

# STRENGTHENING *UNIVERSITY* COOPERATION *OSIJEK – PÉCS*

## *SUNICOP*

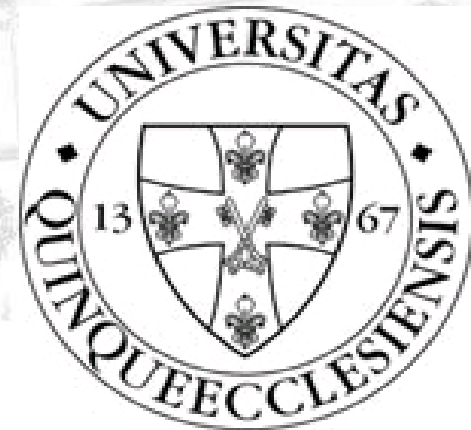


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**Hungary-Croatia**

IPA Cross-border Co-operation Programme





**Constitutional dialogue.  
Protection of constitutions - case  
studies: Hungary and Croatia**

Anita Blagojevic – Tímea Drinóczi

**CONTEMPORARY LEGAL CHALLENGES:**

**EU – HUNGARY – CROATIA**

**Osijek, 16 – 18 february 2012**

# Reason of the research

- **Roots: common law states**
  - counter-majoritarian difficulty
  - normative account of the role of judiciary
  - how to find the proper constitutional meaning
- **Applicability in civil law states ???**
  - „constitutional”
  - „dialogue”
- **We focus on:** understandings of constitutional dialogue; Hungary; Croatia

# Understandings of constitutional dialogue – common law approach

- **Christine Bateup**: **metaphore** (judiciary – political branches of government)
- **Roach Kent**: **expanded approach**
- **William N. Eskridge, Jr and John Ferejohn**: **focusing on legislative power and other agencies**
- **Cathrine Powell**: **dialogic federalism**
- **Bradley M. Bakker**: **„blogs“**

# Understandings of constitutional dialogue – more extended approach

- „**Constitutional dialogue**”
  - flexible system
  - **interactions between constitutional organs and other constitutional and non-constitutional actors** (political parties, trade unions, social organizations, individuals etc.) **in the following constitutional procedures:**
    - legislation
    - constitutional review by the constitutional courts or supreme courts
    - other procedures connected

# Understandings of constitutional dialogue – more extended approach

- **Regulatory level**

- national judiciary and national legislature
- quasi adjudicative (such as ombudsman) and international bodies, NGOs and national legislature;
- people, experts, interest groups etc. and national legislature

- **Judiciary level**

- between international and supranational and national judiciary;
- among national judiciaries, including the role of precedents

# Understandings of constitutional dialogue – more extended approach

- **Scope: realization of the constitution**

- find the proper constitutional meaning,
- maximize the effect of implementation of the functions of different state organs or independent bodies, mainly in the field of decision-making

- **At regulatory and judicial levels**

- solving counter-majoritarian difficulty in common law states
- fostering national quality legislation, mainly in human rights cases
- “changing ideas” among constitutional courts
- promoting common European human right practice
- assisting to use common democratic values

# Hungary

- **CC – Parliament:** retroactive legislation case; overruling the CC
- **Constitution-making power and the Venice Commission**
  - regulation of competences - No
  - actio popularis – Yes
  - constitutional complaint – Yes
  - curtailment of the competences – No
  - mandate of CC judges – Yes
  - president of the CC – interesting reasoning

# Croatia

## CC – Parliament

### **a) on the constitutional right to freedom of public assembly (July 2011):**

- holding of public assemblies within the circle of 100 m from the seat of the highest state bodies of state authority –

### **b) on dual voting rights for national minorities (July 2011):**

- participation in population with more than 1.5% - at least 3 seats;
- dual voting right at the elections for the Parliament

# Croatia

## Government – the Venice Commission

**Opinion concerning draft of the 2002  
Constitutional Act on the Rights of  
National Minorities:**

- a) positive aspects**
- b) negative aspects (dual voting right?)**

# Conclusion

**Contribution of constitutional dialogue to the protection of constitutions, democracy and the rule of law?**

- Croatia?
- Hungary?

