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Symbolic Elements in the Preambles to the Constitutions of the Visegrad Countries**

Preambles play an interesting role in the history and development of modern constitutions. So far, their conditions, function and legal relevance have raised considerable public debate. Although the aim of this article is not to describe these preambles in details, it is necessary to give a brief overview and point out some of their general characteristics. The term *preamble* comes from the Latin word *preambulare*, meaning ‘going ahead’. Therefore, a preamble precedes the constitution as an introduction or a kind of foreword.¹ A constitution may or may not have a preamble, its presence being an option and not a must. Hungarian history has known many important documents of public law with preambles: the Golden Bull of 1222, or Law No. I. of 1920, which was supposed to restore traditional constitutionalism and provisionally regulate the realisation of supreme power in the state. Further examples are Law No. I. of 1946, which declared the Hungarian Republic, and Law No. XX. of 1949 (the Hungarian Constitution).

There are three main theories about the nature and function of preambles. The first one completely denies the legal significance of preambles. The second one suggests that preambles offer a basis from which legal obligation can be directly derived. According to the third theory, a preamble can help interpret the constitution. Hungarian legal tradition chiefly represents the last view: the preamble is used as an aid to the interpretation of law, rather than as a set of independent normative regulations. However, the guidelines of the preamble are supposed to be strictly followed in practice.²

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¹ Sulyok, M.–Trócsányi, L.: Preambulum (Preamble). In: Jakab, A. (ed.): *Az Alkotmány kommentárja* (Commentary on the Constitution). Budapest, 2009, 84.

² *Ibid.* 90–91.

Not all modern constitutions are preceded by a separate introduction or preamble. For instance, the present Italian Constitution and the present Romanian Constitution do not have any preamble. Most European constitutions, however, include an introduction of some sort. Their function is to determine the historical and political basis and context which brought forth the given constitution. They also define the place the new law, which is just about to come to life, is supposed to occupy in the country's traditions of public law. Thus, preambles express the constitutional identity of the country, or at least specify what elements this identity relies on.³

Most Central and Eastern European constitutions after 1989 have a preamble. In most cases, these introductions explicitly state the principles the new law relies on, the people on behalf of whom constitutionalisation is taking place, as well as the circumstances that surround the process. Several new democratic constitutions contain a considerable historical introduction, which usually specifies which are the traditions of the state that the constitution maker considered important. This is a common practice, especially among those states which recovered their independence as a state or were born in the years following the regime change. However, there is no pattern or aid to interpretation that would define precisely what a proper modern democratic preamble is supposed to include. Such is the case of Central Europe and especially the Visegrad region: although these countries have a very similar historical background, the structure and the content of their preambles differ markedly.

The present Hungarian Constitution, adopted in 1989, does not contain any historical narrative except for a reference to the promotion of peaceful historic transition. However, this appears to be an aim to achieve rather than a historical explanation.⁴ There is no attempt to specify the sources of legislative power. Although the Hungarian Constitution is based on the principle of the people's sovereignty, which is explicitly stated among its normative regulations, the preamble refers neither to the people as the source of power nor to the Hungarian political community. However, the scope of power delegated to the constitution maker is clearly specified: it is confined to the creation of a provisional constitution.⁵ Nevertheless, the preamble of the Hungarian Constitution precisely defines its values and its goals to achieve, that is, multi-party system, parliamentary democracy, social market economy, constitutional state and peaceful political shift.

Compared to the Preamble to the Hungarian Constitution, the introductory sentences of the other three Visegrad constitutions contain considerably more information as well as more symbolic and identity-related elements. These documents seem more elaborated in this respect. It is hardly surprising: whereas the Hungarian Constitution underwent major amendment (modification) in 1989, the other three documents came to life later and under more favourable circumstances—that is, avoiding that hectic shift called regime change. Another important factor is that the Czech, the Polish and the Slovak constitutions are not simply amendment acts but, formally, new constitutions.

All three preambles mentioned specify precisely on behalf of whom constitutionalisation is taking place. The Czech Constitution starts with the following phrase: "*We, the citizens of the Czech Republic in Bohemia, Moravia, and Silesia.*" There are two important elements in this formula. The entire group of citizens is considered as the source of state power in the

³ Garlicki, L.: *Polskie prawo konstytucyjne* (Polish constitutional law). Warszawa, 1999, 41.

⁴ Sulyok-Trócsányi: *op. cit.* 93.

⁵ *Ibid.* 92.

Czech Republic. The process of determining the constitutional foundations of the Czech state is thus characterised by clear preference for the civic principle instead of the ethnic principle. Secondly, the way the preamble presents the territorial division of the country is the provincial pattern of the historical Czech state. The commentary of the constitution affirms that the reason for using this pattern is to emphasize the historical roots and not to foreshadow the administrative and territorial division which is later introduced.⁶ We have to bear in mind that the Moravian regionalist interests were represented in the Czech legislation in the first part of the 1990s. Before 1992, one of their aims was to transform the Czechoslovak Federation, which had two members, into a tripolar structure, that is, to create a provincial state instead of the federal state. Later, when the independent Czech Republic carried out an administrative reform to create the level of regions, they made serious attempts to influence decision makers to take the borders of the ancient Czech provinces into account. However, Moravian regionalists failed to achieve their goal and later they lost the opportunity to take part in legislation. The fact that the preamble contains this formula was probably meant to be a gesture towards these forces in 1992.

The preamble to the Slovak Constitution sparked off wider and more heated debate in 1992. The preamble begins with the following phrase: *"We, the Slovak nation..."* The coalition of governing parties chose this formula to express the Slovakian nation's wish to pursue their right to self-determination, whose subject, inevitably, needed precise definition. However, Slovakia cannot be considered uniquely as the home of the Slovak nation. Firstly, there are several national and ethnic minorities in the country, so much so that Slovakia seems to be ethnically and culturally the most heterogeneous state of the Visegrad region. This is an area with important minority groups that have maintained their own separate national identity. Secondly, the term "nation" is used in the Slovak political and social discourse exclusively in a cultural and linguistic sense, both by majority and minority citizens. Most people are reluctant to accept the notion of a politically defined state-nation. Nevertheless, there were many liberal Slovak intellectuals, who together with the political representatives of the Hungarian minority, argued against defining the political community, which was just about to accept their constitution, as the Slovak nation. This dilemma appeared in social and political journalism as the so-called *"debate of the followers of ethnic and civic principle"*. The final text of the preamble can be interpreted as a compromise between the two concepts: although it begins with the formula *"we, the Slovak nation"*, the *"members of national minorities and ethnic groups living on the territory of the Slovak Republic"* are mentioned as well. As a sort of summary, the closing lines of the preamble refer to a broader group of citizens, and thus a common platform is created: *"we, citizens of the Slovak Republic, adopt through our representatives the following Constitution"*.

Unlike the Slovakian Constitution, which interprets the term "nation" culturally and linguistically, the preamble to the present Polish Constitution, adopted in 1997, uses the notion of 'Polish nation' in the sense of a political state-nation: *"We, the Polish Nation—all citizens of the Republic"*. It is true that at several places the entire context of the preamble makes both direct and indirect allusions to the historical, religious and cultural traditions of the Polish nation. However, the term 'nation' is used in the political sense, referring to the state.

⁶ Pavlíček, V.–Hřebejk, J.: *Ústava a ústavní řád České republiky. I. díl Ústavní systém* (Constitution and constitutional order of Czech Republic. I. Constitutional System). Praha, 1998, 47.

The next question of central importance and symbolic value is how each Visegrad preamble relates to the former statehood and state traditions of the nation that brought them to life. Which traditions are emphasised and which are neglected? The answer varies substantially from country to country. Whereas two of the states (Poland and Hungary) underwent mere regime change in 1989, while all the other important attributes of the state (territory, population, name, etc.) remained the same, Czechoslovakia ceased to exist on 31 December, 1992 and two successor states emerged: the Czech Republic and Slovakia. But even these two states are in a slightly different situation: the roots of independent Czech statehood date back much further in time than the roots of independent Slovak statehood. The way the two constitutions relate to the former Czechoslovak statehood is not entirely obvious. We might even say their relationship to the former statehood is rather obscure. However, this relation is firmly linked to the way they relate to the nations' right to self-determination.

The Czech Constitution was adopted in December, 1992. Its preamble interprets the historical moment of constitutionalisation as a time when the independent Czech state is supposed to revive. However, it fails to mention if the Czech nation wishes to pursue its right of to self-determination in this particular moment. This seems logical: both the text and the context of the preamble suggest that in 1992 the Czech members of parliament involved in the process constitutionalisation did not entirely refuse the former Czechoslovak statehood. On the contrary, they tried to remain loyal to "*all good traditions of the ancient statehood of Czech Crown's Lands and the Czechoslovak State*". The Czechs kept the former Czechoslovak state flag, even though the Constitutional Law No. 542 of 1992 on the dissolution of the Czech and Slovak Republic allows neither of the successor-states to use the symbols of the former federation. This, again, clearly signals their loyalty to the democratic Czechoslovak heritage. The Slovak party expressed indignation over this infringement of the law, but in no more than a few weeks they withdrew. In order to justify the legality of this step, Czech lawyers argued that their country did not infringe international public law, as the Czechoslovak flag had lost its "owner" and was not taken by any other legal subject. Thus, any country was allowed to use it.

The Czech rule of law and system of symbols reflect Czechoslovak statehood in other ways as well. For instance, the highest Czech state award is still the Order of the White Lion, which was established in 1922 and used to be the highest Czechoslovak state award. However, it is important to note that the lion is traditionally an essential element of the heraldry and system of symbols of the Czech state—and not of the Slovak state. The statehood of the two 'ancestors' mentioned in the Czech preamble is firmly linked to the two Czech national holidays as well. One of them, 28 October, the day on which the independent Czechoslovak state was founded in 1918, is still considered as a sort of "Independence Day". The other, 28 September, was introduced in 2000 following a period of hot debate. Officially, this holiday is supposed to be a commemoration of Czech statehood, but in reality people celebrate the Czech patron Saint Vaclav and his cult. The criticism was directed not so much against the religious content of the holiday, as against the meaning that was connoted to the cult from the 20th century. Between 1939 and 1945 the German Nazi occupants and their local allies tried to use this cult to strengthen Czech–German relations and to emphasize the subordination of Czech territories, which cast shadow upon the Saint's memory. Finally, it is important to note that 1 January is not only New Year's Day in the Czech Republic, but also the day of the independent Czech state, even if citizens are not perfectly aware of the fact. However, the state lies equal emphasis on the two "Independence Days", 1 January and 28

October. This is unmistakably signalled by the fact that these are the two days of the year when the Czech head of state hands out merit awards.⁷

Slovakia developed a rather different relationship to Czechoslovak statehood. The new Slovak Constitution was adopted in 1992, and, of course, the Slovak Republic was one of the successor-states of the former Czechoslovakia, both from a legal point of view and in the practice as well. The country was neither able, nor explicitly willing to refuse what it considered positive from its Czechoslovak heritage, however, this attitude was not mentioned in the text of the preamble. Unlike the Czech document, the introduction to the present Slovak Constitution does not refer to the tradition of the Czechoslovak statehood at all. The only historical heritage mentioned is that of the Great Moravian Empire, far away in time and rather difficult to interpret from a legal point of view. Interestingly enough, the Slovak preamble is the only document among the Visegrad preambles to refer to the principle of natural law and claim the nation's right to self-determination. This implies that the Slovak constitution maker had the subjective feeling of fulfilling the Slovak nation's old wishes and, having pursued their right to self-determination, creating the independent Slovak statehood. This is supposed to be different from the former Czechoslovak statehood, which the Slovak nation greatly benefited from, but did not consider entirely as theirs. This subtle difference between the two states' preambles faithfully reflects their relationship to the former federal statehood. The Czech party, which formed the majority of the Czechoslovak federation, unequivocally identifies with its statehood, while the Slovak party (the former minority) takes a somewhat ambiguous attitude. This is expressed, for instance, in the fact that 28 October, the Czechoslovak "Independence Day" is not a bank holiday in Slovakia, only a day of commemoration.

Nevertheless, it seems obvious for every true professional and intellectual in Slovakia, that modern independent Slovak statehood is not very closely linked to the Great Moravian statehood of the 9th century, as far as everyday state practice, public mentality and the society's deep reflexes are concerned. Czechoslovak state traditions of the period between 1918 and 1992, and in some aspects Hungarian state traditions before 1918 seem far more relevant. During the 18th and 19th centuries, however, Great Moravian statehood became firmly rooted in Slovak historical and political public consciousness, interwoven with nationalist feelings, as the forerunner and the archetype of real Slovak statehood. During World War II the independent Slovak state lived in the shadows of Nazi Germany, and collaborated with it intensively. In 1992 most of the political forces that operated democratically refused to accept this heritage, and those who supported the idea did not have the possibility to formulate it in the preamble to the constitution.

The Polish Constitution was adopted in 1997 as the final point of a process that begun in 1989 and led to major changes in public law. A text of considerable length, the preamble to the Polish Constitution is the most commonly cited preamble in Europe. It is considered exemplary in several countries, especially by political forces that are predominantly conservative. This is largely due to the *invocatio Dei*, formulated subtly but rather explicitly by the Polish constitution maker. The Constitution represents both those who "believe in God as the source of truth, justice, good and beauty as well as those not sharing such faith but respecting those universal values as arising from other sources". The constitutional

⁷ Halász, I.: A Cseh Köztársaság állami és nemzeti szimbólumai (State and National Symbols of the Czech Republic). In: Glatz, F. (ed.): *Állami és nemzeti jelképek az Európai Unióban* (State and National Symbols in the European Union). Budapest, 2005, 57–58.

power to have recognized “*their responsibility before God*” or “*their own consciences*” while drawing up the Constitution.

However, other elements of the Polish preamble have received less attention. For instance, bits and pieces of the tradition inherited from the former statehood are considered positive in the preamble. Two of them are emphasized, the First and the Second Republic,⁸ while the period of the People’s Republic of Poland is explicitly ignored.⁹ The document mentions the enormous sacrifices and fights that lead to the achievement of independence, and it interprets 1989 as a sort of new beginning for the country (“*having regard for the existence and future of our Homeland, which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate*”). Interestingly enough, Article 1 of the normative text declares that the present Polish Republic has a value for each and every citizen, and the preamble defines the republic explicitly as the Third Republic.

We can draw the conclusion that the preambles to the constitutions of the Visegrad countries do not generally refrain from selecting bits and pieces from their historic heritage. They also tend to prefer certain traditions of their nations’ history of statehood to others, or even let some of them fall into oblivion. However, this should not lead to the restriction of historical and other scientific research and evaluation. This is clearly expressed in the so called ‘Prague Commentary’ on the present Czech Constitution, written by the professors of the Faculty of Law at Charles University. The authors argue that ‘The text of the Constitution cannot be legally required to evaluate history, as this would contradict people’s natural right to free thought and research. Consciousness and belief concerning science and worldview do not belong to the competence of the state.’¹⁰ Sometimes law-makers, in a burst of enthusiasm, fail to respect this and commemorate great figures—or even objects—of history in a law. This has happened recently to two Czechoslovak founding fathers and later presidents, Tomáš G. Masaryk and Edvard Beneš in the Czech Republic or to Andrej Hlinka, vicar and leader of the People’s Party in Slovakia. From a certain aspect, the law on the Holy Crown of Hungary is an example of the same phenomenon.

Another interesting point is what other historical, political or cultural symbols can be found in the preambles of Central Europe, as they are of communicative value. For example, at least two constitutions in the Visegrad region have introductions that implicitly or explicitly allude to Christian traditions. The Polish preamble finds the nation’s cultural roots in Christian traditions and in universal human values. The preamble to the Slovak Constitution refers to the spiritual heritage of Cyril and Method, Slavic missionaries and saints, the cult of whom started to strengthen among Western Slavic—especially Czech, Moravian and Slovak—believers of Central Europe from the 18th century. In the Slovakian social and cultural context this heritage carries an essentially Christian, Slavic and nationalistic message. The Czech preamble does not contain such direct references to Christian roots. The tradition of Saint Vaclav, linked closely to medieval Czech statehood, is not mentioned in the document at all. This is easy to understand, especially if we bear in mind that Czech society has one of the most secularised and laic self-perceptions in Europe. Thus, it is rather surprising that even without considering Christmas and Easter, three of the

⁸ The term “First Republic” refers to the old aristocratic Poland, which ceased to exist during the partitions at the end of the 18th century. Polish public opinion usually considers the period between the two World Wars as the Second Republic.

⁹ Garlicki: *op. cit.* 42.

¹⁰ Pavlíček–Hřebejk: *op. cit.* 46.

bank holidays have very strong Christian background: on 5 June they celebrate Cyril and Method, Slavic missionaries symbolizing the beginnings of Slavic literacy, while on 6 June the execution of Jan Hus, preacher and religious reformer is commemorated. 28 September, already mentioned, has been serving as the “Independence Day” of the Czech nation since 2000, although it is closely related to the cult of Saint Vaclav. These holidays all convey some other message as well, alternative and more profane, but it is undoubtedly true that the roots of these holidays are Christian saints or religious reformers.¹¹

The fight for political independence and the struggle that led to the birth of the nation or state are referred to by the Polish preamble and the Slovak Constitution only, while the Czech and the Hungarian documents ignore the question. 1989, the daybreak of a new epoch, is mentioned in the Polish and in the Hungarian preambles. It is referred to as a peaceful shift that marks a new historical beginning. The introductions to the Czech, the Polish and the Slovak constitutions suggest that these states consider themselves the members of the big family of nations or mankind, and they respect the norms of coexistence that these communities have established. Of course, all of these documents reflect their era: an epoch which had a tendency to extend rights, and was open to universal human rights as well as to democratic values. This conveys important political and legal message, but less symbolic significance that is rooted in the nation’s past and culture.

¹¹ For more details see Halász: *op. cit.* 57–60.