Constitutions hardly played an important role under Communism. They were neither meant to constrain nor to limit the power of the ruling elite. During that time they had little or no idea of constitutionalism. After the systemic transformation in 1989, constitutions were evolved as guiding principle for every state of Central and Eastern Europe. The process of making a new Constitution started in June 1989, in the Round Table Talks in Hungary. Though there was hardly any consensus between the ruling socialist party, the opposition and independent organisations, the negotiation ended in an agreement that resulted in far-reaching amendments to the old communist constitution, thus creating a legal basis for democracy and market economy in Hungary.

The main objective of this chapter is to outline the Constitutional development and institution building at the central level of the Hungarian political system. It thus seeks to focus on the historical background of Constitution making and power sharing between various institutions. It is also an attempt to understand the nature of the Hungarian state and its institutions to establish long cherished goal of democracy, liberal and free society. The chapter also makes particular effort to understand the transition process and tries to situate the role of presidency and the long debated status of the Constitutional Court.

III.1 Evolution of the Hungarian Constitution

In 1988, Janos Kadar was replaced as the General Secretary of the Hungarian Communist Party (MKP) and Imre Pozsgay; the reform Communist Leader was admitted to the Politburo. In the same year, the Parliament adopted a ‘Democracy Package’, which included trade union pluralism, freedom of association, assembly, the press; a new electoral law, and a radical revision of the constitution among others. A Central Committee Plenum in February 1989 endorsed in principle the multiparty political system and the characterisation of the October 1956 revolution as a ‘popular uprising’.
The revolution had gathered strength because the communist party membership declined drastically.

Kadar’s major political rivals then co-operated in moving the country gradually to democracy. The Soviet Union reduced its involvement by signing an agreement in April 1989 to withdraw its forces from Hungary by June 1991. The national unity culminated in June 1989 as the country reburied the 1956 hero Imre Nagy, his associates, and symbolically, all other victims of that Revolution. A national Round Table Meeting, comprising representatives of the new parties and some recreated old parties such as the Small Holders, Social Democrats and Communist Party, and different social groups, met in the late summer of 1989 to discuss major changes to the Hungarian constitution in preparation for free elections and the transition to a fully free and democratic political system.

Meanwhile, the wave of political change was sweeping across the Central and Eastern Europe. In October 1989, the ruling Communist Party convened its last congress and re-christened itself as the Hungarian Socialist Party (MSZP). In a historic session on October 16–20 1989, the Parliament adopted legislation providing for multi-party parliamentary elections and a direct Presidential election. The legislation transformed Hungary from a People’s Republic into the Republic of Hungary, guaranteed human and civil rights, and creating an institutional structure that ensured separation of powers among the judicial, executives and legislative branches of governments. The national Round Table agreement was the result of a compromise between communist and non-communist parties and societal forces. The revised constitution still retained vestiges of the old order. It championed the values of ‘bourgeoisie democracy and democratic socialism’ and gave equal status to public and private property.

Constitutional development in Hungary took a different direction from that of other former socialist countries. The Hungarian approach is notable in that it emphasised

42 Imre Nagy was symbolic hero of the 1956 Hungarian revolution against Communist Russia. He fought for freedom and rights of Hungarian nationals despite his communist up brings.
continuity with changes. The changes in Hungary were not triggered by mass
demonstrations as in Romania, the former German Democratic Republic (GDR) or
Czechoslovakia. The events in Hungary can be rightly described as some sort of
'revolution'\textsuperscript{43} as described by the English historian T.G.Ash. It can be understood as
reforms of revolutionary significance which interrupted the continuity in the policy
making of a state. However, the situations drastically changed the institutional structures
within the Hungarian constitution and strengthened rights and freedoms of the people.

Hungary's transition to a Western-style parliamentary democracy was the first
and the smoothest (in the word of Agh Attila 'the least painful'\textsuperscript{44}) among the former
Soviet bloc countries. It was inspired by nationalism that long had encouraged
Hungarians to control their own destiny. By 1987, activists within the party and
bureaucracy and Budapest-based intellectuals were increasing pressure for the change.
Some of these activities became reform socialists, while other began movements which
were to develop into parties. Young liberals formed the Federation of Young Democrats
(FIDESZ), a core from the so-called Democratic Opposition formed the Association of
Free Democrats (SZDSZ) and the neo-populist national opposition established the
Hungarian Democratic Forum (MDF). Civic activism intensified to a level not seen since
the 1956 Revolution.

1.1 Constitution Making and creation of Institutional Structures

During communism Constitutions hardly regulated the authority of state. Communist
ideas held that a constitution should provide a vision, a programme. It described how
classless society could be realised and by what means. The principles enshrined in the
constitution merely represented the rules and regulations of Party's prerogatives as

\textsuperscript{43} There were no counter-elite, no theoretical background, no organisation and no movement from below,
any defined vision, instructions, and prescription for forthcoming change. In case of Hungary reform is
peaceful, mass mobilisation has taken place but in low key level. Here both external and internal elite
worked together to brought change. At the end the process became peaceful and brought equal amount of
change those are supposed in a full-fledged revolution usually brought.

\textsuperscript{44} See Agh, Attila (2002), 'The dual challenge and reform of Hungarian Socialist Party', Communists and
vanguard of people. Constitutionalism is the philosophical documentation of institutional values and power sharing within various state structures. This is how political institutions are configurations of formal rules which structure human action. More precisely, institutions are sets of constitutional constraints or rules which prescribe, or permit certain actions for individual and political actors. Explaining institutional origins involves explaining the emergence of each of these rules.

The history of the post-communist Hungarian constitutional development is termed as very special in nature. This can be traced to the Revolution of 1989, which neither created any social upheavals or instability within Hungary. Unlike the other Central and Eastern European states, like Bulgaria and Rumania, the Hungarian state established its governing mechanism with greater meticulousness and maturity. The situation was more of a kind of a restoration rather than revolution where the authoritarian state system was strongly rejected and replaced by a new structural form of political pluralism. However, the revolution of 1989 has tried to establish citizens’ basic constitutional rights, long neglected by the Communist regime. In Hungary the revolution succeeded to establish a constitutional, limited and civic government in the place of authoritarian communist model.

Constitution making is very a critical process which involves collective choices against some collective opposition. However, both the reformer and opposition in Hungary wanted to ‘create a constitutional regime, where the ruling party could keep a significant part, of its power but its prerogatives would be largely limited’ (Korosenyi, 1992: 2). It is the document which tries to identify the nature of policy, mechanical division of power, institutional arrangements, rights bestowed upon individual, role of state and over all safety of individual as citizen and social being. So, constitution making is the most significant and inevitable necessity of a modern state. It limits the powers of distinct institutions and control the monopoly with the barracked of individual rights and liberty. The post-communist Central and Eastern European Countries (CEECs) are not exception to it.
Hence, Constitutions are about power; a constitution impregnated with the idea of constitutionalism is about limited power—

The constitution ...is the nexus of fundamental institutions prescribing the scope and rightful succession to ruling positions and the authority to use force. Or in a phrase crude enough to miss the saving holiness, 'who gets what, when and how' [Laswell]. The constitution is autobiography of power relationship, concrete and spiritual, in any human group, and like all autobiographies, it includes some fancies which are not lived up to, and excludes some vices which are lived only too well. (Finer, 1970:12 and Sajo, 1999: 2)

Communist rule was a kind of desertification. It atomised society and destroyed the basic institution and bonds of pluralism which are considered as basic for state building. According to communist practice the constitutions were hardly playing any role in state building or institution building. Almost all the power and authority were concentrated in the Party. There was no concept of institutions with power sharing or any 'limits' to party authority. That mainly indicates that the states were not run according to the principles of 'rule of law' and constitutionalism. But the new post-communist constitutions mark in many ways a complete departure from the totalitarian past. Hence all these constitutions proclaim the fundamental principles of liberal democracy, such as political pluralism; protection of civil and political rights and freedom; private ownership; and free press etc. (Albi, 2005: 22). They removed all the problematic references to communist values—like one party rule, integrated role of party to control economy, polity and society; party as source of law; and mainly the 'class' interpretation of state. The new post communist constitutions express the countries' 'will to get rid of the past and to enter into new era—and their eagerness to establish a firm basis for new constitutional system, based upon principles of democracy and rule of law'(Smith, 2003: 15).

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45 According to the class theory, the state comes into existence when society is divided into two antagonistic classes, one owning the means of social production and other being constrained to live on its own labour. Here the state works as an instrument of the Dominant Class and an instrument of Class exploitation.

46 The constitution is not against the people of any kind-like bourgeoisie or proletariat. But the constitution of modern constitutional and democratic government derives its power from the sovereignty of the people, provided it leaves open the means for the people (the individual voter) to determine their own everyday affairs, and provided it given them the opportunity to block the acceptance of constitution or amend it if they strongly disagree with it (Sajos, 1999: 22).
The transformation after 1989 is nothing but an attempt to rebuild the lost foundation of pluralism and civic institution making. Constitutional assemblies played a key role in the legitimisation of new political authorities during transition period in East European countries. The assemblies were formed either through election (e.g. in Albania, Bulgaria and Romania) or self-constitutionalisation (e.g. in Poland, Hungary and Czechoslovakia). That means both in Hungary and Poland the Round Table Talks (RTTs) among different political forces had effected the changes in the Constitution. Between the fall of 1989 and that of 1992, all of the countries of Central and Eastern European (CEE) region attempted to come up with new constitutions. The exception was Czechoslovakia, where failure to keep the country together was related to the failure to come up with a new constitution. Bulgaria adopted its constitution in July 1991, Slovakia in September 1992, and the Czech Republic in December 1992. Hungary created a new constitution in 1989–90 by a series of patchwork amendments that added up to a wholly new document (Elster et al, 1998: 64). It is striking that, in case of Hungary, the 1949 Constitution underwent various amendments in the 1960s and the early 1970s; its fundamental tenets remained largely intact until the revisions of 1989, following ‘round table talks’ that led to the introduction of Western type political processes and institutions (Pogany, 1993: 335).

Unlike other East European countries, Hungary maintained the 1949 Soviet type constitution, although revising it fundamentally in 1989 and introducing nine further amendments in 1990, to the extent that the Constitutional Court stated that, in the aftermath of the amendments, ‘a new constitution came into effect’ (Albi 2005; Elster et al, 1998; Pogany, 1993) (Figure no.III.1 shows the governmental system of Hungary in 1990). Even though the preamble described as a new constitution the changed there in were regarded as interim in nature.47 It was clear that the amendments to the constitution adopted in the year 1989 were considered purely interim in nature, which would be

47 In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted (Preamble of the constitution).
followed by a new constitution. But even after the end of five national elections by 2006, the Hungarians did not come up with a new constitution.

Before discussing any of the constitutional prerogatives or institutional design the chapter will focus on the essence of political scenario, in which the Hungarian Communist Party and opposition brought forward the 'law of the land'. Like any other Communist regime in CEECs, Hungary had also prohibited any institution or organisation to work freely. Through the Freedom of Association Act, however, the opposition against Communist government legitimised their role to initiate any change and decided to articulate the voice of people demanding change. Thus it is logical, to examine the said Act in detail which brought forward the liberal minded groups forwarded to initiate change and establish the constitutional system in Hungary.
1.2 Role of Freedom of Associations Act

Independent voluntary organisations were not permitted in Hungary until the late 1980s, but thereafter the situation started to change significantly. The Hungarian law today generally permits organisations to undertake any activities that are not prohibited by law. However, the activities of foundations must meet a long-term ‘public interest’. Political activity by organisations is permitted, but Public Benefits Organisations (PBOs)
may not engage in 'direct political activity'. The Constitution and laws articulate a role for non-governmental organisations in the development of policy, but in practice, that role is often limited. This tendency of limited freedom and squeezed articulation in Communist Hungary was questioned by liberal minded, pro-West oppositions. So the Hungarian Round Table Talks first tried to implement the Freedom of Association Act, 1989. They tried to do it in accordance with the provisions of the Constitution, the International Covenant on Civil and Political Rights and Helsinki Pact, 1975 (third basket).\textsuperscript{48}

The first meaningful legal change took place with the amendment of the Act on Associations. This Act created a legal framework for multi-party parliamentary democracy. Though law was allowing setting up political parties, ‘any one who wanted to organise such thing expected apolitical repression’. The creation of the Act on Associations was immediately followed by its broader and narrower political and legal interpretations. According to the broader interpretation, the sphere of the right to Associations included also right to organise political parties in other words, the legal conditions of multiparty system created. In fact all the old parties like Independent Small Holders’ Party, People’s party, Social Democratic Party were recognised between November 1988 and January 1989. The new parties developed out of Social Movements, such as the Hungarian Democratic Forum, Alliance of Free Democrats, Federation of Young Democrats etc.

The second phase of political transition (March–October 1989) was characterised by negotiations between the state party and opposition. The significance of the phase is also indicated by the fact that a number of social scientists call the Hungarian transition

\textsuperscript{48} The Helsinki Final Act dealt with a variety of issues divided into four ‘baskets’. The first basket included ten principles covering political and military issues, territorial integrity and the definition of borders, peaceful settlement of disputes and the implementation of confidence building measures between opposing militaries. The second basket focused on economic issues like trade and scientific cooperation. The third basket emphasized human rights, including freedom of emigration and reunification of families divided by international borders, cultural exchanges and freedom of the press. Finally, the fourth basket formalized the details for follow-up meetings and implementation procedures.
as negotiated revolution. Meanwhile a negotiated type of transition was launched in Poland with the participation of the most important political forces. The Polish pattern seemed to be suitable to be followed both by the Communist Party as well as by the oppositions.

The objective of the Hungarian National Round Table was to draft a new election law which could be submitted. By implied the agreement approved the sitting parliament in time to govern free elections in the spring of 1990. This objective was realised in September 1989, when the conclusion of the negotiations produced a complete electoral draft law sent to the sitting parliament for approval. Act No. XXXIV on the Election of the members of Parliament passed on October 20, 1989, creating what may be called the world’s most complicated electoral law. Hungary’s unicameral 386-member legislature is elected from three electoral tiers: 176 seats come from single-member constituencies; a maximum of 152 seats are awarded to 20 regional party lists; and a minimum of 58 seats from national party lists.

Finally the parties agreed on discussing the political issues in six committees. The sub-committees were the following: a. the amendment of the constitution; b. law on parties and the financing parties; c. electoral laws; d. principles of the amendment of penal law; e. publicity, information policy; f. safeguard on the non-violence of transition. The negotiating parties amended the Constitution of 1949 so that it would be suited to representing the multi-party system. Accordingly, in Hungary political parties can be formed and function freely, and though they can not directly exercise public authority, they may participate in the shaping and expression of popular will (Bozoki et al, 1992:62–65). After the acceptance of free political association through Act on Freedom of Association 1989, the Hungarian constitution legitimised the multi-party system as fundamental to its polity.

49 Elite driven, because it was not mass movement like Solidansic in Poland, not represented with a leader like Vaclve Havel in Czechoslovakia.
According to the Constitution, the political parties in the Republic of Hungary may be established and may function freely, provided they respect the Constitution and laws established in accordance with the Constitution. Political parties shall participate in the shaping and expression of the popular will. They may not exercise public power directly. No single party may exercise exclusive control of a government body. In the interest of ensuring the separation of political parties and public power, the law shall determine those functions and public offices which may not be held by party members or officers.\(^{50}\) The constitution has denied any exclusive control of party over politics like the communist party. At the same time it allowed labour unions and other representative bodies to protect and represent the interests of employees, members of co-operatives and entrepreneurs.\(^{51}\) This is how the Hungarian polity had given space to multiple associations to articulate views which were long denied in the communist era.

This is how the Freedom of Association Act has given the individual what was long denied under Communist party rule. It has created an atmosphere of freedom of expression and articulation. In this manner, the individuals re-established their rights as citizen of a free and open system.

### 1.3 Recognition of Individual Rights

The modern Bill of Rights bears little resemblance to the original American conditions either in their genesis in the Virginia Constitution of 1776 or their promulgation in the first 10 amendments to the United States constitution in 1791. There is universal concurrence on the concept of human rights evolved during the subsequent two centuries. By the end of eighteenth century, model bills of rights were being circulated throughout the globe; that phenomenon continues even today. Today, the influence of American Bill of Rights can be traced through its remote off-spring, including Helsinki Agreement, the German Basic Law, the post-war French constitutions, and the European Convention on Human rights (Kurczewski and Sullivan, 2002: 251–53).

\(^{50}\) Article 3(1) (2) (3) respectively of Hungarian amended constitution of 1997.

\(^{51}\) Article 4, 1997 Hungarian constitution.
All the countries of CEECs tried to come up with written constitution enshrined with fundamental rights (political and civil rights), institution different from the party like, legislature, executive, the Supreme Court and a Constitutional Court. In the meantime, most Eastern European countries including Hungary protected fundamental individual rights, through state intervention. As a typical case, Article 8(1) of Hungarian Constitution declares that the protection of Fundamental Rights is the primary obligation of the state. The state’s right-protection ‘services’ were preserved as constitutional requirement in most cases (Sajo, 1999: 274). Like all the liberal democratic constitution of recent history the Hungarian constitution defined the type of government and power of institution in the very initial paragraph of the Constitution. It required the Hungarian state to establish ‘a multi-party system, parliamentary democracy and a social market economy’. In Article 1, it declared itself to build a ‘republican’ state where the head of the state, the President, should be elected.

The Constitution of Hungary has evolved in the process of Round Table Talks; it tried to get rid of the stagnant economy and economic sector as the sole public domain of state. The new constitution attempted to codify individual rights to inherit property which is basic to any liberal economy (Article 14). Nevertheless, the Constitution of Hungary has not completely abolished the role of state or its role in the control and management of public enterprises. The constitution has given equal emphasis on public and private and protected both thorough laws (Article 9). Starting with property, the Hungarian constitution established ‘the right to property’ in Article 13(1) and recognised some amount of ‘expropriation’ in exceptional cases, in the public interest.\footnote{In these cases the manners are stipulated by law. This promises to give the full, unconditional and immediate compensation to the party—Article 13(2).} In this way, the institution of property is recognised as a social institution instead of individual right.

After the demise of communism in Central and Eastern Europe, the transition regime gave strong emphasis on human rights which was long neglected by the communist systems. The recognition of ‘fundamental human rights’ in the constitution of
CEECs has not only protected the individual from both the party monopoly and the
majoritarian state rule in democratic system. Almost all the constitutions including that of
Hungary have granted the individual with political, social and economic rights.

For example the constitution of Hungary spells out the significance of Rights like
this—

During preparatory work on the (1989) amendments to the Constitution, the opposition Round
Table proposed that changes in the structure of Constitution should reflect the belief that human
rights are henceforth to be regarded as basic values. According to this conception, such rights are
not privileges granted by the state in exercise of its discretion but on the contrary they are the very
limits of state power. According to the Opposition Round Table, it was still acceptable that rights
which were ‘secured’ by the state should be put in a chapter after chapter dealing with the organs
of the state. However, basic rights, which limited state power, should precede those parts of the
Constitution dealing with state organs (ibid: 255–56).

In this way the Hungarian constitution has recognised and protected fundamental
human rights which are basic to individual needs.

In Article 8, the Hungarian constitution has promised that these rights as ‘the
observance and protection shall be primary obligation of state’. It has protected both
‘positive’ and ‘negative’ rights as inevitable for the growth of the individual. The
fundamental rights and duties are codified under Chapter XII of the Constitution of
Hungary. Here both positive and negative rights are judicially enforceable through public
prosecutors who are accountable to provide with ‘independent and impartial’ court
established by law.53 In contrast to negative rights, positive rights are largely disputed and
debated because their enforcement requires complex policy initiatives by the legislative
and executive branches of government. Some of the articles like, Article 54 (2) ‘no one
shall be subject to torture or cruel, inhuman or humiliating treatment or punishment’ has
entered into the list of basic rights because the then communists wanted to stay safe in
post-communist, liberal Hungary.

The Hungarian Constitution legitimised the positive rights like, ‘right to physical
and mental health care of highest possible standards’ to be provided, amongst other

53 Article 57-1.
means, directly through health institutions and medical care.\textsuperscript{54} Other positive rights which
are endorsed by various governments are the right to healthy working conditions,\textsuperscript{55} the
welfare subsistence for needy,\textsuperscript{56} right to education and right to unemployed benefits are
encoded in the Hungarian Constitution. Most of these rights are not justifiable in bare
judicial lexicon. Next, the policy implementation requires lots of efforts from both
legislative and executive branches. However, the Hungarian state through various
governments has been initiating a set of efforts to provide their citizen with these rights.

\textbf{III.2 Hungarian National Assembly}

The Hungarian Constitution prescribed for a parliamentary form of government. It
declares the National Assembly as the ‘supreme organ of state power and popular
representation’.\textsuperscript{57} Through this the aim of the Hungarian Constitution was to uphold the
‘sovereignty of people’ over deliberation and lawmaking. On the other hand, the
Hungarian National Assembly is supposed to ‘guarantee the constitutional order of
society and shall determine the structure, orientation and conditions of government’.\textsuperscript{58}

The Constitution describes the Parliament\textsuperscript{59} as central to the legislative activity. It
has prescribed for a unicameral assembly consisting of a prime minister, ministers and
368 members. It is important to note here that unlike its British counterpart, the
Hungarian Parliament is not a completely sovereign legislature. However the constitution
vested more power than the President but limited its authority by the Constitutional Court
in favour of, ‘rule of law’. Similarly, president also has the right to return any legislation
for reconsideration and he has the power to sit in any parliamentary session and meeting
of any committee. On the other hand, during a state of national crisis or emergency, the

\textsuperscript{54} Article 70(D).
\textsuperscript{55} Article 36(C) (D).
\textsuperscript{56} Article 70(E) (I).
\textsuperscript{57} Article 19-para 1.
\textsuperscript{58} Article 19-para 2.
\textsuperscript{59} The Hungarian Constitution (and Bulgarian, one, likewise) made one chamber parliaments one
distinguished branch of powers, the trustee of power, stemming from the people’s sovereignty. The
Hungarian parliament has supremacy just like the all powerful British parliament but without its 200 years
of self-limitations and mild control of the House of Lords.
Parliament can neither declare its dissolution nor be dissolved. Its mandate shall be extended until the cessation of national crisis or state of emergency.\(^{60}\)

The Parliament in Hungary is overwhelmingly identified by its legislative task, but not in an entirely positive manner. It has been seen by many as ‘law factory’. This is justified in so far as in the last 15 years two events—the transition to democracy and preparations for European Union (EU) membership—required the parliament to adopt an enormous number of new laws and constitutional amendments. However, this view is also the side-effect of the need felt by the first democratically elected government to break with the practice of ruling by government decrees that was so characteristic of the communist era. As a result, between 1990 and 1994, the Parliament had to pass laws on many questions that could have been dealt with at lower levels (Korosenyi 1999: 225–62; Solyom 2001:736–37). Between 1998 and 2002, this trend was reversed when the Victor Orban government strove to figure out how it could govern while widely ignoring the Parliament (Meyer, 2006:151–53).

### 2.1 Election and Mandate

The general election for the members of the Parliament took place every four years in the month of April or May after the dissolution of the previous Parliament. A member of the Parliament may not be the president of the Republic, nor a member of the Constitutional Court, the Ombudsman for civil rights, the president, the deputy president or auditor of the State Audit Office, a judge or prosecutor, an employee of a public administer, body-with the exception of the Members of the Government and Parliamentary State Secretaries, nor a professional member of the armed forces, the police or other security organs. Any change in the nature of mandate and legal position a majority of two-thirds of the vote of members of Parliament present.\(^{61}\) The mandate of a member of Parliament shall end upon completion of term of Parliament, death of the member, declaration of a conflict of interest, resignation and disfranchisement. To prove the conflict of interest a two-thirds majority of its members present and voting is

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\(^{60}\) Article 28-A .

\(^{61}\) Article 20-(1) (5) (6).
required. In case of resignation, members should make statement to the Parliament and a statement of acceptance by the Parliament is not required for the resignation to be effective.

2.2 Organisational Power

The Parliament is supposed to elect its own official chairs like speaker, deputy speaker and clerks from among its members. It can establish standing Committees from among its members and delegate a committee for the investigation of any issues whatsoever. But, Parliamentary Committee is privileged to get any information and testify it accordingly.

2.2.1 Electoral and Other Functions

The Parliament will:

- elect the President of the Republic, the Prime Minister, the members of the Constitutional Court, the Parliamentary Ombudsmen, the president and vice president of the State Audit Office, the President of Supreme Court and the General Prosecutor;
- decide on the recommendation of Constitutional Court, the Parliamentary Ombudsmen;
- exercise general amnesty;
- elect the speaker of Parliament;
- establish standing committees from among its members and delegate a committee for the investigation of any issue whatsoever Article-21(2).

However, the main test of the Parliament’s power is the character of its relations to the other organs. As regards the relationship between the Parliament and Executive branch in Hungary the prime minister is elected by the vote of majority of all members of the National Assembly upon the instruction of the President (Article 33-3). In view of the prominent role of the National Assembly, it is surprising that the other members of the
government are not elected, but appointed (and removed) by the President at the suggestion of the Prime Minister (Article 33, Para 4).

Consequently, a vote of no-confidence in an individual minister is not admissible, although each is accountable not only to the government, but also to the National Assembly. Still, their political survival depends on the Prime Minister. Even more striking is the buttressing of the Prime Minister vis-à-vis the National Assembly in that he (or she) can be removed by a constructive vote of no-confidence which requires the vote of the majority of the members of National Assembly.\textsuperscript{62} In contrast, the Prime Minister only requires the majority of the attending representatives— the quorum being more than half of all members of Parliament—when he himself requests a vote of confidence.\textsuperscript{63} Thus the Prime Minister is in a strong position both vis-à-vis the National Assembly and the government.

\textbf{2.2.2 Basic Functions}

The primary function of the National Assembly is to make laws for the country. It is the supreme body of state power and popular representation in the Republic of Hungary. It is supreme, but it exercises its rights on the basis of popular sovereignty. The Parliament shall ensure the ‘constitutional order’ of society and define the organisation, orientation and conditions of the government. It is clear from the above description that the Hungarian National Assembly has an expanding sphere of authority. The Parliament has capacity to:

- pass legislation of any kind;
- adopt the Constitution of the Republic of Hungary and main sources of law;
- define the country’s social and economic policy;
- assess the balance of public finances, approve the State Budget and its implications;
- decide on the Government’s programme

\textsuperscript{62} Article 39 A Para (1).
\textsuperscript{63} Article 39 A Para (3) (4).
• conclude international treaties of outstanding importance to the foreign relations of the country;
• decide on the declaration of a state of war and the conclusion of peace;
• declare a state of national crisis and establish the National Defence Council, in the case of war, or imminent danger of armed attack by foreign power;
• declare a state of emergency, in case of armed actions aimed at overturning constitutional order or at the acquisition of exclusive control of public power, in the case of acts of violence committee by force of arms groups which gravely endanger life and property on mass scale, and in events of natural disaster;
• Set the rule on the use of the armed forces both abroad and within the country.

2.2.3 Legislative Initiation

In a traditional parliamentary form of government only the legislative members, are supposed to initiate legislation. But in case of the Hungary legislation, it may be initiated by the president of the Republic, the Government, all Parliamentary committees, and any member of the Parliament.64 After the initiation only the Parliament can be vested with the authority to pass legislation. The speaker of the National Assembly shall sign the laws which have been passed by the Parliament and subsequently send such laws to the president of Republic. The piece of legislation passed by parliament and signed by Speaker shall go to President of the Republic, he ensures to give his assent within the period of 15 days following its receipt. He may give his assent with in five days if the Speaker of Parliament requests that issue is of special importance.65

The president of the Republic shall ratify law sent for promulgation. A law can be promulgated in the official gazettes. In case of any disagreement the president may send the legislation back for the reconsideration of Parliament. He may return it with his comments and Parliament is supposed to reconsider it within the period of five days. If the Parliament debates the legislation again and holds another vote on its passage, the

64 Article 25 (1).
65 Article 26 (1).
president is bound to sign it within five days period. In case, he want to reserve the law he may refer such law to the Constitutional Court for review within 15 days. If the Constitutional Court may proceed with a special session and determine the law to be unconstitutional, the president of the Republic shall refer such law to the Parliament; otherwise he shall ratify and promulgate the law within a period of five days. Otherwise, the president has some constitutional privilege to ratify the law in the subject through national referendum. There is no distinct procedure for financial legislation and non-financial one.

2.2.4 Parliamentary Privileges

Being a parliamentary form of government, the members of the Hungarian parliament are rewarded with many privileges. They not only elect the president and the judges of Constitutional Court but granted with many Parliamentary immunities. The legal status of Parliamentary member is enshrined in the Constitution through Article 20(3). All the members of the Parliament are entitled to compensation adequate to ensure their independence, specified allowances and reimbursement of their expenses. A majority of two-thirds of votes of the members of the Parliament present is required to pass the law on the amount of compensation, reimbursement of expenses and allowances (Article 20[4]). Finally, any member of the Parliament may direct a question to Ombudsman for civil rights and the Ombudsman for the rights of National and Ethnic Minorities, to the president of the State Audit Office and the president of the National Bank of Hungary, to the Government or any members of the Government as well as to the general prosecutor on matters which fall within their respective sphere of authority. According to this law, the Parliament can control the executive and government by asking question related to issues involving public interest.\(^6\)

2.2.4.1 Privileges as Members of Parliament

The Constitution declares that ‘in the Republic of Hungary, supreme power is vested in the people, who exercise their sovereign rights directly and through elected

\(^6\) Article 20 (2).
The members of the Parliament shall exercise their activities in the public interest. They may not be given orders as to their activities as members of the Parliament.

In another context, prior to dissolving the Parliament, the president of the Republic is required to request the opinions of the Prime Minister, the Speaker of Parliament and the floor leaders of the parties represented in the Parliament. Second, a new Parliament shall be elected within the period of three months following the declaration of the Parliament’s dissolution or the parliament having been dissolved. Third, Parliament shall continue to operate until the inaugural sitting of the new Parliament.

In order to allow Members of Parliament (MP) to carry out their activities undisturbed, they enjoy a particular form of protection called parliamentary immunity. Parliamentary immunity has two forms: exemption from liability and inviolability. During the whole of his mandate and even afterwards, an MP shall not be liable for his declarations, speeches or votes cast during his work (exemption from liability). The Members of the Parliament may only be arrested if caught in any kind of criminal procedure or misdemeanor proceeding can only be initiated with the prior consent of the National Assembly (that is, with suspension of their parliamentary immunity). The MP with the exception of a misdemeanor proceeding—cannot legally disclaim his rights. The National Assembly may suspend immunity of an MP with the votes of two thirds of the MPs present.

The Act on the Legal Status of the members of the Parliament (with the exception of the rules on incompatibility) provides legal possibility for an MP to have an employment contract. However, the intensive commitment of MPs makes jobs requiring a fixed working time unfeasible to attend to. The MP must announce any form of employment relationship, his own undertaking, foundation, his participation and/or

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67 Article 2 (2).
membership in any economic association, cooperative or public-utility undertaking as well as all income deriving from these activities to the speaker of the House.

Similarly to other parliaments, law ensures the financial independence of the members of the Parliament in Hungary by way of remuneration and reimbursement. Act LV of 1990 provides for the Legal Status of Members of Parliament while Act LVI of 1990 for the remuneration, cost reimbursements and benefits of Members of Parliament respectively. Both acts have been amended several times, the last amendment dates back to 30 May 2006.

III.2.3 Legislature – Executive Relation

Chapter VII of amended Constitution of Hungary states the nature and role of government—the executive. The government consists of the prime minister, the ministers, deputy prime minister (chosen from the ministers). The government can stay in mandate till completion of four years and formation of the newly elected Parliament. It shall loose his franchise as the member of the parliament. The government shall be considered dissolved if conflict of interest would take place on the part of the prime minister. Otherwise Parliament can pass a motion of no-confidence against the prime minister and elect a new Prime Minister. On the other hand, individual minister will loose their mandate in case of completion of the government’s term, upon the minister’s resignation, after the death of ministers, dismissal, disfranchisement or declaration of a conflict of interest will rise. The powers of the government are enshrined in Article 35 of new amended constitution.

The other important and increasingly significant task of the National Assembly besides legislation is the control over the government and government-managed public administration. This control function mainly focuses on assessing the feasibility of the legislators’ intention and ensuring that the Government operates in accordance with the

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68 Article 33 (1)(2)
69 Article 39A (1)
laws. This controlling function of the parliament derives powers from the principle of the political responsibility of the government towards its Parliament. The Constitution stipulates that the government shall be responsible for its operation to the National Assembly and shall regularly report on its activities. It is the National Assembly that approves the government programme simultaneously with the election of the prime minister.

The principle of responsibility of the executive towards the Parliament translates not only into accountability, but the National Assembly may initiate a motion of no-confidence against the government if it does not agree with its policy priorities. On the basis of this motion, the majority of the members of the Parliament may withdraw the government's mandate while at the same time electing the person of the new prime minister in order to ensure continuity in governance.

Parliamentary control may be exercised by the Plenary, the Committees and individual MPs as well. Control may also be enforced through specialized organisations operating under parliamentary control, such as the State Audit Office or the ombudsmen for example. At the plenary session the important means of control are the discussion and adoption of the different reports submitted by the government, and political debates which may be initiated either by the government or by one fifth of the deputies (as discussed in figure III.2).

2.3.1 The Sessions and Sittings of the National Assembly

The National Assembly annually holds two regular sessions: one from 1 February to 15 June, and another from 1 September to 15 December. An extraordinary session or sitting shall be convened on the request of the president of the Republic, the government or one-fifth of the members of the Parliament. When in session, the National Assembly holds sittings weekly, Mondays from 1 p.m. and Tuesdays from 9 a.m. (and occasionally Wednesdays). It is the speaker of the Parliament who convenes the meetings of the House. The House Committee or, if there is no agreement between the factions, the
speaker makes a proposal for the orders of the day. The orders of the day are eventually accepted by the vote of the Plenary.

The agenda items concern legislative proposals and other parliamentary resolutions, debates and votes thereon, interpellations and questions. However, there is a possibility of raise important political issues being raised before the orders of the day at the sittings of the Plenary. The majority of the decisions are taken by a simple majority vote; however, the modification of the Constitution, proposals pertaining to certain legislative issues and operational questions concerning the House may only be decided by a qualified majority vote specified in the Constitution, the law or the Standing Orders. The elections for posts of high public dignitaries also require qualified majority voting. The minutes are prepared on the meetings which are later made public on the homepage of the National Assembly. Public television (Channel M2) provides a three-hour and a five-hour live transmission of the plenary on Mondays, Tuesdays and Wednesdays respectively.
Figure –III.II
Basic legislative procedure of government in Hungary

Source: Villam et al. (2006), the Hungarian National Assembly, Budapest: Office of the National Assembly, pp. 53.
III.3 The Prime Minister: The Executive Head

The Parliamentary form of government that has its ancestral place in the United Kingdom and that has been adopted in the Commonwealth countries and also in several countries of Europe. The ministry headed by prime minister is immediately and legally responsible to the legislature. Like all the traditional Parliamentary form of government, the Hungarian executive is legally accountable to the National Assembly. It is the popular unicameral legislative organ of the Republic. The executive power headed by the prime minister, depends upon a mandate of 386-member house for all its policies and acts, and in the process ultimately answerable to the electorate. It’s clear that, the head of the state—President, occupies a position of nominal importance. So, in the process, the prime minister holds the real executive authority. It is on his advice that the nominal head of the state acts in matters relating to the appointments or dismissal of the ministers, or change of portfolios or proclaiming a war and peace, making an appeal to the nation through referendum.

The prime minister is the leader of the party enjoying clear majority in the parliament, the National Assembly of Hungary. The Parliament shall hold the vote on the election of the prime minister and on the passage of government’s programme at the same time. The ministers shall be appointed and dismissed by the President of the Republic, based on the recommendation made by the Prime Minister. The government shall take an oath before Parliament. Like other parliamentary form of government the prime minister is the leader of the party enjoying clear majority in the legislature.

Till 2000, the prime minister and the leader of the largest party were identical. This had the advantage that the premier could strengthen his position within the party as well as his party leadership which assured him considerable prestige both within the cabinet and the parliamentary fraction of party (Korosenyi 1999: 173–200). It was first FIDESZ that separated the two positions electing the confidant of the then Prime Minister.

70 Article 33(3).
71 Article 33((4)(5).
Orban to the position of party leader. Formally, the next prime minister, Peter Medgyessy, was not a member of any of the parties of the governing coalition. While this allowed him to distance himself from daily political fights, he could not sustain his position as a neutral political actor for a long time. He had no close ties with the governing parties who became increasingly worried that prime ministerial neutrality prevents them from utilizing the office of the prime minister to their own benefit. Subsequently, trust was withdrawn from Medgyessy and he was replaced by a party politician, Ferec Gyurcsany (Meyer, 2006: 155). This has broken the ‘tradition’, the prime-ministership usually end with resignation or death. In 2004, however, the prime minister resigned, and the parties of the government installed his successor without any electoral mandate.

The most important feature of this government is the principle of responsibility of the minister to the parliament. It means that they can stay in office only so long as they enjoy confidence of the National assembly. The government is responsible to the Parliament for its operation and is required to furnish the Parliament with regular reports on its work. Members of the Government are responsible to the government and to the Parliament and shall provide the government and Parliament with reports on their activities. The legal status, compensation and methods of accountability of members of the government and State Secretaries shall be regulated by law. Most importantly, members of the government may participate and speak at sittings of Parliament. On the other hand, the government can lose its mandate by:

- the formation of the newly elected Parliament;
- the resignation of the prime minister;
- the death of prime minister;
- the disfranchisement of the prime minister;
- the establishment of conflict of interest on the part of prime minister or
- the parliament passes a motion of no-confidence in the prime minister and elects a new Prime Minister in accordance with the provision of Para(1) of Article 39(A).

72 Article 39(1) (2) (3).
From the above mentioned facts, it is clear that the Hungarian Parliament states that prime minister is the centre of politics. The concept of collective responsibility is reflected from it. Though ministers are individually responsible for the work they are allotted but the prime minister chairs the team. He is supposed to preside over sessions of the government and shall ensure the implementation of the Government.\textsuperscript{73}

3.1 Motion of No-confidence

The most important requirement of a parliamentary form of government is the existence of a sound and effective opposition that exercise check on the government that want to touch undemocratic extremes. But in the Hungarian case, the opposition in the time of no-confidence motion must nominate a candidate for the office of the prime minister, so that discontinuity in governance of the country is checked by an alternative arrangement. Firstly, a motion of no-confidence in the prime minister may be initiated by a written petition, which includes the nomination for a candidate for the office of prime minister, by no less than one-fifth of the members of the parliament.

A motion of no-confidence in prime minister is considered a motion of no-confidence in the government as well. On the basis of this motion, the majority of Members of the Parliament withdraw their confidence, and then the candidate nominated for prime minister in the motion shall be considered to have been elected. The debate and vote on the motion of no-confidence shall be held no earlier than three days from the date of proposal and no later than eight days from the date of proposal. In opposition to it the government headed by the prime minister may propose a vote of confidence in accordance with the period of eight days after petition. If in both the cases, the Parliament fails to give the government a vote of confidence, then the government shall resign. But the previous government can stay in office until the formation of a new government and shall continue to exercise the rights accorded to it; the government, however, may not

\textsuperscript{73} Article 37(1).
conclude international treaties and may issue decrees with the express authorisation of law, in cases when delay is not permissible.\textsuperscript{74}

During this twilight period, the Prime Minister (PM) shall have to work as the interim prime minister. The Hungarian law denotes this issue like this — if the term of the prime minister is terminated upon the resignation of the PM or the Government, The PM shall remain in office as an interim Prime Minister until the new Prime Minister is elected, but may not motion for the nomination or dismissal of ministers and may only issue decrees upon the express authorisation of law in urgent case.\textsuperscript{75}

\section*{3.2. Emergency Powers}

A state of emergency is a governmental declaration that may suspend few normal functions of government, alert citizens to alter their normal behaviours, or order government agencies to implement the emergency plans. According to Hungarian Constitution, the National Assembly of Hungary can declare state of emergency in case of armed rebellion or natural or industrial disaster. It expiries after 30 days but can restrict basic human rights (such as rights to live, the ban on torture, and freedom of religion etc. During state of emergency, the Parliament can not be dissolved.\textsuperscript{76}

The Hungarian Parliament can proclaim a state of emergency without initiating the executive organs (Article 19, Para 3[1]). But their powers are further restricted by an additional procedure requirement which demands a two-third majority whenever a resolution concerning a state of emergency is passed under Article 19 (Para 4). In a fragmented and weak parliament to bring emergency is a difficult issue. It means, even though parliament does not have to reckon with the executive branch when deciding over cases of emergency, it is constrained by a cumbersome procedural requirement. On the other hand, the president has the power to declare a state of war or a state of emergency whenever the National Assembly is unable to make such decision, in a period of crisis; he sets up and presides over the Council of Defence, which combines most of the legislative

\textsuperscript{74} Article 39 (B).
\textsuperscript{75} Article 39(C).
\textsuperscript{76} Article 28(A) (1).
and executive powers of the state. Even then, certain decisions like the deployment of the armed forces or the issuance of decrees are reserved for him personally\(^7\) (Elster at al, 1998: 97–98).

**III.4 The President of the Republic**

In Hungary, as in many Western liberal democracies, the separation of powers has come to mean that the legislative, executive and judicial functions are exercised by distinct and mutually-independent branches of the government. This concept was reflected in the massive reduction of the Presidential Council’s legislative powers, and in its eventual replacement by the office of the president of the Republic in the reforms of 1989. As will be recollected, the Presidential Council had combined executive and legislative functions during much of Communist period while the National Assembly, which was convened only infrequently, had become a secondary source of legislative role which was restored, while the president of the Republic was entrusted with primarily executive functions (Pogány, 1993: 342–44).

In the time of discussion with various platforms in the Round Table Talks, the Hungarian Communists wanted ‘a semi-presidential system with a popularly elected president’, presumably the well-known Reform Communist leader Imre Pozsgay, to counter balance the parliamentary opposition majority. The compromise reached at the Round Table was that the first president would be elected directly, prior to the election of new parliament. However, two of the new democratic parties refused to sign this agreement and initiated a referendum, narrowly approved by the voters in late 1989, which stipulated that the parliamentary elections take place first and, by implication, that the president would be elected by the new Parliament. This was indeed the Constitutional arrangement that the newly elected parliament be approved in 1990: a straightforward parliamentary system. The Reform Communists still did not give up and once more proposed, by means of a referendum of their own in the summer of 1990, that the president be popularly elected, the referendum failed because of a low turnout (Lijphart,

\(^7\) Article 19 (A), 18 (B), 19 (C).
1992: 214). This is how the Hungarian people preferred parliamentary form of government over presidential form.

The president of Hungary is supposed to be the head of the state (titular head), but holds few powers more than that. He/ she is conferred with the duty to vigil the ‘unity of nation’ and monitor the democratic operation of state. So, through constitution President is also responsible to manage democratic values. He can be the mentor of unity of the nation and upholder of democratic values. This can be misutilised, if the person will go beyond the ethical limits.

He is elected by the parliament for the tenure of five years. Any enfranchised Hungarian citizen who has reached the age of 35 prior to date of the election may be elected to the Office of the President of Hungary. The President of Republic may be re-elected to such office no more than once.78

4.1 Election Procedure

The Hungarian Constitution lays down the procedure of election of the President79 of the Republic of Hungary. According to the procedure, the president is elected by the Parliament for the term of five years. The election of the president of the Republic shall be preceded by the nomination of a candidate. The nomination required to be declared valid which needs recommendation by not less than 50 members. The nomination must be submitted to the speaker of Parliament prior to the announcement of election. No member of the Parliament may nominate more than one candidate. If a member of parliament nominates more than one candidate, all nominations made by the member shall be invalid. Second, the Parliament shall elect the president of the Republic by secret ballot. Voting may be repeated if necessity arises. The candidate who receives a majority of two-thirds of the votes of the members of parliament in the first round voting is elected President of the Republic. In the mean time if no candidate receives such a majority in

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78 Article 29 A (1) (2) (3).
79 Article 29 (A, B, C, D, E).
the first round of voting, the process of voting must be repeated. A majority of two-thirds of the votes of members of Parliament shall also be required to be elected in the second round of voting. Fourth, if no candidate wins the required majority in the second round of voting, a third round voting shall be held. In the third round of voting only those two candidates who received the largest numbers of votes in the second round may stand for election. The candidate receiving a majority of votes—regardless of the number of vote’s cast—in the third round of voting is elected the President of the Republic. Lastly, the election for office of President is supposed to be complete within a period of no more than three consecutive days.

4.2 Qualification, Tenure and Re-election

The Hungarian constitution lays down some restrictions on the re-election of the president. That the term of president’s office is of five years and the President of the Republic re-elected to such office no more than once. Secondly, any enfranchised Hungarian citizen who has reached the age of 35 prior to the date of election may be elected to the Office of President of the Republic. The President after resuming the Office must relinquish any other state, social or political office (Article 30 [A]). A majority of two-third of the votes of the members of Parliament present is required to pass the law on the amount of compensation, allowances and reimbursement due to the president of the Republic.

4.3 Removal of the President

The president may end his term, by various ways, through completion of the term of office, upon the death, upon incapacitation preventing him from attending his duties of a period of more than 90 days, upon resignation, upon declaration of a conflict of interest and upon removal from the office by Parliament. The conflict of interest is a kind of institutional clash between the president and the legislative organ—the Parliament. Any member of the Parliament may petition the Parliament to decide on a declaration of conflict of interest. A majority of two-thirds of the votes of members of the Parliament is
necessary to carry such resolution. Voting shall be held by secret ballot. The president of the Republic may be removed from the office on the basis of an intentional violation of the Constitution or any of the law committed while in office. A motion supported by one-fifth of the members of the parliament may propose that impeachment proceedings be initiated against the president of the Republic. A majority of two-thirds of the votes of the members of the Parliament is required to initiate impeachment proceedings. Voting shall be held by secret ballot. The Constitutional Court is also supposed to cross check the case and determine that the law was violated. It is the most cumbersome process in Hungarian constitution. In this manner the office of the president is being checked by both the Parliament and growing powerful Constitutional Court.

4.4 Powers of President

Most of the presidential powers are strictly ceremonial in nature. But the President also possesses several potentially substantive powers, including sitting in on Parliamentary session, initiating legislative proposal, and refer laws for national referendum. For example, President Arpad Goncz, elected in 1990 and re-elected in 1995, had made wide use of his right to introduce legislation and to refer legislation to the Constitutional Court (Almond and Powell Jr, 2001: 425). Since presidency was a new office in Hungary, President Goncz has no precedent to follow. So, Goncz argued for power sharing between the president and the prime minister. However, the Constitutional court reaffirmed the Constitution and the President’s role as primarily representative and ceremonial (Meyer, 2006: 157; Solyom 2001:755–60). Nevertheless, Goncz’s attempt to redefine the presidency contributed positively to democratic transition. Exceeding his largely ceremonial power as Commander-in-Chief, he ordered the military to avoid intervention during the taxi-drivers’ blockade in the fall of 1990. His activist understanding of his role also helped establish a clear division of competences among various government institutions and hence to clarify and remove the ambiguities of the constitution.
Despite losing the constitutional struggle in favour of a powerful presidency, President Goncz remained very active during his first term. He was making advantage of his most powerful constitutional weapon, his right to speak out on public questions either in the media or in parliament. He spoke often and his New Year’s eve television addresses were influential and set a tradition. During his second term, he played a more passive role, because his party was involved in the governing coalition and so he changed his attitude. His popularity as a politician remained high and the distance from everyday political disputes also gained respect for his office (Meyer, 2006: 157).

After some initial uncertainty, Frenc Madl, the new president elected in 2000, came to define his role by emphasizing the neutrality of the office and seeing himself as the guarantor of the rule of law and constitutionality. Beyond that, he successfully used his position to facilitate and ease Hungary’s transition to the EU. To this end, he initiated the informal practice of regular working breakfasts among the heads of the six largest parties in order to lessen the conflicting nature of the post-millennium political arena. Although much of the transitions remained, this initiative was successful in forging a consensus between parties, including the extreme rightist Hungarian Justice And Life Party (MIEP), in supporting Hungary’s EU membership (ibid: 158). The present President of the Republic, Laszlo Solyom, in office since fall 2005, appears to share Madl’s vision of role of President of Republic.

The president of Hungary is supposed to be the head of the state (titular head), but granted with few Constitutional powers which are more than—Parliament. He may use it through decrees, appeal parliament to expedite the democratic operation of the state. Because, he represents the state of Hungary as head and supervise democratic environment of state (Article 29–[1]). In accordance with the Constitution, the president possesses the following powers-

- Commander-in-Chief of the armed force;
- To conclude international treaties in the name of the Republic of Hungary (here ratification of Parliament is necessary for inclusion of treaty);
- to accredit and receive ambassadors and envoys;
• announce general parliamentary and local government election, European parliamentary election and national referenda;
• to sit and speak in the Parliamentary session and its committee (here he is privileged to keep watch on policy making and suggestions);
• to confer titles, orders, awards, and decorations specified by law and authorize the use there of;
• to exercise the right to grant individual pardons.

Just like any other parliamentary form of government, the Hungarian president has the power to declare a state of war or a state of emergency whenever the National Assembly is unable to make such decisions, in that period he sets up and presides over council of Defence, which is supposed to do all the legislative and executive functions (Article 19 A (1) and 19 [B]). In emergency the President of the Republic of Hungary shall introduce emergency measures, which are defined in a separate law or decree. But Parliamentary Defence Committee have the right to suspend emergency measures introduced by the president of the Republic (Article 19 C–[2] [3]) respectively. So, the Hungarian constitution has created a President and armed with lots of constitutional, supervisory and practical powers. But in the same time it has taken all the powers in favour of the parliament who not only elect the president but keeps the power to impeach him and to declare any pronounced decree invalid.

III.5 Committees
According to the Standing Orders of the National Assembly, there are two main types of committees: Standing Committees and Temporary Committees. At or after its constituent sitting, the Parliament set up its Standing Committees and passes a decision on the numbers of their officers and members. Since 1990, the system of Standing Committees has always been determined by parliamentary party group consensus. The Standing Orders of Parliament provides that it is obligatory to set up the committees dealing with constitutional matters, the budget, foreign affairs, national defence, as well as with matters of immunity, incompatibility, the verification of credentials and, more recently, EU affairs.
The Standing Committees are established to match the structure of the Government. Some of the Standing Committees are established to handle issues related to the internal operation of Parliament and the legal status of MPs (for example the Committee on Standing Orders and the Committee on Immunity, Incompatibility and Credentials). Standing Committees are bodies of Parliament to take initiatives, make proposals and participate in the supervision of government work.

**Table III.1**

<table>
<thead>
<tr>
<th>Term</th>
<th>at constituent sitting</th>
<th>at end of term</th>
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<tbody>
<tr>
<td>1990–1994</td>
<td>14</td>
<td>18</td>
</tr>
<tr>
<td>1994–1998</td>
<td>17</td>
<td>19</td>
</tr>
<tr>
<td>1998–2002</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>2002–2006</td>
<td>25</td>
<td>25</td>
</tr>
</tbody>
</table>

*Source: Villam et al. (2006), The Hungarian National Assembly, Budapest: Office of the National Assembly, pp. 51.*

In May 2006, the new Parliament developed a simpler and more cost-efficient system that includes 18 standing committees:

- Constitutional and Judicial standing order committee (29 members)
- Committee on Health (23 members)
- Committee on Human Rights, Minorities, Civil and Religious Affairs (19 members)
- Committee on European Affairs (20 members)
- Committee on Employment and Labour (19 members)
- Economic and Information Technology Committee (29 members)
- Defence and Law Enforcement Committee (17 members)
- Committee on Youth, Social and Family Affairs (29 members)
- Committee on Budget, Finance and Audit Office (29 members)
- Committee on Environmental Protection (19 members)
- Committee on Culture and the Media (19 members)
- Foreign Affairs and Hungarian Minorities Abroad Committee (20 members)
Committee on Immunity, Incompatibility and Credentials (10 members)
Committee on Agriculture (22 members)
Committee on National Security (11 members)
Committee on Education and Science (23 members)
Local Government and Urban Development Committee (29 members)
Committee on Sport and Tourism (19 members)

Only the members of the Parliament can be officers and members of the standing committees. Ministers and state secretaries cannot be members as one of the main tasks of the committees is to contribute to the supervision of government work.

III.6 Officers of the National Assembly

The National Assembly elects a speaker, deputy speakers and notaries from among the members by secret ballot. In 1990 and 1994 Parliament elected three deputy speakers and eight notaries. In 1998 their numbers were three and ten, and in 2002 and 2006, five and ten respectively.

6.1 Speaker of the National Assembly

The main tasks of the Speaker are:

- To see to the preservation of the prestige of the Parliament, to the maintenance of order and security of the Parliament;
- To organise the work of the Parliament and to coordinate the work of the Committees;
- To convene parliamentary sessions and individual sittings during sessions;
- To open and chair the sittings impartially, to comply with the provisions of the Standing Orders and to maintain the order of the sittings;
- To convene and chair the meetings of the House Committee;
- To represent the Parliament in the course of fostering international relations;
- To represent the Parliament in its relations with other state, social and other organisations;
- To direct the work of the Office of the National Assembly, and to appoint heads of the organisational units.
In a way similar to countries, the speaker is the third highest dignitary in Hungary, after the president of the Republic and the prime minister. Since the transition, the Parliament has always elected a speaker from among the politicians of the biggest party in power: Gyorgy Szabad (MDF) in 1990, Dr. Zoltan Gal (MSZP) in 1994, Dr. Janos Ader (FIDESZ) in 1998, and Dr Katalin Szili\textsuperscript{80} (MSZP) in both 2002 and 2006.

6.2 Deputy Speakers of the National Assembly

The main duty of the deputy speakers is to alternate, along with the speaker, in chairing the sittings of the Parliament. Apart from this, the deputy speakers have no independent powers but the speaker may, from time to time charge them with different tasks, mainly in conjunction with Parliament's foreign relations: they head and receive delegations.

6.3 Notaries of the National Assembly

At the sittings of the Parliament, two notaries serve simultaneously, one belonging to a governing party and one to an opposition party. The notaries authenticate the verbatim minutes of the sessions and of parliamentary resolutions. They proceed as a committee for counting the votes in the event of secret balloting.

III.7 Judiciary

The Judicial institutions in Hungary are distinct and many. The power to adjudicate and legal prosecution is embodied in various organs like—Office of the Public Prosecutor, the Supreme Court in Budapest, the Municipal Courts. But the special among them is the Constitutional Courts which always tries to save Hungary in many critical times. It evolved itself as the saviour of rule of law and balance of power among all the counterparts of CEECs.

\textsuperscript{80} She is the most popular political leader next to President Lazl\'o Solyom. Survey conducted by Szonda Ipsos. She is a socialist.
First, the Supreme Court of Hungary is the ‘supreme authority for justice’ in the Republic of Hungary.\textsuperscript{81} The court hears and decides cases-civil, political and criminal in which the parties involved in dispute present their argument. Second, the Supreme Court of Hungary is entrusted with the power to assure ‘the uniformity of administration of justice by the courts and binding for all courts’.\textsuperscript{82} Third, the ‘courts’ of the Hungarian Republic are supposed to protect and uphold constitutional order, as well as the rights and lawful interest of natural person, legal persons and unincorporated organisations and shall determine the punishment for those who commit criminal offences.\textsuperscript{83} Fourth, along with the Supreme Court Hungary has a General Prosecutor office in national level. The duty of the office is also supposed to ensure the protection of the rights of natural person, legal persons and unincorporated organisations, maintain constitutional order and shall prosecute to the full extent of law any act which violates or endangers the ‘security and independence’ of country Article 51 (1). By elaborating its special role the next part of Article 2 and 3, clearly mentions that the work is of ‘supervisory’ nature. For example, Article 51(3) describes—that the office of the public prosecutor shall help to ensure that everybody ‘comply with the law’. When the law is violated, the Office of the Public Prosecutor shall act to ‘uphold the law’ in the cases and manner specified by law. Fifth, office of General Prosecutor is created by parliament with recommendation made by the President of Republic. It is completely apolitical post where the General Prosecutor is answerable to parliament and supposed to accountable to parliament about its activities.

Thus, the adjudication process in Hungary is completely apolitical in nature. All the judicial bodies are appointed by the president with recommendation with the Parliament. The parliament can bring any change in the constitution, about the nature of work, selection and delegation of work by two-thirds majority voting. So, the very process of recruitment of judges opens room for the politicization of judiciary.

In order to make an evaluation of real nature of the role of judiciary in Hungarian politics, we should critically examine the role of judiciary in Hungarian politics, we

\textsuperscript{81} Art 47(1).
\textsuperscript{82} Here the term ‘courts’ ambiguously may present any court including the Constitutional Court.
\textsuperscript{83} Article 50(1).
should examine the role of Constitutional Court and its evaluation as the most ‘powerful

court’ in the Eastern Europe. Constitutionally and politically, the judicial branch is

independent of both the executive and legislative branches. In 1997, as a result of
government response to the Constitutional Courts’ persistent calling, it also gained
financial independence. The legal system consists of local and labour courts, county
courts and the appellate courts, the Municipal Court of Budapest and the Supreme Court.

In countries which have written constitutions, the courts are also entrusted with

the power of interpreting constitution. They are entitled with a duty to uphold the

constitution as the supreme law of the land and thus acting as the vanguard of that

constitution.84 In this way, the court performs the tasks to legitimate any decision of
government and its delegated agency. So, the post-communist Hungarian Constitutional
Court is empowered with the power of judicial review. With this power in hand, the court
is entitled to annul any laws and other statues that its finds to be unconstitutional (Article
32[2]). Unlike other post-communist countries, ‘every one’ has the right to initiate
proceedings in the Constitutional Court and seek the protection from arbitrary executive
and legislative laws. So, the post-communist Hungarian Constitution is spirited to
establish rule of law and has kept many proceedings to establish checks and balances
against any unlimited power.

7.1 The Constitutional Court

In Political Liberalism, John Rawls described courts as exemplary deliberative
institutions—forums in which reasons, explanations, and justifications are both expected
and offered for coercive state policies.85 The authority of courts is supposed, on this view,
to rest in large part on qualities of judicial reasoning — reasons linking court decisions to

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84 After 1990, the ‘judges are independent and are subordinate to law’. The sole obligation of judges is to
‘protect and ensure the Constitutional Order’. Not to uphold ‘the state and the economic and social order’
as was the case before 1989. Another amendment authorizes the courts to examine the legality of decisions
of state administration. During the Communist rule this right had been severely restricted. During the single
party system judges were reduced to status of ordinary civil servants.
Court as Exemplar of Public Reason’.

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legal or moral authority—especially since courts as institutions lack democratic credentials and often lack the means to implement their decisions. So, deliberation and reason-giving seem especially valuable (and familiar) aspects of adjudication. If therefore, we are trying to locate the institutions where reasoning and deliberation play an important role in public life, it is apt to begin with courts and especially with courts dealing with constitutional issues (Sadurski, 2002: 22). In this manner, the Constitutional Court of Hungary\(^\text{86}\) does not represent the regular part of judicial process but deals with constitutional matters in response to judicial review system.

In the word of Sadurski, the constitutional tribunals of Hungary, the Czech Republic and Poland do not have a problem of legitimacy in at least two senses of the word: one sociological, the other formal and institutional. In respect of an institution, 'legitimacy' is sometimes used as an equivalent to its social standing and popularity. Clearly, constitutional courts in the region enjoy a high level of social acceptance and recognition, despite occasional disagreements and critics of its particular decisions. Constitutional courts in CEE emphatically do not have a problem of legitimacy in sociological sense of word. Further, these courts do not have problem of legitimacy in formal and institutional sense, which may understand as compliance with the constitutionally recognized limits and working under constitutionally defined standards. They do not exceed the powers granted to them by respective constitutions, by the statues on Constitutional Courts or by other relevant laws of their respective jurisdictions (ibid: 164).

It is not part of the regular judiciary system and its proceedings are of adversarial kind. It has its own budget and its members (11 judges) are elected by Parliament. It is charged with the review of the constitutionality of laws and the protection of the

\(^{86}\) The Hungarian Constitutional Court is the offspring of the 1989 transition. Its creation and fundamental principles of its operation were agreed upon at the National Round Table. Its objectives, competences and procedural rules were specified by constitution amended on October 18, 1989 and by the law on Constitutional Court adopted on the following days. The first five justices were elected in the course of the following month, while six justices were delegated by the new Parliament in June 1990. The mandate of the first members of the court expired by the end of November 1998. In June 1999 the other six had also reached end of their term. An era has come to its conclusion (Kis, 2003: 120).

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constitutional order and fundamental rights granted by the Constitution. Its competence includes the posterior\textsuperscript{87} and preventive\textsuperscript{88} review of the constitutionality of statutes, the review of statutes from the aspect of conformity with international treaties,\textsuperscript{89} the establishment of unconstitutional omission to legislate and the review of constitutional complaints submitted because of violations of rights\textsuperscript{90} provided for in the Constitution. If in the course of its procedure the Constitutional Court establishes the unconstitutionality of a statute, it annuls it in whole or in part. The posterior review of the constitutionality of a statute might be initiated by anyone and referring to the violations of rights included in the Constitution or to unconstitutional omission to legislate, anyone may turn to the court directly. The court's decisions cannot be contested in normal manner.

Paradoxically, in the Hungarian Constitution two seemingly incompatible elements are assembled, namely the sovereignty of the National Assembly and its role as a guarantor of the constitutional order. Article 29, Para (2) is at odds with the declaration of the constitution as the 'fundamental law of the Republic of Hungary', with binding force upon all organisations within the society and on all state organs and citizen,\textsuperscript{91} from which the power of the Constitutional Court emanates to abrogate laws on grounds of their unconstitutionality.\textsuperscript{92} The situation is more complicated by stipulation that according to Article 29 (Para 1), the president is also the guarantor of the 'democratic functioning of the state organization'. This ambiguity of the constitution account for the fact among all constitutional courts in the region, that of Hungary has been the most involved in the political struggles of Parliament, government and the President, and that it has become the court which has left by far the most visible traces on the practical life of the country (Elster et al, 1998: 103–4).

One of the most striking features of the post-communist democracies of Central and Eastern Europe is the spectacular growth in the role and prominence of

\textsuperscript{87} Article 1(a), Act of XXXII of 1989 on Constitutional Court.
\textsuperscript{88} Article 1(b), Act of XXXII of 1989 on Constitutional Court.
\textsuperscript{89} Article 1(c), Act of XXXII of 1989 on Constitutional Court.
\textsuperscript{90} Article 1(d), Act of XXXII of 1989 on Constitutional Court.
\textsuperscript{91} Article 77 of Hungarian amended constitution 1989.
\textsuperscript{92} Article 32 (A) Para 2.
Constitutional Courts and tribunal in the new Constitutional order. Many of them have performed a wide range of constitutionally prescribed roles, including overseeing elections and referendums, deciding upon the prohibition of political parties and adjudicating on the conflicts of competence between state institutions, especially the competency of enacted laws. Among all, the Hungarian Constitutional Court has decided on matters of controversial case like laws on abortion, death penalty, criminal prosecution of former communist officials responsible for crimes against the people during the communist period, personal identification numbers for citizens, etc. The Hungarian Constitutional Court may be seen as the most activist among the all (Sadurski, 2002: 2).

7.1.1 The Role of the Constitutional Court

Some of the basic rules concerning the constitutional court have been incorporated as Part IV of the Constitution, following an amendment to the Constitution affected in 1989. These rules are supplemented by the Act on the Constitutional Court of the same year.93

The Preamble of the 1989 Act notes that the Court was founded, in part, to 'protect the fundamental rights guaranteed by the Constitution'. The powers of the court, in this regard, are far-reaching. In any case where the Court finds that a Hungarian statute, or other legal rule, contravenes the Constitution, the Court shall declare that the offending law or the relevant part thereof, is void.94 Decisions of the Constitutional Court are binding on everyone, and there is no right of appeal.95

In addition to examining the constitutionality of statutes and of other legal rules already in force, the Court is empowered to determine the constitutionality of draft legislation and of treaties prior to ratification.96 The jurisdiction of the Court extends, in addition to deciding 'constitutional complaints, the alleged violation of constitutionally

94 Ibid.s.40. See also s.32 A (2). Hungarian Constitution.
95 See s.27 (1). (2). 1989: XXXII.
96 ibid.1 (a),(b). A finding by the Court that either draft legislation or an unratified treaty is inconsistent with the Constitution entails that such measures cannot be proceeded with until the inconsistencies have been eliminated. Idem. Ss.33 (3).36 (2).
protected rights’ arising from a judicial decision, the interpretation of particular provisions of the constitution, the examination of conflicts between international treaties already binding on Hungary and any rule of municipal law, and the determination that a public body has failed to issue regulations thereby giving rise to a violation of the constitution.\textsuperscript{97} The Court may also settle jurisdictional disputes between organs of the State, between such organs and local authorities and between local authorities themselves.\textsuperscript{98} The Court may, in addition, act in any other manner prescribed by law.\textsuperscript{99} It should, however, be emphasized that the Court, which was consciously modelled on the constitutional courts functioning in Germany, Spain and Australia, in particular, was created as a mechanism for testing the constitutionality of laws or of other legal norms, rather than as a forum for remedying individual complaints. Cases of the latter type are, in principle, to be referred to the ordinary courts which are empowered to apply and enforced by the Constitution. This point was decisive in setting the Court’s jurisdiction and in the subsequent evolution of its working methods. However, any natural or legal person, irrespective of nationality, may petition the Court to determine the constitutionality of statute, or of some other legal rule, already in force.\textsuperscript{100} Similarly, any natural person or legal person may refer a complaint to the court alleging the violation of their constitutionally protected rights.

\textbf{7.1.2 Qualification of Judges}

The judges must be legally qualified Hungarian nationals without prior criminal convictions, and who have attained the age of 45.\textsuperscript{101} They must in addition, be theoretical lawyers of outstanding knowledge, university professors, doctors of political science and law, or practicing lawyers with at least 20 years of experience in a field where a degree in political science and law is necessary.\textsuperscript{102} Crucially, membership of the Court is denied to

\textsuperscript{97} See s.1(e). (d). (e). (g). 1989: XXXII.
\textsuperscript{98} Ibid. S. 1(f).
\textsuperscript{99} Ibid. S. 1(h).
\textsuperscript{100} Ibid, S.21 (2).
\textsuperscript{101} S.5 (1), 1989: XXXII.
\textsuperscript{102} Ibid,s.5(2).
any one who, in the four years before their nomination, was a member of the government, an official of a political party or a senior civil servant.103

This is how considerable care has been taken to ensure that the judges of the Constitutional Court possess both legal expertise and the political independence required to discharge their constitutional responsibilities. This is further assured by the act that judges may not undertake any other paid work, while members of the Court, with the exception of 'academic, teaching, literary or artistic activities'.104 Moreover, the 1989 Act states that, members of the Constitutional Court are independent; their decisions are based exclusively on the Constitution and on law.105

As a consequence, the one-party state, in which human rights was denied as constitutional rights have been replaced. Here the judiciary can establish itself as more independent and active in comparison to other organs of government. Subsequently the courts can exercise the dynamics like the judicial review; the rule of law and can extend its powers in meticulous manner. Therefore constitutional expert like Sadurski (2002:14) rightly pointed that,

As the post-communist states of CEE become more mature and stable, so the objections against judicial law making which are pertinent elsewhere in the democratic world apply with equal force to CEE. In particular, there is little or no reason to suspend 'our ordinary intuition' about democracy and legitimacy with respect to countries such as Hungary, Poland or Slovenia, the very countries where the constitutional courts are particularly activist. In many relevant respects these states fully resemble mature democracies, exhibiting as they do developed and pluralistic party systems, a free and diverse press, well-educated and politically aware electorates and independent judiciaries etc.

III.8 The Ombudsman: A Special Feature of Post-communist Institution- Building in Hungary

Since the dissolution of communist regimes in CEE in 1989, dramatic changes have occurred almost in every aspect of those countries' life — economics, culture, and politics and so on. Despite the common communist heritage, reforms developed

103 Ibid, s.5(3).
104 Ibid, s.9(3).
105 Ibid, s.12.
differently in different countries, and the results of those reforms differ as well. In some countries reforms succeeded, such as Poland, the Czech Republic and Hungary, which already are member states of the EU.

Despite the varying results, after 15 years of reforms and regime changes, the starting point and the reforms themselves had a similar character—the end of the communist regime and moving towards democratisation. An important stage of these reforms was the foundation of new institutions that were unfamiliar to the communist world. This was done to create the system of checks and balances between the branches of government and to promote the separation of powers—a basic issue in every consolidated democracy. In most of the new CEE democracies, institutions were founded to supervise public administration. One of the most important of those is the institution of ombudsman. Until recently, the prevailing view was that this institution can function properly only in favourable surroundings, where the democratic system of government is firmly established. In the recent years, however, this view has been constantly disproved by the experience of the new democracies, and the actual nature of the ombudsman’s role in the democratisation process has not been properly explored.

In Hungary, the Parliamentary Commissioner for Civil Rights was established in 1995 and now the country has three ombudsmen, the other two being the commissioner for Data Protection and Freedom of Information and the commissioner for National and Ethnic Minorities' Rights. In the first place, the Parliamentary Ombudsman for Civil Right and the Parliamentary Ombudsman for Right of National and Ethnic Minorities, are supposed to investigate or initiate any law and individual concern.

8.1 The Parliamentary Ombudsman for Civil Rights

This institution is responsible for investigating or initiating the cases involving the infringement of constitutional rights which come to his/her attention and initiate general or specific measures for their remedy.\textsuperscript{106}

\textsuperscript{106} Article 32(B) (1).
8.1.1 Legal Status of Ombudsman

When entering his office, the ombudsman shall take an oath before the Parliament.\textsuperscript{107} In the course of his proceedings, the ombudsman shall be independent; he shall take his measures exclusively on the basis of the Constitution and of the law.\textsuperscript{108} The basic remuneration of the ombudsman and of the special ombudsman shall be the same as the basic remuneration of the ministers, while the basic remuneration of the general deputy of the ombudsman shall be identical with the amount of the basic remuneration fixed in accordance with Act XXIII of 1993 on the Legal Status of Civil Servants for the Secretary of State. The senior official’s supplementary remuneration shall be in the case of the ombudsman and the special ombudsman 80 per cent of the basic remuneration, while in case of the general deputy of the ombudsman; it shall be 30 per cent of the basic remuneration. A remuneration supplement in the amount corresponding to 15 per cent of their basic remuneration shall be due to the ombudsman, to the general deputy of the ombudsman, and to the special ombudsman. The Ombudsman shall be entitled to forty working days leave per calendar year.\textsuperscript{109} As to the social insurance status of the ombudsman; the rules relating to those in employment shall be governing with the provision that his remuneration shall be the income serving as the basis for the social insurance and pension contributions. The payment of contribution and the accounting thereof, as well as the registration and data supply shall be regulated in an agreement concluded by the office of the ombudsman with the General Directorate of National Social Insurance. The duration of the mandate of the ombudsman shall be regarded as time spent in employment and as service time counting towards pension.\textsuperscript{110}

8.1.2 Immunity

The ombudsman and the ex-ombudsman shall not be held responsible in court or before any other authority for any fact or opinion communicated by him in the course of the exercise of his mandate. This immunity shall not extend to slander, libel or to the civil

\textsuperscript{107} Section 7, Act LIX of 1 June 1993 on the Ombudsman (Parliamentary Commissioner) for Civil Rights.
\textsuperscript{108} ibid, s. 8.
\textsuperscript{109} ibid, s. 9 (1) (2).
\textsuperscript{110} ibid, s. 10 (1) (2).
law responsibility of the ombudsman. The ombudsman may be taken into custody only if caught in the act, and criminal proceedings or contravention proceedings may be instituted or continued against him. Furthermore, coercive measures of criminal proceedings may be applied against him only with the previous consent of the parliament. The motion for the suspension of immunity shall be submitted to the speaker of the Parliament by the chief public prosecutor before the submission of the bill of indictment, thereafter or in a case with private prosecution by the court. The motion shall be submitted without delay if the ombudsman was caught in the act. In a case of contravention the motion for the suspension of immunity shall be submitted by the chief public prosecutor to the speaker of the parliament on the basis of the request of the authority of contraventions. The motion for the suspension of immunity shall be transferred without delay for investigation by the speaker of the Parliament to the committee dealing with immunity and conflict of interests’ matters of the Parliament, and he shall report on this on the following session day of Parliament. The committee dealing with immunity and conflict of interests’ matters shall submit its proposal to decision within thirty days at the latest to the Parliament. The parliament shall decide in the matter without debate, but the ombudsman shall be entitled to make known his position. For the decision in the matter of the suspension of immunity the votes of two-thirds of the members of the parliament shall be required. The decision made on the subject matter of the suspension of immunity shall be related only to that case for which the motion has been submitted. If the Parliament suspends the immunity of the ombudsman, it shall simultaneously suspend also his right to provide for his tasks resulting from this office.

8.2 Data Protection Ombudsman
In order to protect the constitutional rights to protection of personal data and to disclosure of data of public interest, the National Assembly shall elect a Parliamentary Commissioner for Data Protection (called Data Protection Ombudsman) from among Hungarian citizens with university degree, with clean record, with excellent academic knowledge or with at least 10 years of professional practice, who are of experience in

111 ibid, s. 11.
112 ibid, s. 12(1) (2) respectively.
113 ibid (3) (4) (5) (6) (7) (8).
conducting and supervising proceedings involving data protection or in related sciences and are well respected. Subject to the exceptions made by this Act, the Data Protection Ombudsman shall be governed by the provisions of the Act on Parliamentary Commissioner for Citizen's Rights. The Data Protection Ombudsman shall:

- observe the implementation of this Act and other acts on data processing;
- examine complaints lodged with him;
- ensure the maintenance of Data Protection Register.\textsuperscript{114}

The Data Protection Ombudsman shall monitor the conditions for protection of personal data and for disclosure of data of public interest, present proposal for adoption or modification of legislation concerning data processing and disclosure of data of public interest, and give opinion on such draft legislation. The Ombudsman may initiate a decrease or an increase in categories of data classified as state or official secrets.\textsuperscript{115} The Data Protection Ombudsman may enter any premises where data are processed. State and official secrets shall not prevent the Data Protection Ombudsman from exercising his rights stated in this Article, but the provisions on secrecy shall bind him as well.

The Data Protection Ombudsman shall exercise his rights in person in cases affecting state or official secrets at the armed forces, the police and the national security agencies. Performing his functions at the national security agencies the Data Protection Ombudsman shall have no access to documents other than records of data specified by separate provisions of law.\textsuperscript{116} Anyone may apply to the Data Protection Ombudsman in case of violation of his or her rights, or of a direct danger thereof, concerning the process of his or her personal data or his or her access to data of public interest, except when the particular case is in the course of judicial procedure. No one shall suffer any prejudice on grounds of his or her application to Data Protection Ombudsman. The applicant shall have the same protection as the persons submitting petitions of public interest.\textsuperscript{117}

\textsuperscript{114} Act no LXIII of 1992 on the protection of Personal Data and Disclosure of data of Public Interest.
\textsuperscript{115} Ibid, Article 25(1).
\textsuperscript{116} Ibid, Article 26(2) (3).
\textsuperscript{117} Ibid, Article 27.
8.3 The Ombudsman and Democracy

As seen in the previous section, the collapse of communism and the process of democratisation in CEE countries brought the establishment of many ombudsman institutions in various areas and levels. During the initial stage of ombudsman activities, many observers seriously doubted the institution’s chances to succeed at its tasks. For many years, the prevailing view was that this institution could function properly only in favourable surroundings, where the democratic system of government is firmly established and the rule of law is universally recognised by the public officials. However, this skeptical view was constantly disproved by the developments in new democracies all over the world, and the studies of ombudsmen’s performance ‘reveal unanticipated adaptations of a remarkably flexible institution that invariably enhances freedom and democracy despite the absence of the presumed cultural prerequisites for its success’.

As one of the most efficient instruments for the protection of citizens’ rights, the ombudsman helps build a law-abiding democratic state. It has been recognised that the ombudsman plays a significant role in increasing the accountability and transparency of public administration. This institution also strengthens the rule of law, by defending human rights. In a democracy, human rights are guaranteed by the state’s constitution and protected by the judiciary. However, in new democracies, it is vital to have a non-or quasi-judicial system of human rights supervision because of the deficient human rights protection during previous non-democratic regimes. It is commonly recognized that ombudsman institutions play a significant role in the democratisation process and can contribute much to democracy consolidation.

For instance, Act LIX of 1993 on the Parliamentary Commission for National and Ethnic Minority Rights is a law of particular significance for Gypsy population. It is the responsibility of the minorities Ombudsman, as defined in constitution, to investigate of any abuses of constitutional rights brought to his/her attention, and to initiate general and individual measures to remedy such abuse. Based on the events of recent years and the Ombudsman’s parliamentary reports, it can be summarised that the establishment of the
institution was justified and absolutely essential. This activity is indispensable to a state founded on law. In January 2004, the Equal Treatment and the Promotion of Equal Opportunities Act (Act CXXV of 2003) came into force. In compliance with EU legal regulations the act introduces a stronger system of sanctions aimed at eradicating discriminations (Fact Sheets on Hungary, Ministry of Foreign Affairs, Budapest, 2004: 22). So the Hungarian political initiatives till 2004 always directed to better protection of Human right through institution like Ombudsman and to rightly qualify to join European Union.

### III.9 Constitution Amendment Rules

The Constitutions are legally binding in nature. They are treated as the law of the land. To adapt and accommodate new situations in the society a constitution must change itself accordingly. Amendment rules are generally made to solve this purpose. Amending the constitution means revising and redrafting the founding act of the constituent powers in non-reactionary manner. The changes made here is in accordance with the rules already established in the constitution.

Generally speaking, amendments to the constitutions are made difficult by specific requirements such as, supermajority, cumbersome and time-consuming procedures, and the necessity of a special convention or a referendum. Keeping aside all these rules, the Hungarian constitution has not made such distinctions. The peculiarity of this kind is described by legal experts as a ‘current and latent crisis of Hungarian constitutionalism’. It means that the Hungarian constitution can be changed like any other laws, through ‘supermajority’ in the National Assembly.

In the absence of any rigorous amendment procedures, a constitution can become pray to majoritarian interest. This feature of the Hungarian constitution is critically assessed by the prominent Hungarian legal expert, Andras Sajo (1999: 39–40):

> ‘[w]ith an easily amendable constitution all its guarantees would cease, too. The intimate relationship with the people’s sovereignty, which was so important when it was created, would discontinue. The legitimacy of the whole political system would be threatened if the content of the constitution were to appear as, or become part of, the ordinary political bargaining process.’

118 From a technical point of view this is exactly the principal problem with the uniquely ambiguous Hungarian Constitution. Besides the ‘leniency’ of these provisions, the theoretical problem with this
After analysing and interpreting various benchmark event of constitutional development and institution building in Hungary one thing is clear that, all the founder members of Round Table Talks tried to get rid of all the maladies of Communist system. The Hungarian Republic tried to create all the significant institutions of modern political system like—multi-party system, parliamentary democracy, fundamental human rights, and some amount of social security net and a Constitutional Court nurturing the rule of law. This is why a number of social scientists described Hungary as rare case; a combination of numerous institutional guarantees; the positive rights within an activist role of the Constitutional Court. However, the Hungarian Constitution has created a balance of power between both executive and legislature; along with the Constitutional Court to uphold democratic constitutional order. In the mean time, Constitutional Court empowered with the power to uphold the rule of law.

Third, it can be rightly said that the Hungarian Constitutional ethos perfectly touching the very essence of Lucian Pye's criteria of equality, capacity and differentiation. Despite many constitutional ambiguities, the state is performing better than other contemporaries. In the last sixteen years of state-building, the Hungarian Republic has generously recognised fundamental rights, basic human values and tried to establish a state on the basis of 'rule of law'. Staying in a strict compartmentalized jurisdiction of Constitution, all three organs of state successfully administered the demand of the society with superior capability. Finally, political development in Hungary has created a nation (embrace it with state citizenship, where rights of minorities also recognized), democratic development (mass participation, equality, universal applicability of law— rule of law, institutionalisation (rule, procedure for parliament, solution is that there is no strict rule protecting the regulation an amendment itself, consequently, it is void of self-binding force. (The regulations on amending the constitution should be more severe than the procedure of amendment itself.) It is easy to see that an incidental political coalition could quickly amend the Constitution as its discretion. Examples from the first eight years of the new democracy are telling. Between 1989 and 1994, at least 10 percent of Constitution has been changed or has been supplemented; there was no year without amendments (except 1993). After a moratorium, a new set of amendments was adopted in 1997. Without exception the amendments were linked to the introduction of laws that want against the current Constitution or simply served personal views and convenience.
To sum up we can conclude that Hungary is a constitutional, democratic and liberal state. The constitution of Hungary adhere various benchmark of plural democracy. It acknowledged the principle of separation of power, independence of judiciary and a spirit of constitutionalism. Especially codification of the role of Constitutional Court and Ombudsman has made state apparatus away from corruption and lawlessness. The establishment of Data Protection Ombudsman and Ombudsman for Civil right were protecting the individual interest from the arbitrary wish of executive and any state agency. Hence Hungarian state qualifies all the characteristic of the modern state which protect individual right along with public welfare measures.