

PRESS RELEASE

Decision 143/2010. (VII. 14.) AB of the Constitutional Court of the Republic of Hungary on the constitutionality of the Act of promulgation of the Lisbon Treaty

On the 12th of July 2010, the Constitutional Court of the Republic of Hungary rejected the petition submitted by a private person aimed at establishing the unconstitutionality of the Act of promulgation of the Lisbon Treaty. (Act CLXVIII of 2007) The petition emphasized that the new rules and mechanisms of the Lisbon Treaty jeopardize the existence of the Republic of Hungary as an independent, sovereign State, governed by the rule of law.

The Constitutional Court points out that the reasoning and the examples of the petition are more or less similar to those examined by other European constitutional courts in the framework of the *a priori* constitutional review of the Lisbon Treaty, accomplished on the demand of national governments, MP-s, etc. The Constitutional Court examined carefully these *dicta* as well as the scientific opinions criticizing some of them.

Under Article 36.1 of the Act on the Constitutional Court, before ratifying an international treaty, the President of the Republic and the Government may request the examination of the constitutionality of an international treaty or of its provisions thought to be of concern. However, this institution of the *a priori* constitutional review of international treaties was not applied in 2007 concerning the Act of promulgation of the Lisbon Treaty.

First of all, the Constitutional Court had to check its competence concerning the Act of promulgation and it came to the conclusion that even if the Treaty of Lisbon modifying the Treaty on European Union and the Treaty establishing the European Community (the latter renamed as the Treaty on the Functioning of the European Union) entered into force, this did not mean that the Act of promulgation had to be treated in a different way as compared to the review of ordinary acts and other legal norms which might be challenged according to the *actio popularis* system, guaranteed by the Act on the Constitutional Court.

The Constitutional Court points out that in the framework of the *a posteriori* review of norms, due attention should be paid to the fact that Hungary is a member state of the European Union. That's why even a decision declaring – let's assume - unconstitutionality cannot threaten the execution of all the commitments deriving from EU-membership. In this case, the legislator should find a solution in which the EU commitments are executed without the violation of the Constitution.

The Constitutional Court also emphasizes that, in case of treaties of such high importance, the competent authorities should always ask in due time the *a priori* constitutional review, thus the deliberation of the present petition is closely linked to the fact, that the *a priori* constitutional review was not demanded.

The Constitutional Court recognizes that the authentic interpretation of the EU treaties and other EU-norms falls under the competence of the European Court of Justice.

The Constitutional Court used the theory of *acte clair* and did not need to refer the case to the European Court of Justice, because it was evident that the petitioner's arguments were a result of imperfect & inadequate reading & understanding of the Lisbon Treaty when he contested the constitutionality of the Act of promulgation. Consequently the pure *verbatim*, full quotation of article 49/A (currently article 50) of the Treaty on the European Union was

enough to see that contrary to petitioner's allegation, no state could be obliged to uphold its membership if it does not want to do so.

Following the philosophy of the *acte clair*, the Constitutional Court considers that in order to rebut the petitioner's arguments, it is enough to refer to changes of rules on the European Union posterior to the Lisbon Treaty which can be regarded as facts of common knowledge: e.g. the attribution of legally binding nature to the Charter of Fundamental Rights, the enlargement of the role of competences of national parliaments according to Protocol No. 2 on subsidiarity and proportionality etc. All these show that the petitioner's arguments for the alleged dangers of the Lisbon Treaty are unfounded.

The Constitutional Court also interpreted the relevant articles of the Constitution on sovereignty, democracy, rule of law and European cooperation.¹ According to the Court, the so-called European clause cannot be interpreted in a way that would deprive the clauses on sovereignty and rule of law of their substance.² The Court referred however to its former jurisprudence on the free limitation of the exercise of attributes of sovereignty by the holder of the sovereignty, i.e. in fact by the legislator.

The Constitutional Court emphasized that material and procedural rules were duly observed during the adoption of the Act of promulgation and the Parliament gave its consent to the content of the Lisbon Treaty on its free will.

To summarize, the Constitutional Court came to the conclusion that even if the reforms of the Lisbon Treaty were of paramount importance, they did not change the situation that Hungary maintains and enjoys her independence, her rule of law character and her sovereignty. Consequently, the application was rejected in all its elements.

Separate³ and dissident⁴ opinions were attached to the decision.⁵

The full text in Hungarian can be read on the following site: <http://www.mkab.hu>

¹ Excerpts from the Constitution:

Article 2.

(1) The Republic of Hungary shall be an independent, democratic state under the rule of law.

(2) In the Republic of Hungary all power shall be vested in the people, who exercise their sovereignty through elected representatives and directly.

(...)

Article 2/A.

(1) The Republic of Hungary may, in order of her participation in the European Union as a member state, based upon international treaty, exercise certain constitutional competences, to the extent that is necessary to exercise rights and perform obligations, under the European Communities and European Union (hereinafter: the European Union) foundation treaties in conjunction with the other member states; the exercise of these competences may be realized independently, through the institutions of the European Union.

(2) A majority of two-thirds of the votes of the Members of Parliament is required for the ratification and adoption of the international treaty specified in paragraph (1).

Article 6.(...)

(4) The Republic of Hungary contributes to achieve European unity in order to realize the liberty, the well-being and the security of the European people.

² The Constitutional Court did not mention however any point of untouchability, nor inherent limits of the European integration, fields reserved everlastingly to national legislation, etc.

³ There were two: the first was written by President P. Paczolay, co-signed by Judge M. Lévay and the second was written by Judge L. Trócsányi.

⁴ Judge A. Bragyova

⁵ The reporting judge was P. Kovács.