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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**Constitutional developments  
in  
Hungary**

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**Paper presented to the Venice Commission**

**by**

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Dear Mr President, honourable Members,

First of all, I would like to thank you for giving me the opportunity to speak here today at the plenary session of the Venice Commission.

In my short talk I will give you an overview of the recent **constitutional developments** in Hungary.

Firstly, I am going to describe some **recent landmark cases** of the Constitutional Court where the opinions released by the Venice Commission were also taken into account. Secondly, I would like to inform you about some actual issues.

Above all, I have to emphasise that the Constitutional Court of Hungary always takes into account the findings of the Commission and often reaches the same or similar conclusions. Before 2012 – in the first 22 years of the history of the Constitutional Court – the Commission was mentioned only in 5 cases. By contrast, since 2012 the Constitutional Court has referred to the opinions of the Commission on 17 occasions, for example, in **electoral cases** and matters concerning the **freedom of assembly**, the **status and independence of the judiciary**, the **freedom of religion**, the **rights of national minorities** and the principle of the **rule of law** in criminal cases.

On the whole, the documents of the Commission provide useful and valuable help in our constitutional adjudication. The **arguments and the reasoning of the Commission supplement and complete the arguments of the HCC** and quite often we both arrive at the **same conclusions**.

Let me give you some examples:

**1.1.** In 2012 the Commission expressed its concerns regarding the new system of **the administration of the courts, especially the independence of the judiciary**. There have been several cases before the Constitutional Court that dealt with this issue.

The Commission acknowledged in its Opinion no. 020 of 2012 that the **judges have the right to file a constitutional complaint** against the orders adopted by the President of the National Judicial Office. In 2016 one of the judges lodged a constitutional complaint against the order issued by the President of the National Judicial Office on **the rules of integrity** regulating the lawful operation of the courts and the respective conduct of the judges. The Constitutional Court examined the complaint and **annulled** certain parts of the order in its decision no. **33/2017**.

**1.2.** At the request of the President of the Curia another aspect of **the independence of the judiciary** was advocated in decision no. **12/2017** of the Constitutional Court when it declared that the general obligation for judges to subject themselves to **national security screening** was contrary to the Fundamental Law.

In both cases, the HCC relied on the opinions of the Commission, and protected **the independence of the judiciary** in its decisions.

I will say a few words about two pending cases and another issue that may interest you, namely the **Act on Higher Education** and the law on the **transparency of NGOs**.

I would like to stress that these cases are still **pending** before the Constitutional Court and a **special working group** of legal advisers was set up and appointed within the Constitutional Court to work on the petition concerning the amendment to the Act on Higher Education.

In both cases two procedures have been initiated in front of the **Court of Justice of the European Union** regarding these two Acts. I would like to inform you that the Constitutional Court has **suspended** these procedures with regard to the procedures on the same issues before the Court of the EU. The goal of the suspensions is to respect the notion of **constitutional dialogue** which was first highlighted in our decision no. 22/2016.

### **7<sup>th</sup> Amendment of the Fundamental Law**

I have to mention here that as a result of the general elections in April 2018, there is a **two-thirds majority** in the Hungarian Parliament empowered to pass legislation to amend the Constitution.

Let me say a few words about the **7th amendment** of the Fundamental Law which has been adopted by the Parliament. I have to point out that this amendment does not affect the Constitutional Court.

It is very important to remember that the Constitutional Court has no competence to review the subject of constitutional amendments, which means that it may review the amendments strictly in case of **procedural violations**.

The most **important amendments** are the following:

1. The 7<sup>th</sup> amendment establishes an “Administrative Supreme Court”, that is, **a separate Supreme Court**, which will have competence in **administrative law**. The previous Supreme Court, (also known as the Curia) will remain at the top of the ordinary court system and will administer justice in criminal cases and private law disputes.

2. The 7th amendment also modified Article XXII on **homeless people**. In its decision no. 38/2012 the Constitutional Court declared that punishing homeless people for being homeless violated their right to **human dignity**. Accordingly, the 7th amendment contains a provision that it is the obligation of the State and local governments to provide accommodation for homeless people. In addition, only an act or a local government decree may declare it unlawful for anyone to live in public areas. Such restriction can exclusively be imposed in the interest of public order, the protection of health and cultural heritage.

4. The 7<sup>th</sup> amendment strengthens the citizens' privacy. Accordingly, the exercise of **freedom of opinion** and freedom of **assembly** should respect the right to private and family life, and the right to home. The Constitutional Court **can balance** between these interests with the help of the so-called **proportionality test** and follows the **German doctrine of „schonender Ausgleich“**.

**In conclusion**, as the President of the Constitutional Court, I can assure you that our Court is fulfilling its duties as the principal organ for the protection of the Fundamental Law as well as the protector of the fundamental rights of individuals.

I would like to stress our **commitment** to the **rule of law** and to the democratic values that have been promoted and protected by the Venice Commission for nearly three decades now. The Venice Commission is also a relevant forum for **constitutional dialogue**, which has become of primary importance in Europe.

Finally, I would like to thank you for your assistance in this mission and for giving me the floor.