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Comparative EU constitutionalism

Safeguarding the constitutions

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Hungary

- President of the Republic (Art 29.1)
- Government (Art 35.1 a))
- Ombudsmen (Art 32/B)
- Courts (Art. 50.1)
- Public prosecutor (Art. 51.1)
- Constitutional Court (Art 32/A)
- Art 2.3.
- Art 70/K

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Hungary - competences

- Preventive review of legal norms
- Posterior review of legal norms
- Constitutional Complaint
- Unconstitutional Omission on Legislate
- Review of Conformity with Treaties
- Conflict of Competences
- Other Competences



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Preventive review of legal norms

Acts before promulgation
by the

Pres of the Rep

Standing Orders before the
adoption

Parliament

International treaties before
their confirmation by
Parliament

Pres of the Rep
Parliament
Government

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Posterior review of legal norms

Abstract review of legal norms (actio popularis)

Concrete review of legal norms

Judge

Procedure in conn with the complaint
of the public prosecutor

Result of the procedure – annulment

Ex nunc

Ex tunc

Pro futuro

Constitutional Complaint

- Admissability
 - Injury of HR's
 - Exhaustion of remedies
 - Meeting the deadline

NOT a real constitutional complaint

NOT about the decision

Base for renewal of the procedure

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Unconstitutional Omission on Legislate

- Anybody can make a proposal
- Ex officio
- No fulfillment of legally required lawmaking
 - the mandate results
 - no explicit mandate to legislate is necessary

Review of Conformity with Treaties

- Art 7 (1) - upon the application of state organs or ex officio
- Lawmaking (contradiction with a treaty) – omission to legislate

Legal norm under which
the treaty has been
promulgated

Legal norm at the same or
lower rank (annul)

Legal norm under which
the treaty has been
promulgated

Legal norm at higher rank

- change the treaty
- conform the domestic
legal norm

Conflict of Competences and other competences

- Bw state organs (courts excl.); bw local govts; bw state organs and local govts
- Neg and pos conflict of comps
- Legal remedy – plebiscit and popular initiatives
- Opinion on the (un)constitutional operation of the local councils
- Presidential impeachment process

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Croatia – competences

- Assessment of constitutionality of laws and other regulations
- Constitutional complaint
- Observing the realization of constitutionality and legality
- Resolving jurisdictional disputes between legislative, executive and judicial branch
- Controlling the constitutionality of programs and activities of political parties
- Controlling the constitutionality and legality of the elections and the national referendum and the electoral disputes

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Croatia – CC



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Review of constitutionality of laws and other regulations

Abstract review of legal norms

-NO actio popularis
- initiative by 'highest state organs' – next slide!

Concrete review of legal norms

Judge

Result of the procedure – annulment

Review of constitutionality of laws and other regulations

- 1/5 of MPs
- Committee of the Parliament
- Pres of the Rep
- Government
- Ombudsman
- Local governments
-(restricted)

Legal or natural persons

BUT

Constitutional Court
is NOT bound

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Constitutional complaint

Admissability

- injury of HR's
- exhaustion of remedies
- meeting the deadline

NOT a real constitutional complaint

NOT about the decision

except

in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated

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Observing the realization of constitutionality and legality

Monitoring function

Report 2002

- on certain constitutional aspects of the military actions undertaken to liberate the Croatian territory during the Croatian War of Independence

Report 2005

- on the right to trial within a reasonable time
- reason: the Croatian judicial system suffered from inefficiency

Review of political parties

Art. 6.4. Const

‘Political parties which by their programs or violent activities aim to demolish the free democratic order endanger the existence of the Republic of Croatia are unconstitutional. The decision on unconstitutionality shall be made by the Constitutional Court of the Republic of Croatia.

Art. 39. Const

‘Any call for or incitement to war, or resort to violence, national, racial or religious hatred, or any form of intolerance shall be prohibited and punishable by law.’

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Review of political parties

Initiated by

- Parliament
- Government
- Supreme Court
- Attorney General
- ombudsman

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Electoral issues

The Constitutional Court:

- controls the constitutionality and legality of elections,
- controls the constitutionality and legality of the national referendum,
- decides on the electoral disputes (not in the competence of courts)

Electoral issues – elections

If electoral activities are not carried out in accordance to the Cons or laws

Lodged by

- political parties
- candidates
- 100 voters or more
- 5% of voters of the constituency affected

-Within 30 days from
the publication of results

Informing the people (media)

Annulment of electoral
activities and decisions

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Electoral issues – referenda

same rules applies AND

Examination of the

- content of question
- requirements of calling the referendum

Electoral issues – electoral dispute

Initiated by

- political parties
- candidates
- 100 voters or more
- 5% of voters of the constituency affected

**appeal
against**

the ruling of the
competent electoral
commission on
the protection of
electoral right



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Thank you for your attention!