

# DIRITTI COMPARATI

## Comparare i diritti fondamentali in Europa

### HUNGARY IS DRAFTING A NEW CONSTITUTION

*Posted on 10 Marzo 2011 by [Katalin Kelemen](#)*

Last week (on February 15) the Hungarian Parliament started to discuss a draft laying down the fundamental principles of the new constitution proposed by the government. It is now a main issue in public discourse in the country, but not much can be read about it in the international media. However there are some Hungarian websites offering news in other languages (for example Politics.hu and [Budapest Times](#) in English and [Economia.hu](#) in Italian).

Hungary is the only country of the former Soviet bloc that has still not approved a new [Constitution](#) after the breakdown of the Communist regime. (Another interesting but different exception is Latvia that in 1993 reinforced its pre-war Constitution, even if making several changes in it.) In addition, Hungary still has in force the first constitution of its history, the one adopted in 1949 by the Communist regime. However, the text was radically reformed in 1989 and adjusted several times during the 90s, so that almost no provision survived of the original text. (For an [English translation](#) of the Hungarian Constitution in force see the homepage of the Hungarian Constitutional Court.) The main point of criticism against this Constitution is that it had been adopted by the Communist regime and revised by a non-democratically legitimate Parliament in 1989, even if it was part of the democratic transition process. Indeed, the 1989

amendments were the result of a negotiation among the members of the Round Table Talks formed by the Communists and the emerging non-Communist political forces, and approved by the non-freely elected Parliament on October 23, the anniversary of the 1956 Revolution.

The new preamble adopted in 1989 states that the Constitution is established “until the adoption of the new Constitution”. There has been a political consensus about the fact that a new Constitution should be drafted, and during the last two decades there have been several attempts to do it, but none of the proposals has been approved due to the lack of the required qualified majority in Parliament. Even if each Hungarian government of the last two decades aimed to draft a new Constitution, the process came to a halt at an early stage every time (the only attempt that reached the stage of a [proposal](#) in Parliament was in 1996). A turning point was reached only last year, when at the [elections](#) in April the centre-right coalition obtained a two-thirds majority, and the new government has been given the possibility to amend the Constitution and/or to adopt a new Constitution. The government has made use of this opportunity, and several constitutional amendments have been passed. At the same time the government started to work on a new constitutional text.

The proposed concept is a highly debated issue at the moment, even if the opposition parties are refusing to take part in the parliamentary discussion if the new Constitution will be passed by a two-thirds majority that in practice does not need their supporting votes. Both MSZP (the Hungarian Socialist Party) and [LMP](#) (a liberal party called “Politics Can Be Different”) are pressing for increasing the two-thirds majority requirement to four-fifths. At the same time the debate is quite lively outside the Parliament – in the print and electronic media and in blogs -, and plenty of ideas and proposals have appeared in scholarly debates. Some academic conferences have been organised about the new Constitution and their papers are being published both on the [internet](#) and in law reviews. Some legal scholars and groups of researchers prepared their own drafts (see for example a detailed [proposal by András Jakab](#), a professor at the Catholic

University of Budapest, in Hungarian), and several public institutions, self-governments, non-governmental organisations and private persons submitted their opinion to the ad hoc committee (all available on the [website](#) of the committee, in Hungarian). See for example the [proposal](#) of the Ombudsman for Minority Rights which is available also in English. However, it is still to be seen to what extent these ideas and proposals will be able to influence the actual text of the future constitution.

The ongoing debate involves several theoretical and practical issues. Among the most highly discussed ones there are the question of the referendum (whether one should be held to approve the new Constitution) and the politically sensitive issue of a possible reference to Christian roots and the Holy Crown in the Preamble. According to the statements of the government (and the [draft concept proposal](#) completed in December), changing the form of government of Hungary (currently a parliamentary republic) is not among their goals. The next step in the constitution-making process will be the submission of a detailed draft which is scheduled to be approved on April 18. If the Parliament follows the schedule, at the end of April Hungary will have a new Constitution, the first adopted within a democratic institutional framework.

#### Timeline

1949: Law no. 20 of 1949 – the first Hungarian Constitution

1989: Amendments adopted at the Round Table Talks and approved by the Communist Parliament  
June 2010: creation of an ad hoc committee for drafting a new constitution

December 2010: submission of a draft concept proposal

February 2011: beginning of the parliamentary debate on the draft concept proposal