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Comparative constitutional law

Safeguarding the constitutions

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PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Hungary (Const)

- 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 (FundLaw)

- President of the Republic
- Government
- Ombudsman (only one) + „data protection authority”
- ~~Courts (Art. 50.1)~~
- ~~Public prosecutor~~
- Constitutional Court (Art 32/A)
- Art 2.3.
- ~~Art 70/K~~

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Hungary – competences (Const)

- Preventive review of legal norms
- Posterior review of legal norms (2010!)
- Constitutional Complaint
- Unconstitutional Omission on
Legislate
- Review of Conformity with Treaties
- Conflict of Competences
- Other Competences



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Hungary – competences (**FundLaw**)

- a) examine adopted but not published Acts for conformity with the Fundamental Law, (**preventive review**)
- b) review any piece of legislation applicable in a particular case for conformity with the Fundamental Law at the proposal of any judge, (**posterior review, concrete**)
- c) review any piece of **legislation** applied in a particular case for conformity with the Fundamental Law further to a **constitutional complaint**,
- d) review any **court ruling** for conformity with the Fundamental Law further to a **constitutional complaint**,

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Hungary – competences (FundLaw)

- e) examine any piece of legislation for conformity with the Fundamental Law at the request of the Government, one-fourth of the MP's or the Ombudsman, (**posterior review**)
- f) examine any piece of **legislation for conflict with any international agreement**, and
- g) exercise **further** responsibilities and competences determined in the Fundamental Law and a cardinal Act.

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Preventive review of legal norms (Const)

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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Preventive review (**FundLaw**)

(Chairman of the) Parliamnet sends the adopted Act to the CC

- on the motion of the proponent of the bill, Gov, Chairman of the Parl
- Part votes on this motion after the final vote

OR

Pres. of the Rep.

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Preventive review (**FundLaw**)

CC

- decision: urgency, within 30 days
- unconstitutionality: Parl – new debate

New procedure can be initiated (Parl, Pres of the Rep);

CC decision: urgency, within 10 days

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Preventive review (**FundLaw**)

If the PR sends the Act back to the Parl; it modifies
Parl/PR ask the same procedure, BUT! only concerning
the modified provisions, OR referring to any failure in the
procedure of adoption

If the PR sends the Act back to the Parl; it does not
modify

PR asks the same procedure, BUT! Only referring to any
failure in the procedure of adoption

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Posterior review of legal norms (Const)

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

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Posterior review (**FundLaw, Art 34(7)**)

As long as state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence set out in **Article 24(2)b-e)**, only review the **Acts on the State Budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes** for conformity with the Fundamental Law or annul the preceding Acts due to **violation of the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and with the rights related to Hungarian citizenship**. The Constitutional Court shall have the **unrestricted right** to annul the related Acts **for non-compliance with the Fundamental Law's procedural requirements** for the drafting and publication of such legislation.

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Posterior review (**FundLaw, Art 34(7)**)

Article 24(2)b-e)

Concrete posterior review

posterior review

Constitutional complain

+

Please remember: interpretative context!

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Constitutional Complaint (Const)

- 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 (Const)

- 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 (Const)

- 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

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Conflict of Competences and other competences (Const)

- 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 :

- repals a law
- repeals or annuls and other regulation

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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)
- Supreme Court
and other courts
- representative bodies of the units of local and regional self-government

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

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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

- President
- Parliament
- Government
- Supreme Court
- Attorney General
- Ombudsman
- Ministry responsible for the registration of political parties

BAN

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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**

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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 or 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

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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!