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**PROCEDURAL TIME LIMITS
IN THE NEW HUNGARIAN REGULATIONS
ON THE CONSTITUTIONAL COURT**

REPORT

by

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“Time is a friend of the Constitutional Court...”

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Mr. President,
Ladies and Gentlemen,
Dear Colleagues,

It is a pleasure to have the opportunity to talk about the procedural time limits – this exciting topic which involves several other questions and which was in the focus during the drafting of the new Act on the Hungarian Constitutional Court.

In order to understand why exactly the procedural time limits played the central role in the parliamentary debates, we should briefly go back into the history of our twenty-two years old court. According to a saying of uncertain origin *“time is a friend of the Constitutional Court”*¹. It refers to the general rule of the decision-making process that the Plenum discusses a draft decision until it gets the majority. If it lasts several months, then the public has to wait for all that period. Therefore there is always a strong expectation from the petitioners that legal norms should set time limits not only on lodging petitions but also on the delivery of decisions by the Constitutional Court.

Recently, Hungary has undergone considerable constitutional changes, and from the 1st of January, 2012 a new Fundamental Law has entered into force, and accordingly a new Act on the Constitutional Court replaced the twenty-two year old one.

However, the regulations introduced by the new Fundamental Law are almost the same as the content of the old Constitution in force between 1989 and 2011², the changes affected considerably the competences of the Constitutional Court. As being one of the most important changes, in this presentation we would like to call your attention to the fact that the Hungarian Constitutional Court has joined those constitutional courts that have the right to examine the constitutionality of individual judicial decisions.³ Having in mind this new competence, it is clear that during the drafting of the new Act the legislator intended to pay special attention to the regulation of time limits that bound the Court itself.

As the Hungarian Constitutional Court gained new competence for German-type constitutional complaints, it became essential to avoid the intolerable prolongation of judicial procedures.⁴ We all may know from the case law of the European Court of Human Rights that *“proceedings in a Constitutional Court are to be taken into account for calculating the relevant period where the result of such proceedings is capable of affecting the outcome of the dispute before the ordinary courts”*.⁵ Therefore observing reasonable time limits during the decision-making process of the Constitutional Court is necessary for complying with Article 6 of the Convention on Human Rights, the right to a fair trial.

¹ László Majtényi, former advisor of László Sólyom, and Péter Paczolay, president of the Hungarian Constitutional Court refer to this saying as widely spread in the Constitutional Court in 2009 and in 2011, respectively (available at www.ortt.hu/jegyzoikonnyvek/jegyzoikonnyv-20090119134344.pdf, <http://www.parlament.hu/biz39/bizjkv39/AIB/1107041.pdf>).

² According to Prof. Dr. László Sólyom, former president of the Constitutional Court: *“The new Constitution is almost the same as the old one, with the exception of the above-mentioned serious wounds. Its language is different in 90% - now there is the text of the Charter of Fundamental Rights instead of the International Covenant on Civil and Political Rights for the human rights.”* (Oral presentation at the Eötvös Loránd University of Budapest on March 21, 2012 http://majt.elte.hu/Tanszekek/Majit/Aktualis/docs/2012/MAJT_TDK_Solyom_Laszlo_20120321.mp3 at 01:48:12)

³ Art. 24 para. (2) point d) of the Fundamental Law: *“The Constitutional Court shall (...) review, on the basis of a constitutional complaint, the conformity with the Fundamental Law of a judicial decision;”*

⁴ As President Péter Paczolay emphasised in the Parliamentary Committee on Constitutional Affairs in its sitting of September 27, 2011. (available at <http://www.parlament.hu/biz39/bizjkv39/AIB/1109271.pdf>)

⁵ Ruiz-Mateos v. Spain Judgment (1993), para. 35.

By the conflict between the Constitutional Court’s rather lengthy procedures and the need for immediate remedies, the following questions have to be answered:

- What time limits are considered reasonable? (Taking into account the complexity of different cases and with special regard to the case law of the European Court of Human Rights?)
- Are there any realistic sanctions for the Constitutional Court if it does not obey regulations on procedural time limits?

Recently in Hungary all of the above-mentioned questions were discussed in details by the members of the Constitutional Court and also by politicians, creating a very exciting debate about the functioning of the Constitutional Court as such.⁶

In the Hungarian Parliament, almost all political parties made attempts to determine a more concrete period for the decision-making process of the Constitutional Court; a normative deadline for final decisions. They seemed not to be satisfied with the reference to a “reasonable” time limit. But by suggesting different periods⁷ it became clear for everybody why it is a very delicate question to set deadlines in normative acts. “If the time limits are too short, it will be impossible to observe them, but if they are too long, they become ridiculous.”⁸ Finally a compromise was made that the Constitutional Court itself in its Rules of Proceedings sets forth inner deadlines.

Consequently, we find regulations on time limits in three levels – in the Fundamental Law for the preliminary norm control, in the Act on the Constitutional Court, and in the Rules of Proceedings. (See Figure 1.)


 DEADLINES FOR PROCEEDINGS: SUMMARY				
Proceedings	Decision on admissibility	Appointment of rapporteur judge	First draft	Decision
preliminary norm control				30 days
<i>expedited procedure</i>				15 days
Judicial initiative in concrete cases		30 days	180 days	
<i>expedited procedure</i>		15 days	90 days	
Constitutional complaint (all 3 types)	120 days		180 days	
<i>expedited procedure</i>	60 days		90 days	
parliamentary resolution related to referendum		30 days	90 days	
<i>expedited procedure</i>		15 days	45 days	
All other proceedings			–	

Fig. 1. Summary on the deadlines of different types of proceedings

⁶ See among others the records from 24 October, 2011 of the Parliamentary Committee on Constitutional Affairs, Justice and Procedure, available at <http://www.parlament.hu/biz39/bizjkv39/AIB/1110241.pdf>

⁷ The periods suggested by certain amendments to the Act on the Constitutional Court ranged from 120 days to one year. See Judit Haraszti: The Constitutional Complaint, manuscript of the paper delivered at the Conference “After the Fundamental Law – before the Cardinal Acts; Changes in the Hungarian Constitutional Law”, Corvinus University Budapest, November 18, 2011

⁸ Judit Haraszti, counsel at the Hungarian Constitutional Court refers to Péter Paczolay, available at <http://www.parlament.hu/biz39/bizjkv39/AIB/1110241.pdf>

In the new Fundamental Law, the preliminary norm control is the only competence by which the Fundamental Law itself sets time limits for closing a case. There are thirty days maximum for examining the provisions of adopted but not yet promulgated Acts, and ten days maximum for repeated petitions.⁹

Besides the above-mentioned time limit, the Fundamental Law makes a reference to a "reasonable time" regarding the adjudication of any charge or litigation.¹⁰ So does the Act on the Constitutional Court, which repeats the same requirement for deciding on constitutional complaints.¹¹

In the light of the Strasbourg case law we can assume that the inner time limits of the Rules of Proceedings may serve as a basis on deciding whether the constitutional Court has delivered its decision within a reasonable time.

The answers to the above-mentioned two questions can be summarised as follows: Complying with the European Convention on Human Rights involves the observation of reasonable procedural time limits, which is judged by the Strasbourg Court from case to case. This expectation has special significance in case of constitutional complaints, if they can affect the outcome of the ordinary judicial procedures. And again, it is the Strasbourg Court that is in the position to impose sanctions for lengthy procedures.

The question, however, remains whether this pressure transforms time into enemy at the Hungarian Constitutional Court...

Thank you for your attention!

⁹ First sentence of para. (6) Art. 6 of the Basic Law: "The Constitutional Court shall decide on the petitions (...) out of turn, but *within thirty days at the latest.*" Second sentence of para. (8) Art. 6: "The Constitutional Court shall decide on the repeated motion out of turn, but *within ten days at the latest.*"

¹⁰ Para. (1) of Art. XXVIII "Everyone shall be entitled to have any charge against him or her, or his or her rights and obligations in any litigation, *adjudicated within a reasonable time* in a fair and public trial conducted by an independent and impartial court established by an Act."

¹¹ Para. (5) Section 30 of the Act on the Constitutional Court: "(5) The Constitutional Court shall decide on constitutional complaints within *reasonable time.*"