with respect to Paragraph 3 of the Closing Provisions of Hungary's Fundamental Law. The Transitory Provisions form a part of the Fundamental Law.
- (3) Hereby repealed are
 - a) Act XX of 1949 on the Constitution of the Republic of Hungary,
 - b) Act I of 1972 on the unified text of the Constitution of the People's Republic of Hungary and on the amendment to Act XX of 1949,
 - c) Act XXXI of 1989 on the amendment to the Constitution,
 - d) Act XVI of 1990 on the amendment to the Constitution of the Republic of Hungary,
 - e) Act XXIX of 1990 on the amendment to the Constitution of the Republic of Hungary,
 - f) Act XL of 1990 on the amendment to the Constitution of the Republic of Hungary,
 - g) the 25 May 2010 amendment to the Constitution,
 - h) the 5 July 2010 amendment to the Constitution,
 - i) the 6 July 2010 amendment to the Constitution,
 - j) the 11 August 2010 amendment to the Constitution,
 - k) Act CXIII of 2010 on the amendment to Act XX of 1949 on the Constitution of the Republic of Hungary,
 - l) Act CXIX of 2010 on the amendment to Act XX of 1949 on the Constitution of the Republic of Hungary,
 - m) Act CLXIII of 2010 on the amendment to Act XX of 1949 on the Constitution of the Republic of Hungary,
 - n) Act LXI of 2011 on the amendments to Act XX of 1949 on the Constitution of the Republic of Hungary to create certain necessary transitional acts in relation to the Fundamental Law.
 - o) Act CXLVI of 2011 on the amendment to Act XX of 1949 on the Constitution of the Republic of Hungary,
 - p) Act CLIX of 2011 on the amendment to Act XX of 1949 on the Constitution of the Republic of Hungary.

Article 32.

In memory of its enactment, April 25th is designated as the day of the Fundamental Law.

Dr. Pál Schmitt

President of the Republic

László Kövér

Speaker of the House