

Fruzsina Gárdos-Orosz & Kinga Zakariás (eds.), *The Main Lines of the Jurisprudence of the Hungarian Constitutional Court. 30 Case Studies from the 30 Years of the Constitutional Court (1990 to 2020)* (Book Review)

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The Constitutional Court has played a key role in Hungary's legal development over the last 30 years. This institution, established during a peaceful democratic transition and based predominantly on the continuity of law, was not without precedent, but it was certainly a novelty in Hungary. However, the past 30 years have not been a completely homogeneous period. The Hungarian Constitutional Court was an activist institution, especially in its first nine years, when László Sólyom acted as the President of the Court. Later this attitude changed and the court became more positivist. This tendency was logical and in harmony with the general trends in development of the economy and society. Maybe the transitional period needed this activism more than the comparatively consolidated post-transitional periods would have.

The final goal of this collection of studies is to contribute to an understanding of the role of the Hungarian Constitutional Court's decisions in the shaping of the constitutional order in the different periods of the new Hungarian democracy. Therefore, the Constitutional Court's history can be divided into two distinct phases: the period from 1990 to 2010 and the post-2010 period, which continues to the present day. The 2010 parliamentary elections resulted in a two-thirds parliamentary majority, which allowed for the unilateral amendment of the previous Constitution and the adoption of the new Fundamental Law in April 2011.

The Constitutional Court has operated for over three decades and its coexistence with different governments contributed to the constitutional environment in different ways and to different extents. Its operational dy-

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namics have not always been the same. From this point of view, sub-periods can be distinguished within the two main periods indicated above. Much has depended on the specific political challenges, the attitudes to trends at the time and the personal composition of its staff. Its two most active periods were in the early 1990s and the first three to four years after 2010.

This situation has of course also affected the status and work of the Constitutional Court. Its specific competences in central budgetary and economic matters have changed, the institution of *actio popularis* has been abolished and, above all, the rules for the election of judges have changed significantly. The number of judges has also increased from 11 to 15 members. The current rules are less concerned with inter-party consensus and more with the will of the parliamentary majority. There are currently only four judges out of 15 who were elected with a broader party consensus. Between 2014 and 2018, the Fidesz-KDNP governing alliance was one seat short of enjoying a two-thirds majority in the parliament.

The internal tensions between the old and new judges elected before and after 2010, which characterized the functioning of the board between 2010 and 2013, have also been resolved. The composition of the Constitutional Court is, therefore, much more ideologically and politically homogeneous than before. This does not mean complete homogeneity, but it certainly has an impact on decision-making. It should also be remembered that since 2018 the court has once again been operating in the shadow of a permanent two-thirds parliamentary majority, which has the power to amend the constitution. The Constitutional Court, however, still plays an important and irreplaceable role in the Hungarian public law system and sometimes makes important decisions of principle. This is mainly linked to our turbulent times, which are characterized by many parallel crises as well as economic and political challenges.

The current book is not the first representative and retrospective publication about the work of Hungarian Constitutional Court to have been published in a foreign language. In 1995 German scholar Georg Brunner and the first president of Hungarian Constitutional Court, László Sólyom edited a collection of papers entitled *Verfassungsgerichtsbarkeit in Ungarn – Analysen und Entscheidungssammlung 1990–1993*. The editors published this book in Baden-Baden with Nomos, the publisher of the current volume. The first retrospective book includes an introduction that is still one of the main points of reference in understanding the early development of democracy in Hungary. Several years later András Holló and Árpád Erdei (the former president and vice-president of Hungarian Constitutional

Court) edited and published the following book in English: Selected decisions of the Constitutional Court of Hungary (1998–2001). This came out at the prestigious *Akadémiai Kiadó* in 2005.

The current selection is the third book edited by Hungarian lawyers and addressed to foreign scholars about the work and principal decisions of Hungarian Constitutional Court. This collection offers a retrospective presentation of the practice of the court since its foundation and over the past three decades. The editors have acknowledged that between 1990 and 2011 this practice was determined by the Constitution, while from 1 January 2012, it has been based on the Fundamental Law of Hungary.

The current English-language collection is based on a Hungarian volume,¹ which was published in Hungarian in 2021 and edited also by Fruzsina Gárdos-Orosz and Kinga Zakariás. The Hungarian selection contains the 100 decisions of the Constitutional Court that are the most significant according to the majority of Hungarian professors of constitutional law (*i.e.* the majority of expert opinion). The editors of the English-language book narrowed this selection down to 30 decisions of international interest, to explain the main lines and the main turns and shifts in Hungarian constitutional jurisprudence.

The authors involved in the analytical work by the editors are recognized and skilled Hungarian legal scholars with different professional backgrounds and experience. Among them, we can find research-fellows, full and associate professors. Many authors have direct work experience, long or short, at the Constitutional Court or the regular courts. One author is currently Deputy Commissioner for Fundamental Rights. Three authors are working outside of Hungary, but they are in close contact with the country of their origin. One later became a constitutional judge (in 2023).

In alphabetical order, the following authors participated in this important work Tamás Ádány, István Ambrus, Gyula Bándi, Ádám Békés, Nóra Chronowski, Lóránt Csink, Gergely Deli, Tímea Drinóczy, Mihály Filó, Péter Gárdos, Fruzsina Gárdos-Orosz, Zoltán J. Tóth, András Jakab, Máté Jenő Kiss, András Koltay, Miklós Könczöl, Petra Lea Láncoš, Attila Láposy, András Osztovits, András László Pap, Gábor Polyák, Zoltán Pozsár-Szentmiklós, Gábor Schweitzer, Bernadette Somody, Márton Sulyok, Orsolya

1 Fruzsina Gárdos-Orosz & Kinga Zakariás (eds.), *Az Alkotmánybírósági gyakorlat – Az Alkotmánybíróság 100 elvi jelentőségű határozata 1990–2020*, HVG-ORAC, Budapest, 2021.

Szeibert, Boldizsár Szentgáli-Tóth, Bernát Török, Réka Varga, Márton Varjú, Attila Vincze, György Vókó and Kinga Zakariás.

The editors explain the applied methods in the preface and introduction to the book. After presenting the facts on which the given decisions are based, the authors provide a doctrinal analysis of the decision the reviewed, including an explanation of the background of the case and its legal consequences. The primary purpose of this collection of analyses is to present the relevant content of the former Constitution and the current Fundamental Law as explored by the court in different specific cases. The authors highlight the reasoning behind the decision and recognize the new legal principles, introduced as a headnote and provide a thorough doctrinal analysis.

“Accordingly, the chapters follow the following structural scheme: title, a summary of the significance of the decision, presentation of the background (including the legal context and the previous decisions), presentation of the petition, description of the operative part and the reasoning, doctrinal analysis, aftermath (both the legal context and later decisions), and bibliography. Each structural element (except for the significance of the decision) is separated under a distinct subheading, and these subheadings are highlighted in bold.”²

The aim of the analysis of any given decision – to describe the ‘landmark decisions’ and the most important tendencies of the 30-year practice of the HCC – is facilitated by emphasizing the significance of the decision at the beginning of the chapter. The most important part of these subsections is the reasoning (*ratio decidendi*) supporting the operative part of the decision in order to reconstruct the content of the referred provision of the Constitution or the Fundamental Law.

“This section presents the majority position, starting from a broad interpretation of the concept of ratio decidendi (all the legal principles that contribute to the substantiation of the operative part are included here).”³

The chapters of the edited book contain a doctrinal analysis of the reasoning supporting the decision of Constitutional Court,

2 Fruzina Gárdos-Orosz & Kinga Zakariás (eds.), *The Main Lines of the Jurisprudence of the Hungarian Constitutional Court. 30 Case Studies from the 30 Years of the Constitutional Court (1990 to 2020)*, Nomos, Baden-Baden, 2022, p. 8.

3 *Id.* p. 9.

“[...] taking into account the dissenting and parallel opinions and the positions in the literature, the main task of which is to assess the solutions developed in the decision. The emphasis is on conflicting positions, so the names and sources of the representatives of the different views appear only in footnotes.”⁴

In their selection, the editors did not simply aim to highlight the most politically and socially sensitive constitutional decisions. If that had been their solitary aim, they would have included early decisions on reparations (restitution) and the powers of the President of the Republic. The editors were more interested in those decisions and their reasoning where the court had established something new or forward-looking. The main focus is, therefore, doctrinal.

There is, however, some disproportionality in the volume. For example, only 7 decisions cover cases before 2011 (*i.e.* the first two decades of operation). This means that the 23 other chapters focus on the politically changed period after 2010, which could be described as the era of the two-thirds dominance of the national-conservative parliamentary majority. This disproportionality is fully justified, however, because the earlier cases, especially those from the 1990s, are mostly already available in major languages to foreign researchers interested in the judicial activities and doctrinal attitudes of the Hungarian Constitutional Court. From this first period, only the following cases have been included in the selection: death penalty, abortion, retroactive transitional justice, in this connection international crimes, lustration, euthanasia and registered partnership.

Much attention has been paid to the events of 2010–2013. At that time, a panel of judges, mostly elected before 2010, was still dealing with some of the sensitive changes. The cases at the time covered issues such as the functioning of the media, the retirement of regular judges and special taxes. Other issues included the changed legal status of churches, transitory provisions of the Fundamental Law, transfer of judicial cases and the preliminary registration of voters. This registration was a novelty in Hungarian electoral legislation. Under the impact of the decision, the Hungarian parliament has changed this reform and introduced preliminary registration only for new voters living abroad.

The cases on which these decisions are based could even be described as a kind of “second transitional package” (after the “first transitional package”

4 Id.

of the early 1990s), which gradually led to the unfolding of the current political regime. During this period, the Constitutional Court sometimes managed to persuade the parliamentary majority to change its decision. It is true that during this period there was also an intense constitutional dialogue between the Hungarian and international or European supranational organizations (mainly the Council of Europe, Venice Commission, EU, OSCE). Directly or indirectly, this dialogue affected the cases dealing with the size of prison cells, foreign currency loans and changed capacity.

The volume also deals with ideologically sensitive symbolic issues: the five-pointed red star and disfigurement of a Soviet War Memorial. One of the decisions discussed also concerned ecology: Natura 2000. A chapter also deals with cases that arose during the special legal order. The decision dealing with Hungarian constitutional self-identity is also very important, because Hungary in followed the new European constitutional discourse in this manner. The issue of proportionality is traditionally an important challenge in constitutional law.

The reviewed publication represents a very important contribution to the international presentation and promotion of the activities of the Hungarian Constitutional Court as well as the presentation of Hungarian scholars dealing with these issues or cases. The authors of the different chapters specialize in different branches of the law (constitutional law, civil law, penal law, media law, *etc.*) and represent different ideological-political camps in Hungary, but they displayed a cooperative and professional attitude in this volume, strictly following the intentions of editors. This editorial discipline was very useful for the structural homogeneity of this interesting publication. With this book, the international readership will have the possibility to appreciate the current professional dilemmas and challenges facing Hungarian constitutional judges, lawyers and scholars.