



SUNICOP

EUROPEAN CONSTITUTIONAL LAW

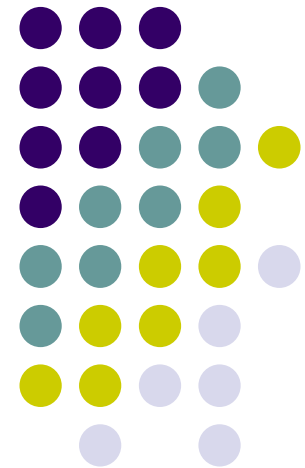


SUNICOP

Development of the Hungarian Constitutionalism

*(Act XX of 1949 as amended in
1989/90)*

Constitution-making (2010/11)



Preliminary questions



- What is constitution-making?
 - Constitution-making power (Who? How? What? Limits?)
 - Types of constitution-making (When?)
 - Elaboration (Concept and text)
- Functions of Constitution
 - Integrate society, creating consent
 - Frame for political decision making
 - Constitute and limit the power
 - Civil rights and liberties
 - Legitimate the regime

Historic constitutional backgrounds



- Before 1st WW Hungary was a kingdom (from 1867: Austrian-Hungarian Monarchy)
- Between the 2 WWs: „kingdom without king” (St. Crown and theory)
- 1946-49 Republic (2nd, because the 1st was in 1848/49)
- 1949-1989 Peoples Republic, with socialist constitution, Soviet model
 - One-party system, dictatorship
 - Centralized state power, parliament was formal, no local governance, no real competitive elections
 - Socialist property system
 - Citizens’ rights were empty declarations
 - Constitution did not prevail, no Constitutional Court or constitutional review

Change of Regime (23 October 1989)





Political backgrounds

- Peaceful negotiations, legality
- Start: 1987, top: 1989 spring
- Bills: Constitutional Court, right to assembly, to association, to strike, to initiate referendum, to travel abroad; motion censure against Council of Ministers

Reform-socialists

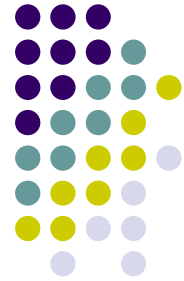
Opposition Round Table

Third Negotiating Party

National Round Table Negotiation



Total Amendment of Constitution Act XXXI. Of 1989



- Old structure, but new content
- republic, multy-party system, division of state powers, principles of democracy, rule of law
- Parliamentary system of government (Government responsible to parliament, neutral head of state)
- Const.Court with wide powers, Court of Auditors, Ombudsman
- Fundamental rights (inviolable, unalienable) protection and guaranties
- However, not full revision, declaring itself „temporary”



Finishing the work: 1990

- 1990 spring, free elections, 6-party coalition (conservative), liberals (and socialists) in opposition
- Political agreement between Hungarian Democrat Forum and Alliance of Free Democrats
- Creation of government (Parliament elects prime minister & vote on gov.programme)
- No acts with force of constitution (2/3 majority of all MPs)
- Election of the head of state
- Local self governments, free local elections



Amendments to the Const. (1991-2009)

- 1991-94 (Con. government 6 party coalition)
 - Judicial review of administrative decisions
 - Military protection
- 1994-1998 (Soc. Lib. government, HSP, AFD 2/3 majority)
 - Election of local governments
 - 4 level judicial system (instead of 3)
 - Nationwide referendum (detailed regulation)
- 1998-2002 (Con. government, YD, HDF, ISHP)
 - Accession to NATO, application of armed forces
- 2002-2009 (Soc. Lib. Governments, 4)
 - 2002 – EU accession
 - 2004 – no line infantry, professional army
 - 2007 – integration of police & border guard (Schengen)
 - Ratification of Lisbon Treaty
 - 2009 – allowance of MPs'

Constitutionality



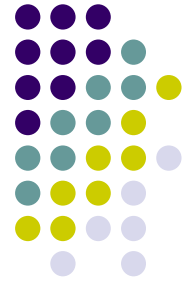
- How the norms of constitution do prevail in reality?
- Guarantees
 - Modern and stable constitution
 - Protection of constitution
 - Violation of constitution shall be declared, sanctioned
 - Remedies against the violation of constitution – constitutional review, Const.Court

Parliamentary elections 2010



- Political situation: economic world crisis, domestic tensions („cold civil war”), „prime minister lied 2006”, „social” referendum (against health system reform), minority government, „expert” government for crisis management – constitutional but unsuccessful governance
- Elections: mixed system, 176 individual constituencies with majority system, 20 territorial constituencies with PR system + national compensation list, 386 mandate
- Turn-out
 - YD-CDPP – 2.706.292 votes; 52,73%; 262 M
 - HSP – 990.428 votes, 19,3%;59 M
 - „Better” – 855.436 votes, 16,67%; 47 M
 - „Politics Can Be Different” (LMP) – greens - 383.876 votes, 7,48%, 16 M
 - In 2006 the governing coalition parties got 2.688.317 votes - Enough for simple majority

Government priorities after elections



- Modification of to constitution along ad-hoc political interests (restrictions and centralization of the media; changing the rules of const.justice elections, bill – restriction of the powers of the Const.Court)
- Economic policy (budget deficit 3% - EU)
 - No direct financial burdens on citizens (no economic restrictions)
 - Lower company tax, 1 key personal income tax
 - Extra taxes for banks, multinational companies
 - Extra tax for single incomes in public sphere (golden goodbye) – CC found it unconstitutional!
 - Private savings in Private Pension Fund redirected to state budget
- Society policy – system of national cooperation

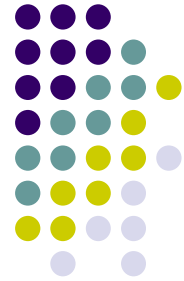
Permanent amendments to the Constitution



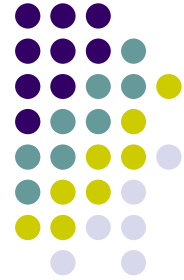
- Seats in the Parliament 200 (instead of 386)
- Position of deputy prime minister
- Appointment of Const.Court judges
- Freedom of press (new media legislation)
- Taxes – retroactive legislation (5 years)
- Limitations on right to be elected
- Limitation of the Const.Court's competence
- Judges shall retire at pension age
- President of the Const.Court shall be elected by the Parliament

Constitution making

Constitutional aspirations (1989-2009)



- 1994-1998 concept for a new const.
 - Parliamentary Constitutional Preparatory Committee (parity)
 - Social and professional debate (1996-1997)
 - Work finished in March 1998
 - 4/5 majority of MPs Const. 24. § (5) – not in force any more
- 2005-2006 consolidation of Const.
 - Ministry of Justice
 - Modernization of the 1998 text with regard to the practice of Const.Court and European constitutional development
 - Starting point for const, making in the future



Constitution making 2010

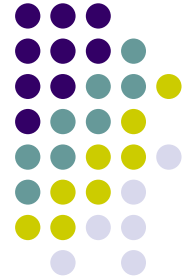
- Parliamentary Constitutional Preparatory Committee (no parity)
 - Suggestions of „society”
 - Concept in December
- Prime Minister’s const.making body
- For 2011 spring - text ; no referendum
- Preamble (St. Crown, God, Christianity)
- 2 opposition parties left the preparatory committee (because of the planned restriction of Const.Court powers)

Constitution making 2011



- Draft of the preparatory committee was put aside („support of the constitution making”)
- Factions may create own drafts
- 2 drafts were worked out (by governing party factions and by an independent MP)
- Bills were on the agenda on 14 March
- National consultation and debate in the parliament
- 18 April – final voting on Fundamental Law (without the votes of the opposition)
- 1 January 2012 – coming into force, „cardinal” laws

Venice Commission



- Opinions
 - On the request of the Hungarian government (March 2011) – 3 questions – no draft
 - On the request of the Monitoring Committee of the Parliamentary Assembly CE (June 2011)
- Concerns, critics
 - Procedure of drafting, deliberating and adopting
 - High number of cardinal (organic) laws – family legislation, social and taxation policy
 - The concept of ‘historical constitution’ as rule of interpretation
 - Wording of preamble
 - Provisions related to Hungarians living beyond the borders
 - Obligations with uncertain content
 - No explicit reference to abolition of death penalty
 - Limitation of the Const.Court’s competence
- Called the attention to the importance of international and European obligations (Articles Q and E)