



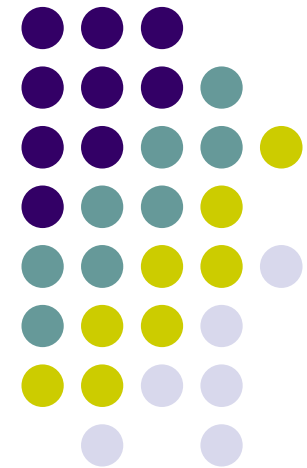
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EUROPEAN CONSTITUTIONAL LAW



SUNICOP

Constitutional Consequences of EU Membership in Hungary





Main areas

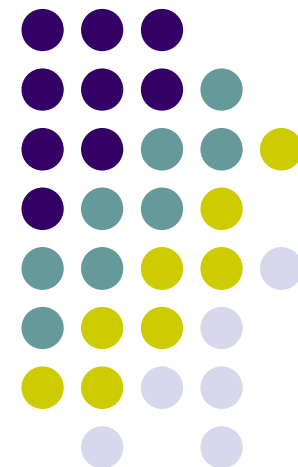
- Amendments of the Hungarian Constitution
- Role of Parliament, Government and Constitutional Court in EU affairs
- Right to vote and EP elections

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

Act LXI of 2002 – before accession

Act CLXVII of 2007 – because of Lisbon Treaty

Relevant Articles of the new Fundamental Law





Introduction

- Hungarian Republic [Hungary] under the Constitution in force [Fundamental Law] is
 - an independent, democratic state governed by the rule of law [Art. 2(1)] [Art. B(1)]
 - a parliamentary democracy with multi-party system and mixed electoral system
- Human rights are guaranteed [Art. 8 and Chapter XII] [Chapter on Freedom and Responsibility]
- Constitution can be amended with 2/3 majority of the MPs [Art. 24(3)] [Art. S(2)]

Significance, preparation of 2002 amendment



- 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



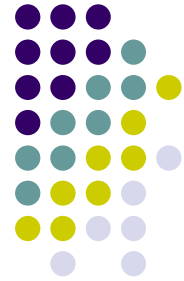
- Exercising constitutional powers
 - jointly (with other Member States)
 - by the EU institutions
- aim and limits of „conferral”
- Procedure: Parliament, international treaty, 2/3 majority of all MP's
- NO enough guarantees for safeguarding national identity



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 objective: § 6 par. (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.*
- 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 EU-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

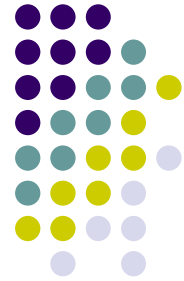
- For the ratification of Lisbon Treaty
- Art. 57(4) of Constitution – principle of ‘*nullum crimen sine lege*’
- Authorization for criminal cooperation under the area of freedom, security and justice

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.

Fundamental Law



Article E

- (1) In order to enhance the liberty, prosperity and security of European nations, Hungary shall contribute to the creation of European unity.
- (2) With a view to participating in the European Union as a member state, Hungary may exercise some of its competences arising from the Fundamental Law **jointly with other member states through the institutions** of the European Union under an international agreement, to the extent required for the exercise of the rights and the fulfilment of the obligations arising from the Founding Treaties.
- (3) **The law of the European Union may stipulate a generally binding rule of conduct subject to the conditions set out in Paragraph (2).**
- (4) The authorisation to recognise the binding nature of an international agreement referred to in Paragraph (2) shall require a two-thirds majority of the votes of the Members of Parliament.

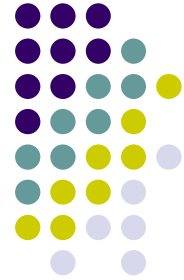
Fundamental Law



Article XXVIII

- (4) No person shall be found guilty or be punished for an act which, at the time when it was committed, was not an offence under the law of Hungary or of any other state by virtue of an international agreement or any legal act of the European Union.
- (5) Paragraph (4) shall not exclude the prosecution or conviction of any person for an act which was, at the time when it was committed, an offence according to the generally recognised rules of international law.
- (6) Except for extraordinary cases of legal remedy determined by law, no person shall be prosecuted or convicted for any offence for which he or she has already been acquitted or convicted by an effective court ruling, whether in Hungary or in any other jurisdiction as defined by international agreements or any legal act of the European Union.

Fundamental Law



Article XXIII

- (1) Every adult Hungarian citizen shall have the right to be a voter as well as a candidate in the elections of Members of Parliament, local representatives and mayors, and of members of the European Parliament.
- (2) Every adult citizen of any other member state of the European Union who is a resident of Hungary shall have the right to be a voter as well as a candidate in the elections of local representatives and mayors, and of members of the European Parliament.
- (4) The exercise or completeness of active suffrage may be subject to the requirement of residence in Hungary, and passive suffrage may be subject to further criteria under a cardinal Act.

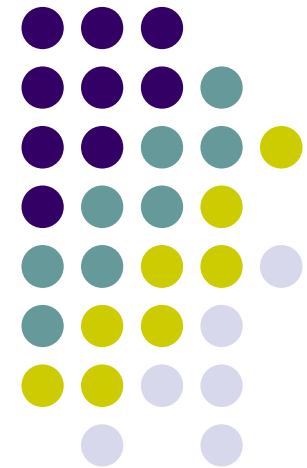
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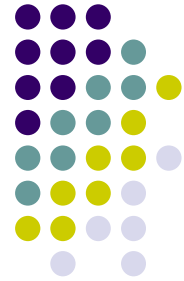
Article 19

- Parliament may ask the Government for information on its position to be adopted in the decision-making process of the European Union's institutions operating with the Government's participation, and may express its position about the draft on the agenda in the procedure. In the European Union's decision-making process, the Government shall take Parliament's position into consideration.

II. Role of Parliament, Government and Constitutional Court



Reconciliation (Parliament & Government)



- *Article 35/A.*
 - (1) In all matters in connection with European integration, the detailed rules governing the oversight powers of Parliament or its committees, the relationship between Parliament and the Government, and the **Government's obligation to disclose information** shall be enacted by a two-thirds vote of those Members of Parliament present.
 - (2) The Government **shall present** to Parliament the motions that are on the agenda of the decision-making mechanism of those institutions of the European Union that require government participation.

Fundamental Law



Article 19

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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/EU-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



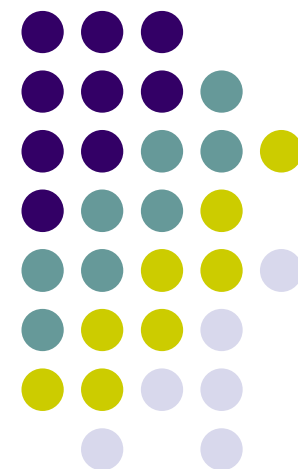
- EC / EU Treaties: not international law [under Art. 7(1)], but domestic law
- Conflict of EC and domestic law: not constitutional matter
- Omission to legislate on the basis of TEC/TEU: not constitutional matter
- Meaning of Art. 2/A: oblique words; it is the basis for EC law to prevail in Hungarian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

Lisbon-decision of Hungarian CC



- 143/2010. (VII. 14.) CC decision
- Motion: annulment of the Hungarian Act incorporating Treaty of Lisbon into the domestic legal system, because
 - it infringes sovereignty
 - its provisions are not precise (e.g. exclusive powers of the EU, withdrawal from the EU)
 - Art. 2/A gave authorisation just for the accession
- CC refused the motion, and ruled that
 - Provisions on withdrawal from the EU are clear
 - Ex ante constitutional control would have been useful (there was no motion for that); however, after coming into force an ex post norm-control is in contrast with loyal cooperation
 - The treaty does not create a super-state; it improves the principle of the rule of law
 - Hungary is henceforward independent Member State of the EU

III. EP elections in Hungary





Components of European right to vote

- Local elections: TEC art.19 par(1) / TFEU art. 22 par(1), Charter art.40, 94/80 EC directive
- EP elections: TEC art.19 par(2) / TFEU art. 22 par(2), Charter art.39, common rules of procedure TEC art.190 / TFEU art. 223, 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!*

