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# *Diverging Approaches of the Hungarian Constitutional Court Concerning the Position of EU Law in the Domestic Legal Order*[1]

## 1. INTRODUCTION

Like in other countries of Central and Eastern Europe, after the political change in the late 1980s, a Constitutional Court has been established in Hungary, as well [Act XXXII of 1989 entitled the Hungarian Constitutional Court with competences similar to the *Bundesverfassungsgericht* (German Federal Constitutional Court)].[2] In the course of the 1990s, after Hungary submitted its application for EU membership, it had to face cases, which concerned the

[1] This paper has been firstly published as second part of the following study: HORVÁTHY, BALÁZS – KNAPP, LÁSZLÓ: The Relationship between the Hungarian and the EU Legal Orders, in SMUK, PÉTER (ed.): *The Transformation of the Hungarian Legal System 2010-2013*, 2013, Complex, Budapest, 51-68.

[2] It's worth to quote *Zdeněk Kühn*'s description on the situation in the post-communist countries after the collapse of the previous political system: "At most, national constitutional courts, viewing themselves primarily as guardians of national constitutions and following the lead of the German archetype, might pursue their national judicial politics, show themselves as the ultimate guardians of national sovereignty and delineate the limits of the ECJ's competence in the way the German Federal Constitutional Court did in its Solange II and Maastricht decisions." KÜHN, ZDENĚK: The Application of European Law in the Member States: Several (Early) Predictions, in *German Law Journal*, Vol. 6. No. 03. (2005) 572.

harmonization of the Hungarian legal order with the European law, as a precondition for the accession of the country.

The relation between the national and the EU law has been subject to the Hungarian Constitutional Court's decision after the accession of Hungary on 1 May 2004. The judgments dealt with particular problems in the relation of the two legal orders. In line with these, this study is intended to draw, if not a complex approach, but the main elements of the Court's practice.

## 2. EUROPEAN LAW AND THE CONSTITUTIONAL COURT PRIOR TO HUNGARY'S ACCESSION

Long before Hungary's EU accession the Hungarian Constitutional Court formulated an early approach concerning the relationship between the EU law and the law of the Member States. Decision 4/1997 of the Constitutional Court (hereinafter: CC) dealt with the constitutionality of *ex post facto* review of national laws promulgating international treaties. According to the opinion of the Court, although if "there is no specific regulation concerning this – due to the universality of constitutional review – constitutional courts examine the constitutionality of them in exactly the same way as in the case of domestic review."[3]

The Constitutional Court reflected the current developments in Europe, regarding the relation between international law and domestic legal systems and the role of the law of the "European integration." At this point, the Court laid down no clear difference between international and European/Community law. Instead of doing so, it emphasized the latter's role of making a change from the often dualist approach in the European states to a monist-adoption concept.

It is noteworthy to quote the full reasoning of the Court concerning the position of EU law in the Members States' legal order

[3] Point II. 7.

and the competences of the constitutional courts connecting to that.[4] It generally emphasized, that "even those members of the EU which still follow the transformation system (e.g. Germany, one of the founding members, Italy, and the Scandinavian countries, which subsequently joined to the European Union) apply the law of the European Union directly, without transformation, and they ensure *priority* (sic!)[5] over national law with the exception of the Constitution.[6] As a result of this, the constitutional courts exercise their competence regarding constitutional examination concerning international treaties (international law) and the decisions of international organizations – due to the adoption system – automatically becoming the part of the domestic law."

After that, like in many other cases, the Court referred to the practice of the German Federal Constitutional Court, making no difference between the *ex post facto* review of EU related and non-EU related international treaties of the Karlsruhe Court. It concluded its examination with the following: "from these decisions, the following position becomes clear: the German Federal Constitutional Court, besides its "naturally" exercising constitutional power concerning ex post facto review – especially with regards to the European Union treaties – must not give up any part of its task to protect the Constitution; this function extends to every way of exercising sovereignty under the *Grundgesetz* (Basic Law [for the Federal Republic of Germany]). On this basis, the Constitutional Court – besides examining the law promulgating a treaty – retains the submission to the EU law under constant control." The aforementioned unclear statement gave reason for the jurisprudence to suppose a possible future approach to EU law. The mere fact that it has not clearly acknowledged the EU legal order, as an

[4] *See* BLUTMAN, LÁSZLÓ – CHRONOWSKI, NÓRA: Hungarian Constitutional Court: Keeping Aloof from European Union Law, in *Vienna Online Journal of Constitutional Law*. Vol. 5. No. 3. (2011) 331–332.

[5] Emphasis added – L. K.

[6] Act XX of 1949 The Constitution of the Republic of Hungary (*not in force*).

autonomous one, separate from international law, made it presumable that the Court will follow a hard-line defending position if favour of the national constitution, similarly to the German Federal Constitutional Court.[7]

Regarding the Hungarian Constitutional Court's attitude towards EU law, Decision 30/1998 CC is of dual nature. On the one hand, it is provided with a more detailed clarification concerning the relationship between the EU and the Member State's law; on the other hand, Hungarian legal order is appeared in a rather self-standing manner.

According to Hungary's Europe Agreement[8] – and the Government Decree promulgating the decision of the Association Council on several executive norms of the Europe Agreement[9] – the Hungarian Competition Authority had to follow, in competition matters falling within the scope of the Europe Agreement, not only

[7] *Ernő Várnay* summarizes in his paper the prevailing opinion in the jurisprudence of that time. VÁRNAY, ERNŐ: Alkotmánybíróság és az Európai Unió joga [Constitutional Court and the Law of the European Union], in *Jogtudományi Közlöny*, Vol. 62. No. 10. (2007) 431. According to *Mihály Ficsor*, although the Constitutional Court seems to recognize the *sui generis* character of EU law, it might not make a difference between this and the international law. FICSOR, MIHÁLY: Megjegyzések az európai közösségi jog és a nemzeti alkotmány viszonyáról II. [Remarks on the Relationship Between European Community Law and the National Constitution II.], in *Magyar Jog*, Vol. 44. No. 9. (1997) 528. In *Janos Volkai*'s opinion it is presumable that the Court will follow the German Federal Constitutional Court, causing conflict between Community law and Hungarian law after the accession. VOLKAI, JANOS: The Application of the Europe Agreement and European Law in Hungary: The Judgment of an Activist Constitutional Court on Activist Notions, in *The Jean Monnet Working Papers*, No 8. (1999) Available at: http://centers.law.nyu.edu/jean monnet/archive/papers/99/990801.html [cit. 2014-03-10].

[8] Act I of 1994 on the promulgation of the Europe Agreement signed in Brussels on 16 December 1991 establishing an association between the Republic of Hungary and the European Communities and their Member States (*not in force*).

[9] Government Decree 230/1996 (*not in force*).

the criteria inherent the EU law and practice of the EU competition authorities existing at the time of signing the Agreement, but also the adopted norms and the legal practice of the mentioned authorities established thereafter.

Unlike Decision 4/1997 CC, Decision 30/1998 CC contains a more precise description of the doctrines of EU law. Concerning the subject matter of the case, the principle of direct application has been emphasized, differentiating Union law from international law. While international treaties become part of national law through, for example, confirmation and promulgation or confirmation and incorporation, such a transformation is not necessary in the case of Union law.

Although the Court recognized the approximation of Hungary's present and future legislation to Community law, as it has explicitly been undertaken by the country under Article 67 of the Europe Agreement, it referred to the fact that Hungary is not a member of the EU yet, and considering this, the "Community's internal law" is still *foreign law* in respect of the application of it.

The main point in the Constitutional Court's reasoning in this case was that before the country's accession, the principle of direct application does not govern position in the Hungarian legal system, and the Europe Agreement can be regarded as a treaty under international law. According to Art. 2 para. (1) of the Constitution, "the Republic of Hungary is an independent democratic state governed by the rule of law", and as such, its authorities cannot be bound – without violating its sovereignty – by norms and practice of another public order, namely the European Union.

Concerning the EU accession procedure of the country, the same point gained greater importance stipulating that "the Parliament may not amend the Constitution in a disguised manner by adopting or promulgating an international treaty." This argumentation has led to the amendment of the Constitution with the Europe Clause,[10] the

[10] Art. 2/A. (1) By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extant

authorizing provision for the EU accession.[11] For the sake of an incontestable political legitimacy, a binding referendum has been held one year before Hungary's accession.

## 3. European Law and Hungarian Law in the Practice of the Hungarian Constitutional Court after the Accession

The first case the Constitutional Court had to deal with was on the implementation of transitional provisions in order to avoid the misuse of the EU agricultural export refund measures. Regulations 1972/2003/EC[12] and 60/2004/EC[13] intended to prevent the accumulation of surplus stocks of certain agricultural products reflecting the price differences between the old and new Member States and countries outside the EU.

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necessary in connection with the rights and obligations conferred by the treaties on the foundation of the European Union and the European Communities (hereinafter referred to as 'European Union'); these powers may exercised independently and by way of the institutions of the European Union. (2) The ratification and promulgation of the treaty referred to in paragraph (1) shall be subject to a two-thirds majority vote of the Parliament.

[11] *See* BLUTMAN – CHRONOWSKI: *op. cit.* 332.; HORVÁTHY, BALÁZS: Az uniós és a magyar jogrendszer metszéspontjairól [On the Points of Intersection of Union and Hungarian Law], in SZIGETI, PÉTER (ed.): *Leviatán. Tomus V*. 2007, Universitas-Győr, Győr, 27.

[12] Commission Regulation (EC) No 1972/2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, OJ L 293 (11 November 2003).

[13] Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, OJ L 9 (15 January 2004).

To fulfil the requirements laid down by the aforementioned Regulations, the Hungarian Parliament adopted the act "on measures related to the accumulation of commercial surplus stocks of agricultural product" (hereinafter Surplus Act). The Surplus Act introduced tax provisions for operators involved in speculation trade movements stockpiling certain agricultural products.

In its Decision 17/2004 CC, the Constitutional Court based its jurisdiction on the examination of the Hungarian law implementing the EU Regulations, without prejudice to the latter's content. On the one hand, the Court dealt with pure Hungarian legal issues, since it declared unconstitutional the definition of possible taxpayers, and the method that the determination of tax provisions has been delegated to executive decrees.

On the other hand, it also examined measures of double nature. The two Regulations have been published in the Official Journal in November 2003 and January 2004 (and modified in February and April 2004). In line with these, the Surplus Act contained provisions, which concerned the procedure of the tax payment, e.g. that its basis is the inventory of 1 May, the daily average of the stocked products in the previous years had to be taken into consideration or Section 5 prescribing that transactions, which occurred after 1 January 2004 are not to be considered for the reduction of stock. Due to their retrospective character, those provisions have been declared unconstitutional, which practically repeated the measures of the two Regulations.

Quoting Decision 30/1998 CC, it stated that before Hungary's accession, without implementing EU law, there is no obligation for the direct application of EU legal measures. But the question arose, how Hungarian legislators could have passed a non-retroactive implementing act in cases of Regulations dating from the end of 2003 and the beginning of 2004? Furthermore, according to the petition, the principle of legal certainty has also been violated with the presumption that traders would make use of the EU refund measures *maliciously*, although stocking had not been forbidden by the Hungarian law before the Regulations have been adopted and implemented into the domestic law.

In its reasoning, the Court emphasized several times, that the subject of its examination was the adopted Hungarian act, not the Regulations themselves. Finally, it declared the aforementioned provisions unconstitutional – judging the constitutionality of the EU Regulations in an indirect manner.[14]

In the next relevant decision, the Constitutional Court repeated its reasoning on the relationship between EU secondary legislation and Hungarian law.[15] Act XXIV of 2004 on Firearms and Ammunition has been adopted as an implementing measure of Directive 91/477/EEC on control of acquisition and possession of weapons.[16] The petitioner stated that the sellers' duty to keep the buyers' record for a certain period violates the right for data protection laid down in the Constitution.

The Court formulated, that concerning the directives and the secondary EU legislation in general, the obligation has arisen for the Member States that they have to implement them in line with their own legislation procedure. It quoted the key element from its reasoning in 17/2004 CC, that "the question about the provisions challenged in the petition concerns the constitutionality of the Hungarian legislation applied for the implementation of the EU regulations (here: directives) rather than the validity or the interpretation of these rules."

*László Blutman* and *Nóra Chronowski* pointed out that the requirement of adequate transposition could be derived from certain

[14] *Márton Varju* and *Flóra Fazekas* described the paradox situation with the following: "While the jurisdiction to examine the compatibility of EU measures with domestic constitutional principles was not taken up by HCC [Hungarian Constitutional Court], arguably by examining the constitutionality of the domestic act stemming directly from the Commission Regulations, in an indirect manner the HCC passed a judgment on the constitutionality of the Regulations." VARJU, MÁRTON – FAZEKAS, FLÓRA: The Reception of European Union Law in Hungary: The Constitutional Court and the Hungarian Judiciary, in *Common Market Law Review*, Vol. 48. No. 6. (2011) 1956.

[15] Decision 744/B/2004 CC.

[16] OJ L 256 (13 September 1991).

sections of the Constitution.[17] With the establishment of the postulate of the "*harmony*[18] between Union law and domestic law follows from the Constitution itself or jointly form the Constitution and the Accession Treaty, then it would open up the possibility of treating the conflict between a transposing and implementing domestic norm and Community law as – at least – a formal violation of the Constitution."[19]

Reflecting the ratification procedure of the Constitutional Treaty, Decisions 58/2004 CC and 1/2006 CC dealt with a referendum initiative against the "Constitution for Europe". The argumentation of the petitioners was based on the status of the

[17] Art. 2/A, Art. 6 para. (4) and Art. 7 para. (1) of the former Constitution:
*Art. 2/A*: see above.; *Art. 6 (4)* The Republic of Hungary shall take an active part in establishing a European unity in order to achieve freedom, well-being and security of the peoples of Europe.; *Art. 7(1)* The legal system of the Republic of Hungary accepts the generally recognized principles of international law, and shall harmonize the country's domestic law with the obligations assumed under international law.
Now Art. E and Q (3) of the Fundamental Law of Hungary (*adopted on 18 April 2011, entered into force on 1 January 2012*):
*Art. E* (1) In order to achieve the highest possible measure of freedom, well-being and security for the peoples of Europe Hungary shall contribute to the achievement of European unity. (2) In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union. (3) The law of the European Union may stipulate generally binding rules of conduct subject to the conditions set out in paragraph (2). (4) The authorisation for expressing consent to be bound by an international treaty referred to in paragraph (2) shall require the votes of two-thirds of all Members of Parliament.; *Art. Q (3)* Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in rules of law.
[18] Emphasis added - L. K.
[19] BLUTMAN – CHRONOWSKI: *op. cit.* 341.

document, namely it is not a simple modification of the earlier Founding treaties, but as a new international treaty, it will replace them.

The Court accepted that the Act of Accession declared only the *existing acquis* to be binding for the new Member States. Although the Treaty has been signed by the Hungarian Prime Minister; until it is not "*empowered*" by the Parliament, it is still possible to initiate a referendum on it, since it is a question within the competence of that legislative body – a prerequisite for initiating referenda in Hungary.

A petition was submitted again, but in line with the aforesaid reasoning. It was rejected again, since the Parliament has already ratified the Constitutional Treaty with Parliament Resolution 133/2004.

The conception of the Court concerning the EU Founding treaties has been clarified in Decision 1053/E/2005 CC. According to the petitioners Hungary failed to comply with the obligations resulting from the free movement of services of the EC Treaty, when it maintained the restrictive provisions of the Acts on Gambling Operations (Act XXXIV of 1991) and Business Advertising Activity (Act LVIII of 1997), concerning the purchase, organization and advertising activities connected to gambling coming from abroad.

As against the argumentation of the petitioners, the Court pointed out, that the Constitution's Europe Clause contains only the place of the Union law in the Hungarian legal order, and no concrete obligation to legislate is stemming from the mentioned provision. Therefore, there is no reason to determine unconstitutionality due to the legislator's omission in the given case, since a mere conflict between EU law and Hungarian law does not establish unconstitutionality.

On the other hand, concerning the position of EU law in the national legal order of Hungary an important statement has been stipulated: despite their international origin, the Constitutional Court does not intend to treat the Founding treaties as international treaties.[20]

[20] Point III. 2.

Until that point, the following scheme could have been drawn: those EU connected legal acts could be judged by the Court that fall within the competence of the Hungarian legislator, *i.e.* implementing measures and unratified treaties.[21] Regarding a substantive conflict between the two legal orders, the Court continuously refused to examine it.

This has been reaffirmed in Decision 61/B/2005 CC on data transferring issues concerning preliminary ruling procedures: "The jurisdiction of the Constitutional Court is laid down by Section 1 of the Act on the Constitutional Court. The cited provision contains no competence authorizing the Constitutional Court to examine collision with Community law. Pursuant to the rules of Community law, this question falls within the competence of the organs of the European Community, finally the European Court of Justice."[22] Additionally, the character of the Europe Clause has been examined. According to the Court, it determines the *position* of Union law in the Hungarian legal system, but it is based on a closed, introspective logical structure, without any reference to the features of EU law.[23]

As the previous decisions have shown, the Constitutional Court did not provide with a complex, well-built system concerning the relationship between Union law and Hungarian law, but the *sui generis* character of the former one could be concluded after the aforementioned decisions. But a new approach was drawn in Decision 72/2006 CC.

The subject matter of the case was the presumed unconstitutionality of several labour law provisions, especially measures of the Labour Code (Act XXII of 1992) and the Act on the

[21] VINCZE, ATTILA: Az Alkotmánybíróság esete az Unió által kötött nemzetközi szerződésekkel [The Constitutional Court's Case with the International Treaties Concluded by the Union], in *Európai Jog*, Vol. 8. No. 4. (2008) 27.

[22] Translation by BLUTMAN – CHRONOWSKI: *op. cit.* 337.

[23] Explaining this, Márton Varju and Flóra Fazekas emphasized that "the constitutional status of EU law in domestic law is approached solely on the basis of Section 2/A." VARJU – FAZEKAS: *op. cit.* 1949.

Status of Public Employees (Act XXXIII of 1992). The petition claimed that the current Hungarian regulation violates EU law, since the Parliament omitted to enact an implementing measure on Directive 2003/88/EC concerning certain aspects of the organization of working time.[24] The petitioner pointed out, that the Founding treaties of the European Communities, which are treaties under international law, are the legal basis of the Directive.

The Court replied it with the following argumentation:

"The Constitutional Court has established in Decision 1053/E/2005 CC that the Founding and Amending treaties of the European Communities are not considered treaties under international law in respect of establishing the competence of the Constitutional Court, and these treaties – being primary sources of law – and the Directives – being secondary sources of the law – are as Community law part of the *internal law* (sic!),[25] since Hungary has been a Member State of the European Union since 1 May 2004. With regard to the competence of the Constitutional Court, Community law is not considered international law as specified under Art. 7 para. 1 of the Constitution. In the petition aimed at the examination of collision with a treaty under international law, the petitioner has not referred to any treaty under international law other than the Directive."

*Attila Vincze* revealed that there is a discrepancy regarding the "*EU law as internal law*" concept. On the one hand, if it is internal law, there is no further obstacle to review its constitutionality in line with competence provisions of the Act on the Constitutional Court. On the other hand, it contravenes the sui generis character of EU law, which has been established in the previous decisions.[26]

Soon after its adoption, the Court had to narrow down this concept in Decision 32/2008 CC, making itself able to judge on the content of the arrest warrant agreement between the EU, Iceland and

[24] OJ L 299 (18 November 2003).
[25] Emphasis added - L. K.
[26] VINCZE: *op. cit.* 27-28.

Norway[27] (hereinafter EUIN Agreement). Although the EU Treaty provided the EU with express treaty-making competence in the field of police and judicial cooperation in criminal matters,[28] since it concerned such sensitive criminal law principles as *nullum crimen sine lege* or *ne bis in idem* with the possible consequence of affecting the application of national criminal rules, it has been concluded as a mixed agreement with the Member States as parties in it.

To establish its competence, the Constitutional Court had to modify the conception on EU Treaties laid down in its earlier decisions. According to them, Hungarian laws promulgating EU related international treaties fall within the competence of the Court, until the "empowerment" of the Parliament (58/2004 CC and 1/2006 CC), after it, it is considered not international but Union law (1053/E/2005 CC) – which became internal law (72/2006 CC), but outside the jurisdiction of the Court (61/B/2005CC).

Since the Hungarian Parliament has already adopted an act promulgating the EUIN Agreement, it should have been characterized as EU law. To solve this, the Court introduced a new differentiation among EU related treaties. On the one hand, it referred the opinion of the EU itself, according to which, this kind of treaties are "*international treaties* regulated by the rules of international law." Reflecting its own previous practice, on the other hand, it laid down, that "since it does not change any of the competences of the European Union or the European Communities regulated in the so-called Founding and Amending treaties, but it establishes obligations in the relation of the individual Member

[27] Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway. OJ L (31. October 2006).

[28] Art. 38. TEU – VINCZE: *op. cit.* 30. According to Art. 38. TEU, "Agreements referred to in Article 24 [under Title V: Provisions on a Common Foreign and Security Policy – L. K.] may cover matters falling under this title."

States and Iceland and Norway." And since it is not a Union legal norm, it falls outside the scope of Art. 2/A of the Constitution, therefore it is to be considered as an international treaty and because of this constitutional review by the Court is possible.

Similarly to the case of the Constitutional Treaty, the Court had to deal with petitions concerning the Treaty of Lisbon. Decision 61/2008 CC was about a referendum initiative intending to reject the "binding force" of the modifying treaty for Hungary. The Court has repeated its argumentation from Decisions 58/2004 CC and 1/2006 CC that a referendum is possible until the treaty is "empowered" by the Parliament. Like in 1/2006 CC, it rejected the petition referring to the fact that the Parliament has already promulgated the Treaty by Act CLXVII of 2007 (hereinafter Promulgating Act).

In Decision 143/2010 CC the Court had to deal with the very substance of the Treaty of Lisbon. According to the petitioner it jeopardizes the existence of the Republic of Hungary as an independent state governed by the rule of law. Before responding to the petition, the Court defined the status of the Lisbon Treaty, continuing to reshape the position of EU law in the Hungarian legal order started in Decision 32/2008 CC.

The question arose whether an *ex post facto* review of the Promulgating Act is possible or not. The Court established its competence to examine it due to the international law origin of that Treaty. This reasoning could be considered as a return to Decision 4/1997 CC, since it contains a rather dualist approach to EU law. It is considered to be more problematic that it contravenes the doctrine of EU law as *sui generis legal order* stipulated in the earlier judgments, and the logic of Decision 72/2006 CC, where it stated that EU law becomes part of the internal legal order.[29]

[29] *László Blutman* concluded that "the Treaty of Lisbon (and therefore the Founding treaties in general), according to this, prevail through the implementing act as international treaties in the domestic law [translated by L. K.]." BLUTMAN, LÁSZLÓ*:* Milyen mértékben nemzetközi jog az Európai Unió joga a magyar alkotmányos gyakorlatban? [To What Extent Can European Law Be Considered as International Law in the Hungarian

Although the Court has established a competence to review the content of the Promulgating Act, in line with 4/1997 CC, it also laid down that in case of unconstitutionality, it shall have no effect on the obligations assumed by the Republic of Hungary, and the legislature should find a proper solution to ensure the harmony between European Union and Hungarian law.

Partially giving up its – so far introspective – approach, the Court stated that albeit it has no competence for substantive interpretation of EU law, there is no obstacle to referring to and quoting the concrete norms of the Lisbon Treaty, as they are *facts*. Answering the petition, the Court laid down, that the Treaty does not establish a European 'superstate'. Although it has gained legal personality to become "stronger and more efficient", but the governments continue to conduct and control it. Besides its legal status, three constitutional novelties have been introduced,[30] namely a of wider control mechanism for the national parliaments, the citizens' initiative as a further step to secure the rule of law involving the European citizens and the Charter of Fundamental Rights as a "collection of legally binding guarantees" of the citizens' rights.

Another international treaty was subject to its most recent decision concerning the position of EU law in the Hungarian legal order,[31] namely the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (hereinafter Fiscal Compact). The Government petitioned the Constitutional Court to interpret the new Europe Clause of the Fundamental Law to decide whether the Fiscal Compact is to be considered as an international treaty under Article E (2) where two-thirds majority voting is required in the Parliament for the ratification or, as for other international treaties, simple majority voting is sufficient.

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Constitutional Practice?], in KOVÁCS, PÉTER (ed.): *International Law – A Quiet Strength, Le droit international, une force tranquille (Miscellanea in memoriam Géza Herczegh)*, 2011, Szent István Társulat – Pázmány University Press, Budapest, 296–297.

[30] Listed by VARJU – FAZEKAS: *op. cit.* 1954.

[31] Decision 22/2012 CC.

The aforementioned paragraph of the Fundamental Law authorizes Hungary to exercise competences jointly with other Member States or through the institutions of the European Union. According to its reasoning, the Court cannot decide on the nature of the given Treaty, but the legislative power exercising the state's sovereignty has to clarify the Fiscal Compact's character. Although being self-restrictive in this case, the Court drew attention to certain elements (the states will sign it as Member States of the EU, it will establish new competences for the Union institutions), which let the legislature assume the Court's opinion.

## 4. CONCLUSION

The practice of the Hungarian Constitutional Court is rather introspective concerning the relation between the two legal orders. As it has been examined, it set out different approaches regarding this issue, continuously refusing to provide with a complex, logically closed analysis on the relation between the Union and Hungarian law. The Court considers its competences as being restricted by two powers that it does not want to touch. On the one hand, it has not interpreted EU law, since it belongs to the competences of the European Court of Justice. Since this relation affects Hungary's sovereignty as an independent state, the Court left the decision on the competence transfer to the legislation, on the other hand. It should define how far the common and/or joint exercise of competences shall extend. This self-restraint in law and practice regarding EU related matters is not unique among the Member States and indeed, it fits well into the broad picture of constitutions of the Eastern European EU Members. In this regard, it is worth to quote *András Sajó*'s view, in which this tendency among the aforementioned countries including Hungary is explained by the strong pro-independence public sentiment and historical grounds, *i.e.* that these countries are newly recognized nation-states that have regained their

sovereignty in recent times after the fall of communism and the political transition.[32]

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[32] SAJÓ, ANDRÁS: The Impacts of EU Accession on Post-communist Constitutionalism, in *Acta Juridica Hungarica,* Vol. 45. No. 3–4. (2004) 198.

[7] SAJÓ, ANDRÁS: The Impacts of EU Accession on Post-communist Constitutionalism, in *Acta Juridica Hungarica,* Vol. 45. No. 3–4. (2004).
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