

HUNGARY

Constitutional complaints

Following recent reforms, individuals can have court decisions tried vis-à-vis the Constitution



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In effect since 1 January 2012, the new Hungarian Constitution heralded significant changes to the competencies of the country's Constitutional Court. The most important of these was introducing the concept of 'real' or 'individual' constitutional complaint. As a result, the protection of fundamental rights is expected to be enhanced, while the Constitution is likely to play a greater role in the operation of courts as well as in everyday life.

Normative and individual complaints

In general, a constitutional complaint means the right of an individual (natural persons, companies and other legal persons) to have recourse to a constitutional body if their fundamental rights are violated.

The constitutional complaint provided by the previous Constitution allowed only for a rather abstract and normative type of recourse, as such a complaint could be filed only if a legal instrument applied in an individual case was alleged to be unconstitutional. The Constitutional Court was not authorised to examine the constitutionality of individual decisions – its competence was limited to analysing the conformity of the legal instrument in the given case.

A 'real' constitutional complaint gives individuals the right to contest court decisions in the event of an alleged violation of their fundamental rights under the Constitution. Since 2012 the competencies of the Constitutional Court have been extended to encompass such individual constitutional complaints. While the Constitution allows for filing normative complaints too, the court is entitled to supervise the constitutional compliance of individual decisions. The scope of contestable decisions (including the definition of 'individual cases') and other conditions of filing are settled by Act CLI/2011 on the Constitutional Court.

Preconditions of filing

Pursuant to the act, a person concerned by an individual case (meaning a court procedure that concerns rights, obligations, rightful interests or the legal status of persons) may file a constitutional complaint against an unconstitutional court decision if (i) the decision was adopted on the merits or it finishes the procedure; (ii) the decision is alleged to violate any of the fundamental rights of the person governed by the Constitution; or (iii) the complainant has no legal remedy available or had recourse to all legal remedies available under law. Complaints can

be filed within 60 days (subjective deadline) of the delivery of the decision, but no filing can be made after the 180th day (objective deadline). Filings are free of charges or stamp duties. The Constitutional Court, on request and until adopting a decision, has the right to suspend enforcement of the decision contested and anyone filing a constitutional complaint must have a legal representative.

To limit caseload, the Constitutional Court has some discretion as to whether or not a complaint can be admitted. The Act provides that the court shall admit a complaint if the violation of the constitutional right has a material influence on the court decision or the issue raised in the complaint qualifies as a material constitutional matter.

Critics warn of the possibility of arbitrary discrimination and further controversies may arise due to the fact that the court has no deadline to address complaints – the act simply provides that the court shall decide about the complaint within a 'reasonable deadline'.

Rationale and challenge

Pursuant to the reasoning of the Constitution and the act, the purpose of regulating individual constitutional complaints was not to enable a general 'highest instance' in court proceedings. The Constitutional Court, within the scope of individual complaints, may not supervise the application of legal instruments that are otherwise in conformity with the Constitution. The Constitutional Court also may not supervise the facts or evidence in cases. Rather, it should examine conformity with regard to the operation of the law. It has the right to annul court decisions, for example, if the interpretation of an otherwise constitutional legal instrument by the court qualifies as unconstitutional or arbitrary due to a violation of fundamental rights.

From the point of view of the Constitutional Court, the broadened scope of its competence presents a serious challenge. While constitutional principles and definitions laid down in the past 20 years may be invoked in individual cases, the practices evolved during the supervision of unconstitutional legal instruments may have less significance and need reconsideration when it comes to individual complaints. In this regard, the remarkable achievements of Germany's Bundesverfassungsgericht and the European Court of Human Rights in Strasbourg will provide valuable guidance.

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