

Act on the Constitutional Court Act XXXII of 1989 on the Constitutional Court

In order to establish the rule of law, to protect constitutional order and the basic freedoms guaranteed by the Constitution, to foster the separation of powers and to secure checks and balances, to set up the supreme body protecting the Constitution, Parliament has enacted the following statute by implementing Paragraph (6) of Article 32/A of the Constitution:

Chapter I Competence of the Constitutional Court

Article 1 The competence of the Constitutional Court includes:

- a) the ex ante examination for unconstitutionality of statutes adopted but not yet promulgated, and of provisions of the rules of procedure of Parliament and of international treaties;
- b) the ex post examination for unconstitutionality of rules of law, as well as other legal means of state administration;
- c) the examination of conflicts between international treaties and rules of law, as well as other legal means of state administration;
- d) judgment on constitutional appeals lodged for the violation of rights guaranteed by the Constitution;
- e) the elimination of unconstitutionality by omission;
- f) the elimination of conflicts of competence between state organs, local governments and other state organs, or between local governments;
- g) the interpretation of provisions of the Constitution;
- h) proceeding in all cases referred by statute to its competence.

Article 2 The Constitutional Court determines its own budget, which shall be submitted for approval to Parliament as a part of the state budget.

Chapter II Organization of the Constitutional Court

Article 3 The seat of the Constitutional Court is Esztergom.

Article 4 (1) The Constitutional Court is a body which consists of eleven Members including the Chairperson and the Vice-Chairperson.

(2) The Constitutional Court elects, from among its Members, the Chairperson and the Vice-Chairperson for a renewable period of three years. Re-election does not affect the term of office of Members of the Constitutional Court.

Article 5 (1) Hungarian citizens with a law degree who reached the age of 45 years and have no criminal record may be elected as Members of the Constitutional Court.

(2) Parliament elects Members of the Constitutional Court from among learned

theoretical jurists (university Professors or Doctors of political science and jurisprudence) and lawyers with at least twenty years of professional experience. Such professional experience must be acquired in a position demanding a degree in political science and jurisprudence.

(3) Members of the Government or employees of political parties, as well as high ranking officials of state administration who served in such capacity during the four years before the election may not become Members of the Constitutional Court.

Article 6 A nomination committee which consists of representatives nominated by caucuses of parties represented in Parliament makes a proposal for Members of the Constitutional Court.

Article 7 Proposed persons are heard by the Legal, Administrative and Justice Committee of Parliament.

Article 8 (1) Parliament elects Members of the Constitutional Court taking into account the opinion of its Legal, Administrative and Justice Committee.

(2) If Parliament does not elect the candidates, the nomination committee specified under Article 6 makes a new proposal during the same session but within fifteen days at the latest.

(3) Members of the Constitutional Court are elected for nine years. Members of the Constitutional Court may be re-elected once.

(4) A new Member of the Constitutional Court shall be elected within the three months preceding the expiry of the predecessor's term in office. Had Parliament been previously dissolved, the election shall be held within one month after the first session of the newly elected Parliament.

Article 9 (1) Members of the Constitutional Court may not be Members of Parliament, council members, officials of other state organs, leading officials in organs of interest representation and members of parties.

(2) Members of the Constitutional Court may not pursue political activities or make political statements apart from the tasks of the Constitutional Court within their competence.

(3) Members of the Constitutional Court may not engage in any gainful occupation other than scientific, educational, literary and artistic activities.

Article 10 (1) Should a conflict of interest specified in Article 9 exist in the case of a person elected as a Member of the Constitutional Court, that person shall eliminate such conflict within ten days of the election. The person elected as a Member of the Constitutional Court may not exercise the rights issuing from this office before the elimination of the conflict.

(2) Should the Member of the Constitutional Court fail to comply with the obligation set forth in Paragraph (1) by the deadline specified therein, the plenary session of the Constitutional Court declares the termination of his/her membership in a resolution.

Article 11 At his/her accession to office, the Member of the Constitutional Court takes an oath before Parliament to unconditionally abide by the Constitution and to conscientiously fulfill his/her obligations.

Article 12 Members of the Constitutional Court are independent and they make their decisions exclusively on the basis of the Constitution and statutes.

Article 13 The salary and remuneration of the Chairperson of the Constitutional Court is determined by a separate statute. The other Members of the Constitutional Court, including the Vice-Chairperson, are entitled to the salary and remuneration of Ministers.

Article 14 (1) Members of the Constitutional Court enjoy the same immunity as Members of Parliament.

(2) Except for cases of being caught in the act, Members of the Constitutional Court may not be arrested, prosecuted or forced by coercive measures of the police without the consent of the plenary session of the Constitutional Court.

(3) In suspending the immunity of its Member, the Constitutional Court simultaneously suspends the right of that Member to carry out his/her tasks issuing from this capacity. A Member's immunity may also be suspended if a Member of the Constitutional Court is prosecuted after having been caught in the act.

(4) Members of the Constitutional Court are not accountable for their opinions expressed or votes cast in exercising their duties.

Article 15 (1) Membership in the Constitutional Court terminates:

- a) upon reaching the age of 70 years;
- b) upon expiry of the term of office [Article 8 (3)];
- c) upon decease;
- d) by resignation;
- e) upon the establishment of a conflict of interest;
- f) by release;
- g) by expulsion.

(2) The termination of the mandate of a Member of the Constitutional Court based on points a)-d) of Paragraph (1) is established and published by the Chairperson of the Constitutional Court. In the case of points e), f) and g) of Paragraph (1), a resolution is passed by the plenary session of the Constitutional Court.

(3) Members of the Constitutional Court retire reaching the age of 70 years.

(4) A resignation shall be tendered in writing to the Chairperson of the Constitutional Court, who shall accept the resignation.

(5) Should a conflict of interest (Article 9) arise relating to the person of a Member of the Constitutional Court, he/she shall eliminate such conflict. If this fails to occur within ten days of the session of the Constitutional Court establishing the conflict of interest, the plenary session of the Constitutional Court passes a resolution declaring the termination of the membership in the Constitutional Court of that person. The Member of the Constitutional Court may not exercise the rights issuing from this office from the time of the resolution of the Constitutional Court establishing the conflict of interest until the newer decision of the plenary session.

(6) A mandate may terminate by release if a Member of the Constitutional Court

is unable to discharge the duties issuing from his/her mandate for reasons that are not imputable to him/her.

(7) A mandate may terminate by expulsion if a Member of the Constitutional Court fails to discharge the duties issuing from his/her mandate for reasons that are imputable to him/her or if the Member commits a crime established in a non-appealable verdict or otherwise becomes unworthy of this office and the plenary session of the Constitutional Court expels him/her from membership in the Constitutional Court for such reasons. A Member who does not take part in the work of the Constitutional Court for one year shall be expelled from membership in the Constitutional Court.

Article 16 (1) Should the mandate of a Member of the Constitutional Court terminate based on points a)-b) of Article 15 (1), the new Member of the Constitutional Court shall be elected according to Article 8 (4). Should the mandate terminate in ways set forth in points c)-g) of Article 15 (1), the vacancy shall be filled within two months.

(2) Filling a vacancy is governed by Articles 5-11.

Article 17 (1) The Chairperson of the Constitutional Court

a) coordinates the activity of the Constitutional Court,
b) convokes and moderates plenary sessions of the Constitutional Court,
c) represents the Constitutional Court before Parliament and other organs,
d) fulfils the tasks prescribed for him/her by statute or by the rules of procedure of the Constitutional Court.

(2) When prevented, the Chairperson of the Constitutional Court is substituted for by the Vice-Chairperson.

Article 18 (1) Administrative and preparatory tasks are completed by the Office of the Constitutional Court.

(2) The rules of the organization and operation of the Office of the Constitutional Court are set forth in the rules of procedure of the Constitutional Court.

Chapter III PROCEEDINGS OF THE CONSTITUTIONAL COURT Common rules of procedure

Article 19 Unless provided otherwise by this statute or the rules of procedure of the Constitutional Court, the provisions of the Code of Civil Procedure shall be applied during the proceedings of the Constitutional Court in regard of legal representation, securing the use of the mother tongue and the exclusion of judges.

Article 20 The Constitutional Court proceeds on the basis of the petition of authorized persons.

Article 21 (1) The proceedings according to point a) of Article 1 may, according to the distinction set forth in Articles 33-36, be proposed by:

a)
b) the President of the Republic,

c) the Government.

(2) The proceedings according to point b) of Article 1 may be proposed by anyone.

(3) The proceedings according to point c) of Article 1 may be proposed by:

a) Parliament, its standing committees or any Member of Parliament,

b) the President of the Republic,

c) the Government or its members,

d) the Chairperson of the State Audit Office,

e) the Chairperson of the Supreme Court,

f) the Prosecutor General.

(4) The proceedings according to points d)-e) of Article 1 may be proposed by anyone.

(5) The proceedings according to point f) of Article 1 may be proposed by the organs between which a conflict of competence occurred.

(6) The proceedings according to point g) of Article 1 may be proposed by:

a) Parliament or its standing committees,

b) the President of the Republic,

c) the Government or its members,

d) the Chairperson of the State Audit Office,

e) the Chairperson of the Supreme Court,

f) the Prosecutor General.

(7) The proceedings according to points c) and e) of Article 1 may also be started ex officio.

(8) The statute may also authorize others than those specified in Paragraphs (1)-(6) to propose the proceedings of the Constitutional Court.

Article 22 (1) Written petitions for initiating proceedings shall be filed directly with the Constitutional Court.

(2) Beside specifying the cause, the petition shall contain an explicit request, too.

(3) A party making a petition may repeatedly submit a petition with the same content only if the underlying causes of the previous petition had changed significantly.

Article 23 (1) The Chairperson of the Constitutional Court forwards petitions submitted by unauthorized entities to an organ having the authority to make the petition while he rejects manifestly ungrounded petitions.

(2) The Chairperson refers petitions for cases outside of the competence of the Constitutional Court to the organ having competence for the case.

Article 24 Everyone shall provide the data requested by the Constitutional Court.

Article 25 (1) The Constitutional Court proceeds in plenary session or in a three member panel.

(2) The Constitutional Court effects the discovery procedure on the basis of available documents and, if needed, by oral hearing and by involving experts. No other methods of discovery or means of taking evidence are admissible.

(3) The Constitutional Court passes resolutions, for which reasons shall be

given, in closed session by a majority of votes, unless otherwise provided for specific cases by the rules of procedure of the Constitutional Court. The resolution shall be delivered to the petitioner.

Article 26 Members of the Constitutional Court may attach to the documents their dissenting opinion along with its reasons in writing.

Article 27 (1) The resolutions of the Constitutional Court are not appealable.

(2) The resolutions of the Constitutional Court are binding for all.

Article 28 (1) The proceedings before the Constitutional Court are free of charge and stamp duty.

(2) The Constitutional Court may charge the costs arising in its proceedings to the petitioner if that party's bad faith in submitting the petition can be established.

Article 29 The detailed rules of the organization and procedure of the Constitutional Court are set forth by the rules of procedure of the Constitutional Court approved in a statute by Parliament at the suggestion of the Constitutional Court.

Article 30 (1) The Constitutional Court shall resolve the following matters in plenary session:

a) the ex ante examination of unconstitutionality of the provisions thought to be of concern in statutes adopted prior to promulgation and in the rules of procedure of Parliament;

b) the ex ante examination of unconstitutionality of the provisions thought to be of concern in international treaties;

c) the ex post examination of the unconstitutionality of statutes;

d) the examination of conflicts between statutes and international treaties;

e) the interpretation of provisions of the Constitution;

f) making the draft statute for the rules of procedure of the Constitutional Court;

g) consent to the arrest, prosecution or use of coercive measures by the police against Members of the Constitutional Court, except for cases of their being caught in the act;

h) the establishment of a conflict of interest relating to the person of a Member of the Constitutional Court;

i) declaring the termination of membership in the Constitutional Court for a Member's failure to eliminate a conflict of interest;

j) the release of a Member of the Constitutional Court from his/her mandate;

k) the expulsion of a Member of the Constitutional Court from membership in the Constitutional Court;

l) any other matters if the Chairperson or three Members of the Constitutional Court propose judgment in plenary session.

(2) The plenary session of the Constitutional Court consists of all Members.

(3) The plenary session has a quorum if attended by at least eight Members of the Constitutional Court including the Chairperson or, if the latter is prevented, the Vice-Chairperson. In the case of an equality of votes, the

Chairperson gives the casting vote. If the Chairperson is prevented, Article 17 (2) applies.

(4) Members of the Constitutional Court take part in plenary sessions of the Constitutional Court with a right to vote. Until a closed session is ordered, the President of the Republic, the Prime Minister, the Speaker of the Parliament, the Chairperson of the Supreme Court, the Prosecutor General, the Minister of Justice and the petitioner may be present and may ask to speak. Also other persons, invited on occasion by the Chairperson of the Constitutional Court, may attend.

Article 31 (1) Three member panels of the Constitutional Court shall proceed, except as statutes provide otherwise, in matters defined by points b) and c) of Article 1, as well as points d)-f) of Article 1.

(2) The panel has a quorum if its session is attended by all three Members.

(3) Persons, invited on occasion by the Member of the Constitutional Court leading the panel, may attend the session of the panel.

Article 32 The plenary session or the three member panels of the Constitutional Court also proceed in all matters whose judgment is referred to their competence by statute or by the rules of procedure of the Constitutional Court.

Chapter IV SPECIFIC PROCEEDINGS

Ex ante examination of unconstitutionality

Article 33

Article 34 (1) The Parliament may send its rules of procedure, before adopting them, to the Constitutional Court for the examination of conformity with the Constitution, indicating the provision(s) thought to be of concern.

(2) If the Constitutional Court establishes the unconstitutionality of a provision thought to be of concern in the rules of procedure, Parliament shall eliminate such unconstitutionality.

Article 35 (1) Upon the petition of the President of the Republic, the Constitutional Court examines the provisions thought to be of concern in statutes adopted by Parliament prior to promulgation.

(2) If the Constitutional Court establishes the unconstitutionality of a provision thought to be of concern in a statute, the President of the Republic may not promulgate the statute before Parliament eliminates such unconstitutionality.

Article 36 (1) Before confirming an international treaty, Parliament, the President of the Republic and the Government may request the examination of the constitutionality of provisions of the international treaty thought to be of concern.

(2) If the Constitutional Court establishes the unconstitutionality of a provision thought to be of concern in the international treaty, the

international treaty may not be confirmed before the organ or person concluding the international treaty eliminates such unconstitutionality.

Ex post examination of unconstitutionality

Article 37 The petition initiating the ex post establishment of unconstitutionality shall request the partial or total annulment of the rule of law or other legal means of state administration.

Article 38 (1) Upon noting the unconstitutionality of a rule of law or other legal means of state administration applicable in the judgment of a case, the judge hearing that case shall suspend the case in court and file a petition initiating the proceedings of the Constitutional Court.

(2) Anyone alleging that a rule of law applicable in his case in process is unconstitutional, may lodge a request initiating the judge's action according to Paragraph (1).

Article 39 If the prosecutor, acting in his power to exercise legal supervision, lodges a protest against an unlawful rule of law on a level below that of a Government decree, or against other legal means of state administration, and the issuing organ disagrees with the protest, that organ may submit the protest for judgment before the Constitutional Court notifying the prosecutor about the reasons of its submission.

Article 40 If the Constitutional Court establishes the unconstitutionality of a rule of law or other legal means of state administration, it annuls in whole or in part that rule of law or other legal means of state administration.

Article 41 The Constitutional Court publishes its resolution on annulment in Magyar Kzlöny [the official journal of Hungary] or in the official journal in which the other legal means of state administration was first promulgated.

Article 42 (1) In the case set forth in Article 40, the rule of law or its provision becomes ineffective and the other legal means of state administration or its provision qualifies as repealed on the day of publication of the resolution.

(2) A rule of law which has been promulgated but has not yet entered into force, does not enter into force if its unconstitutionality is established.

Article 43 (1) The rule of law or other legal means of state administration annulled by a resolution of the Constitutional Court may not be applied from the day of publication of the relevant resolution in the official journal.

(2) Apart from the case set forth in Paragraph (3), the annulment of the rule of law or other legal means of state administration does not affect the legal relationships originating before the resolution was published and the rights and obligations resulting therefrom.

(3) The Constitutional Court orders the review of the criminal proceedings concluded with a non-appealable verdict based on an unconstitutional rule of law or other legal means of state administration if the convict has not been exempted from all adverse consequences and the nullity of the provision applied in the proceedings would result in the reduction or waiver of the measure or in the exemption from or limitation of, liability.

(4) The Constitutional Court may depart from the times specified in Articles

42 (1), as well as 43 (1)-(2) and set a different time for an unconstitutional rule of law to become ineffective or for its applicability in a concrete case, if this is justified by the interest in legal certainty or a particularly important interest of the entity initiating the proceedings.

Examination of conflicts with international treaties

Article 44 The Constitutional Court examines rules of law or other legal means of state administration for conflicts with international treaties ex officio or upon the petition of the organs or persons specified in Article 21 (3).

Article 45 (1) If the Constitutional Court establishes that a rule of law or other legal means of state administration at the same or lower level than the rule of law promulgating the international treaty conflict with the international treaty, it annuls in whole or in part the rule of law or other legal means of state administration contrary to the international treaty.

(2) Articles 41-43 are applicable for publishing the resolution on annulment and for the legal consequences of the annulment.

Article 46 (1) If the Constitutional Court establishes that a rule of law at a higher level than the rule of law promulgating the international treaty conflicts with the international treaty, it invites the organ, person or legislative organ which concluded the international treaty to resolve the conflict, setting a deadline based on the consideration of circumstances.

(2) The organ or person invited to resolve the conflict specified in Paragraph (1) shall fulfill the task by the deadline.

Article 47 (1) If the Constitutional Court establishes that a legislative organ failed to fulfill its legislative task issuing from an international treaty, it invites the organ which committed the omission, setting a deadline, to fulfill its task.

(2) The organ which committed the omission shall fulfill the task by the deadline.

Constitutional appeals

Article 48 (1) Anyone may lodge a constitutional appeal with the Constitutional Court for the violation of his/her rights guaranteed by the Constitution if the injury is consequential to the application of the unconstitutional rule of law and if he/she has exhausted all other possible legal remedies or no further legal remedies are available to him/her.

(2) A constitutional appeal may be lodged in writing within sixty days of the delivery of the non appealable resolution.

(3) Articles 40-43 are applicable for the proceedings of the Constitutional Court.

Unconstitutionality by omission

Article 49 (1) If the Constitutional Court establishes ex officio or upon anyone's petition that a legislative organ failed to fulfill its legislative tasks issuing from its lawful authority, thereby bringing about unconstitutionality, it instructs the organ which committed the omission, setting a deadline, to fulfill its task.

(2) The organ which committed the omission shall fulfill the task by the deadline.

Conflicts of competence

Article 50 (1) If conflicts of competence arise between state organs other than courts, between local governments or between local governments and state organs other than courts, these organs may propose the elimination of the conflict of competence to the Constitutional Court.

(2) The Constitutional Court, without hearing the organ which filed the petition, determines which organ has competence in the dispute and appoints the organ obligated to proceed.

The interpretation of provisions of the Constitution

Article 51 (1) Petitioned by those specified in Article 21 (6), the Constitutional Court interprets individual provisions of the Constitution.

(2) The Constitutional Court publishes its interpretative resolutions in Magyar Kzlny [the official journal of Hungary].

Chapter V CLOSING PROVISIONS

Article 52 (1) This statute enters into force on the day of its promulgation.

(2) The Constitutional Court begins its operation on January 1, 1990.

Article 53 (1) When the Constitutional Court is formed, Parliament temporarily elects only five Members of the Constitutional Court. The elected Members elect, from among themselves, the Vice-Chairperson of the Constitutional Court.

(2) Before the entry into force of this statute, the nomination committee specified in Article 6 submits to Parliament its proposal for Members of the Constitutional Court.

(3) Until all Members are elected, the Constitutional Court also proceeds in cases referred to the competence of its plenary session and the competence of the Chairperson of the Constitutional Court will be assumed by the Vice-Chairperson until the Chairperson is elected.

(4) In the cases referred to the competence of the plenary session of the Constitutional Court, the Constitutional Court temporarily consisting of five Members has a quorum if at least four of its Members are present when passing a resolution. In the case of an equality of votes, the Vice-Chairperson gives the casting vote.

Article 54 (1) Another five Members of the Constitutional Court will be elected following the next Parliamentary election, within two months after the first session of the Parliament. The elected ten Members of the Constitutional Court elect, from among themselves, the Chairperson of the Constitutional Court.

(2) In the cases referred to the competence of the plenary session of the Constitutional Court, the Constitutional Court temporarily consisting of ten

Members has a quorum if at least eight of its Members, including the Chairperson or if he/she is prevented, the Vice-Chairperson, are present when passing a resolution. In the case of an equality of votes the provisions of Article 30 (3) apply.

Article 55 The provision set forth in Article 5 (3) is not applicable when electing the first ten Members of the Constitutional Court.

Article 56 One further Member of the Constitutional Court will be elected by Parliament in the fifth year after setting up the Constitutional Court.

Article 57 This statute does not affect the rights and obligations of the Public Prosecutor's Office set forth in Chapter V. of Act V. of 1972 on the Public Prosecutor's Office of the Republic of Hungary.

Article 58 (1) Simultaneously with the entry into force of this statute, Act I. of 1984 on the Council of Constitutional Law is repealed.

(2) Proposals made to the Council of Constitutional Law which have not been judged until the entry into force of this statute and constitutional appeals will be judged by the Constitutional Court.



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