

THE CONSTITUTIONAL COURT
OF HUNGARY





The basic rules of the function and of the role of the Constitutional Court are contained in the Fundamental Law, the main organisational and procedural rules are contained by the Act n. CLI. of 2011. on the Constitutional Court. The detailed provisions of the procedures are regulated by the Rules of procedure.



The Constitutional Court consists of fifteen judges. The President and the Members of the Constitutional Court are elected by the Parliament with qualified majority for a term of twelve years. Lawyers of outstanding knowledge (for example university professors) or have at least twenty years of professional work experience in the field of law (for example as lawyer or as judge) may become Judges of the Constitutional Court. The President of the Constitutional Court is elected by Parliament from amongst the Judges of the Constitutional Court, for the term of his mandate. The President of the Court has administrative, coordinative and representative role, without prejudice to the independence of the Judges of the Court. The vice-president is elected by the Judges of the Court, upon proposal of the President of the Constitutional Court. Since 1990 Dr. László Sólyom, Dr. János Németh, Dr. András Holló, Dr. Mihály Bihari and Dr. Péter Paczolay has held the presidency.

The Constitutional Court makes its decisions in plenary sessions, in five member panels and as single judge. It is the Plenary Session's competence to decide on the constitutionality of Acts and in other significant cases.



The Constitutional Court is the principal organ for the protection of the Fundamental Law. The tasks of the Constitutional Court are to protect the democratic State governed by the rule of law, the constitutional order and the rights guaranteed in the Fundamental Law; to safeguard the inner coherence of the legal system and to enforce the principle of the division of powers.

Judges of the Constitutional Court are assisted by a staff of lawyers and secretaries. The organisational, operational, administrative and preparatory tasks are performed by the Office of the Constitutional Court. The Office is led by the Secretary General who is elected by the Plenary Session upon proposal of the President. Since 1 January 2011 the Secretary General is Dr. Botond Bitskey. The General Secretariat performs the preparatory duties (filtering, analysing the petitions and calling upon the petitioners to duly complete the petition).



HISTORY OF THE CONSTITUTIONAL COURT

In January 1989 the Parliament decided on the establishment of a constitutional court, however, its structure and competences were formed later on by the trilateral political negotiations. The Act XXXII of 1989 on the Constitutional Court entered into force on 30 October. On 23 November, 1989 the Parliament elected the first five judges of the Court, which could commence its operation on 1 January 1990. After June 1990, the Constitutional Court consisted of ten judges and between 1994 and 2011 the number of the judges was eleven. Since June 2011 the Constitutional Court has fifteen members.

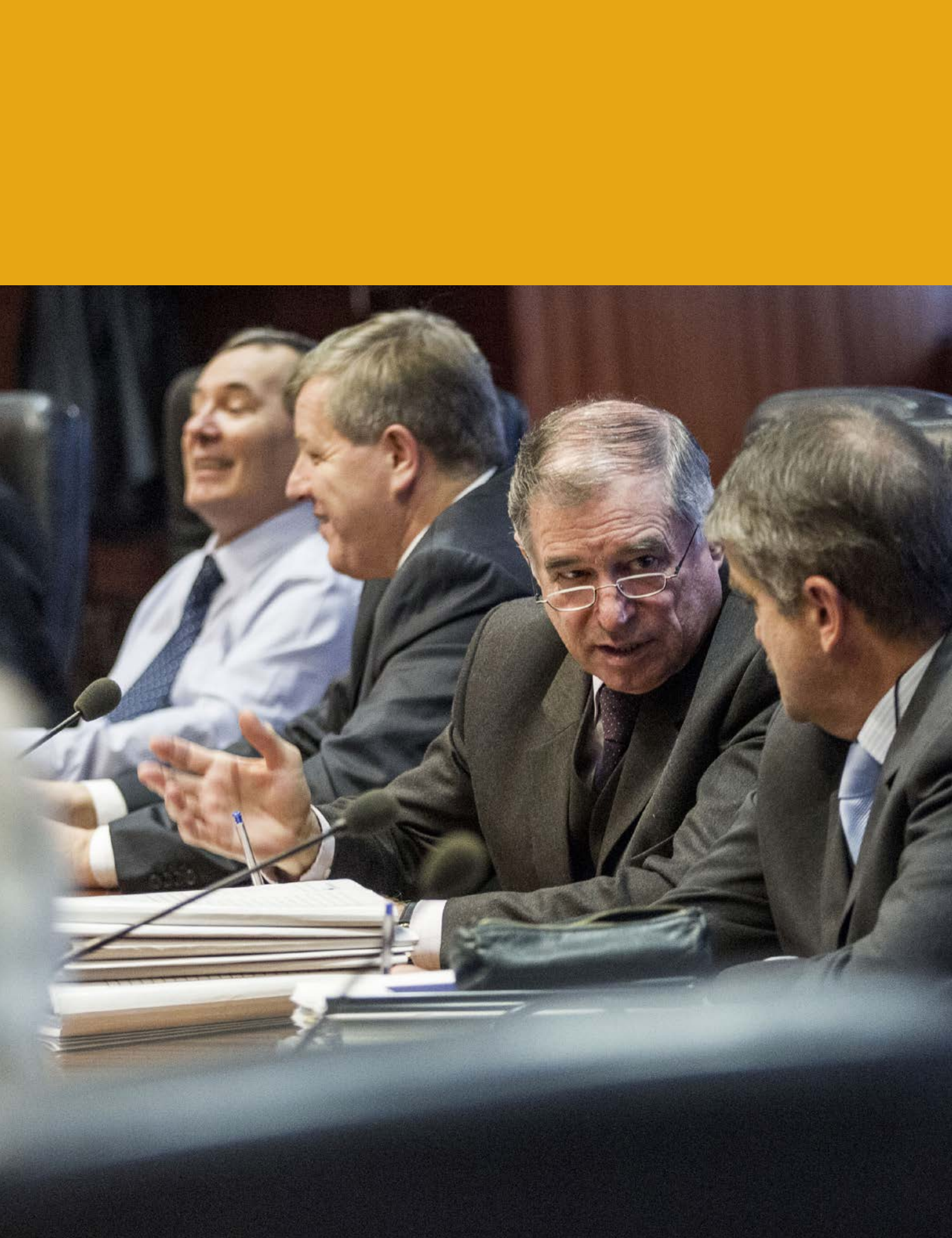
According to the previous Constitution and the previous Act on the Constitutional Court, anyone was entitled to initiate the posterior (abstract) constitutional review of legal provisions at the Constitutional Court, the major decisions were taken in this competence (for example the abolition of capital punishment, the decisions on abortion and euthanasia). At the same time, the Constitutional Court did not have the competence to examine the constitutionality of concrete cases (judicial decisions), the constitutional complaint could be only initiated when an unconstitutional legal provision was applied in the concrete judicial case of the petitioner.

In January 2000 the Court held a scientific conference in occasion of the tenth anniversary of its operation.

On 23 November 2009 the Constitutional Court celebrated twenty years of operation. The Court organised an international conference to celebrate the anniversary, inviting the representatives of foreign courts.

The 1st January 2012 the new constitution, the Fundamental Law entered into force. The main rules on the Constitutional Court are in Article 24. The legal framework of the operation is established by Act CL. of 2011 on the Constitutional Court (hereinafter: ACC).

The new regulation changed not only the competence of the Court, but also the rules concerning the petitioners and a partially new organizational structure was formed after this.



EX ANTE REVIEW OF CONFORMITY WITH THE FUNDAMENTAL LAW (PRELIMINARY NORM CONTROL)

Based on a petition containing an explicit request submitted by an authorised person (the Parliament – upon the motion of the proponent of the bill, the Government or the President of the Parliament), the Constitutional Court examines for conformity with the Fundamental Law the provisions of adopted but not yet promulgated Acts referred to in the petition. The Parliament decides on the petition after the final vote on the bill.

Beside this, when the President considers that the adopted statute is contrary to the Fundamental Law, the President of the Republic refers it to the Court instead of signing it (constitutional veto). If the Constitutional Court declares the unconstitutionality of the statute, it can not be promulgated.

If the President of the Republic finds that any procedural requirement laid down in the Fundamental Law with respect to the adoption of the Fundamental Law or the amendment of the Fundamental Law has not been met, he or she shall request the Constitutional Court to examine the issue. Should the examination by the Constitutional Court verify the violation of such requirements, the amendment of the Fundamental Law can not be promulgated.

The President of the Republic may also request the Constitutional Court to carry out a preliminary review of the conformity of the international treaty or of its provisions with the



THE COMPETENCES OF THE CONSTITUTIONAL COURT

Fundamental Law. If the Constitutional Court declares that a provision of an international treaty is contrary to the Fundamental Law, the binding force of the international treaty shall not be recognised until the States or other legal entities of international law having the right to conclude treaties under international law eliminate such conflict with the Fundamental Law or until Hungary, by making a reservation – if making a reservation is permitted by the international treaty – or by way of another legal instrument recognised in international law eliminates the conflict between the international treaty and the Fundamental Law.

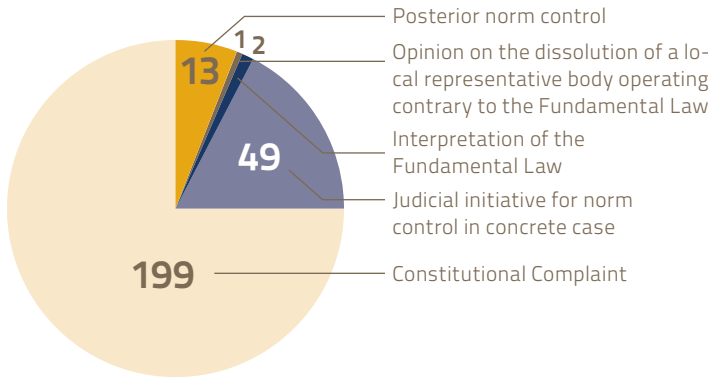
The Government, the President of the Parliament and the proposer of the decision may request the Constitutional Court to carry out the preliminary review of the amendments of the Rules of Procedure of the Parliament. If the Constitutional Court declares that a provision or the amendment of the Rules of Procedure of the Parliament is contrary to the Fundamental Law, it can not be promulgated.



EX POST REVIEW OF CONFORMITY WITH THE FUNDAMENTAL LAW (POSTERIOR NORM CONTROL)

The rules regarding the posterior review have been significantly changed by the rules of the Fundamental Law. Meanwhile until 31 December 2011 anyone, without legal interest could submit a petition asking the constitutional review of a legal norm, according to the new rules, beginning from 1 January 2012 such proceeding can be initiated only by the Government, by one-quarter of the Members of Parliament, the Commissioner of Fundamental Rights (ombudsman), the President of the Curia or by the the General Prosecutor.

If, upon the petition, the challenged law is found to be contrary to the Fundamental Law, the Court annuls it.



NUMBER OF ASSIGNED CASES TO JUDGES ACCORDING TO TYPES OF PROCEDURES (2013)

JUDICIAL INITIATIVE FOR NORM CONTROL IN CONCRETE CASES

In the frame of the competence of posterior norm control the Constitutional Court performs an abstract norm control, and the decision usually does not affect the concrete case which was the base of the petition. The situation is different if a judge, in the course of the adjudication of a concrete case in progress, is bound to apply a legal regulation that he or she perceives to be contrary to the Fundamental Law, or which has already been declared to be contrary to the Fundamental Law by the Constitutional Court. In this case the judge is bound to suspend the judicial proceedings and to submit a petition to the Constitutional Court for the constitutional review.

In this case the Constitutional Court may establish that the legal regulation or a provision thereof is contrary to the Fundamental Law and may exclude the application thereof in the concrete case or even with a general scope.

The Constitutional Court has to review the constitutionality of the norm to be applied out of turn, and has to adopt its decision no later than 90 days.



CONSTITUTIONAL COMPLAINT

Constitutional complaints may be submitted to the Constitutional court mainly when a right guaranteed by the Fundamental Law of the petitioner is violated by a judicial decision. Exceptionally, the constitutional complaint procedure may be initiated also when due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights are violated directly, without a judicial decision. The constitutional complaint therefore is not a claim for substantial judicial review, the Constitutional Court is not a further forum for legal remedy in the concrete case. The Constitutional Court admits the complaint only if a conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. If there are no such issues risen by the case, the Court declares refuses the admission of the case.

According to the new rules, there are three types of proceedings based on constitutional complaint.

The first type of the constitutional complaint proceedings is based on para (1) Section 26 of the ACC. In this procedure a person or organisation affected by a concrete case may submit a constitutional complaint, if their fundamental rights have been injured by the application of an unconstitutional norm. If the challenged norm is found unconstitutional, the Court annuls it.



The second type of the constitutional complaints is based on para (2) of Section 26 of the ACC. According to this, the Constitutional Court proceedings may also be initiated if due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy. In case the norm is contrary to the Fundamental Law, the Court annuls it.

With the third type of the constitutional complaints, based on Section 27 of the ACC, the petitioner does not challenge a norm, but a judicial decision that is contrary to the Fundamental Law if the decision made regarding the merits of the case or other decision terminating the judicial proceedings violates their rights laid down in the Fundamental Law. When the Court establishes that the judicial decision is contrary to the Fundamental Law, the Court annuls the decision.

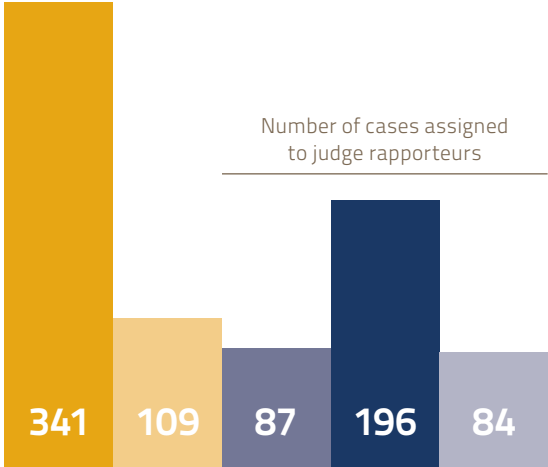
When a constitutional complaint is successful, it is the Curia who establishes the procedural means in civil cases. The Curia is obliged to take into consideration the content of the decision of the Constitutional Court and the concerning procedural rules. If the Constitutional Court annuls a penal verdict, the criminal procedure has to be repeated.



EXAMINATION OF CONFLICTS WITH INTERNATIONAL TREATIES

According to the ACC it is possible to carry out an examination whether a Hungarian legal norm is conform to the provisions of an international treaty. The procedure can be initiated by one-quarter of the Members of Parliament, the Government, the Commissioner for Fundamental Rights, the President of the Curia, the General Prosecutor, the judges in proceedings if, in the course of the adjudication of a concrete case, they are bound to apply a legal regulation that they perceive to be contrary to an international treaty.

Should the Constitutional Court declare that the legal regulation is contrary to an international treaty, it annuls partially or entirely the legal regulation, and invites the Government or the law-maker to take the necessary measures to resolve the conflict within the time-limit set.



- Cases concluded in the course of the preliminary procedure of the Secretary General
- Cases decided by single judge
- Cases concluded by unification
- Number of concluded cases without examination in merits (rejection, termination, transferring order)
- Number of cases decided after examination in merits

NUMBER OF CONCLUDED CASES ACCORDING TO THE CONTENT OF THE DECISIONS (2013)

INTERPRETATION OF PROVISIONS OF THE FUNDAMENTAL LAW

On the petition of Parliament or its standing committee, the President of the Republic or the Government, the Constitutional Court gives an interpretation of the provisions of the Fundamental Law regarding a certain constitutional issue, provided that the interpretation can be directly deduced from the Fundamental Law.



FURTHER COMPETENCES

Parliamentary resolutions ordering a referendum or dismissing the ordering of a referendum to be obligatorily ordered may be reviewed by the Constitutional Court.

The concerned organisation performing religious activity may initiate the examination by the Constitutional Court of the decision of the Parliament refusing the acknowledgment as a Church.

Parliament may dissolve a local government or nationality self-government when operating contrary to the Fundamental Law. Before, on the Government’s motion, the Constitutional Court shall express an opinion in principle on the case.

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| Number decisions on interpretation of the Fundamental Law | 1 |
| Rejection of constitutional complaint due to inadmissibility | 181 |
| Establishing constitutional requirement | 13 |
| Number of cases concluded by annulment of judicial verdict | 5 |
| Rejection of the petition (in the merits) | 126 |
| Declaration of unconstitutionality of legal regulation/provision and annulment of it thereof | 53 |
| Legislative omission | 2 |
| Declaration of conflicts with international treaty | 2 |

NUMBER OF CONCLUDED CASES ACCORDING TO THE CONTENT OF THE DECISIONS (2013)



The acknowledgment of the Churches whose operation is contrary to the Fundamental Law can be withdrawn by Parliament. Previously, the Constitutional Court shall express an opinion on whether the operation of an acknowledged Church is contrary to the Fundamental Law.

The Constitutional Court acts in proceedings aimed at the removal of the President of the Republic from office upon the motion of the Parliament.

The Court may also resolve conflicts of competence among state organs, or among state organs and local governments.

If the Constitutional Court, in its proceedings conducted in the exercise of its competences, declares an omission on the part of the law-maker that results in violation of the Fundamental Law, it calls upon the organ that committed the omission to perform its task.





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