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The Constitutional Court of Hungary
Magyar Köztársaság Alkotmánybírósága

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Cooperation of Constitutional Courts in Europe –
Current Situation and Perspectives
Questionnaire for the national reports**

**REPORT SUBMITTED BY
THE HUNGARIAN CONSTITUTIONAL COURT**

– SUMMARY –

I. Constitutional courts between constitutional law and European law

Hungary belongs to the dualist systems and has a rather receptionist attitude as regards the relationship between international and domestic law. The Constitutional Court has several decisions that can be considered as the manifestation of the so-called “*völkerrechtsfreundliche Auslegung*” [interpretation in favour of the international law] and the “*EU-freundliche Auslegung*” [interpretation in favour of EU law].

The functioning of the Constitutional Court, in practice, is influenced by the legal arguments and decisions of other courts. There is a *verbatim* identity (or a very close similarity) between the formulation of civil liberties in the Constitution and in the European Convention on Human Rights. In the new Fundamental Law that entered into force in 2012, textual importation appears from the European Charter of Fundamental Rights, too.

During the first decade of its existence, the Constitutional Court was attached to take into consideration the jurisprudence of the European Court of Human Rights and several of its judgments were cited. Nevertheless, it seemed that the Constitutional Court had the ambition to secure a higher level of protection of fundamental rights by considering the European Convention of Human Rights as a minimum standard.

Another step towards a new form of relationship between the ECHR-jurisprudence and the Hungarian constitutional jurisprudence can be illustrated with the case of the prohibition of totalitarian symbols by penal law. The Vajnai¹ and the Fratanolo² cases are to be mentioned as a kind of indirect critic on the observation of the ECHR-jurisprudence by the Hungarian Constitutional Court.

The jurisprudence of the Court of Justice of the European Union was also followed by the Constitutional Court, but it soon came to the conclusion that the examination of the compatibility of a national legal norm with EU law does not fall under its competence. In the case of the Lisbon Treaty, however, the Constitutional Court profited from the *acte clair* doctrine in order to avoid the violation of EU law and to avoid the preliminary ruling problem in a sovereignty issue.

¹ Case of *Vajnai v. Hungary*, Application no. 33629/06, judgement of 8 July, 2008

² Case of *Fratano v. Hungary*, Application no. 29459/10, judgement of 3 November, 2011

II. Interactions between constitutional courts

The German Federal Constitutional Court is the most frequently referred constitutional court in the jurisprudence of the Hungarian Constitutional Court. The influence was particularly strong in the first few years of its existence, this time it was typical that whole legal concepts were adopted either from Germany or from the United States of America. Later the references were not always open. Several European constitutional court decisions served as example in different topics, such as cases concerning EU law.

The Constitutional Court of the Republic of South Africa referred to the legal argumentation of the Hungarian Constitutional Court's decision declaring capital punishment to be unconstitutional as the most relevant example, because of the similarity that in both countries there were no express provisions in the constitution.

The exchange of information may be effectuated not only by monitoring foreign precedents, but also through personal contacts. Besides the regular meetings with constitutional court members, the Hungarian Constitutional Court cooperates with several European constitutional courts on the level of legal advisors and other employees (librarians), too.

III. Interactions between European courts in the jurisprudence of constitutional courts

There were no cases in the jurisprudence of the Hungarian Constitutional Court when the ECJ/ECHR interactions (or eventual conflicts) were at stake. In such a hypothetical situation, the Hungarian Constitutional Court would try to give a harmonizing interpretation of the jurisprudence of the ECJ and ECHR.