

JUDICIAL CONTROL OF PARLIAMENTARY PROCEDURE: THEORETICAL FRAMEWORK ANALYSES

Zsolt Szabó*

Károli Gáspár University of the Reformed Church, Budapest
e-mail: szabo.zsolt@kre.hu

Received: 30 November 2022 | Last Revised: 23 March 2023 | Accepted: 3 April 2023

Abstract

Parliamentary procedures are undoubtedly at the heart of (national) parliamentary sovereignty. However, in the last two decades, courts, including supranational ones (e.g. ECtHR), are increasingly getting involved in assessing the application of parliamentary rules and procedures. This increasing judicial activism highlights the importance of finding the equilibrium between the right to an effective judicial remedy, which inevitably should encompass parliamentary decisions, and the principles of separation of powers and parliamentary autonomy. This paper analyses a possible theoretical framework of (judicial) remedies against parliamentary procedural decisions, distinguishing between types of procedural rules, applicants, fora, extents of judicial activism and types of judicial review. It concludes that the different types of remedies are highly dependent on the political landscape and the government structure. It is yet advisable that a permanent, extra-parliamentary forum, a kind of “House-Rules-Court” should be established in countries, where the House Speaker does not enjoy full respect and neutrality.

Keywords: Constitutional Court; Judicial Remedy; Parliamentary Procedure; Parliamentary Sovereignty; Procedural Review.

* Zsolt Szabó, Associate Professor at Faculty of Law, Károli Gáspár University of the Reformed Church, Budapest.

I. INTRODUCTION

Parliamentary functions and procedures are at the heart of national sovereignty. The general principle, since the Bill of Rights, declares that no (domestic or international) instance may ever intervene in determining whether a parliament decision is lawful or not. However, in times of constitutional dialogues, legal harmonization and increasing judicial activism, it seems that common principles (like ‘democratic debate’, mentioned in multiple ECtHR-judgements) emerge even in the field of parliamentary functions. In order to safeguard democracy and the rule of law, courts tend to and should be guarantors of the principles of parliamentary procedures if another remedy is unavailable on the national level. If domestic fora are ineffective in settling procedural disputes, then supranational courts, like the ECtHR will provide a remedy if they deem it necessary. The degree of the judicial intervention (scope of review, extent of judicial activism), however, highly depends on the political-institutional circumstances, there is no “one-size-fits-all” possibility in this respect.

Parliaments are partisan bodies: parliamentary action is usually not triggered by a single institutional interest, but, instead, by the politically-driven interests of the various actors within its domain. Political majorities usually aim at prevailing over the minorities’ room for maneuver. One possibility to push through political agendas is attempting to hold the parliamentary procedure under control – although it should be the task of fair procedures to control the actions of the political majorities. Fair procedures alone do not guarantee good decisions, but unfair procedures are more likely to result in unfair procedures.¹

Regarding judicial control of legislation, the most widespread and accepted form is normative control, i.e. the review of the constitutionality of legislation, which appeared in the 19th century and spread throughout the world in the 20th century. Judicial control of the lawmaking procedural rules appeared as the second step, and judicial review of other parliamentary activities and procedures

¹ Angelika Nussberger, “Procedural Review by the ECtHR: View from the Court,” in *Procedural Review in Fundamental Rights Cases*, ed. Janneke Gerards and Eva Brems (Cambridge: Cambridge University Press, 2017), 167.

as the third. Procedural control first appeared in lawmaking as a supplement to substantive normative control, purely procedural control as an independent competence, only emerged after that.

In this article, I look at the decisive factors influencing the way of legally controlling parliamentary procedural decisions, like the legal nature of parliamentary procedural rules. I attempt to establish a theoretical framework of procedural control mechanisms. First, the different possible solutions of the legal nature of the procedural rules is discussed. Then the appropriate fora for remedies against procedural decisions will be presented. At the end, the way and extent of judicial control will be analyzed.

II. THE LEGAL NATURE OF PARLIAMENTARY RULES: CONSTITUTIONAL PARLIAMENTS V. CONSTITUTION OF PARLIAMENTS?

A parliament is a legal body and a political institution simultaneously: the place of democratic and fair decision-making and a partisan forum for debating political issues. It must, therefore, equally provide for an orderly set of procedures, equipped with (sometimes rigid) legal safeguards. At the same time, it allows flexibility for the political actors presenting their alternative, competing opinions. It is common for all parliaments to have internal rules (rules of procedure) created by themselves, which generally ensure the satisfactory operation of these two, often conflicting functions. Parliaments should work effectively, setting and implementing their agendas, but members' and parliamentary minorities rights should also be respected.

Rules of procedure, or house rules, are internal constitutions of parliaments, determined by the parliamentary majority to ensure fair procedures, including limiting its own power. They can be considered the constitution of parliamentary work not only because it contains the basic internal rules, but also because the parliament is sovereign in its creation as a "constituent power". Many constitutions declare the autonomy of the parliament in creating its own internal rules.²

² US Constitution Article 1, section 5, para 2, German Fundamental Law Article 40, para. 2.

Like constitutions, house rules also have a few main branches of regulation. Haug states³ house rules have three functions: procedural order, minority interests, and organizational order. This concise definition contains the two typical elements of the legal infrastructure of parliamentary operation, the house rules: organization and procedure. Despite the autonomy of the house rules - or even for the sake of it - there are constitutional criteria that the house rules must also comply with. If these are not met, it can be the basis for the action of the judicial and constitutional judges.⁴

Looking back at the history of parliaments, it can be seen that house rules often decided important questions of power. In several cases, the way was opened for dictatorships only after the guarantees of house rules were abolished (Germany, 1933, Austria, 1933). Many examples represent the phenomenon that, in the process of democratization, the democratic procedural rules become more valuable, and previously marginal issues of parliamentary procedure become of primary importance in terms of decision-making and resource distribution. This process can be witnessed in many countries of the democratized Latin-America.⁵ In this process, parliaments emerge from a democratic decoration into important actors. As a result, lawmaking is no longer an unquestionable expression of the state's will, but a compromise decision, following the orderly conclusion of a multi-stakeholder democratic debate.

In a democracy, the distribution and allocation of power is primarily an institutional and regulatory matter and not a technical issue of the use of power. The rules and procedures thus basically determine the outcome of the political debate. The power (majority) required to comply with or even obstruct institutional solutions and procedures also determines the decision of political issues. The one who can achieve change is the one who controls the procedures leading to it. Control over parliamentary time and agenda setting is crucial, especially in

³ Volker Haug, *Bindungsprobleme und Rechtsnatur parlamentarischer Geschäftsordnungen* (Berlin: Duncker und Humblot, 1994), 22.

⁴ Stephen Gardbaum, "Due Process of Lawmaking Revisited," *Journal of Constitutional Law* 21, no. 1 (October 2018), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1670&context=jcl>.

⁵ Eduardo Alemán and George Tsebelis, "Introduction," in *Legislative Institutions and Lawmaking in Latin America*, ed. Eduardo Alemán and George Tsebelis (Oxford: Oxford University Press, 2016), 5.

the legislative process. This also includes the right to propose legislation, the right to amend, and the timing (speeding up or even slowing down). All of this is also relevant in a negative sense: i.e. slowing down, or even preventing, decision-making can function as a veto in practice.

Looking at the history of parliamentary procedure, parliamentary deliberations were informal at the beginning, determined by local customs. Apart from a few common features (e.g., open-air meetings), we do not know much about how parliamentary sessions were conducted until the 15-16 centuries, when customs and ceremonies requiring special expertise became permanent and were confirmed by the monarchs. The convening of sessions (including the selection of place and time) was an important royal prerogative from the beginning—certain joint decisions of the parliament and the sovereign prescribed regularity in this, which was often neglected. The deliberations were usually not continuous: the assemblies often reconvened after a gap of many years, and regularity was a constantly recurring demand. Sessions were conducted according to custom: they usually began with the opening speech of the ruler or his representative. The closure also took place in the presence of the ruler, at which time the adopted decisions were usually confirmed, in the form of consolidated articles.

The 15-16 centuries witnessed the spread of the formation of parliamentary committees in order to facilitate the work of the assembly. In addition to legislation, the commissions also gained increasing importance in government control. At the end of the 18th century (investigative), commissions that worked specifically for this purpose were created. The “Copernican turn” of the 18-19 centuries (when parliament was no more directed by the monarch, rather, it started to instruct the kings’ government and hold it to account), lead to the rise of the parliamentary form of government.

In the 19th century, the continuous, permanent sittings of parliaments, the grouping of representatives into factions, and the functioning of committees became common. All this, and especially the partisanship of the parliament (division to government and opposition) pointed towards a complexity and

mutual distrust, requiring written rules. The first written parliamentary rules of procedure (house rules) appeared in the 17th century in Sweden and Scotland.

In England, however, instead of a single set of rules, the procedure kept its customary basis. The procedure of the British House of Commons is still based on four pillars: the accepted custom and practice, the resolutions and house rules (Standing Orders), the provisions of the Speaker of the house, and the laws (statutes) adopted by the house. Many important issues, such as how questions are presented, or the order in which proposals for resolutions are submitted and accepted, is still based on customary law, compiled first by Thomas Erskine May⁶ in 1844. Even the three readings' lawmaking sequence is without a written record until the present day. Like the British constitution, house rules function as a gentlemen's agreement, although the number of written permanent rules is constantly increasing. A recent research showed that Speaker's authority is not decreasing, despite the increase in parliamentary rules.⁷ The centuries-old customary traditions do not contradict with parliamentary innovations: the reform of the committees system in 1979 and the establishment of the Backbench Business Committee in 2005 are good examples of procedural flexibility and renewal.

In the United States, in both houses of the Congress, there is a codified, permanent set of rules (still based on the famous *Maual* written by Thomas Jefferson). Still, in practice there are regular deviations from them, and the role of precedents is also very significant. The House of Representatives' work is much more regulated from the beginning, while the Senate allows for more freedom for its members.

It is a general rule nowadays that a country's constitution defines the legal nature and the procedure to adopt parliamentary procedural rules. The legal nature of these rules is crucial in terms of legal remedies against their disrespect. There are basically three possibilities:

⁶ Thomas Erskine May, *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (New York City: LexisNexis, 2019), <https://erskinemay.parliament.uk/>.

⁷ Niels D. Goet, Thomas G. Fleming and Radoslaw Zubek, "Procedural Change in the UK House of Commons 1811–2015," *Legislative Studies Quarterly* 45, no. 1 (February 2020), <https://doi.org/10.1111/lsq.12249>.

1. Statute of parliament: in for example Austria, Czech Republic, Slovakia the rules of procedure are set out in a statute, adopted by parliament for an indefinite time period, published in the official journal. In Hungary, there is also a statute on parliament in force, but it does not cover all issues of parliamentary law, leaving room for the adoption of internal parliamentary rules. Statutes are made indefinitely, binding all successor parliaments as well. Statutory rules are rigid, in terms of changeability and consensual deviation possibilities, and their adoption requires the involvement of other state powers outside of parliament, like the head of state. In this respect, their adoption does not rely on full parliamentary autonomy.
2. Parliamentary decision/decreed: in many countries, like in the UK (Standing Orders) or Italy, rules of procedure are adopted as internal parliamentary norms, and Hungary also has a set of rules on this level. These rules, not being universal legal norms, have binding effects only in internal relations, i.e., towards members of parliament, and normally cease to be in force at the end of the parliamentary term.
3. *Sui generis*: in many countries, the rule of procedure of the parliament does not fit in any of the established sources of law, rather, it is seen as an only kind-of-its-own. In Germany, it is an 'autonomous decision' (*autonome Satzung*).

In terms of justiciability, internal parliamentary rules are obviously not justiciable at the courts, only statutes or – upon a special rule – *sui generis* norms (like standing orders). Constitutional courts can, respectively, only review statutes, not parliamentary decrees, notwithstanding that many jurisdictions explicitly provide for the constitutional review of internal parliamentary rules, if their breach directly touches on a constitutional provision.

Being the ultimate interpreter of constitutional law, constitutional courts generally apply the constitution, and not the house rules. The detailedness of the constitution is therefore a crucial issue in terms of judicial powers. Concise, brief provisions on parliamentary procedure, based on which complex problems cannot be solved, can be filled with judicial activism. On the other

hand, detailed, lengthy constitutions do not entrust this to judges – here the durability of constitutional provisions is at stake. The external relations of the parliaments, their role in power sharing, and their relationship with the executive power are usually described in the constitutions of all jurisdictions. However, there are significant differences in the constitutional details of the “parliamentary constitution”. Another important question is the extent to which (legal) political situations and arguments filter into judicial decisions. This can be easier when interpreting short, principled provisions, but more difficult in the case of a detailed constitution.

To sum up, the parliamentary rules in the UK are based on customary law, the continental parliamentary functions are based on comprehensive, codified house rules, leaving a narrow path only to precedents in filling legal gaps. The United States’ solution is halfway between the two: there is a codified, permanent set of rules, but in practice there are regular deviations from them, and the role of precedents is very significant. The most straightforward way towards a court review is that of the statutes, because they are anyway subject to judicial interpretation. Internal parliamentary rules, on the contrary, since they do not have any legal effect on citizens, tend to remain under the parliament’s jurisdiction. The judicial approach to procedural control is dependent on various factors: besides the legal competence set out in the constitution, the length of the relevant provisions of the constitution, and the system of checks and balances is also decisive.

III. FORUMS OF POSSIBLE REMEDIES AGAINST PARLIAMENTARY PROCEDURAL DECISIONS: LEGAL OR POLITICAL?

The principles of separation of powers and the rule of law are both unquestionable pillars of the prevalent constitutional canon. However, these two principles, although they presuppose each other in many respects, can come into conflict with each other - one of these conflicting areas is parliamentary autonomy. The openness of legislative debates, the equal participatory rights of members and fair procedures belong to the domain of the rule of law, while

parliamentary sovereignty is based on the separation of powers. Resolving disputes arising from this conflict is the task of courts, interpreting constitutional principles and permanent rules.

It is obviously not enough to have rules and principles of parliamentary procedure. A forum must be enforced equally if not followed voluntarily by the actors. The answer to the question, which court has jurisdiction (if any) in parliamentary procedural disputes, varies country by country. Parliamentary sovereignty, at least in the UK, does not allow external actors to intervene. The strong and independent position of the Speaker is the only and ultimate forum to settle procedural debates within the House. The principle of the parliamentary sovereignty also prevails in countries which follow the British system, i.e. India, where the judiciary never denied the claim of the Parliament to be supreme as to its internal affairs, based on Article 122 of the Indian Constitution.⁸

On the contrary, external review is possible in Germany since 1949. In Germany, the sovereignty of the constitution (or of the constitutional court) prevails over that of the parliament. Some scholars describe the same difference when conceptualizing parliamentary sovereignty as opposite of judicial supremacy.⁹ Tensions between legislative autonomy and the judicial duty to enforce constitutional requirements more frequently occur, and these tensions are often settled by (constitutional) courts, i.e. extra-parliamentary organs. In some countries, as part of judicial review of legislation, the breach of the rules of legislative procedure may lead to repealing the statute by the constitutional court (this is the case in Hungary, but not for example, in the Czech Republic).

In the UK, the home of parliamentary sovereignty, where the powers of Parliament are unlimited, there is, no relevant legislation in parliamentary law about remedies of procedural disputes between parliamentary actors. Lacking applicable law, the courts have no jurisdiction either in disputes between parliamentarians and non-parliamentarians. It is part of the parliamentary

⁸ Jain, D. C., "Judicial Review of Parliamentary Privileges: Functional Relationship of Courts and Legislatures in India," *Journal of the Indian Law Institute* 9, no. 2 (1967): 205–22, <http://www.jstor.org/stable/43949934>.

⁹ Liora Lazarus and Natasha Simonsen, "Judicial Review and Parliamentary Debate: Enriching the Doctrine of Due Deference," in *Parliament and Human Rights: Redressing the Democratic Deficit*, ed. Murray Hunt, Hayley Hooper and Paul Yowell (Oxford: Oxford University Press, 2014), 385.

sovereignty that Parliament alone is entitled to “retaliate” grievances by a contempt of Parliament, using its own internal rules (Standing Orders). In such cases, the plenary will decide on the submission of the competent committee.¹⁰ This is based on the short provision of article 9¹¹ of the Bill of Rights of 1689, which declares the sovereignty of Parliament - although there is a recurrent idea to place the contempt of parliament on a statutory basis and thus open the jurisdiction of the courts.¹² However, the parliamentary committee and the plenary have the competence to “punish” for example a witness who does not appear before a committee of inquiry, and against these decisions no further remedies are available. However, such cases are normally closed without serious consequences. In practice, parliament applies its criminal powers with considerable self-restraint.

In recent decades, courts worldwide seem to give up their resistance to reviewing parliamentary proceedings.¹³ The resistance first weakened in the field of lawmaking rules, since several countries order the annulment of laws adopted during the faulty procedure by way of the constitutional court, through normative control.¹⁴ One of the reasons for the breakthrough is that the courts enforce the constitutional principles, which ultimately help meaningful deliberation of public affairs to take effect. As a result, parliamentary procedure is less and less seen as a political issue in which the courts cannot have a say. Among the control mechanisms vis-à-vis the parliament, the normative control is the most widespread in the world. In this way of control, statutes, adopted by parliament are checked against procedural rules of their adoption, based on constitutional principles. Procedural control - including the normative review of house rules - is present in many places only as a supplement to this.

¹⁰ Currently the *Select Committee for Standards and Privileges*, previously the *Committee for Privileges*.

¹¹ That the freedom of speech and debates or the proceedings of Parliament ought not to be impeached or questioned in any court or place out of Parliament.

¹² See the public consultation by the UK Government in 2012 on “Parliamentary Privilege” (Presented to Parliament by the Leader of the House of Commons and Lord Privy Seal by Command of Her Majesty, 2012), www.gov.uk/government/uploads/system/uploads/attachment_data/file/79390/consultation.pdf.

¹³ Ittai Bar-Siman-Tov, “The Role of Courts in Improving the Legislative Process,” *The Theory and Practice of Legislation* 3, no. 3 (September 2015): 295–313, DOI:10.1080/20508840.2015.1133169.

¹⁴ Ittai Bar-Siman-Tov, “Semiprocedural Judicial Review,” *Legisprudence* 6, no. 3 (December 2012): 271, <https://doi.org/10.5235/17521467.6.3.271>.

However, in parliamentary activities other than lawmaking, the attitude of the courts, has hardly changed. It seems that the courts more seriously demand compliance with the house rules if the parliamentary act in question has some kind of outcome or product (for example, in the form of a statute), having an effect on citizens' rights.

The constitutional review of parliamentary house rules is a separate issue – it has been established in continental law, but not in the common law system. The competence of the German and French constitutional courts extends to this type of normative control, and in the latter case, moreover, the constitutionality review of the house rules - in its preliminary form - is even mandatory.

Judicial attitudes and activism regarding parliamentary proceedings vary from country to country and from era to era. According to Gardbaum,¹⁵ this historically changing context can be recorded in four scenarios:

- The classic example of the first is the period of the British Parliament between 1832-1945. The parliamentary functioning based on parties and factions had not yet solidified, independent representatives standing one by one against the government. No instance of judicial intervention existed, the sovereignty of the parliament was unbroken.
- The second scenario is that of the modern party system: factional discipline overrides individual conviction. In the case of governing parties, the goal is not to control the government, but to keep it in office at all costs. In this model, the roles are reversed: the parliament already depends on the government, since both are actually projections of the party. This is mainly the case in a two-party system, since a multi-party coalition's fusion of parliament and government is not so strong. In this situation, the role and powers of judges and constitutional judges are evaluated for the first time. This trend can be observed in the reorganization after the Second World War and in the democratization that followed 1989-90.

¹⁵ Stephen Gardbaum, "Pushing the Boundaries: Judicial Review of Legislative Procedures in South Africa," *Constitutional Court Review* 9, no.1 (December 2019), <https://doi.org/10.2989/CCR.2019.0001>.

- In the third model, a dominant party comes to power, and as a result, all political accountability ceases, the relationship of responsibility of the government-parliament relationship is also blurred. Here, the court has an even more active role against parliament: but it does not exceed its powers, since formal rules are followed by parliament.
- In the fourth case, the dominant party abuses its power. In this case, however, the court also tends to exceed its authority, based on the principle of “special situations require a special solution”. This tendency is shown by the gradually strengthening activism of the South African Constitutional Court in the 2000s.

In the following part of this article, my main attempt is to create a theoretical framework for judicial remedies in parliamentary procedure, based on the second and third scenario described above. I do not only focus on courts: even if courts are empowered to judge parliamentary procedure, the ‘first instance’ guardian of the house rules is normally the Speaker, using disciplinary powers, often based purely on customary rules. Countries of parliamentary sovereignty do not have an external, ‘second instance’ forum at all. In other countries, a kind of external control is possible: major legal disputes on breaching house rules may also be resolved by (constitutional) courts. There are conflicting principles to be reconciled. In particular, the external oversight may harm the parliamentary autonomy, the internal oversight may end up in a corrupt, partisan decision. Different jurisdictions have different solutions to settle debates between constitutional bodies. The possible remedies in cases, when parliamentary procedures are disrespected, are the following:

Remedies in parliamentary law	For external actors (citizens)	For internal actors (MP, factions)
at an external forum	I.	II.
at an internal forum	III.	IV.

The above table shows the possible distinctions which can be made between an external remedy that is available against parliamentary acts, and an internal (inter-

parliamentary) remedy. In addition, another distinction can be made between legal remedies available to external persons (citizens) and parliamentarians, since parliamentary acts may affect also non-parliamentarians (if, for example, the committee report makes unlawful statements on citizens), but they may only affect matters within the parliament as well (such as the rejection of an interpellation).

3.1. Extra-Parliamentary Remedies for Extra-Parliamentary Persons (Citizens)

Courts within the UK normally do not consider themselves competent in internal affairs of the parliament, it happens nevertheless that their decisions indirectly stray into the area of parliamentary privilege. In *Stockdale v. Hansard* (1839), the court ruled that it is the duty of the courts to protect the rights of persons outside parliament, as parliamentary freedom of speech could not be unlimited. The case came about parliament's internal, own documents, above all the diary (Hansard), stating that statute is the only parliamentary act, which is binding for the courts by its very nature. As judicial independence requires, no other parliamentary document or decision affects the courts' freedom of legal interpretation.

In *Kerins v McGuinness & Ors*, the Irish Supreme Court ruled that “the privileges and immunities of the Oireachtas, while extensive, do not provide an absolute barrier in all circumstances to the bringing of proceedings concerning the actions of a committee of the Houses of the Oireachtas.”¹⁶ The case came about in 2014: Angela Kerins, chief executive of the Rehab charity was asked before the Public Accounts Committee of the Irish Parliament, the Oireachtas. During the session, the MPs rudely attacked her, being asked offensive questions, without advance notice.

The Court stated that the primary role of providing a remedy where a citizen is affected by unlawful parliamentary action, lies with the Houses themselves. The jurisdiction of a court to intervene can only arise where there has been a

¹⁶ Kerins v. McGuinness & Ors, [2019] IESC 11.

significant and unremedied unlawful action on the part of a committee. The Court also stated that the PAC was acting outside its terms of reference when it dealt with Ms Kerins on different issues as the invitation predicted. Ireland, a country of codified constitution does not place parliamentary sovereignty in the focal point of constitutionalism. The Kerins case, despite the attention it received in both academia and politics, is rather an exception. In many countries, including Hungary, citizens cannot sue parliament or its organs simply due to their unjusticiability.

Recently, from 2005 onwards, the ECtHR became increasingly interested in assessing parliamentary procedures concerning the disputes upon Art. 8-11 of the Convention, especially if domestic fora could not settle the conflict. When assessing the limitation of human rights by legislation, the degree of ‘democratic debate’ during the legislative procedure serves increasingly as an argument. In determining whether the limitation concerned was appropriate, the Court examined how “deep and thorough the parliamentary debate” was, how it corresponded to a “pressing social need”, whether “substantive arguments” were developed in the course of the legislation or “considerable parliamentary scrutiny”, or a “meaningful engagement with the views of minority rights bearers” take place.¹⁷ The ECtHR already gathered evidence from national parliamentary debates for more than 30 judgements. Yet, this approach is far from being consensual; its decisions concerning parliamentary procedures are unclear, their concepts need further substantiation. It is still a question, whether this judicial activity may tend to the evolution of a “common parliamentary law” of the nations, applying common standards, using common concepts.

3.2. Extra-Parliamentary Remedies for Intra-Parliamentary Persons (Mps)

Intra-parliamentary conflicts can best settled by a neutral forum outside parliament. Any intra-parliamentary forum is part of the partisan logic of the parliament, and the decisions are heavily influenced, if not determined, by the parliamentary majority.

¹⁷ For the details of the cases see Matthew Saul, “The European Court of Human Rights’ Margin of Appreciation and the Processes of National Parliaments,” *Human Rights Law Review* 15, no. 4 (December 2015): 745–774, <https://doi.org/10.1093/hrlr/ngv027>.

In Germany, a continental and civil law country, there is an individual procedure at an external forum, the Federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) to settle parliamentary procedural disputes. The BVerfG in the framework of a dispute procedure between constitutional bodies (*Organstreitverfahren*, OSV), interprets the Basic Law to investigate if a constitutional rule is violated. The peculiarity of the regulation is that it can be initiated not only by constitutional bodies, but also by any public law subject possessing constitutional rights, like parliamentary groups or individual members.

The petitioner must prove that his rights, or the rights of the body to which he belongs, have been violated or directly threatened by the other body. A 'part of body' (*Organteil* – eg. a group of MPs) is deemed empowered with own rights, if it can enforce it without the intention or permission of the body as a whole (eg. the parliament). Based on the above, the president of the Bundestag, any representative, the *Ältestenrat* (the political coordinative committee consisting of party group presidents), any standing committee, faction, but even "qualified minorities", i.e. one-third, one-quarter and one-tenth of the Members may be legitimate parties. In practice, the procedure has so far been pursued for three main purposes: the protection of parliamentary opposition rights, the protection of Parliament's rights vis-à-vis the government (mainly in foreign and security policy) and the rights and equality of political parties.

The OSV is primarily a constitutional interpretation procedure: BVerfG does not decide on the dispute itself, but interprets the text of the Constitution with regard to the rights and obligations of the bodies involved. Yet, it does not stop here, but either accepts the application or rejects it based on the result of the interpretation. BVerfG is bound to the application, reflecting on it, and finalizing the conflict remains with the disputing parties. Thus, the German legislator consciously decided to keep BVerfG out of political conflicts that could not be solved by legal means. In practice, the number of OSVs between 1951 and 2015 was close to one hundred and fifty, about 80 of which were closed by a substantive decision of the Second Senate, the others were either rejected or withdrawn. Thus, the OSV is proved to be an effective procedure.

Not all countries share this approach. The Hungarian Constitution does not require legal remedies against parliamentary acts (like disciplinary decisions). Since the disciplinary decisions of the Parliament - the constitutional basis of which is created by the Fundamental Law - are not considered to be judicial or administrative decisions, lack of legal remedy against such decisions does not in itself result in a breach of the constitution. Ordinary court remedies are also excluded in Hungary, since so far, the doctrine of the “inability” of parliament to be sued at courts is strictly held (no one can sue Parliament in civil or penal procedure at court).

3.3. Intra-Parliamentary Remedies for Extra-Parliamentary Persons (Citizens)

In theory, citizens, violated in their rights by MPs, could turn to the competent parliamentary committee or plenary which decide on the immunity. This could function as a quasi-remedy, where MPs could apologize the affected citizen on the House floor. But, as stated above, inter-parliamentary decisions are under political influence and mostly end up partisan.

I also briefly address the possibility that, in the event of legal violations caused by the parliament’s internal bodies and MPs, it can theoretically be suggested that the parliament itself punishes them on the basis of its autonomy. However, this remains a theoretical possibility considering the judicial monopoly of stating legal responsibility. Referral of legal violations committed by MPs from an external (court) to an internal (immunity committee) forum is the path of immunity cases. Judicial control of the decisions made during the immunity procedure is excluded, so here we find a strict separation, the internal immunity and external judicial powers are complementary to each other, as they are mutually exclusive.

3.4. Intra-Parliamentary Remedies for Intra-Parliamentary Persons (Mps)

Since this paper focuses on the relationship between parliament and courts, I will touch on this point only briefly. The best example of parliament’s own house-rules-court is the Speaker of the UK House of Commons. Its decisions (Speakers’ Rulings) are highly authoritative and partisanship usually does not arise. This requires the integrity of the Speaker’s office, which he has maintained

until now. In the Hungarian parliamentary disciplinary law, however, the internal appeal forum system, introduced in the wake of a recent ECtHR-case, cannot be considered an effective legal remedy without concern. This solution is only functional in the case of a Speaker with authority similar to that of the British one.

IV. TYPES OF JUDICIAL CONTROL OF PARLIAMENTARY PROCEDURES

When examining the judicial control of parliamentary procedures, besides legal (statutory) competences of courts, there are two decisive factors one should look at: the extent of the judicial activism, and the practice of procedural review as an individual procedure or part of other review possibilities.

4.1. Levels of Judicial Activism

I will illustrate the context-dependent dynamics of judicial activism by the changes in the practice of the South African Constitutional Court. By the 2000s, the court had broken with the general reluctance shared by most courts around the world, to review legislative processes, parliamentary rules of procedure, and the political accountability of the executive. The court's actions do not represent a violation of the separation of powers, but seek new solutions and legal remedies for the problems that arise.

In the last years, the South African Constitutional Court gradually departed from its original norm of non-intervention in legislative procedures. It has increasingly engaged in oversight of various types of legislative procedures, including the lawmaking process itself, and internal rules and mechanisms of parliament, especially that of parliamentary oversight. For example, in *United Democratic Movement v. Speaker of the National Assembly*, decided in June 2017, the Court set aside the Speaker's ruling that she had no power to call for a secret ballot on a no-confidence motion in the President. The Court held that such a decision must be supported "by a proper and rational basis and made to facilitate the effectiveness of parliamentary accountability mechanisms", which, as it held, was not the case.

As Gardbaum observes,¹⁸ the court deviated towards the judicial review of parliamentary proceedings in three successive steps:

1. First, it established its authority to review legislation adopted in violation of the procedural rules, laid down in the constitution.
2. After that, it carried out the constitutionality examination of the internal parliamentary rules, in order to protect the constitutional rights of the MPs.
3. Finally, in an unusual way, it extended the review to an area that had not been touched before: the parliamentary control, examining whether it fulfils its constitutional obligation to control the government, and if so, how. At this phase, neither the review of norms nor that of procedural rules was the matter, but the mere application of certain rules was the subject of the investigation.

In Italy, on the contrary, the Constitutional Court walked a restrictive way, stating that the due respect for the parliament's autonomy requires that judicial control be strictly limited to those cases that result in an "obvious" violation of the constitutional prerogatives of MPs, and that such violations must be clearly identifiable already during the preliminary consideration.¹⁹

Similarly, the Czech Constitutional Court ruled that only the constitutionally defined rules of lawmaking can constitute a mandatory criterion for review by the court.²⁰ It also stated that the court's task is not to revise the parliamentary culture.²¹ In addition, it also emphasized that it is necessary to balance the formal and procedural aspects of the review with the principle of legal certainty, and as a result, in many cases, where the court found the lawmaking procedure unconstitutional, it kept the law nevertheless in force.²²

The court repeatedly stated that the annulment of a law is only possible if a constitutional norm has been violated, or if the unlawful lawmaking procedure has violated certain constitutional rights, principles or values.²³ As a result,

¹⁸ Gardbaum, 2019.

¹⁹ Decision of the Italian Constitution Court 17/2019.

²⁰ PL. ÚS 23/2004.

²¹ PL. ÚS 24/2007.

²² PL. ÚS 56/2005.

²³ PL. ÚS 26/2016.

since 2013, the Czech Constitutional Court has not annulled a single law due to violating the lawmaking procedure.

4.2. The Relation of Substantive Review to Procedural Review

When performing their constitutional duties in normative control, constitutional courts may look at the content (merit) of a law, the way it was adopted, or both. Courts are generally strict about the result of the parliamentary procedure affecting citizens' rights, but they tend to be less strict if the failures are not from the domain of the lawmaking procedure.

Interestingly, one of the first cases of the annulment of a law due to a procedural error was not in the Euro-Atlantic region, but in the Republic of South Africa, in 1951. The court handling the case established that the election law, in addition to being racially discriminatory in content, was not adopted in the prescribed manner at a joint meeting of the two parliamentary chambers with a two-thirds majority.²⁴ Here, the procedural error was established alongside a more serious content error - which was the defining practice for the courts of many countries for decades. This is what Bar-Siman Tov calls semiprocedural review, which is spreading worldwide.²⁵

For a long time, the US Supreme Court has firmly and consistently refrained from procedural review of legislation.²⁶ The reason for this was the almost doctrinal interpretation of the division of powers and the refraining from interfering in the internal affairs of the Congress. The USSC did not even act on clearly unconstitutional congressional lawmaking procedures. For a long time, there was no formal judicial control of congressional proceedings, at most as part of substantive control. Not even when suspicions arose that the offices of Congress and the President colluded to pass legislation that was not passed by both houses of Congress.²⁷

²⁴ *Harris v. Minister of the Interior*, 1951 (2) SA 428 (A).

²⁵ Ittai Bar-Siman Tov, "The Puzzling Resistance to Judicial Review of the Legislative Process," *Boston Law Review* 91 (May 2011): 1915, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1843564.

²⁶ Tov, "The Puzzling Resistance," 1923.

²⁷ *OneSimpleLoan v. U.S. Sec'y of Educ.*, 496 F.3d 197, 208 (2d Cir. 2007).

By the 2000s, a slow but decisive paradigm shift took place in the field of judicial review of congressional proceedings: the number of dissenting opinions, calling for a procedural review, grew steadily.²⁸ In recent years, the view that the courts must eliminate from the political decision-making mechanism those elements, that are alien to the thinking of the founding fathers who created the constitution, has spread in literature as the structuralist position.²⁹ As we have seen, it is very difficult to separate the purely structural and procedural issues from the substantive ones in practice. In the case of the USA, we can see the rise of procedural judicial control over Congress, mostly in theoretical works and judicial practice.³⁰ According to Bar-Siman Tov's observation, this trend reached the Supreme Court from the state courts through the federal courts, i.e. the paradigm shift took place bottom-up.³¹ Another example for procedural review of legislation is a recent decision³² of the Constitutional Court of Indonesia, suspending a controversial statute on procedural arguments of lacking obligatory consultations during the legislation process. However, the Court's first decision of this kind provoked the anger of the parliamentary majority, resulting in the replacement of a constitutional court justice.³³

In Germany, the mere violation of the house rules during the lawmaking process, without violating a constitutional rule, does not lead to the law's annulment, but according to the ruling position, it remains ignored (*unbeachtlich*).³⁴ This is the case also in some countries of the region, like the Czech Republic or Hungary, where omitting obligatory consultation in the preparatory phase of lawmaking do not result in an annulment by the constitutional court. Nevertheless, there have been cases in Germany where laws

²⁸ See eg. the dissent of Justice Stevens in *Fullilove v. Klutznick* (448 US 1980), judicial review should include a consideration of the procedural character of the decision-making process.

²⁹ Koen Lenaerts, "The European Court of Justice and Process Oriented Review," (Research Papers in Law, College of Bruges, 2012), https://www.coleurope.eu/sites/default/files/research-paper/researchpaper_1_2012_lenaerts_final_o.pdf p.2.

³⁰ *Clinton v. City of New York*, 524 U.S. 417 (1998); *United States v. Munoz-Flores*, 495 U.S. 385 (1990); *United States v. Lopez*, 514 U.S. 549, 613-14 (1995).

³¹ Tov, "The Puzzling Resistance," 1920.

³² Decision No. 91/PUU-XVIII/2020, 25. November 2021.

³³ Zsolt Szabó, "How to Resist Political Pressure against a Constitutional Court?" *JTIBlog*, published 4 November 2022, [jog.tk.hu/blog](https://jog.tk.hu/blog/2022/11/how-to-resist-political-pressure-against-a-cc#_ftn3), https://jog.tk.hu/blog/2022/11/how-to-resist-political-pressure-against-a-cc#_ftn3.

³⁴ Volker Epping and Christian Hillgruber, *Kommentar zum Grundgesetz* [Commentary to the German Fundamental Law] (München: Beck, 2009).

have been struck down - in part - for procedural reasons, for example after the adoption of the immigration law in 2002, due to violations of the voting rules in the Bundesrat.³⁵ And in 2010, due to irregularities (inadequate preparation) experienced during the adoption of the law on social benefits, the Federal Constitutional Court decided to pronounce it unconstitutional, in addition to its content being unconstitutional.³⁶

1. Sole procedural review at lawmaking

In *Kwantski v. The Knesset*,³⁷ the Israeli Supreme Court annulled an omnibus financial law in its 2017 decision, as the procedure violated the right of the deputies to discuss the bill in its details, since they only received the final version shortly before the vote.³⁸ This was the first case in the history of Israeli parliamentarism, when the Supreme Court annulled a law solely due to a procedural error, the adoption of which did not otherwise violate a formal rule of procedure, but “only” limited the possibility of a meaningful debate. Before submitting the opposition motion, the house speaker was inclined to repeat the vote, but he did not support the appeal to the court. In the case of the decision, which is also intended to be indicative, some speak of a new era in which the Supreme Court strengthens democracy with an activist turn.³⁹

2. Mixed review at lawmaking (the procedural review only being additional)

This is the most common way of courts taking in consideration the legislative procedural failures. As part of their general examination in the merit, they often look at the procedure, but only condemn it, if there are already

³⁵ 106 BVerfGE 310, 2002.

³⁶ Hartz IV' Decision, BVerfGE, Judgment of the First Senate of 09 February 2010 - 1BvL 1/09 - paras. (1-220), 2010

³⁷ HCJ 10042/16 (2017).

³⁸ Ittai Bar Siman Tov, “In Wake of Controversial Enactment Process of Trump’s Tax Bill, Israeli SC Offers a Novel Approach to Regulating Omnibus Legislation,” *I CON NECT blog*, 13 December 2017, <http://www.iconnectblog.com/2017/12/in-wake-of-controversial-enactment-process-of-trumps-tax-bill-israeli-sc-offers-a-novel-approach-to-regulating-omnibus-legislation/>.

³⁹ Yaniv Roznai, “Constitutional Paternalism: The Israeli Supreme Court as Guardian of the Knesset,” *IACL-AIDC Blog* May 17, 2019, <https://blog-iacl-aidc.org/2019-posts/2019/5/17/constitutional-paternalism-the-israeli-supreme-court-as-guardian-of-the-knesset>.

enough arguments against the law in the merits. Procedural failures may serve also as an additional argument if the law seems controversial from a constitutional point of view.

3. **Single or mixed procedural control in other procedures than legislation (eg. parliamentary scrutiny procedures)**

Courts are normally more indulgent with parliamentary procedural errors, if there is no product at the end of the procedure, affecting rights and obligations of the citizens. They definitely seem to be more strict at lawmaking procedures. In theory, judicial control of parliamentary scrutiny can be considered in two aspects (again applying the system presented earlier with regard to external and internal forums and applicants).

On the one hand, it is justified that the actors of the scrutiny procedure (eg. MPs asking questions, political groups requiring inquiry committees) be endowed with constitutional rights in order to defend their rights at (constitutional) courts. On the other, persons outside the parliament (citizens, natural and legal persons alike) whose rights have been violated by parliamentary scrutiny, should be able to start the (ordinary) court process, based on the general principle providing remedy against all state decisions. They could equally seek legal remedies against possible sanctions and coercive measures applied by the investigative committee, as we saw in the Kerins case.

This possibility is open in Germany and Austria. Especially the 2014 reform of the rules of procedure in Austria, following the German example, needs a mention. The changes opened up constitutional court competences in the following fields, related to parliamentary scrutiny:

- a) legal disputes about the admissibility of investigation committees upon minority request;
- b) matters concerning the adequacy of conflicts related to the scope of the basic procedure for taking evidence of the Rules of Procedure Committee;

- c) disputes related to the existence of an objective relationship between the request for the taking of additional evidence or the subpoena of a witness and the subject of the inquiry committee's investigation;
- d) competence issues related to conflicts between the Parliament and other state bodies (inter-agency conflicts, following the German example).

V. CONCLUSION

From the international overview, we can draw the conclusion that in continental, and even in some commonwealth jurisdictions, there is a legitimate claim of courts to judge whether parliamentary procedures are lawful (constitutional, fair, etc.). The only country, where parliament's privilege to be its (and its members') own judge is untouched, is the UK. It is not possible there to call a court in cases of grievances caused by the Parliament or MPs to citizens. But in the UK, the respected and independent position of the Speaker guarantee the fair judgement. Either way, parliamentary decisions, even on internal procedural matters, need to be provided with effective remedy. This is what also the ECtHR case law tells us.

However, the extent of the procedural review is highly dependent on the political culture and the government structure. As seen in the case of South Africa, courts tend to be more activist if there is a political turn against checks and balances. In the absence of a 'House-Rules-Court', a supranational forum, mainly the ECtHR, may become the most robust control body of the national parliaments' procedures. Several complaints concerning parliamentary law have been admitted by ECtHR so far. The Court will probably continue to influence the operation of the national parliaments in the future.⁴⁰

The theoretical framework of (judicial) remedies against parliamentary procedural decisions, distinguishes between types of procedural rules, applicants, fora, extents of judicial activism and types of judicial review. The different types of remedies depend highly on the political landscape and the government's

⁴⁰ Csaba Erdős, *Hungarian Parliamentary Law under the Control of the Strasbourg Court; Legal studies on the contemporary Hungarian Legal System* (Győr: Széchenyi István University, 2014), 29.

structure. This article examined the external, judicial enforcement tools more thoroughly, which are either projections of internal political disputes or forums for settling legal violations suffered by external legal citizens. Courts of several countries are increasingly accepting lawsuits from legal entities outside the parliament, disputing parliamentary decisions.

Due to the partisan nature of all parliamentary bodies, no internal House-Rules-Court can be created within parliament in Hungary or other continental countries. However, if the sovereignty of Parliament is not unlimited, constitutional courts are suitable for acting as House-Rules-Court in a German-type dispute settlement procedure between constitutional bodies, if the constitutional and legislative environment is appropriate for this. The advantage of this would be to provide remedy against the decisions of the parliament which are not of legislative nature.

If national jurisdictions do not establish an effective House-Rules-Court of their own (as the constitutional courts would undoubtedly accept as such), the ECtHR may be acting as such. While going slightly against parliamentary sovereignty and its autonomous procedures, this approach can protect human rights and common principles of parliamentary law like democratic debate. In our view, some control over parliamentary procedures is inevitable, but it should preferably remain within the scope of national sovereignty. This is why an impartial House-Rules-Court should be created, possibly at the constitutional court.

Parliamentary law is one of the last, fearfully guarded relics of national sovereignty worldwide. Every state is proud of its parliamentary traditions and considers them to be its internal affairs. Until recently, there was no supranational, international influence or integration pressure in parliamentary proceedings. However, it cannot be denied that, like in the case of courts, there is a spontaneous, voluntary learning process between parliaments, especially embedded in the process of democratization. Regardless of this, fundamental principles can be identified that are common to all parliaments, and their enforcement is the key to fair parliamentary functioning. There can be such principles - which should

be followed in all deliberative bodies - the majority decides, but let the minority be heard, only one topic can be discussed at a time, the pre-agreed discussion rules must be followed, and so on.

Based on this, in principle, the idea of a common parliamentary law (*Ius Commune Parlamentiensis/Ius Gentium Parliamentaris*) and a world-level house rules court acting on this basis could be proposed, on the basis of which the adopted house rules of individual national parliaments could be brought before a forum operating on the basis of globally accepted rules or principles or legal disputes based on them. For now, this idea is far from reality, and its necessity can be questioned, but some signs of international judicial forums are showing interest in parliamentary proceedings. However, until there is no World Constitutional Court, these remain speculations of lawyers for international conferences.

BIBLIOGRAPHY

- Aleman, Eduardo and Geroge Tsebelis. "Introduction." In *Legislative Institutions and Lawmaking in Latin America*, edited by Eduardo Alemán and George Tsebelis. Oxford: Oxford University Press, 2016), 5.
- Bar-Siman-Tov, Ittai. "In Wake of Controversial Enactment Process of Trump's Tax Bill, Israeli SC Offers a Novel Approach to Regulating Omnibus Legislation." *I-CON NECT blog*, 13 December 2017, <http://www.iconnectblog.com/2017/12/in-wake-of-controversial-enactment-process-of-trumps-tax-bill-israeli-sc-offers-a-novel-approach-to-regulating-omnibus-legislation>.
- Bar-Siman-Tov, Ittai. "The Role of Courts in Improving the Legislative Process." *The Theory and Practice of Legislation* 3, no. 3 (September 2015): 295–313. DOI:10.1080/20508840.2015.1133169.
- Bar-Siman-Tov, Ittai. "Semiprocedural Judicial Review." *Legisprudence* 6, no. 3 (December 2012): 271. DOI:10.5235/17521467.6.3.271.
- Bar-Siman-Tov, Ittai. "The Puzzling Resistance to Judicial Review of the Legislative Process." *Boston Law Review* 91 (May 2011): 1915. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1843564.

- Epping, Volker and Christian Hillgruber. *Kommentar zum Grundgesetz* [Commentary to the German Fundamental Law]. München: Beck, 2009.
- Erdős, Csaba. *Hungarian Parliamentary Law under the Control of the Strasbourg Court In Legal studies on the contemporary Hungarian Legal System*. Győr: Széchenyi István University, 2014, 27-38.
- Gardbaum, Stephen. "Due Process of Lawmaking Revisited." *Journal of Constitutional Law* 21, no. 1 (October 2018), <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1670&context=jcl>.
- Gardbaum, Stephen. "Pushing the Boundaries: Judicial Review of Legislative Procedures in South Africa." *Constitutional Court Review* 9, no.1 (December 2019), <https://doi.org/10.2989/CCR.2019.0001>.
- Goet, Niels D., Thomas G. Fleming and Radoslaw Zubek. "Procedural Change in the UK House of Commons 1811–2015." *Legislative Studies Quarterly* 45, no. 1 (February 2020), <https://doi.org/10.1111/lsg.12249>.
- Goet, Niels D., Thomas G. Fleming and Radoslaw Zubek. "Procedural Change in the UK House of Commons, 1811–2015." *Legislative Studies Quarterly* 45, no. 1 (February 2020).
- Haug, Volker. *Bindungsprobleme und Rechtsnatur parlamentarischer Geschäftsordnungen* [Binding Problems and the Legal Nature of Parliamentary Rules of Procedure]. Berlin: Duncker und Humblot, 1994.
- Jain, D.C. "Judicial Review of Parliamentary Privileges: Functional Relationship of Courts and Legislatures in India." *Journal of the Indian Law Institute*, 9 no. 2 (1967): 205–222., <http://www.jstor.org/stable/43949934>.
- Lazarus, Liora and Natasha Simonsen. "Judicial Review and Parliamentary Debate: Enriching the Doctrine of Due Deference." In *Parliament and Human Rights: Redressing the Democratic Deficit*, edited by Murray Hunt, Hayley Hooper and Paul Yowell. Oxford: Oxford University Press, 2014, 385.

- Lenaerts, Koen. “The European Court of Justice and Process Oriented Review.” Research Papers in Law, College of Bruges, 2012. https://www.coleurope.eu/sites/default/files/research-paper/researchpaper_1_2012_lenaerts_final_o.pdf.
- Lenaerts, Koen. “The European Court of Justice and Process-Oriented Review.” (Research Papers in Law 1, Bruges, College of Bruges, 2012) https://www.coleurope.eu/sites/default/files/research-paper/researchpaper_1_2012_lenaerts_final_o.pdf.
- May, Thomas Erskine. *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. New York City: LexisNexis, 2019. erskinemay.parliament.uk.
- Nussberger, Angelika. “Procedural Review by the ECtHR: View from the Court.” In *Procedural Review in Fundamental Rights Cases*, edited by Gerards, Janneke and Brems, Eva, 161-176. Cambridge: Cambridge University Press, 2017.
- “Parliamentary Privilege.” Presented to Parliament by the Leader of the House of Commons and Lord Privy Seal by Command of Her Majesty, 2012. www.gov.uk/government/uploads/system/uploads/attachment_data/file/79390/consultation.pdf.
- Roznai, Yaniv. “Constitutional Paternalism: The Israeli Supreme Court as Guardian of the Knesset.” *IACL-AIDC Blog* May 17, 2019 <https://blog-iacl-aidc.org/2019-posts/2019/5/17/constitutional-paternalism-the-israeli-supreme-court-as-guardian-of-the-knesset>.
- Saul, Matthew. “The European Court of Human Rights’ Margin of Appreciation and the Processes of National Parliaments.” *Human Rights Law Review* 15, no. 4 (December 2015): 745–774, <https://doi.org/10.1093/hrlr/ngv027>.
- Szabó, Zsolt. “How to Resist Political Pressure against a Constitutional Court?” *JTIBlog*, published 4 November 2022, jog.tk.hu/blog, https://jog.tk.hu/blog/2022/11/how-to-resist-political-pressure-against-a-cc#_ftn3.