

Constitution and Constitutional Principles in the EU

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Constitutional Consequences of EU Membership in Hungary

Main areas

- Amendment of the Hungarian Constitution
- Role of Parliament, Government and Constitutional Court in EU affairs
- Right to vote and EP elections

I. Amendments of Hungarian Constitution (Act XX of 1949)

Act LXI of 2002 – before accession

Act CLXVII of 2007 – because of Lisbon Treaty

Significance, preparation

- Constitution-based authorisation for conferral + referendum
- Responsible: Ministry of Justice
- „Wises’ Council” – suggestions for Prime Minister
- Political debate – Party fractions in Parliament

Community Law in Hungarian Constitutional System

- Activist decisions of Constitutional Court
 - 4/1997 (I.22.) CC decision
 - 30/1998 (VI. 25.) CC decision
- Constitution Art. 2/A
 - (1) *By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary in connection with the rights and obligations conferred by the treaties on the foundation of the European Union and the European Communities (hereinafter referred to as 'European Union'); these powers may be exercised independently and by way of the institutions of the European Union.*
 - (2) *The ratification and promulgation of the treaty referred to in Subsection (1) shall be subject to a two-thirds majority vote of the Parliament.*
- Constitution Art. 6(4)

The Republic of Hungary shall take an active part in establishing a European unity in order to achieve freedom, well-being and security for the peoples of Europe.

European clause: §2/A

- Exercising constitutional powers
 - jointly (with other Member States)
 - by the EU institutions
- aim and limits of „conferral”
- Procedure: Parliament, international treaty, 2/3 majority of all MP's
- NO enough guarantees for safeguarding national identity

Referendum: ex §79

- Obligatory, ultimate
 - For a single occasion
 - Just about the access
 - Question and date
- Transit rule (not in force yet)

Further amendments in 2002

- New state aim: § 6 par. (4)
- Central Bank § 32/D par. (1)
- Government represents §35 par. (1)
- Relation between Parliament and Government § 35/A
- Right to vote (EP and local) § 70

Deficiencies of 2002 amendment

- Status of international law and community law in national legal system
- Guaranties of prevalence of EC-law
- Reconciliation between Parliament and Government in European affairs
- Revision of human rights chapter

Conclusions of 2002 amendment

- Very restricted amendment – lack of political agreement
- Tasks of legislator: act on legislation, concluding international treaties, powers of Constitutional Court, role of Parliament and Local Governments, acts on human rights (respect to European human rights)

Amendment in 2007

- For the ratification of Lisbon Treaty
- Art. 57(4) of Constitution – principle of ‘nullum crimen sine lege’
- Authorization for criminal cooperation under the area of freedom, security and justice

Article 57(4) before and after the amendment

- 57(4) No one shall be declared guilty and subjected to punishment for an offense that was not a criminal offense under Hungarian law at the time such offense was committed.
- 57(4) No one shall be declared guilty and subjected to punishment for an offense that was not considered - at the time it was committed - a criminal offense under Hungarian law, or the laws of any country participating in the progressive establishment of an area of freedom, security and justice, and to the extent prescribed in the relevant Community legislation with a view to the mutual recognition of decisions, without any restrictions in terms of major fundamental rights.

II. Role of Parliament, Government and Constitutional Court

Parliament

- Getting information in EU affairs and controlling Government (Act LIII of 2004)
- Giving parliamentary opinion in EU affairs – not obligatory for the Government
- European Affairs Committee
- Incompatibility (MP – MEP Act LVII of 2004)

Government

- Detailed information to the Parliament
 - European proposals
 - Own proposals in EU affairs
- Publicity in EU affairs
- Representing Hungary (Council, European Council)
- Candidates for other EU institutions (ECJ, Commission, ECB, ECA etc.)

Constitutional Court

- Revision its powers:
 - European treaties are not simple international treaties in their contents
 - Secondary EC-law – power of ECJ
- Precedents before the accession:
 - 4/1997 CC Decision (on ex post control of international treaties)
 - 30/1998 CC Decision (on the lack of constitutional authorization to apply EC-law)

Recent Practice of Constitutional Court

- EC / EU Treaties: not international law [under Art. 7(1)], but domestic law
- Conflict of EC and domestic law: not constitutional matter
- Omission to legislate on the basis of TEC/TEU: not constitutional matter
- Meaning of Art. 2/A: oblique words
- Uncertain constitutional practice

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III. EP elections in Hungary

Components of European right to vote

- Local elections: TEC art.19 par(1) , Charter art.40, 94/80 EC directive
- EP elections: TEC art.19 par(2), Charter art.39, common rules of procedure TEC art.190, 93/109 EC directive, Act of Governments of Member States (1976) → PR-system

EP elections in Member States

- Constituencies (generally 1)
- Universality: same conditions (age, residence, voting from abroad)
- Nomination: party-lists
- Voting: directly (preferences)
- Turn-out: D'Hont method

Hungary: Act CXIII of 2003

- PR system, 1 constituency
- Set up lists: Hungarian parties, 20000 recommendation
- Procedure: electoral rolls, voting from abroad
- 1 vote to 1 list
- Turn-out: 5% threshold, d'Hont method

Results 2004



FIDESZ-HUNGARIAN CIVIC UNION – 12 – EPP-ED

HUNGARIAN DEMOCRATIC FORUM – 1 – EPP-ED

HUNGARIAN SOCIALIST PARTY – 9 – PES

ALLIANCE OF FREE DEMOCRATS – 2 – ALDE

Results 2009

- FIDESZ – Hungarian Civic Union – 14 (+2) – EPP (European People's Party)
- MSZP – Hungarian Socialist Party – 4 (-5) – PES (Party of European Socialists)
- JOBBIK – Movement for a Better Hungary – 3 (+3) – none
- MDF – Hungarian Democratic Forum – 1 (+0) – ECR (European Conservatives and Reformists)
- Turnout 36,31 (2004 – 38,5)

Thank you for the attention!

