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Fundamental Rights Protection through Constitutional Complaints, with Special Respect of Its Effectiveness

Ágnes Czine*
Károli Gáspár University of the Reformed Church in Hungary
czine.agnes@kre.hu

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Abstract

The Hungarian constitutional complaint is a modern, functional, and effective legal remedy, the effectiveness of which has been recognized by the European Court of Human Rights. At the same time, the ECtHR emphasized that it is up to the applicant to decide which type of constitutional complaint to file. Based on this idea, I have identified the key points that need to be known in order to assess the success of the constitutional complaint procedure. The effectiveness of a constitutional complaint is fundamentally influenced by the filtering criteria and legal consequences determined by the legislator, as well as by the practice developed by the Hungarian Constitutional Court. More specifically, this means that there are some key points, such as the interpretation of the content of the fundamental rights protected, the determination of issues of fundamental constitutional significance and the strictness of certain formal requirements, all of which could influence the effectiveness of the complaint. In this analysis, I would like to raise a few points that show, based on Hungarian experience, how all these circumstances can narrow or broaden the effectiveness of constitutional complaint procedures.

Keywords: Constitutional complaint; Constitutional law; Effective remedy; Fundamental rights; Judicial review

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* Prof. Dr. Ágnes Czine currently serves as a judge at the Constitutional Court of Hungary and a professor at Károli Gáspár University of the Reformed Church in Hungary.

I. INTRODUCTION

1.1. Raising the Issue

Constitutional complaint proceedings are the most common type of constitutional proceedings before the Hungarian Constitutional Court, allowing individuals and organizations that have suffered harm because of a law or a court decision that violates the Fundamental Law.

However, concerns about the effectiveness of constitutional complaints as a legal remedy have existed since the 1990s in Hungary. First, in 1993, the European Court of Human Rights (ECtHR) questioned whether the Hungarian constitutional complaint constituted an effective domestic remedy and whether applicants should therefore first exhaust this remedy before submitting a request to the ECtHR.[1] After 2012, with the introduction of new types of constitutional complaint, Hungarian legal literature questioned whether the use of these complaints really leads to any results for applicants seeking justice at all.[2]

The effectiveness of constitutional complaints is fundamentally influenced by several factors, such as the filtering criteria and legal consequences determined by the legislator, as well as by the practice developed by the body conducting the proceedings, in this case the Hungarian Constitutional Court. More specifically, this means that there are some key points, such as the interpretation of the content of the fundamental rights protected, the determination of issues of fundamental constitutional significance and the strictness of certain formal requirements, all of which influence the effectiveness of the complaint. Another important factor is the extent to which the applicant seeking justice is aware of the suitability of a constitutional complaint as a legal remedy. There are cases where it is clear that the procedure will not lead to a result, yet the procedure is initiated nonetheless.

[1] *Vén v. Hungary*, no. 21495/93, Commission decision, 30 June 1993.
[2] Erzsébet Kadlót, "Violation of Rights Guaranteed by the Fundamental Law and Fundamental Rights," *Acta Juridica et Politica*, no. 2 (2015): 48–67.

In this brief analysis, I would like to raise a few points that show, based on Hungarian experience, how all these circumstances can limit or expand the effectiveness of constitutional complaint proceedings.

My starting hypothesis is that constitutional complaints are fundamentally a modern and effective legal remedy, but the complainants must learn how to use them effectively as a remedy. The ECtHR's position on this issue essentially requires this, as I will explain in more detail below.

In writing this analysis, I sought to substantiate my assertions and explain my position by drawing on the decisions of the Hungarian Constitutional Court, my own experience, and legal literature. Of course, the scope of this study does not allow me to explore the Hungarian Constitutional Court's practice regarding constitutional complaints in full depth, as this has already been done thoroughly and excellently by the legal literature. My goal is to summarize in a clear and concise manner the most important lessons I have learned about constitutional complaints during my decade-long tenure as a constitutional judge.

First, I consider it necessary to outline the legal background and some concepts in order to clarify the functioning of Hungarian constitutional complaints for the reader and to make the context more understandable for those who may not be familiar with this legal measure of the Hungarian legal system.

1.2. The Concept of Effectiveness

First, I would like to outline what I mean by the effectiveness of constitutional complaints as a legal remedy.

According to Article XXVIII (7) of the Hungarian Fundamental Law, "everyone has the right to seek legal remedy against any court, administrative or other public authority decision that infringes upon their rights or legitimate interests." The fundamental requirement for legal remedies is that they must be effective. Nevertheless, what does effectiveness mean in this case?

According to the Constitutional Court, the effectiveness of the protection required by the Fundamental Law means, in substance, that the protection must be effective and capable of remedying the harm caused by the decision. The

effectiveness of legal remedies can be influenced by a number of factors, from this aspect e.g. the scope of review, the time limit for filing an appeal.

In the view of the Constitutional Court, the effectiveness of a legal remedy means that the appeal procedure must be conducted within the framework defined by the rules of procedure and that the contents of the appeal must be examined on their merits in accordance with the provisions of the law. The adjudicating body is not obliged to ensure the success of the request in all circumstances, but it is obliged to proceed and decide. Furthermore, the exercise of legal remedies does not require the actual infringement of a right; it is sufficient if, in the opinion of the person concerned, the contested decision infringes their right or legitimate interest. The right to legal remedy as a fundamental right must therefore be realized even if no other (fundamental) right infringement was established in the case.[3]

An essential, inherent element of the right to legal remedy is the possibility of legal remedy, i.e. the concept and substance of legal remedy includes the possibility of redressing the infringement of rights.[4] This means that the body providing the remedy must have the possibility to annul or amend the reviewed decision, or instruct the lower-level body to conduct a new procedure.

The constitutional complaint that existed in the Hungarian legal system until the end of 2011 could not be considered an effective remedy according to the European Commission of Human Rights.[5] In the case of Vén v. Hungary, the Commission took the view that, under the rules in force at the time, the Constitutional Court could not annul or modify the specific measures taken by public officials against the applicant, thus precluding the possibility of effective redress for the grievance. This type of complaint was "abstract" at the time and could only be directed against the legislation applied.[6] The ECtHR reached the similar conclusion in the case of *Csikós v. Hungary*[7] and in *K.M.C. v. Hungary.*[8]

3 *Decision 3458/2023 (XI. 7.) AB, Reasoning [36]; Decision 3064/2014 (III. 26.) AB, Reasoning [16]–[17].*
4 *Decision 3064/2014 (III. 26.) AB, Reasoning [15].*
5 At that time, the ECtHR was not yet a unified court, and the Commission acted as the court of first instance.
6 *Vén v. Hungary*, no. 21495/93, Commission decision, 30 June 1993.
7 *Csikós v. Hungary*, no. 37251/04, §§ 17–19, 5 December 2006.
8 *K.M.C. v. Hungary,* no. 19554/11, § 28, 10 July 2012.

However, the Hungarian legal environment changed significantly in 2012 with the adoption of the Fundamental Law and the new Act on the Constitutional Court (hereinafter: ACC).[9] The ECHR's ambivalent position on the effectiveness of constitutional complaints under the Fundamental Law remained unchanged.[10] One of the three types of constitutional complaints that came into force at that time can only be directed against the applicable legislation, another only against the court decision, and the third against both the court decision and the applicable legislation, so it must be considered which one is suitable for remedying the applicant's legal injury.

However, the ECHR's position later subsequently changed. In two decisions taken in 2018 and 2019 the ECtHR declared that - under the respective conditions and circumstances - all three kinds of constitutional complaints may offer an effective remedy to the applicants at domestic level.[11]

I have presented the ECtHR's position on constitutional complaints not only as a historical curiosity, but because it contains a very important central idea that needs to be considered further. Many people form their opinion on the effectiveness of constitutional complaints based on statistics showing how many of the total number of constitutional complaints have led to a favourable outcome for the applicant, but the real question is what this type of constitutional complaint is suitable for reparation the legal harm.

I would like to stop here for a moment. As we can see, the ECtHR also assessed effectiveness based on whether the decision of the Constitutional Court reopens the possibility of legal remedy before the ordinary courts or whether it is directly suitable for remedying the grievance. To this end, a few words need to be said about what measures the Constitutional Court can take in relation

9 évi CLI. törvény az Alkotmánybíróságról [Act CLI of 2011 on the Constitutional Court] (Hungary) (hereafter ACC).

10 *Network of Pharmacies Association v. Hungary*, no. 66925/12, decision, 14 May 2013; *Hungarian Christian Mennonite Church and Others v. Hungary*, nos. 70945/11 et al., § 50, *ECHR* 2014; *Király and Dömötör v. Hungary*, no. 10851/13, § 49, 17 January 2017.

11 Peter Paczolay, "The ECtHR on Constitutional Complaint an Effective Remedy in the Hungarian Legal Order," in *Hungarian Yearbook of International Law and European Law*, eds. M. Szabó, L. Gyeney, and P. L. Láncos (The Hague: Eleven International Publishing, 2020), 157; *Szalontay v. Hungary*, no. 71327/13, decision, 4 April 2019; *Mendrei v. Hungary*, no. 54927/15, decision, 19 June 2018.

to the constitutional complaint with regard to the contested court decision and the legislation.

In constitutional complaint proceedings, the Constitutional Court may find that a court decision is unconstitutional and annul it. The annulment generally affects the entire court decision, but it is also possible to annul only part of the decision. In a multi-defendant case, the Constitutional Court finds that the fundamental rights of the person concerned have been violated and then declares the decision underz review to be partially annulled in relation to a specific defendant.[12]

The other most important legal consequence is the determination that the legislation is unconstitutional, which may also result in the annulment of the entire legislation, part of it, a specific provision, or even a single term. The annulment may take effect *ex nunc*, which occurs on the day following the publication of the constitutional court's decision, or *ex tunc*, which takes effect retroactively to the date of the original entry into force of the annulled law, as if it had never entered into force. Annulment with *pro futuro* effect is linked to a specific future date, which the Constitutional Court applies in cases where the absence of a legal provision would cause confusion in the application of the law or lead to a legal vacuum. In such cases, the Constitutional Court gives the legislator a reasonable deadline to correct the error through legislation.

There are also cases where annulment is not sufficient because new legal provisions need to be enacted to correct the legal gap. In such cases, the Constitutional Court finds that the regulation is unconstitutional due to the lack of legislation and sets a deadline for the legislator to remedy this situation. If legislation is not necessary, because the situation that is contrary to the Fundamental Law can be remedied by interpreting the legislation correctly, then it establishes a constitutional requirement.[13]

[12] Lilla Berkes, Mária Szívós, János Wiedemann, and Kinga Zakariás, "Bírói döntés alaptörvény-ellenességének megállapítása, megsemmisítés, eljárási jogkövetkezmények" ["Declaration of Unconstitutionality of a Judicial Decision, Annulment, Procedural Legal Consequences"], in *Az Alkotmánybírósági törvény kommentárja* [*Commentary on the Constitutional Court Act*], ed. Kinga Zakariás (Budapest: Pázmány Press, 2022), 482.

[13] Botond Bitskey and Bernát Török, eds., *Az alkotmányjogi panasz kézikönyve* [*Handbook on Constitutional Complaints*] (Budapest: HVG-ORAC, 2015), 217–34.

All this had to be mentioned in order to understand the following table, which shows the substantive legal consequences that the Constitutional Court was able to impose last year based on the large number of complaints submitted to it.

Table 1: Cases initiated after January 1, 2012 and completed by September 15, 2025[14]

Legal consequence	**ACC 26. § (1)**	**ACC Section 26 (2)**	**ACC Section 27**
Annulment of court decision	17	–	176
Annulment of legislation	9	14	4
Declaration of prohibition of application	7	2	6
Establishment of legislative omission	8	5	17
Establishment of constitutional requirements	8	8	20
Total complaints during the specified period	861	2665	4453

It can be seen that the most common legal consequence applied by the Constitutional Court is the annulment of a court decision. Over the past nearly fourteen years, the application of other legal consequences has been very rare in constitutional complaints.

Based on statistics, sceptics are quick to conclude that there is only a few percent chance that a constitutional complaint will result in a legal consequence being established on the grounds of unconstitutionality, which could lead to the case being retried or reviewed.

Those who view the institution of constitutional complaints with scepticism ask how the success rate of a legal remedy can be so low. Are we even talking about a real legal remedy? It is undisputed in international legal literature that the constitutional complaint is a specific legal instruments for the protection

[14] Constitutional Court of Hungary, "Decision Search System," data extracted 15 September 2025.

of human rights. The constitutional complaint can be used only if all other remedies for the protection of rights are previously exhausted. This situation also determines its effectiveness. Although the effectiveness has been also limited in other countries, the need for an additional instrument for the protection of rights and freedoms is never excluded.[15]

The central element of my investigation is that, according to the ECtHR, the applicant must consider whether it is worthwhile to pursue this remedy and whether there is a minimum chance of success. However, in order to answer this question in the affirmative, it is necessary to be familiar with the key points of this legal institution and the relevant part of the Constitutional Court's practice so that the applicant can at least substantiate their complaint.

I would like to share a few thoughts on this idea with the reader.

II. THE MODEL OF CONSTITUTIONAL COMPLAINTS IN HUNGARY

2.1. Protection of Fundamental Rights

Constitutional complaints exist in many countries around the world and provide legal remedies for constitutional violations caused by laws and court decisions.[16]

Constitutional provisions define fundamental rights in Hungary. Hungary's first written constitution is stipulated by the Act XX of 1949, which came into force on August 20, 1949. This Constitution was announced in the communist system and after the collapse of the state structure during World War II. However, following the 1949 Constitution, several significant constitutional changes took place in Hungary because of historical events. The most significant amendment to the Constitution took place in 1972, but the changes did not affect the basic institutions of the state. However, an important change was that while the

[15] Jelena Trajkovska-Hristovska, "Procedure for Protection of Human Rights by Constitutional Courts Constitutional Complaint," *Iustinianus Primus Law Review* 5, no. 1 (2014): 10–11.

[16] Pan Mohamad Faiz, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court," *Constitutional Review* 2, no. 1 (2016): 103–28.

1949 Constitution can be considered a translation of the Soviet constitution, the modification of 1972 was already Hungarian legislation. Formally, the 1949 Constitution was amended, and the original paragraphs were rearranged and renumbered. The next significant modification enacted in 1989, after the change of regime. After the abolition of state socialism, the constitution was reformed in its fundamental institutions. The 1989 amendments placed the political system within a democratic framework, and fundamental principles such as the protection of human rights were incorporated into the new legal structure.

Hungary joined the European Union on May 1, 2004, the process of creating a new constitution that was in line with both national identity and European norms was completed on January 1, 2011, when the current legislation was promulgated. This law replaced the 1949 Constitution and laid down the legal framework of the modern Hungarian state, including fundamental rights, the rules of state organization, and the separation of powers. In this Fundamental Law, fundamental rights are listed in the chapter entitled Freedom and Responsibility.

In a democratic state governed by the rule of law, such as Hungary, a differentiated institutional system operates to protect fundamental rights. The protection of fundamental rights is therefore primarily a state task, in which all state bodies must participate, but there are also institutions that specialize in the protection of fundamental rights. At the beginning of its operation, the Constitutional Court emphasized that the democratic functioning of the state organization implies that the state, through the activities of its organs, fulfils its constitutional obligation to respect and protect fundamental rights. In addition to protecting fundamental rights, the state has a duty to establish and maintain the functioning of its various organs in such a way that they guarantee fundamental rights, regardless of subjective claims. The unconditional enforcement of constitutional provisions is a fundamental condition for the realization of the rule of law. The courts and the Constitutional Court play a significant role in the protection of fundamental rights. Their involvement is indispensable in

fulfilling the requirements of the rule of law. Their relationship with each other fundamentally determines the effectiveness and success of their involvement.[17]

According to the Constitutional Court, the state has an obligation to protect institutions by defining in law the substantive and procedural rules based on and within the framework of which the fundamental rights declared in the Fundamental Law can be enforced. This element (i.e., the legal definition of the details of the enforcement of claims) makes the fundamental right in question a genuine subjective right.

In Hungary, the Fundamental Law classifies the courts, including the Constitutional Court, the Commissioner for Fundamental Rights, and the National Authority for Data Protection and Freedom of Information, as institutions responsible for protecting fundamental rights. The most important requirement for state institutions protecting fundamental rights is to ensure their independence, as these institutions monitor the activities of the executive power that affect fundamental rights. In this system of institutions protecting fundamental rights, constitutional rules ensure the independence of the Constitutional Court, the courts, and the ombudsman at the highest level. Compared to these constitutional institutions, the fundamental rights protection authorities embedded in the state administration system have only limited independence.[18] A number of non-governmental organizations that are well known internationally (e.g., Amnesty International, Helsinki Committee) are also involved in the protection of fundamental rights.

2.2. The Hungarian Constitutional Court

The most important institution for the protection of fundamental rights is the Constitutional Court. The Constitutional Court was established based on the so-called European model.

[17] Ágnes Czine, "The Relationship between the Constitutional Court and Ordinary Courts, with Special Reference to Criminal Courts," in *Commentary on the Constitutional Court Act*, ed. K. Zakariás (Budapest: Pázmány Press, 2022), 64.

[18] Bernadette Somody and Beatrix Vissy, "Az alapjogok védelme [The Protection of Fundamental Rights]," in *Internetes Jogtudományi Enciklopédia* [*Internet Encyclopedia of Law*], eds. András Jakab, Miklós Könczöl, Attila Menyhárd, and Gábor Sulyok, 2019.

According to legal tradition, constitutional adjudication dates back to the 1803 case of *Marbury v. Madison*,[19] in which the Supreme Court of the United States declared that any law contrary to the Constitution is void and that the courts have the power to determine this. This marked the emergence of the Anglo-Saxon decentralized system of constitutional adjudication, in which ordinary courts decided on constitutional issues.

In contrast, the history of European constitutional adjudication dates back only a hundred years. European constitutional courts were established based on the so-called centralized model of Austrian-born constitutional lawyer Hans Kelsen. Constitutional adjudication was entrusted to an independent, autonomous body with a monopoly on deciding constitutional disputes.

After World War I, following the breakup of the Austro-Hungarian Monarchy, the first truly functioning constitutional court, the Austrian Constitutional Court, was established in 1920 to protect the constitutionality of independent Austria, which became the model for the continental European model of constitutional adjudication. I would like to note that until 1975, the Austrian Constitutional Court did not have the authority to hear cases brought by private individuals.

The Hungarian Constitutional Court was established in 1990 on a centralized model, but its detailed rules were based on the German Federal Constitutional Court, where the institution of constitutional complaints was introduced at the time of its establishment in 1951.[20] Thus, some form of constitutional complaint has existed in the Hungarian Constitutional Court from the outset. First, the Court consisted of 11 members, but since the legislative change in 2011, the number of constitutional judges has increased to 15.[21] The members were initially elected for a term of nine years and were eligible for re-election. Since the 2011 reform, their term of office has been 12 years, but it is not renewable.

[19] W. T. Eijsbouts, "Wir Sind Das Volk: Notes about the Notion of 'The People' as Occasioned by the Lissabon-Urteil," *European Constitutional Law Review* 6, no. 2 (2010): 199.

[20] Eszter Bodnár, "I. Constitutional Complaints-Institutional History and International Overview," in *Az alkotmányjogi panasz kézikönyve* [*Handbook of Constitutional Complaints*], eds. B. Bitskey and B. Török (Budapest: HVG-ORAC, 2015), 20–21.

[21] "The Constitutional Court-History," *Website of the Constitutional Court* (Hungary).

The primary competence of the Hungarian Constitutional Court is to protect constitutional norms, which also includes reviewing the constitutionality of legislation. The body pays particular attention to certain fundamental rights, such as freedom of speech, freedom of expression, protection of privacy, freedom of assembly, and freedom of religion.

On January 1, 2012, a new constitution came into force under the name Fundamental Law, Article 24 of which contains the basic rules governing the Constitutional Court. The legal framework for its operation is set out in the new Act on the Constitutional Court (ACC),[22] while the detailed rules on its operation, procedure and organizational structure are laid down in its Rules of Procedure.

2.3. Proceedings of the Hungarian Constitutional Court Aimed at Protecting Fundamental Rights

The most important competences of the Constitutional Court, as enshrined in the Fundamental Law, include preliminary and subsequent judicial review, judicial initiative, and constitutional complaints. Of course, it has several other competences,[23] but the constitutional complaints account for more than 93% of its caseload. It should be noted that the German Federal Constitutional Court, which served as a model for the Hungarian Constitutional Court, dealt with constitutional complaints in similar proportions. In the more than seven decades since its establishment in 1951, 95% of the cases it has adjudicated have been constitutional complaints.[24]

Constitutional court proceedings initiated for the review of legal norms can be divided into two groups: preliminary and subsequent norm control.

[22] évi CLI. törvény az Alkotmánybíróságról [Act CLI of 2011 on the Constitutional Court] (Hungary).

[23] Such powers include: reviewing the National Assembly's decision to hold a referendum (Section 33 of the ACC), issuing an opinion on the dissolution of a representative body operating in violation of the Fundamental Law (Section 34 of the ACC), Opinion on the operation of a religious community with legal personality in violation of the Fundamental Law (Section 34/A), Removal of the President of the Republic from office (Section 35), Conflict of powers between state bodies and state and local government bodies (Section 36), examination of municipal regulations, public law regulatory instruments and decisions on legal uniformity (Section 37), interpretation of the Fundamental Law (Section 38), decision on preliminary interpretative opinions of the European Union (Section 38/A)

[24] Bundesverfassungsgericht (Federal Constitutional Court of Germany), "Annual Statistics."

Before the promulgation of a law, only the National Assembly and the President of the Republic are entitled to initiate such proceedings, but subsequent norm control can be divided according to who is entitled to initiate the proceedings. Thus, judicial review may be initiated by a judge, ex post abstract norm control by a specific person (ombudsman) or organization (a quarter of the members of the National Assembly). The two types of constitutional complaints may be initiated by private individuals and legal entities. Ex post facto judicial review can also be divided according to whether the persons specified request that the legislation be found to be in conflict with an international treaty or only with the Fundamental Law.

Let us look at some important detailed rules concerning norm control procedures:

2.3.1. Preliminary Norm Control

Preliminary examination of compliance with the Fundamental Law, preliminary norm control means constitutional review prior to the promulgation of the norm. The National Assembly and the President of the Republic are entitled to initiate preliminary norm control proceedings.[25] Accordingly, preliminary norm control must be initiated before the final vote on the law, and the National Assembly may only vote on the law after the decision of the Constitutional Court.[26]

2.3.2. Ex Post Abstract Norm Control

With the entry into force of the Fundamental Law (January 1, 2012), a paradigm shift took place and the previous general abstract norm control, which could be initiated by anyone, was curtailed. The possibility of anyone submitting a motion was abolished, and the Constitutional Court now only reviews the conformity of legislation with the Fundamental Law at the initiative of a specific group of proposers, namely the Government, one quarter of the members of the National

[25] The basis for the jurisdiction under Section 23 of the ACC is Article 24(2)(a) of the Fundamental Law, to which Section 23(1) also refers.

[26] László Klicsu, "Preliminary Norm Control Procedure," in *Commentary on the Constitutional Court Act*, ed. K. Zakariás (Budapest: Pázmány Press, 2022), 225–26.

Assembly, the President of the Supreme Court, the Prosecutor General, or the Commissioner for Fundamental Rights.[27]

2.3.3. Judicial Initiative for Individual Norm Control Proceedings[28]

When constitutional issues arise, ordinary courts must apply the principles and criteria developed by the Constitutional Court, known as tests (e.g., criticism of public figures, restriction of rights). The purpose of the judicial initiative is to prevent judges from applying legislation that is contrary to the Fundamental Law in cases before them. Although judges in ordinary courts must therefore also take constitutional considerations into account, but they cannot review the constitutionality of legislation themselves, as in Anglo-Saxon systems. Instead, if they have concerns in this regard, they must refer the matter to the Constitutional Court.

2.3.4. Review of Legislation that Conflicts with International Treaties

In this case, the standard of review by the Constitutional Court is not the Fundamental Law, but an international treaty. Neither the Fundamental Law nor the ACC expressly stipulates that the Constitutional Court may only review legislation for conflicts with international treaties whose binding force has been recognized by Hungary. However, a constitutional problem may only arise if a piece of Hungarian legislation conflicts with a provision of an international treaty that is binding on Hungary or has become part of the Hungarian legal system. Article Q(2) of the Fundamental Law does not prescribe the obligation to ensure consistency between international law and Hungarian law in general, but only in order to fulfil Hungary's international legal obligations. The procedure may be conducted not only at the request of an eligible person, but also ex officio.[29]

The procedure may be initiated by one quarter of the members of the National Assembly, the Government, and the President of the Supreme Court, the Prosecutor General, and the Commissioner for Fundamental Rights. The

[27] Article 24(2)(e) of the Fundamental Law, Section 24(1) of the ACC.
[28] Fundamental Law, Article 24(2)(b), ACC Section 25(1).
[29] Petra Lea Láncos, "Examination of Conflicts with International Treaties," in *Commentary on the Constitutional Court Act*, ed. K. Zakariás (Budapest: Pázmány Press, 2022), 387–388.

judge shall, in addition to suspending the court proceedings, initiate proceedings before the Constitutional Court if, in the course of adjudicating a specific case before him or her, he or she finds that a law must be applied that conflicts with an international treaty.[30]

In addition to these norm control procedures, there is also a constitutional complaint procedure, which was established partly for norm control and partly for the constitutional review of court decisions. As I have already mentioned, there are three types of this procedure. This will be discussed further below.

III. CONSTITUTIONAL COMPLAINT PROCEDURES

3.1. Types of constitutional complaints in Hungary

According to the rules in force, there are three types of constitutional complaints under Act CLI of 2011 on the Constitutional Court (ACC):

3.1.1. Old-type Constitutional Complaint[31] [ACC Section 26(1)].

Aimed at establishing the unconstitutionality of the legislation applied in court proceedings and at annulling the unconstitutional legislative provision and the court decision if the application of the legislation resulted in the violation of the petitioner's rights guaranteed by the Fundamental Law in the court proceedings.

This option is to file a constitutional complaint for judicial review, which already existed before January 1, 2012, but was directed only against the law, not against the court decision. Before 2012, the Constitutional Court only examined and annulled the legislation in this type of constitutional complaint, but in the new type, it can also annul the related court judgment.

3.1.2. Direct complaint [ACC Section 26(2)]

This aimed exclusively at establishing the unconstitutionality of a legal provision and its annulment if, as a result of the application or enforcement of the legal provision, the petitioner's right guaranteed by the Fundamental Law

[30] ACC § 32(2) (Hungary).

[31] Complaint pursuant to Section 26(1) of the ACC: maintained and incorporated into the Fundamental Law the constitutional complaint regulated in the old ACC and aimed at reviewing the legislation applied in individual cases (see above). Act XXXII of 1989 on the Constitutional Court, Section 48(1) (old ACC).

has been directly infringed. In this case, no court or administrative proceedings are necessary, only that the legislation directly infringes the applicant's rights guaranteed by the Fundamental Law and there is no possibility of legal remedy. Section 26(2) of the ACC reinterpreted the possibility of an exceptional constitutional complaint directed directly against a legal provision. In both cases, the subject of the constitutional review may be the legal provision itself, i.e., both constitutional complaints are subject to normative review.

The difference between the complaints set out in Section 26(1) and (2) of the ACC is that while in the case of (1) the infringement of rights results from the application of the law in court proceedings, in the case of (2) it occurs directly from the law, without a court decision.

In the case of a complaint directed solely against the legislation [paragraph (2)], the fundamental question is therefore whether the person concerned is affected. While in constitutional complaints related to judicial proceedings, the involvement of the litigant or the defendant is clear, as it is based on civil or criminal proceedings, in the case of grievances without judicial proceedings, a more rigorous examination of involvement is necessary. In such cases, the grievance must be *personal, direct, and current*. The Constitutional Court may only conduct a substantive examination if the petitioner can credibly demonstrate that the contested legal provision has been directly enforced against him or her without a court decision and that, as a result, he or she has suffered a legal injury for which there is no legal remedy available or which has already been exhausted. The required personal, direct, and current involvement must exist at the time the petition is filed.[32]

Even in the early days of the Constitutional Court, up until 2012, Hungarian constitutional complaints differed from *actio popularis*. A constitutional complaint could be lodged by anyone whose rights had been infringed because of the application of an unconstitutional law and who had exhausted all other legal remedies or had no other legal remedies available to them.[33] After 2012,

[32] *Decision 3110/2013 (VI. 4.) AB, reasoning [27]; Order 3120/2015 (VII. 2.) AB, reasoning [55].*

[33] Act XXXII of 1989 on the Constitutional Court, Section 48(1) (old ACC).

constitutional complaints under Section 26(2) of the ACC required stricter proof of involvement (personal, direct, current). [34]

3.1.3. Genuine Constitutional Complaint [ACC 27. §]

A "real" complaint seeks to annul a decision on the merits of a court case or a decision otherwise concluding court proceedings if the decision violates the petitioner's rights guaranteed by the Fundamental Law. This type of constitutional complaint accounts for most of the cases brought before the Constitutional Court.

However, the practice of the Constitutional Court has limited the role of this type of constitutional complaint. The Court cannot become a court of ordinary fourth instance, because laws are primarily interpreted by these courts, and the Constitutional Court refrains from taking a position on the validity of issues pertaining to legal dogma and has no jurisdiction to review the direction of judicial decisions, the judicial assessment of evidence, or the entirety of court proceedings.[35]

According to one of the Constitutional Court's early decisions, "a constitutional complaint is a means of protecting the fundamental rights enshrined in the Constitution, the purpose of which is to create constitutional guarantees against state power in order to protect the rights of individuals, or communities, and to ensure their autonomy of action." [36]

A common feature of the types of constitutional complaints currently in force in Hungary is that they are objective means of protecting fundamental rights. This means that they go beyond the specific, individual cases of the complainants, as they shape, enrich, and concretize the content of fundamental rights. In this way, they further develop the practice of the Constitutional Court and the interpretation of the Fundamental Law. In addition to their objective function, they also provide subjective legal protection, as they remedy the violation of the applicant's fundamental rights. It should be noted that the legal institution of

[34] *Decision 33/2012 (VII. 17.) AB, reasoning [61]–[62], [66]*; Order 3367/2012 (XII. 15.) AB, reasoning [13], [15].

[35] *Decision 3268/2012 (X. 4.) AB, reasoning [28]; Decision 3325/2012 (XI. 12.) AB, reasoning [13]–[15]; Decision 3003/2012 (VI. 21.) AB, reasoning [4]; Decision 3231/2012 (IX. 28.) AB, reasoning [4].*

[36] *Decision 65/1992 (XII. 17.) AB, ABH 1992, 289, 291.*

constitutional complaints differs in this respect from the constitutional court proceedings described above, which primarily serve to uphold the integrity of the legal order, with the protection of individual fundamental rights and the redress of grievances being only one possible legal consequence in their case.[37]

The type of complaint that best achieves subjective legal protection is that which is directed against a judicial decision, since in a specific judicial proceeding, it can break the final decision and compel the ordinary court to conduct a new proceeding. In contrast, complaints against norms bring the interests of a community before constitutional review and operate at a higher level of abstraction, making them often more difficult to justify than a specific case. It is no coincidence that the abstract constitutional complaint in force in the earlier period of the Constitutional Court left a sense of deficiency among the legal remedies of the legal system, which is why the type of complaint directly challenging a court decision was also introduced.

The essence of the constitutional complaint procedure can therefore be understood as an individual (subjective) legal remedy and the possibility of constitutional redress associated with it. This does not mean that the petitioner, any citizen or legal entity, can claim that a law is unconstitutional by referring to any provision of the Fundamental Law, because he or it must prove the involvement in the case in question. In this respect, constitutional complaints differ from the ex post facto review of norms that was previously available to anyone. They also differ from previous constitutional complaints in that the possibility of overturning a court decision can also remedy the individual legal injury suffered in the case in question. The Constitutional Court noted as early as 1991 that the complaint may involve a subjective constitutional remedy (the so-called *Jánosi* case[38]), but it took more than two decades for this to be implemented.

[37] Eszter Bodnár, "I. Constitutional Complaints – Institutional History and International Overview," in *Az alkotmányjogi panasz kézikönyve* [*Handbook of Constitutional Complaints*], eds. B. Bitskey and B. Török (Budapest: HVG-ORAC, 2015), 24.

[38] *Decision 57/1991 (XI. 8.) AB.*

The Constitutional Court has repeatedly stated in its decisions that a constitutional complaint can only be based on a violation of a right guaranteed by the Fundamental Law, therefore, pursuant to Section 52 (1b) (b) of the ACC, the essence of the violation of a right guaranteed by the Fundamental Law must be indicated in the motion.[39] Consequently, not all articles of the Fundamental Law can be invoked as a legal basis in a constitutional complaint, only the rights listed in the section entitled Freedom and Responsibility. Not all of these, however, as there are declarative provisions that express the objectives of the state but do not define the rights of the individual.

Constitutional complaints may therefore be lodged in defence of fundamental rights, but the Constitutional Court has also included certain legal principles in this category. The prohibition of retroactive legislation and the reasonable period of time granted to legal entities to prepare before the legislation enters into force, which is one of the principles of legal certainty and, ultimately, the rule of law. In this way, it has broadened the list of fundamental rights taken from the classic human rights catalogue on which complaints can be based.

The person or organization submitting the constitutional complaint must take the above into account. They must be aware of the content of the fundamental right, as well as the relevant practice of the Constitutional Court, and must also submit a justification for the violation thereof. Without a constitutional justification, the complaint cannot be assessed on its merits.

Based on statistical research based on decisions made between 2012 and 2022, it can be established that the total number of fundamental rights successfully invoked during the 11-year period was 1,441. The most frequently invoked (and adjudicated) rights guaranteed by the Fundamental Law are: the right to a fair trial [Article XXVIII(1)], equality before the law [Article XV(1) and (2)], the rule of law [Article B(1)], the right to property [Article XIII], the right to legal remedy [Article XXVIII(7)], freedom of expression and freedom of the press [Article IX(1) and (2)].[40]

[39] *Decision 3325/2012 (XI. 12.) AB, Reasoning [13].*

[40] Kinga Zakariás and Ágnes Németh, "The Constitutional Court's Practice of Protecting Fundamental Rights since the Entry into Force of the Fundamental Law – in Numbers," *Constitutional Court Review*, no. 2 (2023): 38.

In my former article written at the beginning of the period mentioned above, I examined the fundamental rights that the applicants invoked as legal grounds in criminal cases. As mentioned, Article B) of the Fundamental Law sets out the requirements of the rule of law, which cannot be invoked in a constitutional complaint, except in two respects: the time needed to prepare for the implementation of the law and retroactive legislation. Interestingly, however, this was the wild card for a long time, until it became common knowledge that it could only be invoked in a limited number of cases. At that point, the situation changed, and applicants began to refer to another, fairly comprehensive article consisting of several sub-rights, Article XXVIII(1), which defines the requirements of a fair trial.[41]

The research data cited shows that the two legal bases have switched places, but they are still among the top three, and another general reference basis applicable to legislation has wedged itself between them: the requirement of equality before the law, the general requirement of equality before the law.

The practice of applicants, which indiscriminately refers to all rights and articles that are even remotely related to the grievance in the layman's view, has been transformed into the invocation of general articles that contain several partial rights, in the hope that they may arouse the interest of the Constitutional Court. However, as we have seen, this alone is not enough.

Let us look at the statistics. The statistical data clearly show the extent of the caseload of constitutional complaints within the listed powers of the Constitutional Court. Based on the most recent full year, 2024, the number of completed cases was distributed as follows:

One decision was made on preliminary norm control and one decision was made on the interpretation of the Fundamental Law. During the subsequent review of the norm, 525 decisions were made. Of these, 6 norm controls were initiated by specific persons and bodies, and 28 were initiated by judges.

[41] **Ágnes** Czine, "The Role of Constitutional Complaints in Criminal Cases," *FORUM*, no. 2 (2015): 11–12.

The two types of constitutional complaints under Section 26 of the ACC (including norm control) resulted in a total of 55 decisions, while the number of decisions on constitutional complaints against judicial judgments (Section 27 of the ACC) was 435.

Thus, 93% of all decisions made by the Constitutional Court last year were constitutional complaints, and 82% of these were directed exclusively against judicial decisions concluding proceedings. With a relatively small margin of error, we can say that this ratio has generally remained the same over the past ten years.

The examination of specific court proceedings related to constitutional complaints therefore accounts for the overwhelming majority of all decisions of the Constitutional Court, so we are talking about a very important procedure and legal institution that influences constitutional practice.

3.2. Key Points of the Hungarian Constitutional Complaint

I must therefore highlight a few factors which, due to the structure of the legal institution, result in the complaint becoming eligible for substantive review or not at certain points of consideration.

3.2.1. Admissibility Screening Procedure

As a result of the admissibility procedure, many constitutional complaints are rejected because they do not meet the basic formal requirements.

In this respect the most important factor could be that there is no requirement to have a lawyer, so any layperson who is unfamiliar with the requirements and practices of the Constitutional Court can send a few handwritten lines stating how they feel the state authorities have treated them unfairly. However, in most cases, these descriptions do not outline a constitutional violation, but only criticize judicial or administrative and other proceedings and the decisions made in them because they did not rule in favour of the applicant. Another important influencing factor may be that the constitutional complaint procedure is free of charge, so it does not matter how many proceedings the applicant initiates and

when, and therefore the applicant does not consider which type of constitutional complaint is appropriate as a legal remedy for resolving the matter.

After receipt of the application, the Secretary General checks the formal requirements during the preparatory phase, and the applicant is asked to provide any missing information, if necessary. Meeting the application to the formal requirements, the case designated to the reporting constitutional judge undergoes a so-called admissibility procedure. On that case, if the petition still does not meet the formal requirements, does not raise a question of fundamental constitutional significance, or does not raise doubts as to the unconstitutionality of the contested court decision, the judge submits a rejection proposal.

I would like to note that in the event of a rejection, the Constitutional Court does not specialize its reasoning by case type in its admissibility practice and does not take a position on the unconstitutionality of the contested court decision or on the related issue of fundamental constitutional significance. The situation is different if the application is not rejected but is decided on its merits. When examining the merits of the application, the reasoning for the two circumstances mentioned above is generally separated, because it must be established on what basis the further examination will be based.

In the course of rejecting applications, the Constitutional Court has developed the practice of attaching a formalized but more specific type of justification. For example, it rejects the application because

- the specific problem is not a constitutional or legal issue at all,
- it is a question of legality, not constitutionality that can be interpreted by ordinary courts,
- the motion is aimed at reviewing the facts of the case, i.e., at obtaining a new ordinary remedy,
- the motion requests a re-evaluation or reconsideration of the evidence,
- the motion does not raise any new constitutional issues,
- the motion would not materially affect the petitioner's situation.

Or the Constitutional Court outlines the other reasons why the motion is unfounded.[42]

The consideration required for the acceptance of a constitutional complaint falls within the jurisdiction of the Constitutional Court, thus giving it considerable leeway in deciding whether to examine the complaint on its merits. The Constitutional Court has developed a practice, in many cases a test, or a set of criteria, for the protection of individual rights, so if the applicant submits their petition with knowledge and explanation of this, they have a much better chance of obtaining effective legal remedy. During the substantive examination, decisions can be made at two levels: by the five-member councils (there are currently three such councils) or by the full session comprising all members.

If we want to make the proportions and extent of this process tangible, let us turn to the statistics again and take the 2024 figures as a basis.

The Hungarian Constitutional Court concluded 904 cases in 2024. Of these, 377 cases were rejected by single judges due to formal deficiencies, despite the fact that the vast majority of them were supplemented with instructions. In a further 405 cases, the panels, mostly five-member councils, found the applications unsuitable for substantive examination due to deficiencies and therefore rejected the complaints.

For formal reasons, therefore, the overwhelming majority of applications do not meet the filtering criteria. Of course, there are criteria among these that require consideration and cannot be applied mechanically. These include, for example, the identification of the fundamental right that has been violated, the constitutional justification for the violation, and an explanation of how the applicant is affected. A proper explanation of these in the application requires more serious background knowledge, but the basis for the violation of the Fundamental Law and the issue of constitutional significance can be filtered out from the proper justification of the complaint.

[42] Botond Bitskey, "Special Rules for Individual Constitutional Complaint Procedures," in *Az alkotmányjogi panasz kézikönyve* [*Handbook of Constitutional Complaints*], eds. B. Bitskey and B. Török (Budapest: HVG-ORAC, 2015), 145.

Returning to the statistics, it should be noted that in 2024 there were 16 cases in which part of the application was considered suitable for substantive examination, and the complaint was therefore accepted. In 64 cases, the decision rejected the application because of the substantive examination.

Finally, in 58 of the 904 cases, or 6% of the cases, the Constitutional Court found a violation of the Fundamental Law or a question of fundamental constitutional significance that warranted examination.[43]

At the end of the admissibility screening procedure, in order for a decision on the merits to be made, there must be "doubt as to the constitutionality" or an issue of constitutional significance must be identified for the Constitutional Court to conduct a substantive constitutional review of the case.

Constitutional complaints that meet the formal requirements must pass through another filter. This provision is contained in Section 29 of the ACC. The condition for the admissibility of all three types of constitutional complaints is that they raise a question of unconstitutionality or a question of fundamental constitutional significance that materially affects the judicial decision. These two conditions are alternative in nature, so the existence of one of them alone justifies the Constitutional Court's substantive proceedings. The examination of the existence of the conditions falls within the discretion of the Constitutional Court.[44] Let us look at the two questions individually from a practical point of view.

3.2.2. Unconstitutionality and the Special Nature of the Remedy

A constitutional complaint is not a regular judicial remedy in which a higher court may, in certain cases, re-examine the entire case from a legal perspective. In complaints filed under Sections 26(1) and 27 of the ACC, the subject of the examination may be "the decision on the merits of the case or any other decision concluding the court proceedings." The Constitutional Court conducts a constitutional review, which is therefore much narrower and partly different

[43] "Caseload and Statistical Data of the Constitutional Court," Constitutional Court of Hungary.
[44] *Decision 3/2013 (II. 14.) AB, Reasoning [30]; Decision 34/2013 (XI. 22.) AB, Reasoning [18].*

in scope than that of an ordinary court, but its starting point is always the final court decision on the merits or concluding the proceedings.

The practice of the Constitutional Court has crystallized the types of court decisions that may be the subject of proceedings. From a substantive legal point of view, a decision may be substantive or non-substantive depending on whether it decides on the fundamental issue raised in the case, i.e. whether it decides on the legality and legal consequences of the claim, charge, application or other motion. Judgments are always substantive, but certain orders may also be considered substantive if they meet the above condition. However, most orders are not substantive because they either do not decide the fundamental issue or only decide on incidental procedural details.

If we classify decisions from a procedural law perspective, they can be final or interim, depending on whether their adoption concludes the proceedings before the given court or whether the proceedings continue. Some decisions, such as those rejecting a statement of claim or a petition and terminating the proceedings ( ), are also final, while others related to the conduct of the proceedings are not. All procedural orders and decisions on ancillary issues are excluded from decisions that can be challenged by a constitutional complaint. From a substantive legal point of view, judgments and final orders can also be challenged by a constitutional complaint.[45]

According to the Constitutional Court, acting within its competences as regulated in Section 27 of the ACC Consequently, when examining the constitutionality of a judicial decision, the Constitutional Court refrains from taking a position on questions of specialized law or questions of interpretation of the law that fall within the jurisdiction of the courts.[46]

The success rate of the vast majority of constitutional complaints is poor in part because they do not attempt to substantiate a constitutional violation,

[45] Botond Bitskey, "Special Rules for Individual Constitutional Complaint Procedures," in *Az alkotmányjogi panasz kézikönyve* [*Handbook of Constitutional Complaints*], eds. B. Bitskey and B. Török (Budapest: HVG-ORAC, 2015), 196–99; Zs. András Varga, "Constitutional Complaint Against a Judicial Decision," in *Commentary on the Constitutional Court Act*, ed. K. Zakariás (Budapest: Pázmány Press, 2022), 327.

[46] *Decision 3003/2012 (VI. 21.) AB, Reasoning [4]*

but rather raise again legal violations that have already been challenged in the ordinary court system. Applicants often fail to understand that the violation that can be remedied by a constitutional complaint is not just any violation of the law, but the result of a clearly definable, arbitrary judicial decision or legislation that does not take sufficient account of the protection of fundamental rights.

The remedial nature of constitutional complaints is often misunderstood by lawyers, but also by the majority of applicants who proceed without legal representation. The Constitutional Court is not part of the ordinary court system, which decides legal disputes on the basis of sectoral and special legislation and provides two or three levels of legal remedy. When the new type of constitutional complaint was introduced, the Constitutional Court emphasized that it is not a fourth level of decision-making.

This means that although constitutional complaints are considered a legal remedy, as they can remedy subjective legal grievances, their scope is limited because they are not ordinary court remedies. Pursuant to Article 24(1) of the Fundamental Law, the Constitutional Court is the supreme body for the protection of the Fundamental Law. Accordingly, pursuant to Article 24(2)(d) of the Fundamental Law, the Constitutional Court may review judicial decisions from the perspective of constitutionality, and its jurisdiction is limited to examining and eliminating any unconstitutionality that materially affects the judicial decision. Therefore, it has no jurisdiction to review the direction of judicial decisions, the judicial assessment and evaluation of evidence, or the entire court proceedings.[47] In other words, the Constitutional Court cannot make a legal decision in place of the ordinary courts, so it basically has the power of cassation, on the basis of which the ordinary court must issue a new judgment in accordance with the principles of the Fundamental Law.

Consequently, constitutional complaints are a subsidiary form of legal remedy, similar to applications to the European Court of Human Rights (ECHR). This

[47] *Decision 3231/2012 (IX. 28.) AB, Reasoning [4]; Decision 3017/2013. (I. 28.) AB, Reasoning [3].*

means that if there is a regular court remedy, it must be exhausted before a constitutional complaint can be successfully lodged in order to ensure that the legal review is carried out in full.

3.2.3. Issues of Fundamental Constitutional Significance

The other condition, the concept of a question of constitutional significance, determines the scope and depth of the Constitutional Court's review of the contested legislation or judicial decision in constitutional complaint proceedings.

When reviewing compliance with the Fundamental Law, the Constitutional Court must examine whether the right enshrined in the Fundamental Law has been violated. The substantive legal concept of the right enshrined in the Fundamental Law is sufficient to delimit the scope of the Constitutional Court's review in the case of constitutional complaints against legislation. The Constitutional Court must examine whether there is a likelihood of a violation of fundamental rights in the case in question.

As can be seen from the above, the subjective rights enforced in court proceedings and fundamental rights often overlap. Courts are obliged to interpret the text of legislation in accordance with its purpose and the Fundamental Law when applying the law. In this sense, a violation of the law by a court may also constitute a violation of fundamental rights. However, the law requires the Constitutional Court to identify and examine not just any constitutional issue, but issues of "fundamental" constitutional significance. The ACC sets out the Constitutional Court's jurisdiction to examine issues of fundamental constitutional significance in constitutional complaint proceedings.[48] This activity requires consideration and, naturally, involves elements of uncertainty for the applicant.

Of course, many other issues could have been discussed in more detail, but this is all that could be included in the current analysis of Hungarian constitutional complaints.

[48] Kinga Zakariás, in *Commentary on the Constitutional Court Act*, ed. K. Zakariás (Budapest: Pázmány Press, 2022), 351–52.

IV. CONCLUSIONS

The Hungarian constitutional complaint is a modern, functional, and effective legal remedy, the effectiveness of which has been recognized by the European Court of Human Rights. At the same time, the ECtHR emphasized that it is up to the applicant to consider which type of constitutional complaint to file. It is advisable to consult a lawyer first. With this in mind, I have outlined the key points that need to be known in order to assess the success of the constitutional complaint procedure.

It is therefore highly advisable for the applicant to consider whether a constitutional complaint is suitable for resolving or remedying the legal injury in question. Today, the Constitutional Court has a well-established practice in relation to constitutional complaints, which provides assistance in this regard. The case law of the Constitutional Court makes it possible to determine with a high degree of certainty which of the three types of constitutional complaints currently in existence is likely to be successful in a given case. However, the majority of complainants do not currently consider this issue with sufficient thoroughness, which is why a large number of complaints are rejected on the merits. The Constitutional Court is not the fourth level of the ordinary court system, but a body that conducts examinations based on constitutional criteria and can provide special legal remedies in these proceedings to applicants who have suffered harm because of the administration of justice or legislation.

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