



Presentation of Tamás Sulyok,

President of the Constitutional Court of Hungary

Budapest, 20. 09. 2017

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# 1) Brief history of the Constitutional Court of Hungary (CC)

The CC started its work on the **1st of January 1990** and played an important role in **the transition to the new democratic system**

## - Main functions

- **guaranteeing the rule of law**
- **protecting individuals' fundamental rights**

(leading cases on capital punishment, abortion and euthanasia)

## - Main competences

- posterior (*ex post*) constitutional review (submitted by any individual)
- preliminary (*ex ante*) reviews (submitted by the President of Hungary)

**Before 2012** the most important competence of the CC was definitely the abstract posterior norm control, the so-called ***actio popularis***

- anybody was entitled to initiate *actio popularis* without any time limit and without being personally affected
- *actio popularis* played an important role in strengthening democracy, but it resulted in an unmanageable workload for the CC



# Crucial constitutional changes in Hungary

**On the 1st of January 2012, the new Fundamental Law entered into force**

- Under the Fundamental Law and the new Act on the CC, constitutional complaint procedures became the main competences of the CC.
- These procedures are the following:
  - complaints against a **legal provision applied in a judicial decision**
  - complaints against **legal norms which are directly applicable**
  - complaints against **judicial decisions**, the „real“ or „genuine“ complaint (*Urteilsverfassungsbeschwerde*)

# Positive changes

- **all three branches of power** are under constitutional control now
- the Fundamental Law must be **applied in all judicial procedures**
- complaint procedures can provide **direct constitutional remedy** for individuals
- the CC continues to safeguard democracy and the rule of law through its **norm control procedures**

## Restrictions

- the Fundamental Law imposed some **temporary and partial restrictions** on the competencies of the CC

## 2) Main competences of the CC – Bodies of the CC

1. Preliminary (*ex ante*) review of conformity with the Fundamental Law (**preliminary norm control**)
2. Posterior (*ex post*) review of conformity with the Fundamental Law (**posterior norm control**)
3. **Judicial initiative** for norm control in concrete cases
4. **Constitutional complaint**

# Three types of constitutional complaint





## First type - complaint against a legal provision applied in a judicial decision

- subject of review: a legal regulation that is applied in a specific judicial procedure or decision
- the CC has the **competence to annul the challenged legal norm**
- the deadline to lodge such complaint is **60 days** after receipt of the final judicial decision in the case

## Second type - complaint against legal norms which are directly applicable

- *actio popularis* was abolished
- new type of complaint was **introduced in 2011**
- **main criteria** for such complaint:
  - challenged law is applied directly (by state/administrative organs)
  - petitioner must be affected personally (organisations are not allowed to file a complaint in the name of others)
  - no judicial procedure is available
  - no court decision is necessary
- deadline to lodge a complaint: **180 days** from the entry into force of an Act

## Third type - complaint against a **judicial decision**

- „real“ or „genuine“ / „full“ constitutional complaint (*Urteilsverfassungsbeschwerde*)
- provides constitutional remedy **strictly on constitutional grounds** against judicial decisions
- the CC has the competence to **annul the challenged judicial decision**

The CC has issued several important rulings on real constitutional complaints so far.

# Main decision-making organs of the CC:

- **plenary / full session** (attended by all members)



- **five-member panels** (handling minor cases)

### 3) Members of the CC

- the CC consists of **fifteen judges** elected by the Parliament by qualified (**two-thirds**) **majority for a term of 12 years**
- the **President** is also elected by the Parliament from among the judges



- no re-election is permitted after 12 years in office (the old system allowed re-election for a second term of 9 years)

# **Eligibility criteria for Members**

## ***Members must be:***

- independent and subordinated only to the Law,
- Hungarian citizens without criminal record,
- between 45 and 70 years of age

## ***Members must have:***

- a degree in law,
- at least twenty years of experience in the field of law, and must be,
- law scholars of outstanding knowledge

**In November 2016, four new members and the President** of the Constitutional Court were elected by the Parliament.

- on the **basis of a political consensus** between the governing party and one of the opposition parties
- now all the 15 members attend the full sessions
- the current members **represent all branches of the legal profession**
- members are former court judges, experienced lawyers, university professors and law scholars

## **4) Landmark decisions of the CC**

### **As a result of ex post review:**

Decision 3/2016 on the fundamental rights of homeless persons

Decision 7/2017 on the limitation of fundamental rights in a local decree

Decision 13/2017 on the independence of the judiciary and the right to privacy

### **As a result of constitutional complaint procedures:**

Decision 3001/2016 on prohibition of discrimination

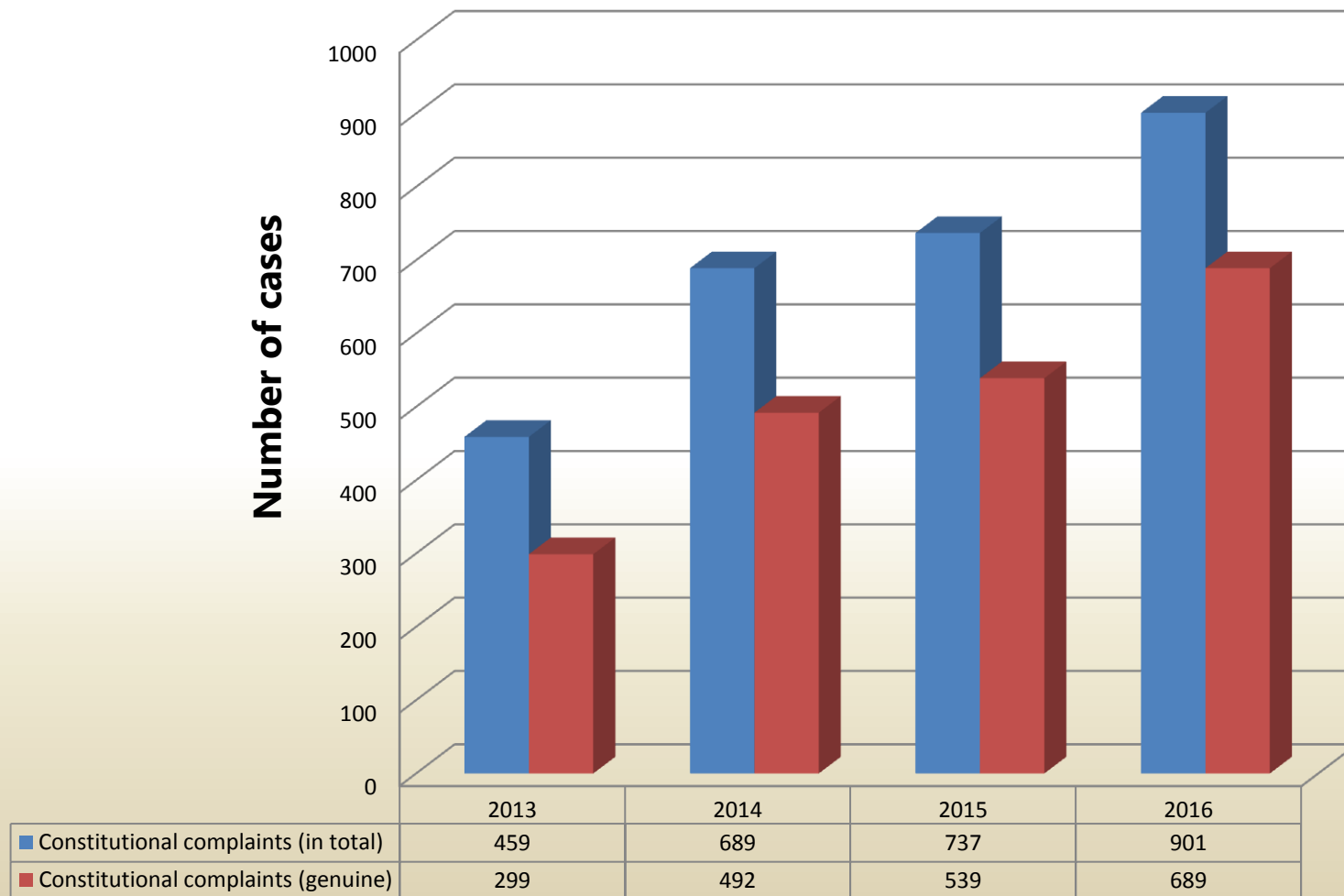
Decision 14/2016 on right to peaceful assembly



## 4) Statistics, figures

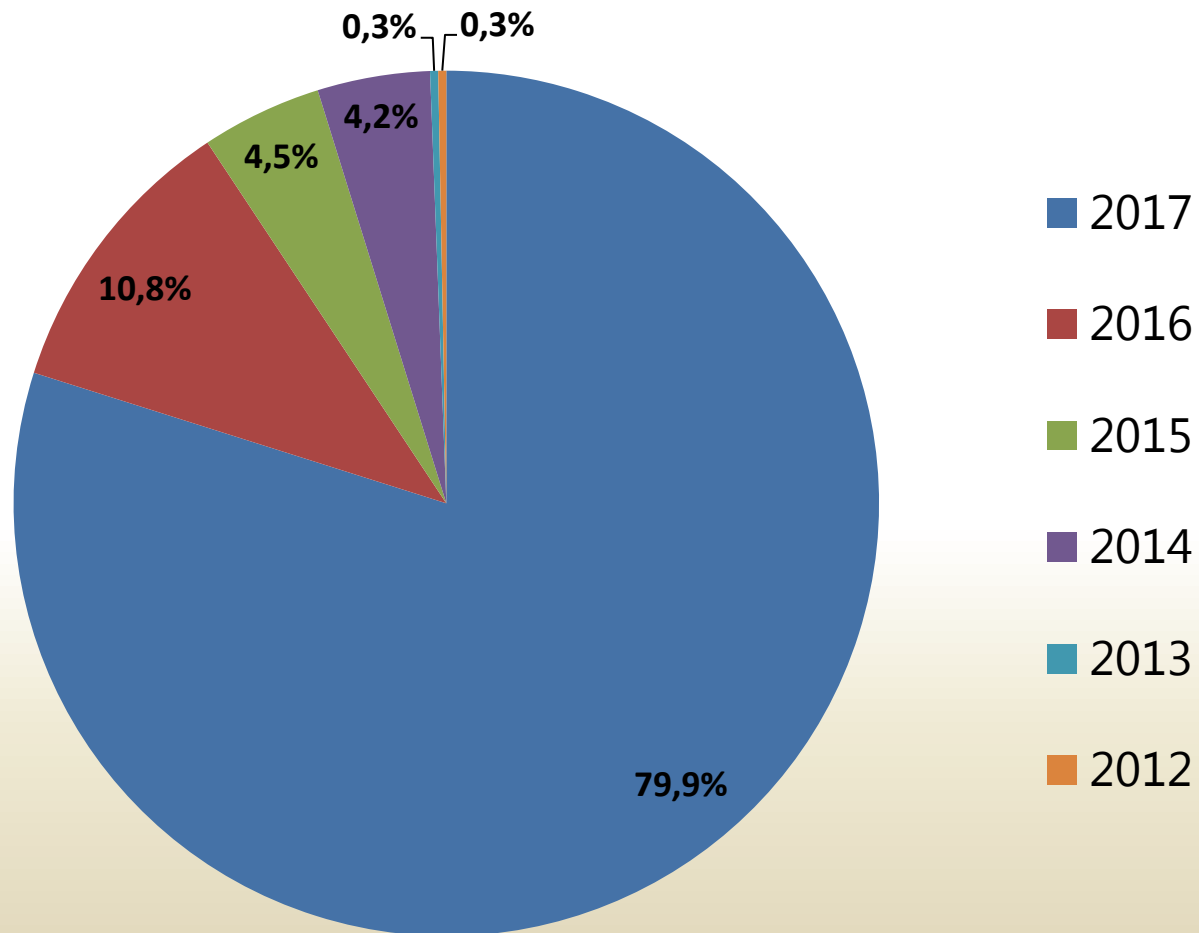
- the statistics of the CC have shown that the „genuine” or the **„real” complaint is the most common type** of complaint
- 689 of the 901 complaints submitted in 2016 were „real” or „genuine”
- in the first half of 2017 the CC received 387 genuine complaints
- in 2016 and 2017 the CC annulled court decisions in 10 and 5 cases respectively

## Number of constitutional complaints submitted in 2013-2016

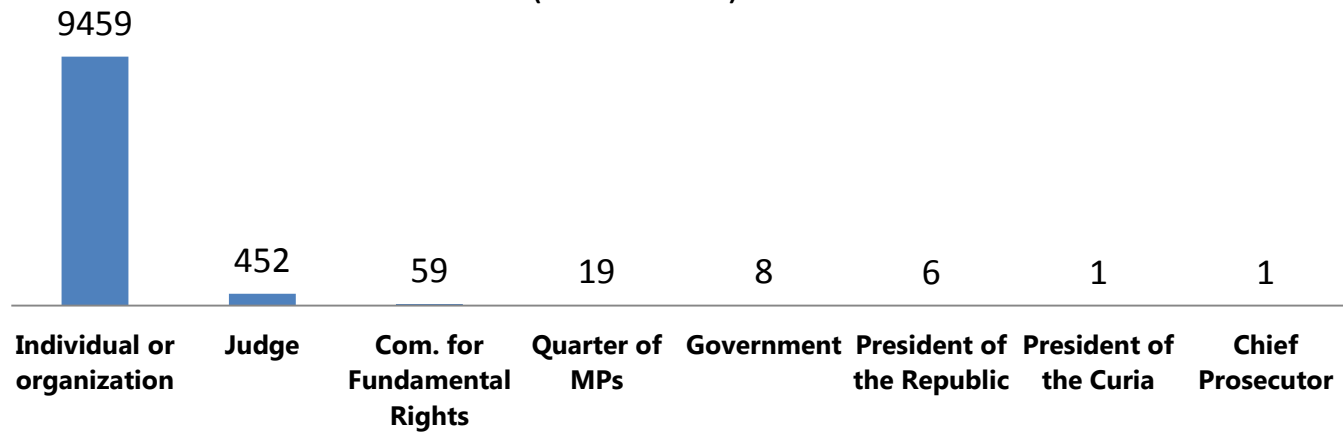


## Number of ongoing constitutional complaints admitted

(status: 30 June 2017)



## Number of cases based on the petitioner (2012-2017)



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