Strasbourg, 19 June 2012

CDL(2012)045

Opinion 665/2012

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REMARKS OF THE HUNGARIAN GOVERNMENT

ON THE DRAFT OPINION ON ACT CLI OF 2011 ON THE CONSTITUTIONAL COURT

OF HUNGARY

(received on 13 June 2012)

Hungary welcomes that the Venice Commission found the Act on the Constitutional Court (hereinafter: ACC) in general well drafted, coherent and identified a number of positive elements in the Act. It is also due to the fact that the legislative proposal was being drafted in strong cooperation with the Hungarian Constitutional Court and the recommendations of the Venice Commission of March 2011 were entirely taken into account (e. g. ensuring the Commissioner for Fundamental Rights the right to initiate ex post review).

We are convinced that the Fundamental Law and the ACC opened a new chapter in the protection of fundamental rights by establishing the full constitutional complaint and ACC provides adequate basis for the Constitutional Court to protect Fundamental Law and fundamental rights in an effective way.

However, we would like to make some comments on several points of the draft opinion to clarify the text and the aims of the Hungarian regulation on Constitutional Court.

Chapter I – General provisions, the legal status and organisation of the Constitutional Court

7. *(…) While such a period is a commendable step, it should be implemented with a sense of proportion. The term 'Government' should not include local government.*

> The Hungarian text of the ACC is entirely clear in this respect: „Kormány" means only Government, the general organ of executive power, it does not refer to local governments (the Hungarian word for that is „helyi önkormányzat").

10. *Like for the judiciary as a whole, the Fundamental Law does not provide any explicit statement on the independence of the Constitutional Court and its judges. As a main subject, the Fundamental Law devotes to the Constitutional Court only Article 24, which summarises some principles regarding the competences and the appointment of the judges and the President. Article 24.1 of the Fundamental Law provides that "the Constitutional Court shall be the supreme body for the protection of the Fundamental Law" without making any reference to the independence of the Constitutional Court. Moreover, the guarantees related to the status of the judges are provided for only in the Act on the Constitutional Court, below the level of the Fundamental Law.*
11. *As regards to the new legislative system set forth for the Constitutional Court the Venice Commission has strongly recommended that the main principles and conditions related to the independence and autonomy of the Court be clearly laid down in the new Constitution. So far this recommendation has not been taken up. At least, the Act on the Constitutional Court should include a clear statement on the independence of the Constitutional Court.*

54.1. *The independence of the Constitutional Court and the status of its judges should be guaranteed in the Fundamental Law, and not only in the Act on the Constitutional Court. At least, the Act should include a clear statement on the independence of the Constitutional Court.*

> The independence of the Constitutional Court as a body is a principle that appears not expressly in the Fundamental Law but it results from the general principles of the Fundamental Law, especially from the principle of rule of law and separation of powers [Fundamental Law Article B) paragraph (1) and Article C) paragraph (1)].
> Moreover the ACC declares that members of the Constitutional Court shall be independent, subordinated only to the Fundamental Law and acts. Regulations of ACC on members of Constitutional Court, on their appointment, election and on the personal requirements – that are identical with those in effect since 1989 – are to ensure the independence and professional competence of the members of the Constitutional Court. Creating the conditions of the independent operation was the goal also when the ACC – while extending the term of the office – prohibited the re-election of the judges of

the Constitutional Court. Personal independence is also guaranteed by the high remuneration of the members of Constitutional Court.

13. *The salary of the Judges at the Constitutional Court is laid down in Section 13 ACC. In principle, they will be entitled to the same salary and allowances as Government ministers. However, Section 13.1 ACC provides for one astonishing exception: with respect to the supplement for managerial responsibilities the judges shall be granted 150 % of the amount for ministers. The remit of ministers consists first and foremost of managerial activities whereas the latter only play a minor role amongst the duties of Judges at the Constitutional Court.*

In case of members of the Constitutional Court, the components of the salary do not refer to the nature of their activity. It is only a calculation rule the main point of which is that a judge of the Constitutional Court shall earn more than a minister. This ensures the independence of the members of the Constitutional Court.

16. *Nevertheless it should also be noted, that Article 24.4, 2nd sentence Fundamental Law does not provide for such an exception to the term of office of twelve years. The Fundamental Law should be amended accordingly.*

The two provisions are not contrary to each other, judges are elected for 12 years and their mandate can be extended only in exceptional cases.

18. *Section 16.4 ACC stipulates that the mandate of a member of the Constitutional Court may be terminated by exclusion, if the member has become unworthy of his/her office. The meaning of the term "unworthy" may be seen as rather vague. In particular, as there will not be much previous practice to guide in a concrete case, it remains unclear, which actions by a member would be deemed to make him or her "unworthy".*
19. *Admittedly, such a wording is not completely unusual from a comparative perspective. Section 10.1.c of the Austrian Act on the Constitutional Court for example uses the very same term, stating that a member has to be removed from office, if the member becomes unworthy regarding the respect and the trust his or her mandate demands, or disregards the obligation of non-disclosure. As the vagueness of this term seems to be necessary to a certain extent, it should be compensated by procedural safeguards. A possible compensation could be to provide for the requirement at least for the two-thirds majority or even the unanimity of other judges. In addition, the provision should be completed by giving some examples (e.g. disregarding the obligation of non-disclosure).*

54.2. *In order to balance the vagueness of the term of "unworthiness" in Section 16 ACC, allowing the exclusion of a member from the Court, procedural safeguards should be introduced, for example to provide for the decision on exclusion to be taken by at least a two-thirds majority or even the unanimity of other judges.*

The possibility of exclusion of a member from the Constitutional Court if he or she became unworthy of his or her office has been part of the act on Constitutional Court since 1989 but till now the Constitutional Court never used this procedure.

21. *Salary and non-financial benefits of the President of the Constitutional Court are laid down in Section 19 ACC. It is for the Hungarian authorities to decide, whether these benefits are appropriate in the light of the social conditions in their country and compared to the level of remuneration of higher civil servants. However, while the salary of judges should indeed be guaranteed by law, other fringe benefits– if they are granted at all – should not be included in a cardinal law but be left to lower level regulation. The personal privileges, provided for in such a specific way in Section 19 and 20, can affect the dignity of the Court's President and the public perception of the independence of the Constitutional Court at a whole.*

***54.6**. The personal privileges granted to the President, provided for in Sections 19 and 20 ACC in such an analytical and specific way, can affect the dignity of the President and the public perception of independence of the entire Constitutional Court.*

> Regulating the salary and the benefits of the President of the Constitutional Court in an act is a guarantee because it could violate the independence of the Constitutional Court if these benefits would be regulated by the Government or by a minister. The necessity of a wide consensus for changing the salary and benefits ensures the financial independence of and the lack of influence on the President at the same time. A cardinal act has regulated the salary and the benefits of the President of the Constitutional Court since 2000 (similarly to the salary and benefits of the President of the Republic and the President of the Supreme Court).

***23.** Section 22.5 ACC provides that the President may require that candidates for posts at the Office have further educational qualifications, certifications or practical experience. It should be made clear that such qualifications can be sought for only when they are objectively related to the post to be filled (e.g. specific IT knowledge, etc.).*

> This regulation does not concern specifically the Constitutional Court, the situation is similar at all public authorities. The reason for this is that the Act on Civil Servants regulates the requirements for being appointed as a civil servant in general, but there is a need to take also the special character of a public authority into account. That is why the Act on Civil Servants gives the possibility for the head of the public authority to prescribe further requirements for the posts at the public authority. As a matter of course, these qualifications should be objectively related to the post to be filled.

Chapter II – Procedures Falling within the Tasks and Competences of the Constitutional Court; Legal Consequences

***24.** The procedure of the ex ante review, the so-called Preliminary Norm Control, is provided for in Section 23 ACC. The Venice Commission recalls its warning, that "an entitlement to submit a request for binding preventive abstract review should be awarded restrictively, as such a procedure easily becomes part of the political game if it is widely available." With the exception of ex ante review of international treaties, this competence should be exercised restrictively.*

> The ex ante review is an exceptional instrument which is guaranteed by two facts. First, the majority of the Members of the Parliament present must agree on the initiative. Secondly, the examination of the compatibility of a whole act with the Fundamental Law in general cannot be requested. Every legal provision to be examined, the relevant provisions of the Fundamental Law as well as the constitutional correlation to be examined by the Constitutional Court must be indicated explicitly.
> During the five months that have passed since the Fundamental Law came into force no initiative for an ex ante review has been submitted to the Constitutional Court.

***26**. The constitutional complaint procedure is specified in Section 26 et seq. ACC. Three different types of constitutional complaints are available:*
a) Article 26.1 ACC – a complaint against a legal provision applied in court proceedings;
b) Article 26.2 ACC – an exceptional direct complaint against a legal regulation, when there are no real and effective remedies available;
c) Article 27 ACC - a full constitutional complaint against final court decisions.
The Venice Commission appreciates that thus constitutional complaints both against all legal provisions and court decisions are provided for in order to counterbalance the abolishment of the actio popularis. Nevertheless, the concept of constitutional complaints under the CCL should be further clarified. Despite the fact, that Section 26.1 ACC refers to Article 24.2.c of the

Fundamental Law, i.e. constitutional complaint against other than judicial decisions, its scope is reduced to "judicial proceedings", whereas "judicial decisions" are subject to Section 27 ACC referring to Article 24.2.d of the Fundamental Law. Legislative measures shall only be subject to constitutional complaints under Section 26.2 ACC by way of exception from Section 26.1 ACC. The rationale behind this distinction seems to be to draw a line between the review of a legal provision as such (Section 26.1 ACC) – as a normative constitutional complaint - on the one hand and the review of its application (Section 27 ACC) – as a full constitutional complaint - on the other, as it is also mirrored in Section 31 ACC. Section 28 ACC states that one kind of review may as well include the other. The scope of this provision should be clarified.
***27**. Finally, the additional threshold-criteria for each procedure largely resemble each other. Indeed with regard to Sections 26.1 ACC and 27 ACC they seem to be identical in substance, though not in the wording. Firstly, a violation of the complainant's rights under the Fundamental Law is required. Secondly, as an expression of the subsidiary character of the constitutional complaint, all legal remedies must have been exhausted beforehand. Section 26.2 ACC introduces an additional qualification to the violation of the complainant's rights, stating that it must occur directly, which is defined as "without a judicial decision". As a result, only the violation of the applicant's rights and the exhaustion of legal remedies function as filters, whereas other requirements are only decisive for the identification of the applicable norm, even though the latter has no further consequences for the further procedure (besides different time-limits for submitting applications, Section 30 ACC). The criteria for each type of complaint should be set out more clearly.*
***28**. The Venice Commission recommends clarifying the complaint procedures, without reducing their scope. This would also allow the simplification of the filter criteria. In addition to the rule already contained in Section 26.2 ACC, an exception for the exhaustion of legal remedies should be provided for all cases where adhering to this rule could cause irreparable damage to the individual.*

***54.3.** The two individual complaint procedures should be clarified, without reducing their scope (Sections 26 and 27 ACC).*
***54.4.** An exception to the requirement for the exhaustion of legal remedies should be provided for all cases where adhering to this rule could cause irreparable damage to the individual (Section 26 ACC).*

> The Fundamental Law and the ACC rearranged the competences of the Constitutional Court by emphasizing the protection of individual fundamental rights instead of abstract review. Constitutional complaint is the means serving this purpose.
> ACC establishes two types of constitutional complaints. Section 26 maintains the former type of constitutional complaint that serves the examination of compatibility of legal provisions with the Fundamental Law. As a consequence of this procedure, Constitutional Court shall annul legal provisions violating the Fundamental Law and the legal provisions annulled may not be applied in the case on the base of which the proceedings of the Constitutional Court was initiated.
> An exceptional form of this procedure is laid down in Section 26 (2) in accordance with which the petitioner also contests legal provisions, however, mainly because of his or her lawful conduct, without a court decision in the actual case, meaning that the legal provision had a direct effect on him or her.
> By means of the other type of constitutional complaints [Section 27] court decisions violating the Fundamental Law can be contested. Namely, it can happen that legal provisions that are compatible with the Fundamental Law, will be construed in a way violating the Fundamental Law by a judge in the course of their applications or the judge takes otherwise an unconstitutional decision. On the basis of this type of constitutional complaint, the Constitutional Court shall annul such court decisions.
> The conditions required with regard to the submission of constitutional complaints are the same in both cases: a) the violation of the petitioner's right guaranteed by the Fundamental Law, b) there is no procedure for legal remedy or the petitioner has

already exhausted the possibilities for remedy (this is to ensure that petitioners first take the judicial way to seek legal protection), c) the constitutional complaint should be submitted in due time.
The only difference between the two types is that in the first case the violation of the fundamental right is caused by the legal provision, while in the second case it is caused by the judicial decision.
In order to ensure that petitioners have no disadvantage from being mistaken in the question whether unconstitutionality in their specific case is caused by the legal provision applied or by the judicial decision taken, Section 28 ACC provides for interoperability between the procedures, meaning that the Constitutional Court can examine the constitutionality of the legal provision or the judicial decision even if the petitioner contested only the other one.

***29**. Section 26 ACC also empowers the Prosecutor General to request the Constitutional Court to examine the conformity of regulations with the Fundamental Law, if a person concerned is unable to defend his or her rights personally or if the violation of rights affects a larger group of people. It is incoherent to give the power to defend individual interests to the Prosecutor General who is called upon to defend the public interest. The Prosecutor General could easily come into a situation where these interests conflict and he or she cannot pursue both of them with the same vigour which they may merit. While such powers do not contradict European standards, the Hungarian authorities should consider vesting them in the Commissioner for Fundamental Rights.*

***54.5**. The power to request the Constitutional Court to examine the conformity of regulations with the Fundamental Law if a person concerned is unable to defend his or her rights personally or if the violation of rights affects a larger group of people should be vested with the Commissioner for Fundamental Rights rather than with the Prosecutor General (Section 26 ACC).*

It is a traditional element of the Hungarian legal system that public prosecutors, taking into account the right of the parties to dispose, also represent public interest by instituting proceedings in cases when the persons entitled are not in a position to protect their own rights. In such cases it is appropriate to ensure the right for the prosecutor services to turn to the Constitutional Court if the legal provision applied in the case concerned is in breach of the Fundamental Law, just as if the person concerned had the right to contest that legal provision by means of a constitutional complaint in the case he or she would be in a position to protect his or her own rights. The same applies to cases participated in by the public prosecutor if the violation of rights affects a larger group of people.
In accordance with the above, the Prosecutor General may only turn to the Constitutional Court if they participated in the court proceedings on which the case is based. The Commissioner for Fundamental Rights has no such possibility in court proceedings; by virtue of his or her constitutional status, he or she has an initiative but not an enforcing role regarding the examination of individual violations of fundamental rights. Therefore, the possibility to turn to the Constitutional Court would be incompatible with his role. Should he or she consider a legal provision being in breach of the Fundamental Law, he or she can initiate an ex post review, thus his or her powers are much broader than the powers of the Prosecutor General.

***32**. With regard to Sections 30.2 and 30.4 ACC, which provide for different starting points for the deadline, it is unclear, which point actually is the decisive one. While the formulation of Section 30.4 ACC indicates, that all conditions must be fulfilled cumulatively, which implies that the latest starting point will be decisive, the wording of Section 30.2 ACC does not allow for a such a conclusion.*

According to Section 30 (1) of ACC constitutional complaints may be submitted within sixty days of receipt of the decision. If the decision is not communicated, the time-limit shall be counted from the date of becoming aware of the decision or from the date of the violation of rights guaranteed by the Fundamental Law [Section 30 (2) of ACC].
If the decision was communicated but the petitioner was inable to submit the complaint in the time-limit of 60 days due to a circumstance beyond his or her control, he or she can submit an application for extension along with the complaint within fifteen days of the termination of the obstacle, but submitting shall not be later than 180 days from the communication of the decision (so it is an objective time-limit) [Section 30 (3) and (4) of ACC].

***34**. Section 34 CCL introduces the so-called "Opinion on the Dissolution of a Local Representative Body Operating Contrary to the Fundamental Law". This provision is not very elaborate and thus does not sufficiently specify its content. A priori, it seems to be disproportionate, insofar as even a single act contrary to the Fundamental Law could lead to the dissolution of a local representative body. On the other hand, the Constitutional Court may only express an opinion, obviously without a binding effect. The norm does not deal with the power of the bodies competent for such a dissolution. There seems to be no answer to the question, whether this body may judge on the unconstitutionality of the operations concerned in contradiction with the Court´s opinion.*

***54.7**. Clearer criteria are required for the "dissolution of a local representative body operating contrary to the Fundamental Law" (Section 34 ACC).*

According to Article 35 paragraph (5) of Fundamental Law, at the motion of the Government – submitted after obtaining the opinion of the Constitutional Court – Parliament shall dissolve the local representative body operating in breach of the Fundamental Law.
This competence has been exercised by the Constitutional Court since 1990. The ACC codifies the twenty-two-year practice of the Constitutional Court by obligating it to give an abstract opinion. Thus the Constitutional Court decides not on the question of fact, but examines the violation of the Fundamental Law in principle. The final decision shall be taken by the Parliament taking into account not only the abstract constitutional opinion of the Constitutional Court but also the facts presented by the Government.

***37**. The Venice Commission is of the opinion that the possibility to amend the Fundamental Law in order to bring it in line with an international treaty should also be envisaged in Section 40.3 ACC.*

The Parliament as a constitutional power naturally can choose the way to bring the Fundamental Law and the international treaty into harmony by amending the Fundamental Law. The ACC does not contain this possibility because a source of law at a lower level than the Fundamental Law (e.g. an act) cannot establish an obligation with regard to the constitutional power.

***38**. According to Section 41.1 ACC, the Constitutional Court may annul legal regulations and provision in part or in whole. Section 41.2 ACC states that this power is subject to the exceptions and conditions provided for in Article 37.4 Fundamental Law. The Commission recalls its critique of this infringement of the powers of the Constitutional Court. It regrets and notes with serious concern, that the scope of Article 37.4 Fundamental Law has even been extended further under Article 27 Transitory Provisions, stating that the exemption of certain acts from constitutional review is not only valid until the state debt falls below 50 % of the Gross Domestic Product, but that these acts will not be subject to full and comprehensive supervision by the Constitutional Court, even when the budget situation has improved beyond that target.*

***54.10**. The limitation of the Constitutional Court's control powers in budgetary matters should be abolished. At least, the excessive restriction of Article 27 of the Transitory Provisions should be brought into line with Article 37.4 of the Fundamental Law.*

One goal reflected in several articles of the Fundamental Law is ensuring the conditions for establishing and maintaining economic stability of the country. It is in the light of this goal that the the regulation that Constitutional Court may temporarily – as long as the level of state debt exceeds half of the Gross Domestic Product – review acts on the central budget and central taxes in a limited way, must be interpreted.
This, though the Fundamental Law set up another control mechanism by establishing the Budget Council, gives more scope for action to the government in tough economic situations while putting no real obstacles in the way of the protection of fundamental rights.
The Constitutional Court may examine the violation of several fundamental rights and the restriction does not hinder the Constitutional Court in reviewing acts on central taxes on the merits referring for example to the violation of the right to human dignity (as in the case of the retroactive introducing of a 98% tax).
So Constitutional Court can also fulfil its duties on human rights protection in the limited ex post review procedure, while there is no restriction on competence at all with ex ante review and examination of conflicts with international treaties.
The goal of the transitional provision connected to Article 37 (4) of the Fundamental Law is to ensure that economic stability should not be endangered even after state debt has sunk to under half of the Gross Domestic Product.

Chapter III – The Rules and Operation of the Constitutional Court and Rules of Procedure

***42**. Details for the plenary sessions of the Constitutional Court are laid down in Section 48 ACC. It allows the President of the Constitutional Court to invite "other persons" to attend the plenary session. The law does not provide for criteria for the President´s decision. Even though the persons invited will arguably not have a right to vote, the presence of certain persons and the exclusion of others can influence the kind of arguments exchanged in the plenary, thus bearing the risk of negative effects on the independence of the Court. Plenary sessions should be open either to judges only or to the public.*

It is hard to define in advance whose hearing will be useful in the plenary session of the Constitutional Court. The President of the Constitutional Court can invite the petitioner, his/her legal representative or an expert [Section 57 (6) of ACC] but also other persons if it is necessary (e.g. the judge who adjudicated the actual case). The detailed rules of the publicity of the procedure of the Constitutional Court shall be specified in the Rules and Procedures of the Constitutional Court, adopted by the plenary session. Obviously, invited persons are not allowed to vote and can not be present at the voting.

***43**. Section 51.2 ACC declares legal representation to be mandatory in Constitutional Court proceedings. Whereas such a provision aims to raise the quality of complaints, it may easily amount to an outright denial of access to constitutional justice if it is not counterbalanced by providing legal aid either free or granting financial assistance at least. Provisions on legal aid should be available also for proceedings before the Constitutional Court. In order to provide for legal aid in proceedings before the Constitutional Court, the legislator may also simply refer to provisions concerning other proceedings, such as civil procedures. In Austria, for instance, legal aid in proceedings before the Constitutional Court is also granted according to the provisions of the Code of Civil Procedure (see Section 35 Austrian Act on the Constitutional Court in conjunction with Section 63 et seq. Austrian Code of Civil Procedure).*

***54.8**. Provisions on legal aid need to be available also in proceedings before the Constitutional Court (see Section 51).*

In order for the Constitutional Court to be able to more effectively protect fundamental rights and for petitions to be better founded, ACC requires legal representation in constitutional complaint proceedings. The Venice Commission welcomes this fact in its draft opinion.
The system of legal aid is in a crisis in Hungary at the moment that is why the Government plans its overall revision bringing the judiciary and the Hungarian Bar Association into the procedure. In the framework of this revision is it possible to examine the question how the preparation of constitutional complaints can be inserted into the legal aid system.
However, it should be noted that Section 51 (3) of ACC defines the person of the legal representative in a wide ranging way: A person who has passed the bar examination may act in their own case without a legal representative; lawyers (law firms), legal advisor of a legal
person and representatives (who have passed the bar examination) of human rights protection non-governmental organisations may act as legal representatives. The role of the non-governmental organisations can make it possible that the case of the person whose fundamental rights were violated can get to the Constitutional Court in any case. This way the non-governmental organisations can protect not only the petitioner's fundamental rights but indirectly also those of every person concerned.

Chapter IV – Closing Provisions

***46**. According to Section 69 ACC, the whole Act shall be considered a cardinal Act pursuant to Article 24.5 of the Fundamental Law.*
***47**. According to Article T.4 of the Fundamental Law, cardinal acts must be adopted by the Hungarian Parliament with a two-thirds majority. In its Opinion on the new Constitution of Hungary, the Venice Commission had acknowledged that a "certain quorum may be fully justified in specific cases, such as issues forming the core of fundamental rights, judicial guarantees or the rules of procedure of the Parliament." The Commission, however, also recommended restricting "the fields and scope of cardinal laws in the Constitution to areas where there are strong justifications for the requirement of a two-thirds majority." The Venice Commission argued on the basis of Article 3 of the first Protocol to the ECHR: "When not only the fundamental principles but also very specific and "detailed rules" on certain issues will be enacted in cardinal laws, the principle of democracy is itself at risk. This also increases the risk, for the future adoption of eventual necessary reforms, of long-lasting political conflicts and undue pressure and costs for society."*
***48**. In order to avoid the above-mentioned problems the Venice Commission is of the opinion that the "cardinal elements" in the ACC should be restricted to fundamental principles and important rules on the issue and that merely technical details should have been regulated at the level of ordinary law, which can more easily be amended by a simple majority in Parliament.*

***54.9**. The "cardinal elements" in the ACC should be restricted to fundamental principles and merely technical details should be regulated at the level of ordinary law (Section 69 ACC).*

The system of cardinal acts is a constitutional tradition in Hungary and has the role to ensure that acts on the most important state institutions should be adopted by a political consensus. The Fundamental Law decreased the number of cardinal acts but there was no intention while preparing the Fundamental Law to require only the majority of the Members of Parliament for the amendment of the ACC, as the two-thirds majority requirement for the amendment of this act is one of the most important guarantees for

the independence of the Constitutional Court that should be ensured also according to the draft opinion of the Venice Commission.
It has to be emphasized that in the end it will be the Constitutional Court that will judge which rules need to be amended by a two-thirds majority. As the Constitutional Court is the only institution that can interpret the Fundamental Law in a decision binding for everyone, only it is able to interpret *ultima ratio* the authorization of the Fundamental Law saying "the detailed rules of the competence, organisation and operation of the Constitutional Court shall be laid down in a cardinal Act".

***50**. Sections 71-74 ACC are aimed at ending all pending cases resulting from actiones populares, unless they would still be admissible under the new regime. The applicants are invited to resubmit their petitions, if they are still admissible – though as another type of procedure – under the amended ACC; with regard to time-limits, which would already have run out in the meantime, Section 71.4 ACC provides for certain exceptions. The deadline for resubmission is 31 March 2012 according to Section 71.3 ACC. However, Section 71.5 ACC refers to 30 June 2012 as a deadline. One can hardly see which of the two contradictory deadlines is actually applicable.*
***52**. A sufficient and comprehensive level of individual protection can be guaranteed via a full constitutional complaint, at best combined with a preliminary ruling procedure. As a result, as long as the applicants of actiones populares are given sufficient time to resubmit their petitions as constitutional complaints, their legal protection remains sufficient. However, taking into account that the details of the transitory provision were not widely discussed within the Hungarian society and the fact that the CCL was adopted only weeks before it entered into force, the relevant deadline should in practice rather be the one referred to in Section 71.5 CCL.*

According to Section 71 (3) of ACC a person whose petition was extinguished due to the termination of *actio popularis* may have submitted new petition to the Constitutional Court until 31 March 2012 if the requirements specified for the constitutional complaints were met (he/she was affected by the legal regulation). However, the new rules of the ACC should be applied also in case of these petitions, so if the petitioner was unable to submit the complaint in time due to a circumstance beyond his or her control, he/she could submit the complaint after the deadline (with an application for extension) [Section 30 (3) of ACC]. There is a final (objective) deadline for that case: 30 June 2012 [Section 71 (5) of ACC].
As ACC was promulgated at the end of November 2011, submitters had four months to renew their petitions.
The Constitutional Court informed all of the submitters of extinguishing petitions in form of an order and drew their attention to the conditions and deadline of renewing their petitions as a constitutional complaint. Until the end of March, more than 300 such petitions had been submitted to the Constitutional Court.