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## FOUNDATIONS OF THE UNCODIFIED HISTORICAL CONSTITUTION OF HUNGARY

This research in the field of the history of the Hungarian state and law intends to explore the development of the history of our public law between 1222 and the Austro-Hungarian Compromise of 1867. Nothing proves better the topicality of this study than the fact that 330 years ago the Hungarian Estates of the Realm adopted the law on the male line succession of the Habsburgs, and the year 2017 marked also the 150<sup>th</sup> anniversary of the Austro-Hungarian Compromise.

“First of all, we need to clarify: uncodified or historical constitution? Quite a few authors, including the skilled jurists, use these two concepts as synonyms, although they are not equivalent at all. An uncodified constitution is created continually during the historical development of a given country, and contains not only the constitutional rules but the »relevant sources of the legal institutions« as well (Decision No. 33/2012 of 17 July of the Constitutional Court of Hungary). Thus, uncodified constitution is a dynamic concept, in contrast to the historical constitution, which is often called ancient constitution”<sup>1</sup>.

As a consequence of the above considerations, the following sources of law can be treated as part of the uncodified constitution: the Golden Bull and its confirmations and renewals, the crown-ideology, the Doctrine of the Holy Crown, the Rákos field resolution of 1505, Acts 2 and 3 of 1687, the Pragmatic Sanction, Acts 10 and 12 of 1790, the public law aspects of the April Laws of 1848, and the laws on the Austro-Hungarian Compromise.

These days there is a great emphasis on the interpretation of the uncodified constitution, as the Fundamental Law, presently in effect, contains references to it. The Fundamental Law states that it shall be interpreted in accordance with the achievements of the historical constitution; the principle of judicial independence was declared as an achievement by the Constitutional Court; it is, therefore, clear that this research is of relevance nowadays.

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<sup>1</sup> A. Sereg, *Történeti Alkotmány* [Uncodified Constitution], <http://www.jogiforum.hu/hirek/30202> (visited June 24, 2018).

## 1. THE BEGINNINGS: THE SIGNIFICANCE OF THE GOLDEN BULL

Two key “legal documents” of the Hungarian Middle Ages are the Golden Bull of 1222 of King Andrew II, and the 1351 law of King Louis I. These two decrees served as foundations for the unification of the nobility as an estate of the Realm, as well as for the build-up of the power of the estates of the Realm. However, the Golden Bull produced its actual effect only after its confirmation in the year 1351.

### 1.1. THE GOLDEN BULL OF 1222

The issuance of the Golden Bull of 1222 was procured from the King by the magnates who had been omitted from power as opposed to those in the entourage of the King. It accomplished the will of the King, even if it meant, at least partly, nothing more than self-restraint. The so-called “renewal of the Golden Bull” of 1231 (often, but incorrectly, called the confirmation of the Golden Bull), is also to be regarded as the same<sup>2</sup>.

The Golden Bull, as a matter of fact, was nothing but a royal charter with a golden seal (*bullā aurea* in Latin), in which the King recognized the royal servants (*servientes regis*) as a class with feudal rights that were to be observed and not to be breached neither by the high aristocracy, nor by the King. These rights were the following:

- on the day of Saint Stephen, the King or the Palatine (*comes palatinus*) should hold a grievance day, all the royal servants might freely come before them;
- no royal servant might be arrested without a verdict;
- the property of the royal servants was exempt from taxation; the King might not stay at their manors uninvited (which was a huge burden); their property might have been bequeathed to anyone; in the absence of a will, their property should pass to the collateral relatives, and only after that might it pass to the King. Until then, in the absence of a male heir, the property used to pass immediately to the King.
- royal servants were obliged to wage war only inside the country, abroad they were obliged to fight only in defence of the homeland;
- royal domains could not be given to foreigners, and without the Royal Council’s approval, they might not receive honours and titles;

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<sup>2</sup> G. Béli, *Árpád kori törvényeink* [Our laws in the period of the Árpáds], „JURA” 2000, issue 1-2, p. 38; B. Mezey, *Magyar Alkotmánytörténet* [Constitutional History of Hungary], Budapest 1995, p. 47.

- Resistance clause (*ius resistendi*): if the King would not obey the regulations, firstly, the Palatine should endeavour to settle the complaints with the monarch. In the lack of a successful intercession, the bishops and archbishops, the castle warriors (i.e. the lords; *iobagio castris*) and the noblemen might, without the crime of high treason, resist and object (“*episcopi et alii iobagiones ac nobiles regni*”, Act 31 of 1222)<sup>3</sup>.

Nonetheless, the Golden Bull had not yet had an impact, it had become a basis of reference only since the 14<sup>th</sup> century and, by its confirmation of 1351, it began to serve as the foundation of the feudal constitution. Actually, the Golden Bull listed some basic criteria of the uniform status of the royal servants.

## 1.2. THE “RENEWAL OF THE GOLDEN BULL” OF 1231

In 1231, the King enforced his will, even if it partly meant nothing more than self-restraint. The “renewal of the Golden Bull” of 1231 was issued by Andrew II upon the pressure of the Church, and, essentially, it reaffirmed the content of the Golden Bull of 1222, but omitted the provisions that offended the Church. In turn, then, the prominent clergymen were entitled to hear the complaints on the grievance days in Fehérvár and, in justified cases, they had the right to request the King to remove the Palatine. Moreover, instead of *ius resistendi*, the threat of excommunication got included into the document. The 1231 “renewal” also fell into oblivion<sup>4</sup> and the Kehida Charter of 1232 set forth the establishment of the royal servants’ right of jurisdiction.

## 1.3. THE DECREE OF 1267

In 1267, as an end to the protracted civil war and as a sign of peace, King Béla IV and his son King Stephen jointly issued a decree with the consent of the barons upon the request of “the noblemen called royal servants”<sup>5</sup>. The plural form at the beginning of each provision, such as „*statuimus*” (we have stated), „*volumus*” (we want), „*concessimus*” (we have permitted), „*ordinavimus*” (we have ordered), makes clear that the King and his son mutually recognized the rules governing the life of the nobility. At the same time, the declaration of the two Kings entailed the intent of the Royal Council as well. This shows that the role of the Royal Council in the legislation had become essential by that time, however, the basis of the

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<sup>3</sup> A. Degré, *Magyar alkotmány- és jogtörténet* [Constitutional and Legal History of Hungary], G. Béli (ed.), Pécs 2009, pp. 63-65.

<sup>4</sup> *Ibidem*, pp. 65-66.

<sup>5</sup> *Ibidem*, p. 66.

regulations was still the will of the King. Thus, the source of substantive law was still the monarch himself, but the Council, by giving its consent to the confirmation of the King's decision, became a factor of the legislation beside the King<sup>6</sup>. The edict reaffirms the essentials of the Golden Bull in 10 articles without making any reference thereto. It recognized the rights of the counties and introduced the excommunication instead of *ius resistendi*. This document also fell into oblivion<sup>7</sup>.

The essence of the 1267 decree is that it was issued with the consent of the barons, so the legislation was no more the exclusive right of the King, and a form of joint exercise of power had been created. It is important to note that the classes of the *nobiles* and the royal servants merged. Due to that merger, the royal servants (in the capacity of noblemen) were already entitled to send their deputies to the Diet.

#### 1.4. 1290: CONFIRMATION OF THE PRIVILEGES

After his coronation, Andrew III made an oath according to which he should confirm the privileges of the noblemen of the country that they had obtained from the saint royal predecessors. Relying on a certain group of noblemen, the Church could force the King to accept the rules of a feudal governing structure, thus they were able to control the overwhelming power of the barons and could provide place for the nobility in the Council (Acts 7, 8, 9, and 25 of 1290). Thenceforth, the King could issue his decisions formally on his own; and the nobility, which were entitled to appear on the Fehérvár grievance days (beside the Royal Council), had the right to call the barons to account for their deeds<sup>8</sup>.

#### 1.5. 1351: CONFIRMATION OF THE GOLDEN BULL AND DECLARATION OF AVITICITY

In November 1351, Louis the Great (Louis the Hungarian, *Ludwik Węgierski* in Polish) convened the Diet where he reaffirmed the Golden Bull except for its Article 4 on testamentary freedom, and also enacted additional provisions. The "abrogated" Article 4 recognized the testamentary freedom of the royal servants. By eliminating that freedom, Louis the Great introduced the so-called aviticity: the regulation of inheritance of the hereditary (i.e. ancient, *avitus* in Latin) noble possessions in Hungary. The 1351 law of Louis the Great abolished the testamentary freedom and prescribed that the inherited property should automatically pass

<sup>6</sup> G. Béli, *Árpádkori...*, p. 39.

<sup>7</sup> A. Degré, *Magyar...*, p. 66.

<sup>8</sup> G. Béli, *Árpádkori...*, p. 39.

to the direct or collateral male successor. In case a family had died out in the male line (*defectus seminis*), the property escheated to the King (escheatage). The law of Louis the Great, that remained in force until 1848, protected the property of the nobility against the barons and, through the escheatage, increased the revenues of the Crown<sup>9</sup>.

Following its 1351 confirmation, the decree of 1222 was reborn, because the two noble classes (the *nobiles* and the royal servants) merged.

From among the provisions of the 1222 decree of Andrew II regarding the royal servants, Article 4 deserves special attention: “*Si quis serviens sine filio decesserit, quartam partem possessionis filia obtineat, de residuo, sicut ipse voluerit, disponat. Et si morte preventus disponere non potuerit, propinqui sui, qui eum magis contingunt, obtineant. Et si nullum penitus generationem habuerit, rex obtinebit*”. On the basis of the 1351 transposition, scholars and the interpreters of the transposed provisions concluded that a royal servant, in the lack of a direct line heir, could freely bequeath his possessions to anyone regardless of the rights of his relatives. In fact, however, it was not the case in reality, only a royal servant as a free landowner had the right of disposition over his property. Thus, the royal servants did not expect Andrew II to introduce a new succession regime, they only wanted to achieve that the King recognize the testamentary freedom of the magnates with regard to them as well<sup>10</sup>.

In terms of the life of a Hungarian nobleman, the 1351 decree of Louis I was found to be of decisive importance. By transposing the provisions of the 1222 decree of Andrew II, the privileges and rights of the royal servants and the *nobiles* were summed up as the rights of the nobility. Through its further transpositions by other decrees, in 1351, the long-forgotten Golden Bull became the foundation of the noble privileges and formed the basis of the four fundamental rights of the noblemen as enshrined in the *Tripartitum*: noblemen might be condemned only in a regular judicial proceeding, they were subject only to the rule of a lawfully coronated King, they might enjoy their properties freely and tax-exempt, in return of which they were obliged to defend the country militarily, and together with other noblemen they might exercise the right of resistance if the King violated the rights of the nobility<sup>11</sup>. Consequently, since 1351, the Golden Bull had contained the foundations of nobility, and thenceforward, it can be referred to as a factor of the uncodified constitution.

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<sup>9</sup> M.T. Tarján, *1351. december 11. Nagy Lajos király kihirdeti az ősiség törvényét* [11 December 1351, Louis the Great promulgated the law on aviticity], „Rubicon”, [http://www.rubicon.hu/magyar/oldalak/1351\\_december\\_11\\_nagy\\_lajos\\_kiraly\\_kihirdeti\\_az\\_osiseg\\_torvenyet/](http://www.rubicon.hu/magyar/oldalak/1351_december_11_nagy_lajos_kiraly_kihirdeti_az_osiseg_torvenyet/) (visited June 24, 2018).

<sup>10</sup> G. Béli, *Die Basisinstitut des Privatrechts* [Basic Institutions of Private Law], (in:) G. Máthé (ed.), *Die Entwicklung der Verfassung und des Rechts in Ungarn*, Budapest 2017, p. 179.

<sup>11</sup> *Ibidem*, p. 180.

## 1.6. LEGACY OF THE GOLDEN BULL

In 1384, Queen Mary (1371-1395) convened the Diet and reaffirmed the Golden Bull, as well as the decree of 1351<sup>12</sup>. In *Opus Tripartitum* (in full *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae* in Latin, “Customary Law of the Renowned Kingdom of Hungary in Three Parts”) by Werbőczy (1514) the equality of the nobility with the barons and the high clergy in respect of their fundamental freedoms and rights was demonstrated. Therefore, the first and most important element in the Doctrine of the Holy Crown (discussed further below) was the so-called “*una eademque libertas*” i.e. the “one and the same freedom”, which meant that only one freedom (nobility) existed for the high clergy, the barons, and the noblemen; thus they lived according to the same law and customs, as well as the same procedural law<sup>13</sup>. While Werbőczy’s striving was not to elaborate a new theory, but to prove the equality of the nobility with the barons and the high clergy, still he gave rise to a doctrine that determined the power of our monarchs and the development of the history of our public law for almost two hundred years to come<sup>14</sup>.

Overall, we can, therefore, approach the significance and impact of the Golden Bull from two aspects: firstly, that of the law on landholding and, secondly, that of the constitution (constitutional history). The landholding was the basis of power and noble families, while, in constitutional regard, the document contains the unification of the nobility.

In essence, aviticity could preserve the Hungarian landholding system, hence the King could create domestic political stability. Introduction of aviticity preserved the possessions of the nobility against the barons, that is why they did not have possibility to increase their lands with the detriment to the properties of the nobility. This fact, by the way, enlarged the royal domains in the long term, since if a nobleman had no male heir, his ancient possessions escheated to the King. The 1351 provisions had, of course, their disadvantages as well. They remained in force until 1848, strongly hindered the economic and social transition and became

<sup>12</sup> J. Szalay, L. Baróti, *A magyar nemzet története I-IV.* [History of the Hungarian Nation]. <https://www.arcanum.hu/hu/online-kiadvanyok/MagyarNemzetTortenete-a-magyar-nemzet-tortenete-9A23/szalaybaroti-a-magyar-nemzet-tortenete-9A24/magyarorszag-a-vegyes-hazakbol-szarmazott-kiralyok-koraban-8F7/i-az-anjouk-kora-8FF/4-iv-maria-13821387-ii-vagy-kis-karoly-13851386-AD9/> (visited June 23, 2018).

<sup>13</sup> F. Eckhart, *Magyar alkotmány és jogtörténet* [Constitutional and Legal History of Hungary], Budapest 2000, p. 120.

<sup>14</sup> Zs. Biró, *Az út az örökös királyságig* [Way to the hereditary kingdom], (in:) T. Drinóczi (ed.), *Studia Iuvenium Iurisperitorum* 9, Pécs 2018, p. 32, <http://sii.ajk.pte.hu/files/studia-iuvenium-iurisperitorum-9-2018.pdf> (visited June 20, 2018).

the main obstacle to capitalism and embourgeoisement. After all, the law of Louis the Great motivated István Széchenyi to write his book *Hitel* (Credit, 1830) which addressed the solution of the problem. Finally, Act XV of 1848 (one of the April Laws) abolished aviticity, and, after the fall of the war of independence of 1849, the Emperor's letters patent also ruled over the abolishment thereof<sup>15</sup>.

Concerning the public law development of the Golden Bull, the following milestones can be mentioned: in 1222, Andrew II issued the Golden Bull, in which he laid down some fundamental criteria of the uniform status for the royal servants. The Kehida Charter of 1232 granted the royal servants the judicial rights. In the decree of 1267 jointly issued by Béla IV and the young King Stephen, the classes of the *nobiles* and the royal servants merged, by which a relatively large class of nobility with uniform status evolved. As a result of the 1351 confirmation of the Golden Bull and the declaration of aviticity, the Golden Bull has been regarded as a factor of the uncodified constitution since the 14<sup>th</sup> century. And finally, in 1514, Werbőczy declared the equal rights of the nobility.

## 2. FUNDAMENTAL DOCUMENTS OF THE UNCODIFIED CONSTITUTION

### 2.1. THE CROWN-IDEOLOGY

Following the 1301 dissolution of the House of Árpád, Charles I (Charles Robert, 1308–1342) overcame his opponents, took the throne of Hungary and had himself coronated three times in order to comply with all the criteria of legitimacy, that is to be crowned by the Archbishop of Esztergom in Székesfehérvár with the Holy Crown.

Charles Robert mentions in his royal charters several times that he had become King of Hungary through invitation, acceptance, and election. His stance on royal authority and crown played an important role not only in building up his power but also contributed to the development of the crown-ideology. He consciously called his crown “Holy”, thereby stating that his reign was unquestionable via the holiness that the crown attained from the Pope. Although, in a legal sense, the crown was not separate from the King for a long time; by the conception of the crown-ideology, the long way to separation began<sup>16</sup>.

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<sup>15</sup> M.T. Tarján, *1351. december 11...*

<sup>16</sup> Zs. Biró, *Az út...*, pp. 16-17.

## 2.2. THE RÁKOS-FIELD RESOLUTIONS

In 1505, there was no official Diet convened, the estates of the Realm, however, gathered at the Rákos field where, in the so-called Rákos-resolutions, they declared that a confederation be formed by the gentry, the high clergy, and the barons with the purpose that, in case Vladislaus II (1490–1516) died without an heir, they would elect a King from among themselves<sup>17</sup>. According to the decision: “Our country awfully shattered, and foreign kings caused her utter destruction who had not learned the morals of the Scythians, who, dealing with their self-affairs, fain gave themselves to calmness rather than to warfare, so had they lost the marches and border forts of the country one after the other”. So, the estates of the Realm were not satisfied with the reign of kings from foreign houses who had not ruled the country diligently. “Wherefore, if the present ruler passed away from this world without an heir son, lest a foreign monarch forcibly usurp the country and subject her to eternal servitude: we [the estates of the Realm] decide that every time the country is left without a king, and no heir sons remained who, according to our laws and customs, would inherit the throne, a foreign man shall not be elected to be a king; only a Hungarian man, who is competent and suitable, shall be accepted as lord and king” (12 October 1505)<sup>18</sup>. Hence, the estates of the Realm decided to elect a king from among themselves if Vladislaus II died without an heir.

Thereby, the national elective monarchy was established on the level of a decision. The decision is correctly called “resolution”, because it was issued without the consent of the King and out of a Diet, which, otherwise, could have been convened by the King. A further clause of the Rákos field resolution was that if anyone brought or helped a foreign pretender or did not revolt against that person, he should be deprived of his nobility and fall to villeinage. A further important characteristic of the agreement is that, according to contemporaneous law, if the parties concluded a contract of their own free will, it might not be changed, consequently, even the Diet might not repeal the Rákos field resolutions. In plain language, it means that the King had nothing to do with their decision, for although he was on the throne of Hungary, he did not own the throne<sup>19</sup>.

<sup>17</sup> B. Mezey, *A magyar állam- és jogtörténet forrásai* [Sources of the Constitutional and Legal History of Hungary], Budapest 1998, p. 37.

<sup>18</sup> V. Fraknoi, *Magyarország a mohácsi vész előtt a pápai követek jelentései alapján* [Hungary prior to the Mohács Disaster as reflected by the Protocols of the Papal Nuncio], Budapest 1884, p. 6.

<sup>19</sup> P. Engel, G. Kristó, A. Kubinyi, *Magyarország története 1301-1526* [History of Hungary 1301–1526], Budapest 1998, pp. 351-352.

### 2.3. DOCTRINE OF THE HOLY CROWN

By the raise of the estates of the Realm, the person of the King and the person of the Holy Crown separated, and the latter became the embodiment of the legal personality of the Hungarian state. In the 13<sup>th</sup> and 14<sup>th</sup> centuries, the King obtained the regal power by the coronation, then, after the partition of power, the sovereignty of the *sacra corona* was formed. By the 15<sup>th</sup> century, the crown had become the source of ownership, the *ius regium* (that is the noble properties) escheated to the Holy Crown. It meant that the Holy Crown was the owner of the territory of the state as well. As the influence of the estates of the Realm evolved, they exercised the rights of the crown in the Diet together with the King; this led to the combination of the two systems: with the fusion of organic state theory and the crown-ideology, the Hungarian state-concept was created, that is the Doctrine of the Holy Crown<sup>20</sup>.

The principles of the doctrine were:

1) The sovereignty of the Hungarian state is owned by the Holy Crown, and it belonged to the King only indirectly through the crown. The King might exercise the right of ennoblement, conferment, governance, judicial and legislative power through the Holy Crown.

2) The sovereignty was granted to the Holy Crown through conferral (by the nation to the Holy Crown), accordingly to the King, thus the ultimate source of the sovereignty is the will of the nation.

3) In respect of legislation, the sovereignty was divided, as the King might exercise the legislative power upon consultation with the nobility.

4) All noblemen were part of the Holy Crown, however, the King had the right of ennoblement, and the nobility (as a whole) could invest the monarch with regal power, that is to say, there was a mutual relation between the King and the nobility within the framework of the state.

The substantive finding is what Werbőczy strived to demonstrate was that all noblemen were members of the Holy Crown; and in relation thereto, he pointed out to the importance of the Holy Crown. In the form of his Tripartitum and by the creation of the Doctrine of the Holy Crown, the author [i.e. Werbőczy] wished to give a powerful argumentation weapon to the nobility for the next two hundred years against the foreign Habsburg rulers on the basis of the principle of equal freedom; and thereby assured that the nobility and the country keep their relative independence (existing only in principles) as long as they could.

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<sup>20</sup> Zs. Biró, *Az út...*, pp. 29-30.

## 2.4. ACTS II AND III OF 1687: HEREDITARY KINGDOM OF THE HABSBURGS

Hungary on its own was unable to overcome the Ottomans, that is why the country needed Austrian help, that resulted in the coronation of many Habsburgs who became the kings of Hungary. In 160 years, it caused that, with the exception of the coronation, the Doctrine of the Holy Crown ceased to be valid and the hereditary kingdom of the Habsburgs was established. By the time Joseph I was crowned, through the Acts II and III of 1687, hereditary kingdom of the Habsburgs on the throne of Hungary was incorporated into the law, the national elective kingdom and the Doctrine of the Holy Crown completely disappeared, only a mere shadow of its formal self was reflected in the final arrangements of the Pragmatic Sanction<sup>21</sup>.

## 2.5. SIGNIFICANCE OF THE PRAGMATIC SANCTION FROM PUBLIC LAW PERSPECTIVE

In less than two centuries, the law of succession of the Habsburgs, even the female succession, was forced to Hungary by the Austrian rulers, exploiting its tight situation. In 1711, Joseph I died without an heir, therefore, pursuant to Article 3 of Act III of 1687, a male successor of the Spanish branch of the House of Habsburg inherited the hereditary provinces in conjunction with the hereditary throne of Hungary. For this reason, the Spanish Charles III (Charles VI, as Holy Roman Emperor) was entitled to the throne, but, due to the war of succession, he could take the throne only in 1712<sup>22</sup>.

Although the 1707 Diet held at Ónod declared the dethronement of the House of Habsburg, it was qualified as constitutionally invalid under the Doctrine of the Holy Crown<sup>23</sup>. Subsequently, the *Szathmár pacificatio* (i.e. the Treaty of Szatmár of 1711), that was the instrument of peace settlement, served as a public law foundation of the Hungarian version of the Pragmatic Sanction. During Rákóczi's war of independence, the country got weakened, while the Habsburg Empire strength-

<sup>21</sup> G. Béli, *A Négyeskönyv 1573. évi interpolált változata és közjogi megoldásai* [Interpolated version of Quadripartitum of 1573 and its public law solutions], (in:) G. Máthé (ed.), *Quadripartitum kézirat azonosítása* [Identification of the Manuscript of the Quadripartitum], Budapest 2015, p. 333; B. Hóman, G. Szekfű, *Magyar történet V.* [Hungarian History V], Budapest 1936, p. 367; E. Bartoniek, *A magyar királykoronázások története* [History of Hungarian Coronations], Budapest 1987, pp. 98-100; E. Bálint, *A királyi trón betöltésének módja Magyarországon* [Method of Enthronement in Hungary], Budapest 1912, p. 11.

<sup>22</sup> E. Bartoniek, *A Magyar...*, p. 153.

<sup>23</sup> K. Molnár, *A Szent Korona-tan kifejlődése és mai jelentősége* [Development of the Doctrine of the Holy Crown and its Significance today], Pécs 1927, p. 10.

ened in consequence of the French defeats; thus emerged the idea of compromise: Sándor Károlyi (Rákóczi's general) and Miklós Pálffy signed the Treaty of Szatmár in 1711, which restored the feudal constitution and the hereditary succession of the House of Habsburg. It consisted in the following: Charles III, at his coronation, took an oath to the "constitution" and, in the 1715 Diet, he promised that Hungary should be governed exclusively according to the law of Hungary<sup>24</sup>.

Charles III had no sons, however, he wished to keep the throne for his daughter, Maria Theresa. He modified the succession agreement within the House of Habsburg (the so-called House rules) in 1703, and legalized female succession, which was promulgated in the form of the Pragmatic Sanction. He had the document adopted by the Croatian-Slavonian estates of the Realm in 1712, then by Transylvania in 1722. On 27 June 1722, the Hungarian estates of the Realm also adopted it, and it entered into force as of 1723; in return to which the nobility required the monarch to respect their feudal rights and that the countries of the Holy Crown be part of the Empire "indivisibly and inseparably – *indivisibiliter ac inseparabiliter*" and be governed together at all times. It meant that the Hungarian estates of the Realm waived the right of king-election even for the case of male-line extinction of the Austrian and Spanish branch of the House of Habsburg, whereby female succession could take place<sup>25</sup>. In addition, in order to definitively win over the estates of the Realm, Leopold reaffirmed the provisions of the Tripartitum on *habeas corpus*, tax-exemption and, in his Act 5 of 1723, he raised the role of the counties over the villeins<sup>26</sup>.

Besides the inseparability, the Pragmatic Sanction set forth one more important factor of the constitutional law: the Lands of the Crown of Saint Stephen (Hungary, Transylvania, and Croatia) should be handled as an unified, distinct part within the Habsburg Empire, where the rules of succession should be the same; that is, the Pragmatic Sanction was not only a simple House rule that had been extended, and not only a measure that guaranteed the succession of Maria Theresa, but also a public law instrument that formed the basis for the later Compromise of 1867<sup>27</sup>.

Pursuant to the Pragmatic Sanction, If Charles III died without a male heir, the female line of Charles III should be the first in the line of succession, thereafter, the female line of Joseph I should inherit the kingdom, finally, the female line of Leopold I succeed to the throne; within the female lines, firstly the men should take their place, then should come the women, and finally the other subsequent

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<sup>24</sup> G. Szekfű, *A magyar állam életrajza* [Biography of the Hungarian State], Budapest 1917, pp. 147, 150.

<sup>25</sup> E. Bartoniek, *A Magyar...*, p. 101.

<sup>26</sup> B. Hóman, G. Szekfű, *Magyar történet VI.* [Hungarian History VI], Budapest 1936, p. 97.

<sup>27</sup> I. Gonda I., E. Niederhauser, *A Habsburgok* [The Habsburgs], Budapest 1987, p. 111.

lines. The Pragmatic Sanction contained personal conditions as well: the monarch should be an Austrian archduke, a Roman Catholic, and a person of a legal marriage. If none of the Habsburgs could comply with these requirements, the right of king-election should return to the Hungarian estates of the Realm. In summary, the interests of the Habsburg Empire prevailed, because no other solution was possible, and the Turks were still threatening our eastern borders<sup>28</sup>.

In the public law system, the Pragmatic Sanction was of such importance that the fundamental laws of 1792, 1848, and 1867 were based thereon<sup>29</sup>. In the international relations, the regulation provoked an Europe-wide repugnance, since the legal situation established between Austria and Hungary strengthened the monarchy so much that it caused aversion and anxiety on the part of the major powers<sup>30</sup>. First in its post-Mohács history, Hungary, together with Austria, represented a value of a major power, therefore the Pragmatic Sanction has to be recognized with regard to its significance in respect of international power relationships as well. In addition to the fact that the Pragmatic Sanction set forth the succession order of the Habsburgs, it foreshadowed the future common issues: military and foreign policy and a joint financial policy (only for the expenditures of these), and dealt with the circumstances of the coronation of the king of Hungary<sup>31</sup>.

## 2.6. ACTS 10 AND 12 OF 1790/91

The Hungarians insisted on the Acts 10 and 12 of 1790/91 as well. Act 10 was the basis of the April Laws of 1848; its essence was that Hungary should be governed according to her own laws and customs, and the King should reign in the country as a Hungarian King. Act 12 was the other foundation of the April Laws of 1848; and it stated that legislation falls in the joint competence of the Diet and the King, furthermore, it rejected the possibility of governance through letters patent and other absolutistic means by the emperor<sup>32</sup>.

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<sup>28</sup> G. Ferdinandy, B. Schiller, *A Pragmatica Sanctio és a Házi törvények* [Pragmatic Sanction and the House rules], Budapest 1903, pp. 4-8; J. Horváth, *Az 1722/23 I. II., III. Törvényezikkek által elfogadott pragmatica Sanctio lényege és annak helyzete a magyar közjogban* [Essential Provisions of the Pragmatic Sanction adopted by Acts I, II and III of 1722/23, and its Situation within the Hungarian Public Law], Budapest 1898, p. 30.

<sup>29</sup> J. Horváth, *Az 1722/23...*, p. 83.

<sup>30</sup> *Ibidem*, p. 87.

<sup>31</sup> A. Gergely *Az 1867-es kiegyezés* [The Compromise of 1867], „Rubicon”, [http://www.rubicon.hu/magyar/oldalak/az\\_1867\\_es\\_kiegyezes](http://www.rubicon.hu/magyar/oldalak/az_1867_es_kiegyezes) (visited June 19, 2018).

<sup>32</sup> Act X of 1790/91 on the independence of Hungary and her related parts (1790/91. évi X. törvénycikk Magyarország és a hozzákapcsolt részek függetlenségéről), <https://net.jogtar.hu/ezer-ev-torveny?docid=79000010.TV&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D25> (visited June 23, 2018); Act XII of 1790/91 on the legislative and executive power (1790/91. évi XII.

## 2.7. THE “CONSTITUTION” OF 1848

The reforms of the early 19<sup>th</sup> century and the spring of the European revolutions created the constitutional reform of 1848 in the Kingdom of Hungary. The monarch ratified the April Laws on 11 April 1848. Essentially, the whole feudal constitution was abolished, and gave place to a parliamentary (or constitutional) monarchy. From a constitutional aspect, the following Acts were of greater relevance:

Act 3: The King might exercise his executive power through an independent Hungarian ministry, his regulations were valid only after being countersigned by a minister. The first responsible government was composed of a Prime Minister and eight ministers. The ministers were responsible for their actions, their accountability was regulated by law.

Act 4: Annual Diet should be convened in Pest, the representatives should be elected for a 3 months period. The king might adjourn and dismiss the Diet, but a new assembly should be reconvened within three months.

Act 5: The basis of suffrage was the property census.

Act 8: Tax-exemption of the nobility was abolished, equality and proportionality in the discharge of public burdens was introduced.

Act 9: *Urbarium*, villein socage, *nona* (tax paid by the villeins to the lord of the manor), and the obligatory gift were abolished; indemnification to the lord was paid by the state in a later date. Abolishment of manorial courts was also introduced.

Act 13: Abolishment of the tithe (*decimae* in Latin, a tax to be paid to the Church) without indemnification.

Act 15: “Aviticity shall absolutely and completely be abolished”. The socager became the owner of the land, equality before the law was achieved<sup>33</sup>.

## 2.8. IMPERIAL DIPLOMA OF OCTOBER, FEBRUARY PATENT, PROVISIONAL STATE AND COMPROMISE

Following the revolution and war of independence and the transitional period, Austria and Hungary showed the signs of rapprochement, especially due to the international situation. Austria agreed to take the Pragmatic Sanction as a starting point, but refused the laws of 1791 and, instead of that, preferred the Imperial

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törvénycikk a törvényhozó és végrehajtó hatalom gyakorlásáról), <https://net.jogtar.hu/ezer-ev-torveny?docid=79000012.TV&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D25> (visited June 23, 2018).

<sup>33</sup> A. Degré, *Magyar...*, pp. 293-295.

Diploma of October (issued on 20 October 1860) and the February Patent of 26 February 1861.

In October 1860 Franz Joseph promulgated a diploma, a federal type constitution for his peoples. Pursuant to the diploma, the pre-1848 legal system and regime was to be restored, which was a retrograde step in comparison to the April Laws of 1848<sup>34</sup>. The diploma was unacceptable for Hungary not only on a principled basis but also practically, since, at that time, the country did not have a lawfully accepted monarch or Diet that could have adopted the diploma.

The February Patent contained stricter provisions: the Hungarian Diet was regarded as a provincial assembly only, that could send delegates to the imperial parliament. Only 85 of the 343 delegates of the imperial parliament was to have been sent from Hungary, that is not more than 25%. The Hungarian nobility called the Patent an unprecedented humiliation, for the thousand-years old Kingdom of Hungary was dealt merely as a province and its political weight was considered as only one fourth of the empire. It was to mean that Hungary could have appeared on the provincial level within the empire, that is it could have had a marginal role in comparison to its significance; therefore the February Patent as a new constitution was rejected by the Hungarian estates of the Realm<sup>35</sup>. As a response, Franz Joseph dismissed the Parliament and introduced a rule by decree; that was the period of provisional state.

The Emperor supposed that resistance could be broken in Hungary as time passes, and a regime would take place that would be advantageous for the Empire and favourable for Austria. International situation (especially the strengthening of Prussia and the defeat and the territorial loss suffered from the Prussians) inclined the monarch to approach the Hungarians in order to find a solution by which he could consolidate his empire. Franz Joseph recognized that, without inner stability, he could not be up to the European major powers.

The Hungarian nobility also recognized the opportunities offered by the situation. The first step to the relief was taken by Ferenc Deák (1803–1876, the Hungarian jurist, statesman and later Minister of Justice, known as “the Wise Man of the Nation”) who wrote his *Easter article* in 1865, in which he stated that the Empire had to survive and the laws on the common issues should be formed accordingly<sup>36</sup>.

Deák identified the sole document that was accepted by both parties and could mean a common beginning: the Pragmatic Sanction. The Wise Man of the

<sup>34</sup> A. Gergely *Az 1867-es...*

<sup>35</sup> Á.P. Harmat, *A kiegyezés és előzményei, a neoabszolutizmus kora (1850-1867)* [The Compromise and its antecedents, the period of neoabsolutism (1850-1867)], <http://tortenelemcikkek.hu/node/127> (visited June24, 2018).

<sup>36</sup> A. Gergely *Az 1867-es...*

Nation stated that the purpose of the Pragmatic Sanction was the unified empire and it served as a fundamental law for Austria and Hungary, from which it could be derived that constitutional and legal autonomy of Hungary was not contrary to that of Austria, furthermore, he claimed that “precondition of any negotiation on all issues concerning the interests of the empire as a whole is the recognition of the independent and autonomous statehood of the country”<sup>37</sup>.

He stated that it was a *sine qua non* to the existence of the unified empire to conclude an agreement on the common issues, i.e. the foreign and military policy and a joint financial policy (for the expenditures of these). In short, Deák planned a relation closer than a personal union, where the two parts of the empire would be equal and function in the framework of a common constitution and would be tied together mostly by the monarch and the common defence<sup>38</sup>.

By the Austro-Hungarian Compromise, the dual monarchy was established<sup>39</sup>. On 29 May 1867, the Diet adopted the “legislative package” on the Compromise, which entered into force upon the coronation of Franz Joseph on 8 June 1867 and was ratified by the monarch on 28 July<sup>40</sup>.

Public law basis of the Compromise was the Pragmatic Sanction which stated that the monarch of Austria and Hungary was identical (i.e. the same person) and that the two countries are tied together “indivisibly and inseparably – *indivisibiliter ac inseparabiliter*” and owe each other mutual defence. It followed that Austria and Hungary should provide common armed forces, diplomacy, and the financial background of those. The common policies could not function without common governmental bodies: common ministries for military, diplomacy and finance, as well as delegations of the national Parliaments, each composed of 60 delegates addressing mainly the common budget. In addition to common policies, there were the so-called “issues of common understanding”, such as state debt, customs, taxation, railway, and postal policy<sup>41</sup>.

The Compromise itself was a package of legislation composed of the following four statutes:

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<sup>37</sup> G. Máthé, *Deák Ferenc közjogi dogmatikai remeke* [Francis Deák's Masterpiece in the Dogmatics of Public Law], (in:) G. Máthé, A. Menyhárd, B. Mezey (eds.), *A kettős monarchia* [The Dual Monarchy], Budapest 2018, p. 47.

<sup>38</sup> A. Gergely *Az 1867-es...*; G. Máthé, *Deák Ferenc...*, p. 53.

<sup>39</sup> A. Gergely *Az 1867-es...*

<sup>40</sup> V. Tóth-Péter, *Az 1867-ig vezető út: koronázás és kiegyezés Esztergom vármegyében* [The Way to the Compromise: coronation and compromise in Esztergom County], (in:) Archives: Hungarian National Archives (Magyar Nemzeti Levéltár): *XX. századi történeti források* [Historical sources of the 20th century] <http://www.archivnet.hu/az-1867-ig-vezeto-ut-koronazas-es-kiegyezés-esztergom-varmegyeben> (visited June 25, 2018); In the beginnings, the work in the legislation was impeded by the adoption of the so-called royal guarantees, but the work could continue thereafter.

<sup>41</sup> Á.P. Harmat, *A kiegyezés...*

Act 12 of 1867 on the issues of common interest of the Lands of the Holy Crown of Hungary and other countries ruled by His Majesty and on the method of arrangement thereof<sup>42</sup>;

Act 14 of 1867 on the proportion of financial burdens of the common issues pursuant to the Act 12 of 1867 by virtue of the Pragmatic Sanction that is to be henceforward borne by the Lands of the Holy Crown of Hungary<sup>43</sup>;

Act 15 of 1867 on the contribution to the state debts to be borne by the Lands of the Holy Crown of Hungary<sup>44</sup>; and

Act 16 of 1867 on the customs and trade alliance formed between the Lands of the Holy Crown of Hungary and other countries of His Majesty<sup>45</sup>.

The significance of the laws of 1867 is that they were not a direct continuation of those of 1848, but a construction based on mutual concessions, whereby the Monarchy consolidated its status as a European major power.

### 3. THE FUNDAMENTAL LAW AND THE UNCODIFIED CONSTITUTION

The Fundamental Law presently in effect in Hungary sets forth in the National Avowal that “We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation”<sup>46</sup>. Similarly in Section (3) of Article R we read as follows: “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein, and the achievements of our historical constitution”<sup>47</sup>. The Constitutional Court tried to interpret what this provision could actually mean, and its interpretation is still ongoing. However, it is a certain fact – and it was declared by the Constitutional Court – that the provisions of the Fundamental Law shall be interpreted not merely in accordance with the historical constitution but its achievements. The question of what can be regarded as an achievement shall be determined by the

<sup>42</sup> Act 12 of 1867 <https://net.jogtar.hu/getpdf?docid=86700012.TV&targetdate=&printTitle=1867.+%C3%A9vi+XII.+t%C3%B6rv%C3%A9ny&referer=1000ev> (visited June 26, 2018).

<sup>43</sup> Act 14 of 1867 <https://net.jogtar.hu/getpdf?docid=86700014.TV&targetdate=&printTitle=1867.+%C3%A9vi+XIV.+t%C3%B6rv%C3%A9ny&referer=1000ev> (visited June 26, 2018).

<sup>44</sup> Act 15 of 1867 <https://net.jogtar.hu/ezer-ev-torveny?docid=86700015.TV&searchUrl=/ezer-evtorvenyei%3Fpagenum%3D27> (visited June 26, 2018).

<sup>45</sup> Act 16 of 1867 <https://net.jogtar.hu/ezer-ev-torveny?docid=86700016.TV&searchUrl=/ezer-evtorvenyei%3Fpagenum%3D27> (visited June 26, 2018).

<sup>46</sup> Fundamental Law of Hungary: National Avowal.

<sup>47</sup> Fundamental Law of Hungary: Foundations, Section (3) of Article R.

Constitutional Court from case to case, for the nature of the achievements is not defined by the Fundamental Law<sup>48</sup>.

The 19<sup>th</sup> century laws that constituted the bourgeois transformation are part of the uncodified historical constitution. These laws created a solid institutional foundation on which the modern constitutional state is built<sup>49</sup>.

Related to the judicial independence, the Constitutional Court found that two laws could be regarded as achievements: Act 4 of 1869 and Act 9 of 1871. Both addressed the independence of the judges from different aspect, e.g. irremovability, retirement etc.

Therefore, the Constitutional Court established that judicial independence, and the resulting principle of irremovability, is not only a normative rule of the Fundamental Law, but also an achievement of the historical constitution. Thus, it is an interpreting principle obligatory to everybody, based on the provisions of the Fundamental Law, and which is to be applied also in the course of exploring other potential contents of the Fundamental Law<sup>50</sup>.

#### 4. CONCLUSION

In summary, we can conclude that, between 1222 and 1867, there were waves in the development of the state, the crests and troughs of the waves being formed by history.

In the 14<sup>th</sup> century period of the crown-ideology, the King had absolute power, then up to the early 16<sup>th</sup> century the King had to face the constantly strengthening estates of the Realm and nobility that grew to become a factor of power. In the late 17<sup>th</sup> century, the Habsburgs' right of succession to the throne of Hungary set back the rights of the nobility and therewith the feudal constitution, which was conceived by Werbőczy in his *Tripartitum*. The 18<sup>th</sup> century brought changes: the Pragmatic Sanction and Leopold II, at the end of the century, confirmed the rights of the nobility. The laws of 1848, however, did not raise the feudal monarchy to a higher level, but resulted in a bourgeois transformation and a parliamentary monarchy, which did not last very long. In the period between 1849 and 1867, the standpoints of Austria and Hungary alternately diverged and converged, then, finally, they established the constitutional Austro-Hungarian Empire with mutual

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<sup>48</sup> I. Vörös, *A történeti alkotmány az Alkotmánybíróság gyakorlatában* [Uncodified constitution in the case law of the Constitutional Court], „Közjogi Szemle” 2016, issue 4, p. 49.

<sup>49</sup> Decision 33/2012.(VII. 17.) AB.

<sup>50</sup> Decision 33/2012.(VII. 17.) AB.

consent; it was the most important turning point in the history of our uncodified constitution.

The Fundamental Law of 2011 shall be interpreted in accordance with the achievements of our historical constitution; as a result thereof, the principle of judicial independence was declared as an achievement by the Constitutional Court.

## BIBLIOGRAPHY

- Act 12 of 1867 <https://net.jogtar.hu/getpdf?docid=86700012.TV&targetdate=&printTitl e=1867.+%C3%A9vi+XII.+t%C3%B6rv%C3%A9ny%3A9nycikk&referer=1000ev> (visited June 26, 2018)
- Act 14 of 1867 <https://net.jogtar.hu/getpdf?docid=86700014.TV&targetdate=&printTitl e=1867.+%C3%A9vi+XIV.+t%C3%B6rv%C3%A9ny%3A9nycikk&referer=1000ev> (visited June 26, 2018)
- Act 15 of 1867 <https://net.jogtar.hu/ezer-ev-torveny?docid=86700015.TV&searchUrl=/ ezer-ev-torvenyei%3Fpagenum%3D27> (visited June 26, 2018)
- Act 16 of 1867 <https://net.jogtar.hu/ezer-ev-torveny?docid=86700016.TV&searchUrl=/ ezer-ev-torvenyei%3Fpagenum%3D27> (visited June 26, 2018)
- Act X of 1790/91 on the independence of Hungary and her related parts (1790/91. évi X. törvénycikk Magyarország és a hozzákapcsolt részek függetlenségéről), <https://net.jogtar.hu/ezer-ev-torveny?docid=79000010.TV&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D25> (visited June 23, 2018)
- Act XII of 1790/91 on the legislative and executive power (1790/91. évi XII. törvénycikk a törvényhozó és végrehajtó hatalom gyakorlásáról), <https://net.jogtar.hu/ezer-ev-torveny?docid=79000012.TV&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D25> (visited June 23, 2018)
- Bálint E., *A királyi trón betöltésének módja Magyarországon* [Method of Enthronement in Hungary], Budapest 1912, p. 11
- Bartoniék E., *A magyar királykoronázások története* [History of Hungarian Coronations], Budapest 1987, pp. 98-100
- Béli G., *A Négyeskönyv 1573. évi interpolált változata és közjogi megoldásai* [Interpolated version of Quadripartitum of 1573 and its public law solutions], (in:) G. Máthé (ed.), *Quadripartitum kézirat azonosítása* [Identification of the Manuscript of the Quadripartitum], Budapest 2015, p. 333
- Béli G., *Árpád kori törvényeink* [Our laws in the period of the Árpáds], „JURA” 2000, issue 1-2, p. 38
- Béli G., *Die Basisinstitut des Privatrechts* [Basic Institutions of Private Law], (in:) G. Máthé (ed.), *Die Entwicklung der Verfassung und des Rechts in Ungarn*, Budapest 2017, p. 179
- Biró Zs., *Az út az örökös királyságig* [Way to the hereditary kingdom], (in:) T. Drinóczi (ed.), *Studia Iuvenium Iurisperitorum* 9, Pécs 2018, p. 32 <http://sii.ajk.pte.hu/files/studia-iuvenum-iurisperitorum-9-2018.pdf> (visited June 20, 2018)

- Decision 33/2012.(VII. 17.) AB.
- Decision 33/2012.(VII. 17.) AB.
- Degré A., *Magyar alkotmány- és jogtörténet* [Constitutional and Legal History of Hungary], G. Béli (ed.), Pécs 2009, pp. 63-65
- Eckhart F., *Magyar alkotmány és jogtörténet* [Constitutional and Legal History of Hungary], Budapest 2000, p. 120
- Engel P., Kristó G., Kubinyi A., *Magyarország története 1301-1526* [History of Hungary 1301–1526], Budapest 1998, pp. 351-352
- Ferdinandy G., Schiller B., *A Pragmatica Sanctio és a Házi törvények [Pragmatic Sanction and the House rules]*, Budapest 1903, pp. 4-8
- Fraknoi V., *Magyarország a mohácsi vész előtt a pápai követek jelentései alapján* [Hungary prior to the Mohács Disaster as reflected by the Protocols of the Papal Nuncio], Budapest 1884, p. 6
- Fundamental Law of Hungary: Foundations, section (3) of Article R
- Fundamental Law of Hungary: National Avowal
- Gergely A., *Az 1867-es kiegyezés* [The Compromise of 1867], „Rubicon”, [http://www.rubicon.hu/magyar/oldalak/az\\_1867\\_es\\_kiegyezes](http://www.rubicon.hu/magyar/oldalak/az_1867_es_kiegyezes) (visited June 19, 2018)
- Gonda I., Niederhauser E., *A Habsburgok* [The Habsburgs], Budapest 1987, p. 111
- Harmat Á. P. *A kiegyezés és előzményei, a neoabszolutizmus kora (1850-1867)* [The Compromise and its antecedents, the period of neoabsolutism (1850-1867)], <http://tortenelemcikk.hu/node/127> (visited June 24, 2018)
- Hóman B., Szekfű G., *Magyar történet V.* [Hungarian History V], Budapest 1936, p. 97
- Hóman B., Szekfű G., *Magyar történet VI.* [Hungarian History VI], Budapest 1936, p. 367
- Horváth J. *Az 1722/23 I. II., III. Törvényezikkek által elfogadott pragmatica Sanctio lényege és annak helyzete a magyar közjogban* [Essential Provisions of the Pragmatic Sanction adopted by Acts I, II and III of 1722/23, and its Situation within the Hungarian Public Law], Budapest 1898, p. 30
- Máthé G., *Deák Ferenc közjogi dogmatikai remeke* [Francis Deák’s Masterpiece in the Dogmatics of Public Law], (in:) G. Máthé, A. Menyhárd, B. Mezey (eds.), *A kettős monarchia* [The Dual Monarchy], Budapest 2018, p. 47
- Mezey B., *A magyar állam- és jogtörténet forrásai* [Sources of the Constitutional and Legal History of Hungary], Budapest 1998, p. 37
- Mezey B., *Magyar Alkotmánytörténet* [Constitutional History of Hungary], Budapest 1995, p. 47
- Molnár K., *A Szent Korona-tan kifejlődése és mai jelentősége* [Development of the Doctrine of the Holy Crown and its Significance today], Pécs 1927, p. 10
- Sereg A., *Történeti Alkotmány* [Uncodified Constitution], <http://www.jogiforum.hu/hirek/30202> (visited June 24, 2018)
- Szalay J., Baróti L., *A magyar nemzet története I-IV.* [History of the Hungarian Nation] <https://www.arcanum.hu/hu/online-kiadvanyok/MagyarNemzetTortenete-a-magyar-nemzet-tortenete-9A23/szalaybaroti-a-magyar-nemzet-tortenete-9A24/magyarorszag-a-vegyes-hazakbol-szarmazott-kiralyok-koraban-8F7/i-az-anjouk-kora-8FF/4-iv-maria-13821387-ii-vagy-kis-karoly-13851386-AD9/> (visited June 23, 2018)
- Szekfű G., *A magyar állam életrajza* [Biography of the Hungarian State], Budapest 1917, pp. 147, 150

- Tarján M.T., *1351. december 11. Nagy Lajos király kihirdeti az ősiség törvényé* [11 December 1351, Louis the Great promulgated the law on aviticity], „Rubicon”, [http://www.rubicon.hu/magyar/oldalak/1351\\_december\\_11\\_nagy\\_lajos\\_kiraly\\_kihirdeti\\_az\\_osiseg\\_torvenyet/](http://www.rubicon.hu/magyar/oldalak/1351_december_11_nagy_lajos_kiraly_kihirdeti_az_osiseg_torvenyet/) (visited June 24, 2018)
- Tóth-Péter V., *Az 1867-ig vezető út: koronázás és kiegyezés Esztergom vármegyében* [The Way to the Compromise: coronation and compromise in Esztergom County], (in:) Archives: Hungarian National Archives (Magyar Nemzeti Levéltár): *XX. századi történeti források* [Historical sources of the 20<sup>th</sup> century] <http://www.archivnet.hu/az-1867-ig-vezeto-ut-koronazas-es-kiegyezes-esztergom-varmegyeben> (visited June 25, 2018)
- Vörös I. *A történeti alkotmány az Alkotmánybíróság gyakorlatában* [Uncodified constitution in the case law of the Constitutional Court], „Közjogi Szemle” 2016, issue 4, p. 49

## Summary

The article examines the evolution of the Hungarian Public and Constitutional Law from 1301 until the Austro-Hungarian compromise in 1867.

The topic is highly relevant, because the year 2017 marked the 330<sup>th</sup> anniversary of the 1<sup>st</sup> and 2<sup>nd</sup> Act of 1687, which state that the Habsburgs are the only and true heirs of the Hungarian throne; it also marked the 150<sup>th</sup> anniversary of the Austro-Hungarian Compromise. Furthermore the current Fundamental Law says that “We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation”.

The main chain of thoughts of the article presents the crown-ideology and the Doctrine of the Holy Crown, the Rákos field resolution of 1505, the Acts 2 and 3 of 1687, the Pragmatic Sanction, Acts 10 and 12 of 1790, the public law aspects of the April Laws of 1848, and the laws on the Austro-Hungarian Compromise.

The article presents the fundamental documents of the Hungarian uncodified historical Constitution issued within the given period. Through their formation and historical background we can truly understand the Hungarian customary law and the legal traditions, which are still honoured by our present Fundamental Law.

## KEYWORDS

Golden Bull, Hungarian uncodified constitution, Doctrine of the Holy Crown, Pragmatic Sanction, Austro-Hungarian Compromise

## SŁOWA KLUCZOWE

Złota bulla, węgierska konstytucja materialna, Korona świętego Stefana, Sankcja Pragmatyczna, kompromis austriacko-węgierski