



Hungarian Helsinki Committee



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## NEW RULES ON THE CONSTITUTIONAL COURT

1. The Constitutional Court Act (CC Act) **was submitted to the Parliament by a parliamentary committee, violating the closing provision of the Fundamental Law** which sets out that all cardinal laws shall be submitted to the Parliament by the Government. As a result, the Government was **not obliged to conduct any professional or public consultation**, and, accordingly, no such debates took place.
2. The provisions of the CC Act on the nomination and election of judges, conflict of interest and term of office **do not guarantee the independence of Constitutional Court (CC) members**. Due to the composition of the parliamentary committee proposing judges and the majority required to elect them, the Fidesz-KDNP with its two-thirds **majority may nominate and elect members** of the CC without the support of any opposition party. The CC Act allows „**infinite membership**” for judges should a new member of the CC not be elected by the time the term of office of another justice ends. This rule allows political parties to keep judges with a favourable ideological background in their seats. Seven out of fifteen members were already elected under this new procedure; most of them held in the most controversial cases (e.g. mandatory retirement of judges) that the challenged rules were constitutional.
3. The Fundamental Law has preserved the **limitation of the CC’s competences as far as Acts of Parliament on central state budget and taxes are concerned**. The limitation was further extended by the Transitory Provisions (having constitutional status) making the transitory restriction last forever by stating that the exemption of certain acts from constitutional review is not only valid until the state debt falls below 50 % of the Gross Domestic Product, but that these acts will not be subject to full and comprehensive supervision by the CC, even when the budget situation has improved beyond that target.
4. The rules of ex ante constitutional review processes are dysfunctional, since **ex ante reviews** of Acts of Parliament **may be initiated only by those in favour of the given Act** (the Government, the proponent of the Act, or the Speaker of the House) and the President of the Republic. The previous president, Pál Schmitt, publicly promised not to exercise his right to request constitutional review of legal rules and did not do so during the term of his presidency.
5. **Ex post constitutional reviews may no longer be initiated as actio popularis**, and NGOs and human rights defenders are also excluded in this regard.
6. The fact that **citizens may turn to the CC only by way of constitutional complaints** decreases the overall level of objective fundamental rights protection. Additionally, petitioners face many obstacles: (i) **legal representation is mandatory** in processes before the CC and no legal aid is ensured; (ii) **petitioners who initiate procedures “abusively” are threatened with a high procedural fine** (cc. 1 700 EUR), which may deter people from turning to the CC. Furthermore, the CC is provided with **wide discretion in admitting constitutional complaints**.
7. Exclusion rules in concrete cases **do not ensure the impartiality of CC judges**.

8. The CC Act **terminated almost all of the ongoing CC procedures automatically** (1 600 in all), including those initiated by way of *actio popularis* as of 1 January 2012, **without an in-merit decision**, practically with a retroactive effect. Some of the petitions may be re-submitted as individual constitutional complaints, which will require petitioners to go through a lengthy legal procedure. However, **a considerable part of the petitions may not be re-submitted at all**, since the fundamental rights of citizens or legal entities filing these petitions are not affected directly or the provisions in question do not result in the violation of a concrete fundamental right.
9. **Some of the legal rules that were found unconstitutional by the CC were soon written directly into the Fundamental Law or its Transitory Provisions** (e.g. the right of the Chief Public Prosecutor and the Head of the National Judicial Office to designate the proceeding courts). This is an indirect limitation of the power of the CC, as the CC does not have the power to review the constitutionality of provisions contained by laws at the hierarchical level of Fundamental law.
10. The content of **some of the decisions of the CC were made public even before their official public communication, which made it possible for the Government to amend the laws which later were found to be in contradiction with the Constitution in “due time”**. The first clear sign of this was when the Government submitted the amendment to the Constitution restricting the power of the CC on the very day the CC annulled an Act related to budgetary matters. Later, even the reasoning of the decisions could be read before their official communication, which even the President of the CC found “extremely problematic.”