

Presentation of Tamás Sulyok, President of the Constitutional Court of Hungary

Introduction

Your Excellencies, Dear colleagues, Ladies and Gentlemen!

It is a great honour to be with you and I am very happy that you accepted my invitation to visit the Constitutional Court.

I believe that such events help us to understand each other better, because we can share our ideas not only on constitutional matters, but on other public matters / matters of common interest.

Today, I would like to deliver a short presentation on the history, the competences and the composition of the Hungarian Constitutional Court. I will also talk about some of our latest key decisions and present some statistics related to our work.

I have to point out that as in many other well-functioning democracies in the world, our institution acts as an effective 'safety net' protecting the fundamental rights of individuals and the fundamental values of the democratic state.

My presidential credo is to help the weak with all possible constitutional means against the abusive power of the strong. The fifteen judges of the Hungarian Constitutional Court dedicate themselves to ensuring that individuals / people can enjoy their fundamental rights in their daily lives.

The constitutional values that we examine and safeguard through our decisions are very broad. They range from the basic principles of the rule of law, the constitutional identity within the European Union, the right to fair trial and the freedom of press to the right to peaceful assembly.

Géza Ottlik, a Hungarian writer once wrote, 'the closer we get to each other, the better we get to know ourselves.' I believe this idea truly reflects our commitment and respect for each other at the Constitutional Court, and it can be the basis of international cooperation as well.

We consider international dialogue and multilateral exchange of opinions, ideas and experience in the field of judicial cooperation extremely important.

Your Excellencies, Dear colleagues, Ladies and Gentlemen!

I do very much hope that you find our meeting interesting and fruitful.

2. Dia

In my presentation I will focus on five major issues.

As you can see on the slide I have divided my presentation into five parts.

In the first part I will say a few words about the history of the Constitutional Court.

Then, I will outline the competences of the Court and introduce the decision-making bodies.

Next, I will tell you about the members of the Court and the eligibility criteria for judges.

In the fourth part I will summarize some landmark decisions.

Finally, I would like to show you some charts which illustrate our work in figures.

3. Dia – Brief history of the CC

Firstly, I shall briefly outline the history of the Hungarian Constitutional Court. I am sure you will understand that as most Hungarians, I would never miss the chance to talk about our history.

The old Constitution and the old Act on the Constitutional Court were adopted in 1989 by the last Socialist Parliament. The creation of the Constitutional Court was the result of a long political debate during the transition period.

The Constitutional Court started its work on the 1st of January 1990. The Act conferred broad competences on the Constitutional Court to create a political balance between the different branches of power.

The main competences of the Constitutional Court were the norm control procedures, most importantly the posterior (ex post) procedure, the so- called "*actio popularis*".

4. Dia

It basically allowed anyone to initiate such procedure before the Constitutional Court without any time limit or without being personally affected, and the scope of the constitutional review was unlimited.

During the transition period, it was undoubtedly very useful, positive and important, because it provided support to the Constitutional Court in its decisions to establish the framework for a democratic state and the rule of law in Hungary. On the other hand, it resulted in an unmanageable workload for the Constitutional Court. Thus, it was necessary to close the floodgates.

5. Dia

I would like to emphasize here that constitutional reforms were necessary. On the 1st of January 2012, the Fundamental Law entered into force, and in 2011 the new Act on the Constitutional Court was also adopted by the Parliament.

6. Dia

The new system reinforced the individual level of protection instead of the abstract norm control. It also extended the constitutional review to judicial decisions.

I would like to point out here that all three branches of government are under constitutional control now.

The essential /main principle of the new system is that the Fundamental Law must be applied in all judicial procedures.

Moreover, the complaint procedures have increased the efficiency of human rights protection in Hungary, which is unquestionably a very positive development.

Thanks to the constitutional complaint procedures, the Constitutional Court can provide DIRECT constitutional remedy for individuals.

However, I also have to mention that the Fundamental Law imposed some temporary restrictions on the competences of the Constitutional Court.

One such restriction is that as long as the level of public debts exceeds half of the Gross Domestic Product, the Constitutional Court may only review the Acts on the central budget in connection with the rights to life and human dignity, the protection of personal data, freedom of thought, conscience and religion, - if these fundamental rights are violated.

We do very much hope that in the near future the Constitutional Court will be able to perform its duties without any limitation.

7-8. Dia – Main competences of the CC – Bodies of the CC

On the slide we have highlighted the most important competences of the Court which are the following:

- the preliminary norm control, that is, the *Ex ante* review of conformity with the Fundamental Law. It is also called the presidential veto, since the President of Hungary is entitled to submit such petition for norm control.
- the posterior norm control, that is, *the Ex post* review of conformity with the Fundamental Law, which allows the Constitutional Court to guard the democratic principles. In the new system only a few petitioners have the right to submit it, for example, the Commissioner for Fundamental Rights
- the judicial initiative for norm control in concrete cases. Judges have a very important role in the constitutional system. Since the Fundamental Law entered into force, we have dealt with 452 judicial initiatives.

- Finally, we have the constitutional complaint procedures which became the most important tasks for the Constitutional Court.

There are 3 types, but there are common rules that must be applied in all cases.

A complaint can be submitted by a person or an organization affected, provided that

- the person or the organization is directly and personally affected in the concrete case,
- their rights enshrined in the Fundamental Law were violated, and
- the possibilities for legal remedy have already been exhausted or there was no remedy granted at all.

9. Dia

The first type of complaint can be lodged against an applied legal norm in a concrete judicial decision or procedure.

The review is strictly restricted to examining the conformity of the regulation applied with the Fundamental Law.

In these cases, the Constitutional Court has the competence to annul the challenged norm.

10. Dia

In the second case, after *actio popularis* was abolished a new (the so- called "direct" or "full") complaint was introduced, which requires the petitioners to prove being personally affected by the application of the norm in question.

In the case of direct complaints, the challenged norm is directly applicable and is imposed by the state or an administrative organ. It is noteworthy that no court decision is necessary for petitioners to turn to the Constitutional Court in this case.

11. Dia

Finally, there is, the “real” or “genuine” complaint, when the subject of the procedure is a concrete judicial decision.

The model was the German system, the famous *Urteilsverfassungsbeschwerde*.

This kind of complaint enables the Constitutional Court to provide constitutional remedy – strictly on constitutional grounds – against judicial decisions. It is very important to emphasize here that the Constitutional Court is not a 4th (fourth) instance court, and it does not decide on the merits of the case.

Under the new Act, the Constitutional Court has the power to annul the challenged judicial decision if the decision on the merits of the case is contrary to the Fundamental Law and violates the petitioner’s fundamental rights.

12. Dia – Main decision-making organs of the CC

The main body is the plenary session which all the Members attend. In these sessions we usually discuss the most important cases. I would like to note here that, for example, only the plenary session has the competence to annul Acts that are contrary to the Fundamental Law.

I also have to emphasize that the Constitutional Court takes its decisions by simple majority.

The Constitutional Court may also sit in panels and we have three panels with five Judges sitting on each panel. They deal with the less significant cases, for example, they mostly make decisions on the admissibility of constitutional complaints. The system is very similar to that of the Federal Constitutional Court of Germany.

Both in Germany and Hungary, the Judges are entitled to add their dissenting opinion or concurring reasoning to the decisions.

13. Dia – Members of the CC

The Constitutional Court 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.

The most important new principle in the new constitutional system is that the judges' term in office is limited. Neither the Fundamental Law nor the new Act on the Constitutional Court allows re-election.

This is a crucial change since the old Constitution allowed the re-election of judges for another term of 9 years. My firm belief is that this restriction strengthens the independence of the institution.

14. Dia

The law stipulates strict eligibility criteria for the new Members of the Constitutional Court.

First of all, they have to be independent, they must be Hungarian citizens and cannot have any previous criminal conviction. A further requirement is a law degree. Candidates must possess an outstanding theoretical knowledge of law or have at least twenty years of professional work experience in the field of law.

As you can see, there are also certain age criteria for the new judges.

15. Dia

I would like to point out that in November 2016, four new Members and the President of the Constitutional Court were elected by the Parliament.

It is particularly important that they were elected on the basis of a political consensus between the governing party and one of the opposition parties.

As a result of the elections in 2016, now all the 15 members attend the plenary sessions.

The current Members are from various legal professions, all branches of the legal profession are represented among the constitutional judges.

The Constitutional Court consists of former court judges, experienced lawyers and university professors / law scholars.

My firm belief is that such diversity enables the Court to deliver sound and well-reasoned decisions.

16. Dia – Landmark decisions of the Constitutional Court

Now, your excellencies, ladies and gentlemen, I will say some words about our latest, most important decisions.

The following decisions were accepted in a posterior norm control procedure.

The first is decision no. 3 of 2016, concerning the fundamental rights of homeless persons.

On the motion of the Commissioner for Fundamental Rights, the Constitutional Court formulated a constitutional requirement in accordance with Article XXII paragraph (3) of the Fundamental Law.

The relevant article of the Fundamental Law states that “a local government decree may provide that staying in public places as a habitual dwelling is illegal”.

The Constitutional Court stated in its decision that such a local decree, in our case, the decree adopted by the city of *Kaposvár* shall not be applied to homeless persons.

Another is decision no. 7 of 2017 on the limitation of fundamental rights also concerns a local decree.

Also on the motion of the Commissioner for Fundamental Rights, the Constitutional Court found unconstitutional and annulled a local decree of *Ásothalom* local municipality.

The local decree banned the activity of muezzin, the wearing of burka in public and any kind of so-called 'propaganda' which questions the institution of marriage as a relationship between a man and a woman.

Finally, I will mention decision no. 13 of 2017 regarding the independence of the judiciary and the right to privacy.

The President of the Curia initiated this procedure.

The Constitutional Court found certain provisions of the Act on national security unconstitutional as they infringed/violated the independence of the judiciary and the right to privacy.

The Constitutional Court acknowledged that national security is a serious duty of the state, however, the provisions examined by the Constitutional Court might have enabled abuse of power.

Now, let me show you some decisions that have been made through a complaint procedure.

Decision no. 3001 of 2016 was about the prohibition of discrimination.

The background of the case is the following: A discotheque applied different rules on the entry for women and men. The Constitutional Court stated that the prohibition of discrimination must be applied in the private sector (this is what the Germans call "Drittwirkung"), especially when the service provided is open to the public.

The Constitutional Court also advocated that social equality is a constitutional value and the prohibition of discrimination safeguards this basic value, that is, the right to human dignity.

In decision no. 14 of 2016, the Constitutional Court had to decide a case regarding the right to peaceful assembly.

In this case the police banned an assembly and the Administrative Court approved the police decision. The Constitutional Court found the judgment

challenged by the complainant contrary to the Fundamental Law as it violated the petitioners' right to peaceful assembly.

The Constitutional Court stated that the reasons for the ban by the police were not clear; and later the Administrative Court failed to consider the provisions of the Fundamental Law when it made its judgment.

This decision of the Constitutional Court demonstrated the significance of the right to peaceful assembly in a democracy.

Another landmark decision is no. 16 of 2016 on the freedom of press.

In this case the freedom of press and the freedom of expression were the subject of the complaint, in particular the publication of pictures and videos that clearly showed the faces of the members of the police force.

The Constitutional Court held that the press has the right to show the faces of the members of the police in action, even without their consent.

17. Dia

Last but not least, let me inform you about the work of the Constitutional Court in terms of figures.

The statistical figures clearly demonstrate that the „genuine” or the „real” complaint is the most popular / common type of complaint.

As you can see, in 2016, 901 complaints were lodged, of which 689 were „real” or „genuine” complaints. In the first half of 2017, the Constitutional Court received altogether 387 genuine complaints.

In 2016, we annulled judicial decisions in 10 cases. This year the Court has annulled 5 court decisions so far.

18. Dia (number of complaints)

The introduction of the genuine (real) constitutional complaint has been successful. Since 2012, the number of genuine constitutional complaints has increased

significantly. In 2016, more than twice as many complaints were submitted as in 2013. As a clear sign of the confidence in the Constitutional Court, more and more people take the opportunity to file an application to the Constitutional Court in their own personal cases.

19. Dia (backlog)

The Constitutional Court of Hungary has no significant backlog. The proportion of constitutional complaint cases filed earlier than 2014 is less than one per cent in the first half of 2017.

20. Dia (petitioner)

It is also noteworthy, that since the Fundamental Law entered into force, 9500 individuals or organizations have turned to the Constitutional Court. The length of the evaluation of the cases is approximately half a year on average.

Farewell

Your Excellencies, dear colleagues, ladies and gentleman!

I do hope that you have found my presentation useful and I also hope that this very first meeting is just the beginning of our future cooperation, and of a beautiful friendship as the often quoted saying goes from the closing scene of the famous film 'Casablanca'..

The National Credo of the Fundamental Law states that 'We respect the freedom and cultures of other peoples, and shall strive to cooperate with every nation of the world'.

I am more than convinced that this is an important message which will help us to understand and respect each other although our views and beliefs may be different.

I am sure that in the end we will be able to find a common platform based on our shared values. That is the reason why I am encouraging and urging an intensive

dialogue with our international partners on those issues that concern all of us. This way we can also get to know ourselves a little bit better.

I have always been an honest man and therefore I can honestly say again that we are open to any kind of dialogue.

Thank you very much for your attention.

Budapest, 20. 09. 2017