



## Models of Constitutional Courts?

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**Abstract.** In international comparison, two basic constitutional models are known. In one of the models, the traditional courts – headed by the Supreme Court of the State – compare the individual legal norms with the standards of the constitution, and ultimately overrule the statute in concern. The decentralized constitutional courts deal with the tasks of the traditional jurisdictional litigation, investigation of international treaties, the dignitaries' special impeachment, or the election of arbitration. But most important is to emphasize the institution of the scope of the review of the legal norms. In my view, the conceptual basis for the decentralized constitutional courts is the possibility of ex-post constitutional review. It is clear from the above discussed that the most practical solution for a centralized model is where the Constitutional Court has the right to constitutionally overrule the decisions of ordinary courts. Perhaps some may complement the constitutional complaint with the Ombudsman's basic right to investigation into insulting activities of individual acts. The institution of the Ombudsman was established early, at the dusk of the communist regime by the Hungarian legislator; however, for some political reasons, it had to wait until the mid-90s for the first parliamentary commissioners to be elected. As the Constitution entered into force on January 1, 2012, it changed the Ombudsman system of Hungary, which by then had become monocratic, "one-headed" instead of the earlier model based on four coequal ombudsmen.

**Keywords:** Hungarian public administration, ombudsman system, constitutional court, constitution, models of constitutional courts

So, what is the Constitutional Court? We could raise the question that is obvious for many. Generally speaking, we could respond that it is a norm-controlling board, which looks at legal norms and state legislation on constitutional grounds.

In international comparison, two basic constitutional models are known. In one of the models, the traditional courts – headed by the Supreme Court of the State – compare the individual legal norms with the standards of the constitution, and ultimately overrule the statute in concern. So, in this scheme, practically all courts implement constitutional judicature, but due to appeals and legal

remedies the Supreme Court of the country is the authentic and principal body of the interpretation of the Constitution. Therefore, constitutional judicature is said to be decentralized in countries of the above range.

The other model is where an individual body is set up to review legal acts, statutes in the light of the constitution. (Only in the latter it is possible literally, and in the classical sense, to speak about constitutional court.) Obviously, besides this, there could be other scopes of authority of the bodies mentioned above.<sup>1</sup>

Classically, there is no separate constitutional court in the *UK*, *US*, *Australia*, *Canada*, *Denmark*, *Norway*, *Sweden*, or *Japan*. Article 120 of the Dutch Constitution is a peculiarity: the courts – so that there is no separate constitutional court – do not rule on the constitutionality of a law!

As far as *Switzerland* is concerned, we might say that it incorporates a particular mix of the classical European and American models. Each court has the right – except the federal level – to examine the constitutionality of the laws. The Federal Court has the power to participate in individual constitutional complaints; however, it is authorized to overrule legal regulations on cantonal level.

The *Greek* form of constitutional judiciary is also a curiosity; among members of the Supreme Court of the State and law professors, judges are appointed by drawing lots. The judiciary only has the jurisdiction to control the acts and there is no authority for lower-level legislation such as statutes. Also, it should be pointed out that other courts in their scope of discretion consider the constitutionality of the statutes.

In Hungary, the mandate period of a member of the Constitutional Court is a twelve-year term. Members of the Court cannot be re-elected. This represents a significant change compared to the previous law, under which, besides a nine-year mandate, there was a one-time opportunity for re-election.<sup>2</sup> However, this created a chance – at least in theory – that the members of the constitutional court were trying – at least, towards the end of their mandate, with their “behaviour” and their votes – to promote their re-election. In several states, the mandate ends at the time of retirement (e.g.: Austria, Bosnia and Herzegovina, Turkey, etc.). In Azerbaijan, the first mandate period is a term of fifteen years! A one-time re-election is possible, but the second cycle can last only for 10 years (see Legény *op. cit.* 235 p.).

1 We focused on the protection of the four freedoms, noting that the characteristics of individual constitutional courts – focal points – can be judged only on the grounds of all their jurisdiction. We may add that not only the constitutional complaint and the normative control are related with fundamental rights, but the same could pertain to international treaties as well as for consideration of the referendums and election issues. If we refer to the name of the specific bodies, apparently as specific property names, they should be entered in uppercase; however, as abstract doctrinal concepts, we specify these bodies as constitutional courts.

2 In some states, term of office lasts until retirement (e.g.: Austria, Bosnia and Herzegovina, Turkey, etc.). In Azerbaijan, for the first period, it is a 15-year mandate! A one-time re-election is possible, but the second period lasts only 10 years. See Legény 2006. 235.

The following categories of people could not opt for the membership of the Constitutional Court: who were members of the government, were senior party officials within four years prior to the date of the election, or held state leadership positions. At least nine, and no more than fifteen, Members of Parliament that form a nomination committee make a proposal for the Members of the Constitutional Court. The committee must provide a seat for each representative of the parliamentary parties.

Another concern is the election of the judges. International practice usually splits the right of election. In many countries, the head of the state also has the option to delegate members. Bicameral parliaments also provide complex opportunities from this point of view.

In France, for example, the President of the Republic, the President of the National Assembly, and the President of the Senate shall appoint 3 members each out of the possible 9.

A third of the 15 members of the Italian Constitutional Court are delegated by the Parliament, another third by the head of the state, and three colleges are authorized through certain collegiums of the Supreme Court, one by the Council of State and the State Audit Office. This model inherently provides that persons with a professional judicial experience can become members of the body.

In Austria, the president, the vice-president, the twelve ordinary members, and three of the six alternates – who are designated by the government – use to be appointed by the President of the Republic. The Federal Council and the National Council recommends a regular 9–9 and 3 or 6 alternates, one third of whom is also appointed by the President of the Republic.

In Slovakia, it is also the President of the Republic who appoints the 10 constitutional judges recommended by the National Council of 20 persons. The particularity of these two latter models is the plural designation system, that is, a few will finally gain the membership, but there will be some disappointed who are considered – would take the mandate – but will not be inaugurated into office. On the one hand, it partly reduces the prestige of candidacy, and, on the other hand, it results in the fact that the most appropriate persons will probably not undertake candidacy.

In Spain, the judges are appointed by the King. Four of them by the lower, another four by the upper house are appointed based on a two-thirds majority, while another four (2–2) are appointed by the designation of the government and the Judicial Supreme Council.

Three members out of the total thirteen of the Portuguese Constitutional Court are already co-opted by the already elected ten individuals. In my view, this particular solution is welcome because the candidates' expertise can be judged more objectively from the inside, while it is also more perceivable what kind of expertise and skills are needed to get a better distribution of cases.

The Belgian model is very specific. Judges are appointed by the King with a two-thirds majority of the Senate, from two different circles of candidates. Members of one of the groups have at least five years of previous mandates in the high positions at the Court of Cassation, at the Council of State, at the Constitutional Court, or they have been at least university teachers for at least five years. The second group, however, is formed of persons who were members of the Senate or the House of Representatives for at least 8 years. That means that in Belgium politics plays a quite important role in the constitutional court. This situation can be regarded as a contrast to the regulations of other countries that try to eliminate politics from the constitutional court.<sup>3</sup> This solution specifically makes the Constitutional Court part of the system of checks and balances.

The Turkish model is highly specific. It is completely the authority of the head of the state to appoint the 11 regular members and the four deputy members. It is the specificity of the model that public institutions / organizations appoint judges. (These are higher courts, the State Council, the Higher Education Board, administrative professionals' organizations, and bar associations.)<sup>4</sup>

We could consider as a discrepancy from the classic "binary code" the solution that is applied in Bosnia and Herzegovina and that prevents us from the inevitable comparison of the duality of government and opposition. The President of the European Court of Human Rights appoints 3 of the 9 members of the Constitutional Court. A further exception is that these members cannot be citizens of either the given state or of those neighbouring countries.<sup>5</sup>

Costa Rica's constitutional structure is outstandingly interesting. The normative task is implemented by the Sala Courta, an individual plenum of the Constitutional Court. (The two bodies – with a relative autonomy – interlock.) The members are elected by a two-thirds majority in parliament for an eight-year term. Inasmuch as the legislature with a two-thirds decision has not replaced the judges, the mandates will automatically extend. In my opinion, this model provides simultaneous manifestations of independence and control.<sup>6</sup>

In Hungary, judges of the Constitutional Court are elected by the Parliament by a two-thirds majority. The entire origination of the post from the parliament is a substantial nexus between the policy and the body. If one political side has a two-thirds support, then even the most prominent jurists could be stigmatized as "party soldiers". If, however, the proportion of two-thirds is divided among several

3 A specific requirement that Dutch and French language groups give the same number of judges in each group.

4 Legény 2006. 232.

5 Legény 2006. 235. An analogous rule that in Liechtenstein from the six members only the president, the deputy and two other members must be citizens, while the others may be foreigners.

6 Furthermore, in respect of specific constitutional complaints, judges have a great freedom of movement. See Pokol 2003. 39. f.

political powers, the situation is also subject of concern. In general, for the sake of consensus in the commission, both sides mutually agree to the other's candidate, so it can be traced back who recommended the individuals. That is why it would be appropriate to introduce the multi-channel nomination of the members.

The new Constitution and the ACC created the legal ground of the identical nomination method, which is identical with the nomination of members. The parliament elects the chairperson from among the members already in position. Previously, the procedure rules specified the number of member designations, in several rounds and in an absolute-absolute majority system. The chairperson was elected by the members from among themselves (the deputy chairman as well).

The presidential term of office covers the president member's mandate time. That is to say, it could be almost 12 years or even 12 years. (It is not evident whether in the selection process it is a tactical aspect to take into consideration the years of term of office. The current rules, however, foster this.)

Both models have arguments for and against. Members probably know better who is the best and the most prestigious professional under whose leadership they could work best. However, election by members could determine and foster negative factors such as overly patriarchal internal relationships, personal conflicts or co-operations, personal interests may dominate in this model. Mandates attributable to the parliament ensure greater legitimacy for the decision can be traced back indirectly to people's will.

In Lithuania, the judicial power of constitutional court is very much like that of the Hungarian constitutional court. The parliament elects the president, but with the designation of the head of the state. In Germany and Switzerland, it is also the representative body of the people that elects the president, but coming from the inside, after a proposal by the members.<sup>7</sup> (In Germany, by voting in both houses separately and in Switzerland by a joint meeting.) The presidential cycle lasts 2 years in Portugal, 3 in Bulgaria, Spain, and Slovenia, and four years in Croatia. (At the other end of the spectrum is France, where mandate time is nine years.)<sup>8</sup>

It is not accidental that the German Constitutional Court was the role model when creating the Hungarian institution.<sup>9</sup> Its spheres of authority – in international comparison – are quite wide. The land of origin of the real constitutional complaint – recently introduced in our country – is Germany. Furthermore, besides the scopes of powers known in Hungary, we have to emphasize the institution of electoral judging. (It should also be mentioned that constitutional courts operate at member-state level as well!) The body went into operation in 1951. Until 1999,

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7 In Argentina, Croatia, Bulgaria, Italy, Portugal, Slovenia, and Turkey, the members elect a chairman from among themselves (Legény 2006. 233.).

8 Legény 2006. 233.

9 In contrast with the Austrian model – as generally regarded the first centralized Constitutional Court –, many see the origin of the institution in the Paulskirche court, set up according to the Constitution adopted in 1848. See Ádám 1998. 185.

it is estimated to have decided in more than 100,000 cases. 96% of them were individual constitutional complaints!<sup>10</sup>

An outstandingly important authority of the German committee – that until the annulled act replaced (by a body with jurisdiction) this plenum – has the right to release provisions regulating temporarily unsettled life situations.<sup>11</sup> This is actually a positive legislation, instead of the traditionally negative legislative competence of constitutional courts.

So, the constitutional complaint is applicable against specific judicial decisions or statutes can be applied as well. The criteria in the former case are exhaustion of other remedies and one month of submission deadline. The latter may be enlisted within one year after the legal norm has become effective.<sup>12</sup> The Federal Constitutional Court with “constitutionally conforming interpretation” may determine the correct meaning of a legal norm on constitutional grounds.<sup>13</sup>

In Poland, the Constitutional Court has jurisdiction over the following matters:

- a) constitutionality of laws and international conventions;
- b) compatibility of laws with international conventions whose ratification requires the prior approval of an individual law;
- c) compatibility of the acts of central state organizations with the Constitution and with ratified international conventions and laws;
- d) examination of complaints concerning as defined<sup>14</sup> in paragraph (1) of Article 79.<sup>15</sup>

Decisions of the Constitutional Court on international conventions, laws, and of other normative acts as unconstitutional provide a legal ground for a new trial or for the annihilation of the decision / making another decision against the enforceable judicial provision, legally binding administrative court resolution, or other decision based on the Constitutional Court’s resolution, according to principles determined in rules applicable to the procedure in question.<sup>16</sup>

Any court could turn to the Constitutional Court in case of legal issues or in matters of normative acts, ratified international conventions, in issues of the constitutionality of an act, inasmuch as the response affects the decision to the case before the court concerned.<sup>17</sup>

In accordance with the principles laid down in the law, anyone whose constitutional right or freedom was violated is entitled to apply to the

10 Legény 2006. 225.

11 Ádám 1998. 188.

12 Ádám 1998. 188.

13 Ádám 1998. 185.

14 Article 79. Polish Constitution (1): Any court could turn to the Constitutional Court in legal question, or in matter of normative acts, ratified international convention, in issue of constitutionality of an act, inasmuch as the response affects decision to the case before the concerned court.

15 Article 188. Polish Constitution.

16 Article 190. Polish Constitution.

17 Article 190. Polish Constitution.

Constitutional Court and ask for a decision on constitutionality of the very law or another normative act which was referred to by the court or another public organ when it had made a non-appealable decision on the person's constitutionally defined freedoms, rights, or obligations.

The decentralized constitutional courts deal with the tasks of the traditional jurisdictional litigation, investigation of international treaties, the dignitaries' special impeachment, or the election of arbitration. But most important is to emphasize the institution of the scope of the review of the legal norms. In my view, the conceptual basis for the decentralized constitutional courts is the possibility of ex-post constitutional review.

As the greatest problem of the centralized model, we may consider that in the practice of the courts one can observe a special coexistence of the dogmatically consistent branches of law (civil law, criminal law, etc.), on the one hand, and of the abstract view of constitutional law, on the other – while providing greater protection against gaps. The centralized model has the advantage that it separates the interpretation of the law from the specific interpretation of the Constitution. The fact has in its favour that the decisions are deployed to a specific body which is an expert on the subject in the field of constitutional law.

It is clear from the above discussed that the most practical solution for a centralized model is where the Constitutional Court has the right to constitutionally overrule the decisions of ordinary courts. (Perhaps some may complement the constitutional complaint with the Ombudsman's basic right to investigate into insulting activities of individual acts.)

After the collapse of the socialist system in Central Europe – despite the American intellectual influence –, almost all centralized constitutional courts have been established. So, this kind of bodies work in Poland, Hungary, the Czech Republic, Slovakia, Croatia, Slovenia, Serbia, and Romania – an exemplary development of the Baltic States. This may be due to the replacement of radical socialism – with the socialized traditional court personnel already gone, the Constitutional Court had to be built from scratch. Interestingly, Lithuania and Latvia have established decentralized constitutional courts. (Moreover, Lithuania adopted the German model of the classical constitutional claim.) In Estonia, there is no separate body for this purpose. Hungary in 2011: the new Constitution created the new Constitutional Court Act, also containing detailed provisions. In 2012, both entered into force.

Latvia operates under the Constitution, the Constitutional Court, which examines the impact within the scope prescribed by law in cases concerning the constitutionality of the law as well as other matters that are referred to the competence of the law. The Constitutional Court is entitled to laws and other acts declared invalid.<sup>18</sup>

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18 See Article 85 of the Constitution.

Judges of the Constitutional Court originate from many bodies, namely the Parliament, the government, and high courts. They were all confirmed by the absolute majority in the Parliament. The mandate is for 10 years and cannot be revoked.<sup>19</sup>

The Board has jurisdiction, *inter alia*, to examine the constitutionality of laws and international treaties prior and subsequent to the control of norms, pronouncing the lawlessness of the decisions of lower-level administrative establishments and also considering constitutional complaints.<sup>20</sup> (Thus, the introduction of the German model includes individual constitutional complaint and concrete norm control).

The Lithuanian Constitutional Court will decide whether they act in accordance with the laws adopted by the Parliament and the Constitution, and whether the actions of the President of the Republic and those of the Government violate the Constitution and the laws.

In relation to these issues, the Government, or at least one-fifth of the deputies, and the courts may apply to the Constitutional Court.

In Slovakia, the Constitutional Court shall consider the complaints of the natural or legal persons who are approved by the fundamental rights and freedoms if those complaints did not belong to the jurisdiction of another court.

In case of a complaint, the Constitutional Court may award appropriate monetary compensation for the injured party!<sup>21</sup>

In Austria, in case a law is repealed or the constitutional court finds an act law unconstitutional, all courts and administrative authorities are bound to the decision of the constitutional court. However, except for the actual case, the abrogated law has to be applied for the cases that have been decided before the decision of the constitutional court.<sup>22</sup>

Czech Republic within the competence of the Constitutional Court:

a) annulment of specific laws and regulations when they conflict with the constitutional order;

b) annulment of legal norms and other specific provisions if they conflict with the constitutional order or the law.

So, the possibility of a constitutional complaint against the decision of the individual is also mentioned.

A law may have more than one interpretation, all of which are acceptable; however, it cannot be regarded as untenable. This in itself does not necessarily mean its nonconformity with the Constitution. (Although, in cases of doubt, situations detrimental to legal certainty, and other issues of the Constitutional Court, annulling the decision may take place.)

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19 Chronowski–Drinóczy 2007. 302.

20 Chronowski–Drinóczy 2007.

21 Article 127. Slovak Constitution.

22 Article 140. Austrian Constitution.

It is also possible that the courts use many different interpretations of legislation, but one of them is considered especially defective. In such cases – as a last resort –, the Supreme Court will hopefully ensure a remedy to the injured party during the review process, provided that the conditions are met. This particular “mistake” is not sure, though, that it reaches the level of unconstitutionality, and thus it is not certain that the Constitutional Court’s jurisdiction may be exercised.

If a rule can only carry a meaning that cannot be an objective for the legislative branch of a constitutional state, it is likely that the decision of the Constitutional Court will have that annulled. The absurdity of such legislation must be detected by the proceeding courts, and it is important that, parallel to the suspension of the procedure, the proceeding of the Constitutional Court’s decision is also initiated.

Why is the expansion of the institution of a constitutional complaint a significant development for Hungary?

This has created a significant vacuum legis because the solicitous (but not unconstitutional) act and its rigid and inflexible interpretation have violated the fundamental rights of the parties in many cases, in which neither the Constitutional Court nor the traditional court system have given them any possibility to a legal remedy. So – as we put it earlier –, there was a sort of a vacuum in a narrow field of legal protection. Of course, this narrowness of the vacuum could not console those citizens who were pauperized because of this vacuum legis.

(Although we are somewhat sceptical about courts with the function of American-style constitutional judging, we must add that even *ad absurdum* may also be a potentially better solution than the model with the “vacuum,” where certain matters are regulated neither by ordinary courts nor by separate control panel conducting the legal norms.)

An act, which is not unconstitutional in itself, could still result in offending the fundamental rights of someone very seriously, even if the interpretation itself is not erroneous. If an insufficiently reasoned legislation is interpreted by the courts in a far too inflexible way, then it is most likely that the rights of the involved ones will be violated. So, this was an instructive case in Hungary at the time of the previous Constitution, even when there was no real possibility of the “real” constitutional complaint. For instance, a testament was invalid because, at the time when the previous Civil Code was in effect, it was compulsory to number both sides of the pages. The computer word processing program automatically does not print the first page number. The heirs tried to use an extensive interpretation, in which case the title on the first page could be regarded as a substitute for the page number. The Supreme Court rejected this interpretation with its rigidly textualist interpretation. They only complied with the words of the law. The law itself is not unconstitutional as the significance of the page numbering guarantees that the pages could not be replaced. Therefore, the Constitutional Court could not give a remedy to the problem. So, overall, the fundamental rights of the heirs were

seriously violated. A real constitutional complaint under the new Constitution would allow the effective protection of fundamental rights in similar cases.

In a number of similar legal cases, the victims of the wrongly chosen exercise of rights ended up on “no man’s land”.<sup>23</sup> Neither the inflexible textualist courts nor the Constitutional Court, which was tendentially refusing individual cases, was lacking the scope of authority to protect our fundamental rights. Due to such problems, the new system is considered to be a significant step forward, away from this aspect.

The real difficulty is in making decisions in those cases where there are many ways of interpretation and one of them is unconstitutional or where the application of all of them results in an outcome with a single item that would comply with the Constitution.

These latter cases can affect the division of the scope of authority in between the Supreme Court and the Constitutional Court. Insofar as the Constitutional Court establishes its own jurisdiction – even in cases of “regular” illegality on the top of unconstitutionality –, it essentially becomes a “Super Court” and actually rises above any specific case in the country’s highest judicial forum. With such a function, it would exceed its originally designated scope of power and it would cause a significant instability in the legal system, practically transforming the entire judiciary system into a five-grade system.

This risk could be overcome through constitutional provisions relating to the complaint, through accurate, casuistic regulation, or a very wise and diplomatic practice of interpretation. Because of the very laconic Hungarian regulation, only the second solution could have been applied.

That is a very strong separation of the “anti-Constitutionality” and illegality, through a thoroughly reasoned and fine-tuned strategic partnership of the Constitutional Court and the Supreme Court through strategic partnerships. This evolution is still the big issue of the future.

In other countries with centuries-old cultures of democratic standards, parallel to the law, other norms, morality can also effectively control the society. Therefore, certain issues are not obliged to be regulated by the law. As a result of the customs evolved during the socialist era, the “moral authority” of the ombudsman is particularly important as it actually lies at the crossroads of law and morality. That is why it is important to highlight that a powerful ombudsman also operates complementing the constitution courts. In my view, the system of fundamental rights protection organization should be examined as a whole – we can draw conclusions about the authentic ways of a complex analysis.

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23 In a related law case, the end of the will did not include the location (Budapest) next to the date, but it was included in the text. The court refused the basic legal reasoning and declared it invalid; so, the daughter who alone had taken care of her father did not inherit the property 1/1 (only half), so, what is more, she became indebted to the sister who had ignored their parent for years!

It is particularly important that the first Ombudsman was elected from one of the former socialist countries: Poland!

The organization structure is monocratic and the senior commissioner can have up to three deputies. Their task is determined by the Ombudsman, with the provision that one of them should provide legal protection for the soldiers by all means. The office is extremely significant; at the completion of the manuscript, the number of the staff is around 250.<sup>24</sup>

The commissioner is elected by a simple majority of the Sejm for 5 years. The speciality of it is that there is a committee consisting of 35 members who have the right to nominate the candidate together with the Marshall of the Parliament. The Senate confirms or vetoes within 30 days of the candidature. (The deputies are elected the same way.) The nomination criteria – in my view, it is a commendable fact – for Polish citizenship is outstanding legal knowledge and professional experience. The “moral values and the social sensitivity” of the person are also important factors.<sup>25</sup>

In addition to the classical scope of authority, in controlling the classical forms of law enforcement, administration is also entitled to oversee the activity of the bodies performing quasi-administrative tasks, such as social, professional, and co-operative institutions. The categories considered protected are the freedoms and legal rights of the citizens. Its action cannot be provoked only by a complaint, but even *ex officio* or at the request of the President of the Sejm.

There is no time limit for the petition.<sup>26</sup> Exhaustion of remedies prior to the petition is not a requisite.

At the request of the body concerned, there must be a response within 30 days.

The Commissioner, in addition to the initiation of the procedures, is also authorized to intervene into ongoing cases. S/he may propose subsequent norm control at the Constitutional Court. The Commissioner may initiate a legally binding interpretation from the Supreme Court. In particular, the control of the courts in general is not subtracted from the scope, but in practice it rather means the possibility of investigation. Naturally, the Commissioner has no voice in judicial activity.

Corresponding to the Hungarian system, the Commissioner should make a report to the Parliament, in addition to both of the houses. This is partly discussed verbally but also in writing published in the report. In addition, the Ombudsman

24 Kucsko-Stadlmayer 2010. 187.

25 Kucsko-Stadlmayer 2010. 188.

26 Although this latter practice corresponds to Anthony Adam's theory, it reveals that the Constitutional Court, in comparison to the standard interpretation of the Basic Law, is necessarily – in addition to the Constitution – the relevant norm (see: Adam Anthony. *Constitution and Constitutional Values*. Osiris, Budapest 1998, p. 73). It should be remembered, however, that they even employed private parties, and thus interpreted laws in their daily lives. The specialties, in my opinion, are the binding interpretations of the court.

shall report regularly on the activities of the media to inform the public about the most important issues.

The Commissioner is also entitled to attend the meetings of the Sejm and to initiate a legislative activity and has the possibility of modifying it also.

The Polish model is overall a very commendable way to guarantee the fundamental rights, especially through the considerable Constitutional Court and the Ombudsman's system.

The institution of the Ombudsman was established early, at the dusk of the communist regime, by the Hungarian legislator; however, for some political reason, it had to wait until the mid-90s for the first parliamentary commissioners to be elected. As the Constitution entered into force on January 1, 2012, it changed the Ombudsman system of Hungary, which by then had become monocratic, "one-headed" instead of the earlier model based on 4 coequal ombudsmen.<sup>27</sup> The institution of the Commissioner of Basic Rights was created, which became the only Ombudsman.<sup>28</sup> The Ombudsman is assisted by two deputies, the Deputy for the Rights of Future Generations and the Deputy for Minority Rights. The position of the Data Protection Supervisor was abolished; his former tasks are now carried out by the National Data Protection and Freedom of Information Authority (Nemzeti Adatvédelmi és Információszabadság Hatóság, NAIH).

The Commissioner of Fundamental Rights is elected by a 2/3 majority of the Parliament for a term of 6 years. The commissioner or their deputy can be persons who have at least 35 years of age, finished legal education, have outstanding theoretical knowledge or at least 10 years of professional practice, and significant experience in the conduction, supervision, and scientific theory of procedures related to basic rights (or, in case of deputies, the appropriate field of law).<sup>29</sup>

The Parliament elects the Deputy for the Rights of Future Generations and the Deputy for Minority Rights by a 2/3 majority of votes on the proposal of the Commissioner of Fundamental Rights. With the exception of establishment and termination of mandate, the employer's rights over the deputy of the Commissioner of Fundamental Rights are exercised by the Commissioner of Fundamental Rights.

The task of the Commissioner of Fundamental Rights is to examine anomalies<sup>30</sup> related to fundamental rights and to take initiatives in order to redress them.

Primarily, the Ombudsman examines administrative authorities and other bodies providing public services. However, s/he cannot examine the operation of the Parliament, the Constitutional Court, the president, the courts, and the State Audit Office.

27 Constitution of Hungary, Art. 30.

28 The legal status of the Commissioner of Fundamental Rights is regulated by the 2011. CXI.

29 See 2011. CXI. 5.§.

30 An anomaly is an inappropriate, abnormal, unpleasant situation, detriment, or its direct threat that is related to constitutional rights.

The Ombudsman is required to examine petitions submitted to him, but can also act *ex officio*. The premise of his inspection is that he can only investigate procedures that were initiated after October 23, 1989 and only if – in case the procedure was started by a petition – the person submitting the petition has already exhausted the administrative remedies available. Furthermore, if a non-appealable decision was made, he can only turn to the Commissioner of Fundamental Rights within one year of the notification of the decision. From this time on, the Ombudsman has the opportunity to examine the case only if the procedure was initiated *ex officio*.

## Conclusions

In relation to the whole issue, the essay is to be finished with the conclusion hereunder. The classification of the fundamental rights protection models cannot be reduced to two categories. The competence of the proper constitutional complaint reaching even the individual case itself takes the centralized constitutional courts, which were originally regarded as “negative legislators,” closer to the ordinary judiciary system. The invalidation procedure by the regular jurisdiction courts (so not the throwing back of them) is also a special feature. The election of the Bodies – even together with the co-operation of the judicial branch – adds a new aspect to it. Overall, it can be stated that it is not always possible to understand the operation of the constitutional court system of certain countries without the thorough analysis of its judicial system.

## References

- ÁDÁM, A. 1998. *Alkotmányi értékek és alkotmánybíráskodás*. Budapest.
- CHRONOWSKI, N.–DRINÓCZI, T. 2007. *Európai kormányformák rendszertana*. Budapest.
- KUCSKO-STADLMAYER, G. 2010. *Európai ombudsman-intézmények. (A német kiadás alapján válogatta Szabó Máté és Péterfalvi Attila)*. Budapest.
- LEGÉNY, K. 2006. Az alkotmánybíráskodás modelljei. In: Tóth, J.–Legény, K. (eds), *Összehasonlító alkotmányjog*. Budapest.
- POKOL, B. 2003. *A bírói hatalom*. Budapest.