

Tamás Prugberger – Andrea Szöllős

Several Critical Issues in the Development of the Administration of Hungarian Constitutional Justice



Summary

This essay intends to show the main characteristics of the two phases of the development of Hungarian constitutional justice. The first part examines the operation of the Constitutional Court in the first two periods starting from its foundation. The first period under the chairmanship of László Sólyom may be characterized as having approaching cases from the perspective of natural law, moving away from the statutes of the Constitution then in force (the invisible Constitution), while in the second period, under the chairmanship of constitutional judge János Németh, decisions were based on the interpretation of the text of the Constitution. The second phase of the Constitutional Court is analyzed by presenting decisions made in taxation cases and in employment and civil service dismissal cases, and it deals in detail with the controversial decision relating to the Magyar Nemzeti Bank (the National Bank of Hungary, hereinafter the MNB).

Journal of Economic Literature (JEL) code: K19, K39, K49

Keywords: Constitutional Justice, Constitutional Court, economic policy, government

DR TAMÁS PRUGBERGER, DSc, professor emeritus, Faculty of Law, University of Miskolc (prugberger.tamas@t-online.hu), DR ANDREA SZÖLLŐS, PhD student, Deák Ferenc Doctoral School, Faculty of Law, University of Miskolc (email@elérhetősége).

THE EFFECT OF CONTRADICTORY RELATIONS OF ECONOMIC
POLICY AND GOVERNMENT ON THE FOUNDATION AND OPERATION
OF THE CONSTITUTIONAL COURT PRIOR TO 2010

The evolvement of Hungarian constitutional justice after the change of regime in 1990 was not without contradiction, and depended to a great extent on the frequently-changing direction of government, which significantly influenced its operation. Therefore, the foundation, further development and operation of the Constitutional Court depended significantly on the changes in political direction. These changes have had a significant effect on the foundation, operation and development of the Hungarian Constitutional Court. Consequently, if we want to deal with the CC and its operation objectively, we cannot avoid presenting the evolution of the political trends influencing constitutional justice.

In the course of the change of regime in 1990, Hungary was largely insolvent in part as a result of the running of the MNB during the Kádár regime. At that time, the MNB's management proposed that Hungary should join the International Monetary Fund (hereinafter, the IMF) at the end of the 1960s and it took out significant loans partly from the IMF and partly from foreign private banks, primarily West German financial institutions. The smaller part of these loans was used to maintain a higher level of living than that of the other Warsaw Pact countries. The reason for this was that the Kádár regime did not want a new uprising similar to the revolution of 1956. The larger part of the loans was invested in the modernization of state companies and in the renovation of their technology and stock if machinery.

At the time of the collapse of the real socialist system, Hungary seemed to have the opportunity to partially cancellation and reschedule its debts in a similar way to Poland. Hungary could have received this opportunity from Helmut Kohl in gratitude for the opening of the Austrian–Hungarian border to East German citizens coming across Hungary, which advanced the process of German reunification. However, the first Hungarian prime minister after the change of regime, József Antall, did not take this opportunity saying that the opening of the borders was a humanitarian duty, for which it would be unethical to demand a reward. Besides the Hungarian Alliance of Free Democrats (in Hungarian ‘Szabad Demokraták Szövetsége’, hereinafter the SZDSZ), which at the time of the change of regime misled Hungarian voters with its anti-communist and anti-Soviet phraseology – threatened from the opposition side the first civilian government, which was made up of the coalition of the Hungarian Democratic Forum (in Hungarian ‘Magyar Demokrata Fórum’, hereinafter the MDF), the Christian Democratic People's Party (in Hungarian ‘Kereszténydemokrata Néppárt’, hereinafter the KDNP) and the Smallholders' Party. Acting aggressively and beyond its competence, the SZDSZ hindered all attempts to cancel or reschedule the debts. The scope for action of the Antall government was significantly limited by its agreement made with the SZDSZ under coercion. Based on this agreement, beside the conservative civilian government and its prime minister, József Antall, Parliament elected the liberal Árpád Göncz as President of the Republic, and György Surányi,

who had the same political orientation, as the head of the MNB. That behind all these steps stood the USA representing the global financial background power is supported by the fact that Mark Palmer, who was delegated to Hungary as the American ambassador, directed the national privatization behind the scenes at the time of the change of the regime, thus taking part in the destruction of the Hungarian food, light, and engineering industries and in the transformation of Hungarian agriculture into the contract farm system similar to large farms in the USA. It was for this reason that they opposed the division of the cooperatives into family farms.

At the end of the 1980s the commercial banks, which previously operated as a department of the MNB, were torn away from the MNB and began to operate independently under left-liberal control, providing preferential loans for the socialist political nomenclature in order to stabilize their existence in the economy, while these banks went bankrupt and needed to be capitalized by the state before their privatization. These processes should have been vetoed by the MNB, but this did not happen. The MNB, led by the liberal György Surányi, continued the previous liberal monetary policy. Therefore, József Antall replaced György Surányi in the autumn of 1991 and Péter Ákos Bod was elected for the position. However, he was forced to resign in 1994 by the first left-liberal government led by Gyula Horn as prime minister, and György Surányi was elected again as the president of the MNB. In the course of his presidency, the pyramid-scheme-like bond issues of the broker firm established by the K&H Bank were brought to light. These bond issues helped the enrichment of many left-liberal politicians and civil servants. All this went unnoticed by the MNB led by György Surányi, though the MNB should have noticed it since it had responsibility for monetary supervision. Presumably, the MNB discovered these illegal acts, however it probably disregarded them, because the MNB itself operated a branch in Vienna illegally and at great loss. During this period, Hungarian public debt did not decrease but stagnated. Significant damage and economic disadvantages were caused, however, by the fact that in the course of the Gyula Horn's premiership, the corrupt, unconditional, and under-priced privatization practice continued, which was characteristic of the previous Antall government too. Moreover, it was Gyula Horn's government which handed over the country's energy resources and energy suppliers cheaply to foreign firms and placed the country, including its inhabitants and small and mid-sized enterprises into dependence on foreign multinationals.

In the spring of 1998, the first government led by Viktor Orbán, officially the second civilian conservative coalition made up of the Alliance of Young Democrats (in Hungarian 'Fiatal Demokraták Szövetsége', hereinafter Fidesz), KDNP and the Smallholders' Party, followed the Horn government. Thanks to the professional economic and financial cooperation between the first Orbán government and the MNB, directed by Zsigmond Jármai, the country's debts fell below 55 per cent (Gazdag, 2015:34).

After the parliamentary election of 2002, the first Orbán government was replaced by the second left-liberal government. In its first period, the state debt increased slightly (up to 59 per cent) (Gazdag, 2015:34) driven by the government, led at this time by Péter Medgyessy as its first prime minister, significantly raising the remuneration of civil and public servants, which stimulated the economy and consumption.

However, it overstepped its financial possibilities, and the increased salaries could not be withdrawn. Consequently, collective dismissals, which breached both EU and Hungarian law, were launched at the institutions of civil and public servants (Prugberger, 2005:34–36). The civil and public servants who took legal actions won on the first instance. However, on the second instance they lost because of the ‘directive’ given to the lower level courts by the Supreme Court, clearly under government pressure. The applications for review were rejected, of course, and in the same ‘odd way’ the European Court of Human Rights did not find any infringement of law in the procedures of the Hungarian courts, either.¹ It is a pity that no opposition party or individual filed a case to the Constitutional Court before the decision of the European Court of Human Rights, because all the above-mentioned decisions and the government pressure on the courts violated the right to work and the judicial independence laid down in the previous Constitution, as well as warranty rights.

Not long after this, Péter Medgyessy was relieved in a putsch of his position as prime minister by wish of the SZDSZ coalition partner (Csontos, 2016:10). The constitutional nature of this event qualified as a borderline case according to statutes of the Constitution² that had been modified several times after the change of regime in 1990 and which preceded the new Fundamental Law of Hungary. That is to say, it was not a putsch coming outside with the aim of bring down the political system, but rather an inner putsch, which did not affect the governmental authorization of the parties in power. Therefore, the opposition parties did not start constitutional proceedings. The aforementioned broker firm of K&H Bank, in which the Hungarian Socialist Party (in Hungarian ‘Magyar Szocialista Párt hereinafter the MSZP) held an interest, and the Ministry of Youth and Sports led by Ferenc Gyurcsány, who followed Medgyessy as prime minister, and the ministries under SZDSZ control led the way in wasting public money and corruption (Prugberger, 2009:7–14). However, because these illegal, anti-public and anti-private property activities were carried out by those left-liberals in power by evading the regulations then in force but not violating the rules of the Constitution, no constitutional proceedings were launched. Similarly, no constitutional procedures began in the “oil bleaching” cases, which happened at the same time and which were committed by the corrupt field-officers of the army, causing damage to the Hungarian state by tax evasion. The then opposition took these cases before a parliamentary committee in vain, the committee members of the left-liberal government making it impossible to start investigations in these cases by their boycott (Prugberger, 2009:7–14).

The government of the left-liberal coalition led by Ferenc Gyurcsány, which gained a mandate for another four-year period at the elections in the spring of 2006, practically handled the country as a business and trade company. There was a peak in corruption and in the privatization of the country at a very low price. The national wealth decreased dramatically under the left-liberal comprador government unconditionally serving transatlantic capital and the economic goals of a USA bent on dominating the world. The state debt, which had decreased to below 55 per cent under the Orbán government, increased to more than 85 per cent during the Gyurcsány era as a result of the corrupt privatization and attempts at privatization (Prugberger, 2009:7–14),

and the dilettante macro-economic and monetary policy. The state budget deficit, which was expected by the EU to be under 3 per cent, increased to above 8 per cent. Pursuant to the Constitution prior to the Fundamental Law, constitutional proceedings could not be launched due to unconstitutional governmental management because the constitutional rules prescribing rational management of public finances were first defined by the Fundamental Law which was enacted in 2011.

That is why the country reached a state of near bankruptcy similar to that of Greece. Gyurcsány had to resign as a consequence of the referendum rejecting the privatization of the state health insurance funds and the state health insurance (Prugberger, 2014:14). The ‘expert government’ – as it called itself – led by prime minister Gordon Bajnai, who followed Gyurcsány, ‘saved’ the country from the bankruptcy by taking out IMF loans with tough conditions, the aim of which was to maintain the country’s neoliberal transatlantic dependence by requiring high interest and short loan periods, which would have caused the country to take out further loans. Sadly, the Constitutional Court again failed to declare the short-lived Act No. 1 of 2001 on Private Health Insurance Funds unconstitutional in relation to the privatization plan of the Gyurcsány government based on its infringement of the right to health guaranteed by the Constitution. In this case the Bajnai government would not have been able to pass its act aiming at a similar establishment of the private pension funds, which was eventually annulled by the second Orbán government (Prugberger, 2014:18–19).

During this period, the Constitutional Court, founded in 1990, had two operational profile phases. The first phase was characterized by the political and ideological attitude of the founding members. The first president of the body, László Sólyom, as well as its vice-president and the great majority of the judges had a civil democratic and/or Christian democratic bias. Only a minority represented the moderate social-national reform-socialist view, the inner content of which was characterized by the human-faced socialist world view. These two orientations could cooperate in the body. This first body of the Constitutional Court, led by László Sólyom, elaborated the concept of the administration of constitutional justice based on the “invisible constitution”. For, although the Constitution of 1949 was completely modified and amended in 1984, it still had the atmosphere of the Stalin-Rákosi dictatorship. And there had been no new constitution as a result of the constant refusal of the constitution drafts of the governments in power after the change of regime by the representatives of the opposition at the time. The concept and standards of the invisible constitution were formed as a synthesis derived from Magna Carta, the written constitutions of Western European countries, and the constitution of the USA.³ All this was latently influenced by the historical doctrine of the Holy Crown, and the agreement, incorporated in a “Magna Carta”, concluded between the Hungarian king Andrew II and the Hungarian estates, and the invisible constitution was based on these documents. This approach resulted in the decision of the Constitutional Court, which deemed the Act No. LXXV of 1995 on the Ownership, Use and Sale of Agricultural Land not to be unconstitutional.⁴

According to the declarations of the first constitutional judges, the Constitutional Court – by means of its decisions – tried to “lay down the basis for the change of

regime” during its first period before the years of 2010–2012 (Sólyom, 2001). For this reason and in order to be able to annul with “*ex nunc*” effect all the regulations which were not in compliance with the Constitution amended significantly by Act No. I of 1989, Act No. XXXII of 1969 on the constitutional court offered a great variety of means for the control of norms, many of which the Constitutional Court could not take advantage of due to the large number of constitutional complaints made by individuals. In the first decades, the Constitutional Court was greatly overloaded by petitions from advocates and individuals who tried to repair their own or their clients’ injuries to interest shrouded in a breach of the constitution. There were many *actio popularis* among them, too. Besides this, in this period and later too, the Constitutional Court had to handle the lack of political consensus and the shortcomings in legal techniques in the cases of petitions of interest organizations and the then opposition parties (Sólyom, 2001). For this reason, the Constitutional Court could not declare unconstitutionality in many cases where the legal acts and the principles behind them were formally in compliance with the Constitution, but where the politics, and the civil servants and politicians serving that politics, committed abuses in their ad hoc political decisions that were concealed by legal reasoning. This revealed itself first of all in the field of privatization (Prugberger, 1997). The normative and ad hoc decisions were often influenced by the politics and the duality, i.e. the norms which were the subjects of the Constitutional Court decisions seemed to be in compliance with the Constitution on the basis of strict objectivity, however, they seemed to be contradictory to EU law or the prevailing political interests or vice versa. All this resulted in many controversial or debated Constitutional Court decisions.

The case of the Zétény–Takács Act on Justice⁵ was a typical example for the above written. The Constitutional Court declared unconstitutionality in a constrained way in the constitutional control petition of Árpád Göncz referring to the infringement of legal certainty. The same happened in the case of the Zétényi–Csurka–Zimányi bill⁶, which had eliminated the constitutional shortcomings of the previous act in vain. Both the act and the bill attempted to discontinue the lapse in the cases of political miscarriages of justice, liquidations and capital treason between 1944 and 1999 and based on these, the perpetrators of the aforementioned crimes committed during World War II and between 1944 and 1990 could have been held responsible as the protection of the dictatorial regime had slipped away (Zétényi, 1999). Regarding the highly controversial foreign privatizations, which were contrary to the interests of the Hungarian state, the Constitutional Court could not intervene effectively, because before the privatizations the left-liberal Horn government made the previously non-transferrable state property transferrable by amendments to the Constitution and other acts on state property and its protection.⁷

The second phase of the operation of the Constitutional Court before the second Orbán government was characterized by the lack of the previous trend of public legal theory due to the chairmanship of János Németh, a legal professor in civil procedure. Consequently, the Constitutional Court started a practise of analysing case law, in which the normative or ad hoc legal norm that was the subject of the petition

or complaint was compared to the relevant constitutional provision, the rights and obligations prescribed by it and it was analyzed in detail as to what extent the legal norm in question was in compliance with or contrary to them. This practice was also followed by the next constitutional chairs and judges.⁸ The present administration of constitutional law is not far from this point of view and practice with the difference that judges compare the contested normative or ad hoc action to the new Fundamental Law taking effect in 2011 instead of the repealed Constitution of 1949 which had been comprehensively amended many times.

By the second phase of the Constitutional Court's operation prior to 2010, the cases which could be sent to the Court had been restricted. Despite that, there were left-liberal expectations of influencing the objective decision making, which the Constitutional Court could more or less successfully fight against. This tendency manifested itself in connection with the aforementioned privatization cases, where – as was mentioned before – the government had amended the law, or had the law amended by Parliament to be in compliance with EU law preferring free market competition and with the Constitution having been amended comprehensively in 1989. Even the courts declared many privatizations and other contracts as injuring public interest and violating good morality based on the principle of freedom of contracting. Typical examples of this were the cases where huge amounts of severance pay were given to left-liberal public and civil servants in leading positions at public institutions with reference to the termination of their employment by mutual consent, whereas they continued to be employed in their previous positions in a contract of agency or commercial legal relationship (Prugberger, 2009:7–14; 2010:79–80).

THE TEMPORARY PERIOD AFTER 2010 AND THE NEW PERIOD
STARTING IN 2012 WITH THE GOING INTO EFFECT
OF THE NEW FUNDAMENTAL LAW AND THE NEW ACT
ON THE CONSTITUTIONAL COURT

On the basis of what is mentioned above, the third Fidesz–KDNP civil coalition and the second Orbán government that took office in 2010 faced huge corruption cases and abuses (Prugberger, 2010:79–81). At first, the government attempted to have the aforementioned severance payments paid back into the state and local government budgets by means of court decisions. The courts, with their mainly left or left-liberal attitude biases, rejected to declare these contracts invalid on the basis of being illicit and, moreover, and rather controversially, they declared them valid based on the principle of the freedom of contracting. As a response and in order to return the money to the state budget, the new civil government levied a 98 per cent tax on such remunerations with retrospective effect by amending the Taxation Act. However, because of this, the government officials whose contracts had been unlawfully terminated by the Medgyessy, Gyurcsány and Bajnai governments and who were lawfully entitled to compensation for damages were also negatively affected. This modification of the act came before the Constitutional Court, which annulled it by referring to the principle that nobody can

retrospectively be put in a legally more disadvantageous situation.⁹ The Fidesz–KDNP government, thinking that a lot of the judges over a certain age had been socialized under the Kádár regime and therefore had a left-liberal attitude and were loyal to that political view, made amendments to acts stating that although the majority of civil servants could stay in office until the age of 70, judges can work only until the age of 62 and at that time they must retire. This special legal provision was also annulled by the Constitutional Court because of the infringement of the principle of equal treatment.¹⁰

As far as other officials are concerned, the government provided special treatment for government officials by creating the Government Officials Act (in Hungarian ‘kormánytisztviselői törvény’, hereinafter the Kjt¹¹) giving them a special legal status, but also placing them under strong subordination and requiring unconditional loyalty from them towards the government. Therefore, the Kjt prescribed that government officials are required to be loyal to their direct superiors, and if they do not work to the expectations of the government or their superiors, then their public service can be terminated at any time without reason. Since the provision of Kjt allowing the termination of employment without reason infringes Article 24 of the Social Charter – which states that all notices delivered by the employer must contain valid reasons – and since the termination of employment by the employer without reason results in the infringement of the right to work, the Constitutional Court annulled the provision of the Kjt allowing termination without reason.¹² The new Civil Servants Act (hereinafter referred to as Kttv¹³) already prescribes the obligation to provide valid reasons for the notice of termination of the civil servant’s employment in a similar way to the Labour Code Act¹⁴ and the Public Servants Act (hereinafter referred to as Kjt¹⁵), but the provision of the Kttv prescribing obligatory reasons for the termination of employment of both government officials and civil servants provides less protection than the Labour Code provides for employees or the Kjt for public servants. That is to say, both government officials and civil servants can be dismissed due to a lack of confidence, which is a reason that can be used anytime in any case, or a so-called “rubber reason”. Thus, government officials and civil servants have become very defenceless, especially in that sense that according to the Kttv, civil servants must be loyal to their superiors. Therefore, a talented civil servant is at the existential mercy of their mediocre superior.

These provisions in the Kttv, which provide a possibility for contra-selection, could be attacked before the Constitutional Court based on the fact that they violate the principle of equal treatment and entail negative discrimination towards civil servants compared to the provisions related to termination in the Labour Code and the Kjt (Mélypataki, 2011; 2013).¹⁶

On the other hand, it must be seen as a positive fact that the Constitutional Court declared unconstitutionality – both before and after the Fundamental Law took effect in 2012 – both in the cases of notices of termination without reason and in the cases of complaints relating to the levying of taxes retrospectively.¹⁷ In these cases, the Constitutional Court – as with the levying of the 98 per cent tax or the obligatory retirement of judges at the age of 62 – was right to question the constitutionality of the way the government handled these issues.

Even so, on the basis of what is described above, the government can be understood, since it tried to reverse and eliminate as quickly as possible the corruption, moral-socio-political depravity, the tendency towards anarchy and the increasing financial instability of public finances, which were the results of the previous 8 years of left-liberal government. Essentially, this was the reason for the negative response by the government in creating the act, in which the scope of power of the Constitutional Court was limited in economic cases. It is, however, in compliance with EU law, and this is reflected in the fact that the Supreme Court is allowed to examine only the validity of the reason given in the notice of termination by the employer, while examining the content of the reason falls outside of its scope.¹⁸ Despite the limitation, the Constitutional Court could declare unconstitutionality in cases affecting the economy where there is an infringement of the Fundamental Law, without contravening economic political interests. The fact that the government enhanced its discretionary power in this issue turned out subsequently to be correct because with its professional economic and financial policy in cooperation with the MNB, it was able pull the country out of the economic and financial mud into which the country was dragged by the previous 8-year left-liberal government and the MNB, which followed orthodox policy and was involved in offshore actions through its president at that time.

From this point of view, it is worth judging positively the present unorthodox economic and monetary policy of the MNB, which was especially fiercely criticized by the left-liberal opposition in connection with its policy relating to foundations. Under pressure from the opposition, the President of the Republic filed a petition to the Constitutional Court against the bill on the legislation relating to foundations. The aim of endowing foundations was to promote the training of economic experts in unorthodox economic policy, as opposed to orthodox economic policy, within the framework of the MNB in such a way that it could not be disturbed by the aggressive protest of the opposition, which favours mainstream orthodox economic political policy. In order to achieve this, the government wanted to amend Article 162 of Act No. CXXXIX of 2013 on the National Bank of Hungary (MNB) with Bill No. T/9380 so that that knowledge of the data concerning the foundations and the economic enterprises established by the MNB to fulfil its tasks could be restricted. The reason for this given by the MNB and the government was that although it is a public asset, it comes from the profit of the MNB management and, therefore it is not part of public finances, and thus the supervision of its use and utilization is the responsibility of the Supervisory Board of the MNB. This view was considered a reason for concern by the impartial President of the Republic, therefore he turned to the Constitutional Court. In his opinion – which was accepted by Decision No. 8/2016 (IV.6.) of the Court – the companies owned by the MNB and the foundations established by it manage public funds. Pursuant to Article 39 of the Fundamental Law all the data concerning public funds are of public interest. Organizations managing public funds are obliged to give accounts of their management of public funds. However, the President of the Republic and the Constitutional Court also acknowledged the fact, which was also part of the reasoning of the aforementioned Decision of the Court, that it is legal to restrict

the publicity of such data in the interest of the protection of any constitutional value or fundamental right. Despite this, the Constitutional Court declared the bill to be unconstitutional in its above-mentioned decision. Considering all this, there is some inconsistency in the decision of the Constitutional Court, which is also reflected in the two minority reports attached to the Decision. According to Béla Pokol's minority report, the separation of the economic enterprises established by the MNB from its foundations would be justified, a view which partly coincides with that of the MNB and the government. In his minority report, András Zs. Varga emphasizes that the Fundamental Law does not contain procedural rules relating to the knowledge of data of public interest. Nevertheless, the provision of the Act on the Central Bank of Hungary may be interpreted in a way that data may be requested from the decision-making organization.¹⁹ Since the opposition, being committed to left-liberal orthodox policy, was not in favour of all this, they submitted their complaint to the Constitutional Court asking the court to declare the unconstitutionality of all of the measures related to foundations of the MNB. The Constitutional Court, however, pointed out its constitutional doubts regarding only the qualification procedure for private foundations and the attempt at confidentiality in connection with this, and not regarding the whole package of measures, which is correct from constitutional considerations and very important to the country from an economic point of view. It is very important because empty mainstream neoliberal economic conceptions, literature, "scientific" research and education are made from fiction rather than from mathematical deductions and formulas based on economic and sociological reality, and therefore they are useless. László Csaba, in his monograph about European economics (Csaba, 2014:26, 55) and Csaba Lentner, in his essays on public funds (Lentner, 2015:31–76; 2016), give very strong and in-depth criticisms of that mainstream economic trend that leads to deadlock. Since this trend, which is empty but still maintains its power at any cost, can only be crushed by the MNB establishing – with the support of foundations – educational centres teaching economics within the framework of both the MNB and institutions of higher education, and where the teaching of unorthodox economic trends will prevail, the steps towards the separated management of foundations are legally justified too. European law, in line with the World Bank and the IMF, supports the independence of the MNB. And that is what Matolcsy legally took advantage of. Notwithstanding, the Constitutional Court – with the exceptions of the two minority reports – did not take this fact into consideration. From the view point of legal philosophy, the Constitutional Court approached the question from the traditional "correct law" side, and not from the now-prevailing aspect of positive law, which can be disputed from the point of view of correct law.

Regardless of this case, and besides the issues of economic policy and the existential questions affecting the civil service sector, the Constitutional Court has advanced the rights of its citizens to social security, health, a good environment and human dignity with many of its decisions.²⁰

To conclude, we can state that the administration of Hungarian constitutional law may be divided into two different phases. In the first period of the first phase,

the decisions were based on a constitutional theoretical approach rather than on the interpretation of the statutes of the constitution, while in the second period of the first phase the Constitutional Court made its decisions based on the interpretation of the statutory provisions of the Constitution. The decisions of the second phase were largely made on the basis of the new Fundamental Law. A significant proportion of the cases has involved labour and civil service status issues, provisions making citizens' rights more burdensome retrospectively and the analysis of the management of financial and central bank foundations. All the phases of the administration of Hungarian constitutional law may be characterized by the fact that it could not avoid being influenced by politics and this applies everywhere since the administration of constitutional law moves along the border of politics and law (Paczolai, 1995).

NOTES

- ¹ In September 2005, a group of those affected, with the help of Dr Csaba Pákozdy and Dr Tamás Prugberger, turned to the Court of Human Rights in Strasbourg, which decided – after seven years of silence and urging – that the Hungarian courts made their decisions, having become legally binding, in accordance with the law.
- ² Act No. XX of 1949 (not effective).
- ³ See also Sólyom, 2001 and the parallel opinion attached to No. 23/1990. (X.30.) CC. Decision.
- ⁴ 35/1994 (VI.24.) CC. Decision.
- ⁵ 11/1992 (III.5.) Constitutional Court Decision on the first justice bill (Zétényi–Takács).
- ⁶ 53/1993 (X.13.) Constitutional Court Decision on the second justice bill (Zétényi–Csurka–Zimányi).
- ⁷ 33/1993 (I.28.) Constitutional Court Decision and 21/1994 (III.16.) Constitutional Court Decisions were related to this.
- ⁸ This decision line is described in the detailed interpretation of the Constitutional Court decisions in connection with the social insurance by Rab, 2012:52–112.
- ⁹ 37/2011. (V.10.) Constitutional Court Decision declared the provision of Act No. XC of 2010 which raised the income tax with a retrospective effect unconstitutional and 1268/B/2010 Constitutional Court Decision is about the constitutional control of the act after its modification as a consequence of the above-mentioned Constitutional Court Decision.
- ¹⁰ 33/2012. (VII.17.) Constitutional Court Decision.
- ¹¹ Act No. LVIII. of 2010 on the Status of Government Officials (Kjt) (not effective).
- ¹² 8/2011. (II.18.) Constitutional Court Decision.
- ¹³ Act No. CXCIX of 2011 on the Legal Status of Civil servants (Kttv).
- ¹⁴ Act No. I. of 2012 on the Labour Code.
- ¹⁵ Act No. XXXIII of 1992 on the Legal Status of Public Servants (Kjt).
- ¹⁶ Important Constitutional Court Decisions in the cases of the terminations of civil servants' employment: 518/D/2009–518/D/ 2009 AB.; 111/B/2011–29/2011 AB.; III. 00505/2012–342012 AB.; III. 00506/2012. AB.; IV. 01235/214–3049/2015 AB., IV. 01648/2014–3285/2014; IV. 00894/2015–3192/2015 AB.
- ¹⁷ *Ibid.*
- ¹⁸ Act CXIX of 2010 narrowed the circle of the financial acts in which the Constitutional Court may execute constitutional control. See further Naszladi–Tilk, 2015.
- ¹⁹ 8/2016. (IV.16.) CC. Decision declared unconstitutional – with the exceptions of the Minority Reports of Béla Pokol and András Zs. Varga – the modification of the Act on the Central Bank of Hungary which would have allowed confidentiality in case of the foundations of the MNB.
- ²⁰ See, for example, No. 518/E/2006–38/20011. Constitutional Court Decision in capacity case – see further its legal interpretation by Jakab, 2014:109–111, 220.

REFERENCES

- Csaba, László (2014): *Európai közgazdaságtan* [European Economics]. Akadémiai Kiadó, Budapest, 26–54.
- Csontos, János (2016): Van élet a Magyar Szocialista Párt után is? [Is There Life After the Socialist Party?]. *Magyar Idők*, 14 November.
- Gazdag, László (2015): Senki Alfonz és a jereváni rádió [Alfonz Nobody and the Yerevan Radio]. *Kapu*, no. 9.
- Jakab, Nóra (2014): *A munkavállalói jogalanyiség munkajogi és szociális jogi kérdései, különös tekintettel a megváltozott munkaképességű és fogyatékos személyekre* [Labour and Social Law Issues of the Legal Entity of the Employer with Special Respect to Persons with Altered Work Abilities and Disabilities]. Bíbor Kiadó, Miskolc.
- Lentner, Csaba (2015): A magyar nemzetgazdaság működésének gazdasági, rendszertani, jogszabályi alapjai – unortodox jegybanki eszközök bemutatásával ékesítve [The Economic, Taxonomic and Legal Bases of the Operation of the Hungarian National Economy – Embellished by the Introduction of the Unorthodox Monetary Means of the Central Bank]. In: *Adózási pénzügytan és államháztartási gazdálkodás* [Fiscal Policy and the Management of Public Finances]. Ed. Csaba Lentner, Nemzeti Közszerzői Egyetem Szolgáltató Kft., Budapest, 31–76.
- Lentner, Csaba (2016): *Rendszerváltás és pénzügypolitika* [Change of Regime and Financial Policy]. Akadémiai Kiadó, Budapest.
- Mélypataki, Gábor (2013): Az indokolásnélküliség elméleti és gyakorlati problémái a munka- és a közszolgálati jogban [Theoretical and Practical Problems of Notices without Reasons in the Labour Law and the Law of Public Service]. *Miskolci Jogi Szemle*, no. 2, 62.
- Mélypataki, Gábor (2011): A kormánytisztviselői törvény az európai jog tükrében [The Government Officials Act in the Mirror of the European Law]. In: *Publicaciones Universitatis Miskolciensis Sectio Juridica et Politica*, vol. 29, no. 2, 483–502.
- Naszladi, Georgina – Tilk, Péter (2015): Az alkotmánybíróságra vonatkozó szabályozás átalakulása 2010 után [The Transformation of the Regulations Related to the Constitutional Court after 2010]. In: *Jog és politika határán. Alkotmánybíráskodás Magyarországon 2010 után* [On the Border of Law and Politics. The Constitutional Jurisdiction in Hungary after 2010]. Eds. Fruzsina Gárdos-Orosz, Zoltán Sente, HVG-ORAC, Budapest, 48–52.
- Paczolai, Péter (1995): Az alkotmánybíráskodás a politika és a jog határán [The Administration of Constitutional Justice on the Border of Politics and Law]. In: *Alkotmánybíráskodás, alkotmányértelmezés* [Constitutional Jurisdiction, Constitutional Interpretation]. Ed. Péter Paczolai, ELTE Állam- és Jogtudományi Kar, Budapest.
- Prugberger, Tamás (2005): A köztisztviselői létszám-leépítési perekben hozott bírósági ítéletek problematikus vonásai [The Problematic Characters of the Judicial Decisions in the Cases of Civil Servants' Lay-offs]. *Magyar Jog*, no. 6.
- Prugberger, Tamás (2010): A köztisztviselők és a közalkalmazottak felmentésének jogi lehetőségei [The Legal Possibilities of the Dismissal of Civil and Public Servants]. *Polgári Szemle*, no. 3.
- Prugberger, Tamás (2014): A társadalombiztosítás problematikus és lehetséges továbbfejlesztési kérdései [The Problematic Issues of Social Insurance and its Possible Development]. *Polgári Szemle*, no. 1–2.
- Prugberger, Tamás (2012): *Magyar munka- és közszolgálati jogi reform európai kitekintéssel* [The Legal Reform of the Hungarian Labour and Civil Service Law from a European Viewpoint]. Novotni Kiadó, Miskolc.
- Prugberger, Tamás (2009): Politikai felelősség közjogi, büntető- és polgári jogi felelősséggel kiegészítve [Political Responsibility Complemented by Public, Criminal and Civil Law Responsibilities]. *Polgári Szemle*, no. 6.
- Rab, Henriett (2012): *A nyugdíjbiztosítási ellátások fenntarthatóságának jogi garanciái* [The Legal Guarantees of the Sustainability of Pension Supplies]. HVC-ORAC, Budapest.
- Sólyom, László (2001): *Az alkotmánybíráskodás kezdetei Magyarországon* [The Beginnings of the Administration of Constitutional Justice in Hungary]. Osiris Kiadó, Budapest.
- Zétényi, Zsolt (1999): Néhány adalék az igazságtételhez [Several Additives to Justice Reality]. *Valóság*, no. 11.