ANTAL BERKES

International Law under the Hungarian Fundamental Law and in the Procedures of the Constitutional Court

Introductory remarks

In his lecture at the Hague Academy of International Law, Antonio Cassese distinguished four stages of constitutional perception on international law. The first phase (from 1787 to the World War I) is characterized by the recognition of the binding force of international rules in the US Constitution and the short-lived French Constitution of 1791,[1] the second stage (from the Weimar Constitution of 1919 to World War II) by a skepticism towards international law,[2] the third stage (from the French Constitution of 1946 to the late 1950s) by the ignorance of international law in Eastern-European constitutions influenced by the Soviet-Union, whereas Western democracies granted treaties or international customary law a higher rank than ordinary laws in their domestic law.[3] Finally, the fourth stage (since the 1960s), during which Cassese gave his lecture, was marked by the Western European States' constitutional confirmation of treaty law, with regard to the strengthening of the EC's integration and by the socialist countries' moderated constitutional reforms.[4] In 1994, Eric Stein argued that Cassese's model is a *Leitmotiv* of a fifth stage of historic development, namely that of Central-European constitutions' post-revolutionary democratic reform and the „opening" toward international law.[5]

The drafters of the new constitutions of Central-European States had to take two major developments into consideration: 1. „the recognition of the individual as an 'international person'", as a requirement of the accession of the post-socialist countries to the Western European community of nations; 2. the European Union (EU) as a supranational organization, which requires an unprecedented harmonization and even replacement of domestic law by/with regard to EU law, as a criterion of the accession.[6] As a result, most Central-European States adopted express constitutional provisions on the acceptance of international law as a whole, or certain sources of international law. Since the transition into democratic constitutionalism in 1989-1990, they have elaborated their international law conform, latter EU law conform legal system and, independently of major constitutional

[1] Antonio CASSESE: Modern Constitutions and International Law. 192 *RdC* 331 (1985) 352-356.
[2] Ibid. 357-363.
[3] Ibid. 363-365.
[4] Ibid. 366-367.
[5] Eric STEIN: International Law in Internal Law: Toward Internationalization of Central-European Constitutions? 88 *AJIL* 427 (1994) 427-450.
[6] Ibid. 430.

amendments, their perception has remained inspired by „friendliness to international law" (*Völkerrechtsfreundlichkeit*).[7]

Hungary's constitutional history perfectly sets in this development, and that is the reason why it is useful to make references to the nine Central-European States that are nowadays both EU and NATO members. Considering that international law does not impose any concrete obligations on States in constitutional matters[8] and that there is no single good solution in the question of the domestic status of international law, comparative law of Central-European constitutional systems and the Hungarian experience of the past 20 years could lead to certain conclusions. Thus, the present article reviews certain constitutional and judicial developments related to the status of international law, with due regard to the recent case law of the Hungarian Constitutional Court (CC), and the comparison of the constitutional solutions of the other nine Eastern EU Member States. However, it cannot analyze other constitutional provisions of the new Fundamental Law (FL)[9] concerning international law[10] or the status of EU law[11] within its limits.

The present article argues, in its first part, that Hungary's new FL does not alter the traditional rank of international law rules in the domestic legal order, and, in the second part, that we can nevertheless observe considerable nuances in the constitutional case law, reflecting the global phenomenon of the „internationalization of constitutional law".

Subtle amendments: The new Fundamental Law's perception on international law

A. Subtle amendments in the hierarchy of sources

Post-socialist Central-European States have all adopted at least one constitutional reference or a separate clause on their obligations under international law. In order to compare the new FL's international law clause to its Central-European „colleagues", it seems useful to make some remarks on the following questions: 1. Does the given constitution have a separate international law clause and what wording does it use? 2. Does it provide for the status of treaties in internal law? 3. How do international treaties become applicable in the domestic legal order? 4. Finally, does the constitution provide for any sources of international law other than international treaties? As for the 1989 Constitution of Hungary and its new

---

[7] Ibid. 343.

[8] „A State's domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law. Every State possesses a fundamental right to choose and implement its own political, economic and social systems." *Military and Puramilitary Activities in und against Nicaragua (Nicaragua v. United States of America). Merits*, Judgment, *I.C.J. Reports* (1986) 131., par. 258.

[9] For the English translation of the Basic Law made by the Hungarian Embassy in Washington, see the website of the Hungarian Embassy of Washington, http://www.huembwas.org/news_events/20110426_new_constitution/text.htm (10. 10. 2011.).

[10] Such as: Preamble, para. 1 (the question of Nation and that of the inclusiveness of national and ethnic minorities) para. 19 (non-prescription of „inhuman crimes"); Art. D (the Kin State's obligations); Art. E (clause on the European Union); Art. 45(1) („humanitarian activities according to the rules of international law"); or other provisions absent from the Fundamental Law, such as the prohibition of war [Art. 6(1) of the 1989 Const.], a reference to international human rights conventions [see the criticism of the Venice Commission: European Commission for Democracy through Law (Venice Commission), *Opinion on the New Constitution of Hungary*, Adopted by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011), Opinion no. 618 / 2011, Doc. no. CDL-AD(2011)016 (Strasbourg, 20 June 2011), para. 30.].

[11] It suffices to remark that the Fundamental Law, similarly to the 1989 Constitution, does not provide for the status of Community law in domestic law, neither precise any principles on its applicability (such as primacy, direct effect). Under the case law of the Constitutional Court and of domestic courts, EU law is considered as a sui generis law (in conformity with the ECJ's holding in the *Costa v. ENEL* case). See e.g. Constitutional Court Decisions 1053/E/2005. AB, 72/2006. (XII. 15.) AB; Decision 32/2008 (III.12.) AB; Supreme Court, BDT2004. 1031.

successor, the FL, the present article cannot analyze the status of each of the sources of international law,[12] but limits itself to answer briefly to the questions above.

Ad 1: If we compare the international law-recognition clauses, we see that 9 out of the 10 States adopted an express clause, whereas the Latvian constitution mentions human rights treaties in its fundamental rights clause. Two constitutions (Czech Rep., Poland) mention the respect of international law generally[13], one refers to „generally recognized principles and rules of international law"[14] and six other refer both to binding treaties and „generally recognized rules of international law"[15]. Although one can say that under international law, States are bound by customs even without any constitutional consent, the precision of provisions makes a clear impression of „friendliness to international law". For example, even if the Latvian Constitution does not have a separate international law clause, the Constitutional Court could arrive to the same solution as the German Federal Constitutional Court's principle of favourableness (*Völkerrechtsfreundlichkeit*) of the Basic Law towards the international law.[16]

As for the 1989 Constitution of Hungary,[17] it reads as follows:

§ 7(1) The legal system of the Republic of Hungary shall accept the generally recognized rules of international law and shall further ensure the harmony between domestic law, and the obligations assumed under international law.

It is not disputed that the 1989 Constitution generally accepts the generally recognized rules of international law by the method of adoption,[18] whereas other international law ob-

---

[12] For the numerous articles on this question, see e.g. BRAGYOVA András: *A magyar jogrendszer és a nemzetközi jog kapcsolatának alkotmányos rendezése. Elméleti kérdések [The Constitutional Regulation of the Relationship of the Hungarian Legal System and International Law. Theoretical Questions]*. In: BRAGYOVA András (szerk./ed.): Nemzetközi jog az új alkotmányban. Tanulmányok [International Law in the New Constitution. Studies]. KJK, MTA Állam- és Jogtudományi Intézete, Budapest, 1997. 9-34.; BODNÁR László: *A nemzetközi jog és az államon belüli jog viszonya az új alkotmányban [The Relation of International Law and Internal Law in the New Constitution]*. Ibid., 35-73.; SONNEVEND Pál: *Nemzetközi jog és belső jog a magyar jogrendben. A Magyar Alkotmánybíróság gyakorlata. [International Law and Internal Law in the Hungarian Legal Order. The Case Law of the Hungarian Constitutional Court]*. In: JENEY Petra – NAGY Boldizsár (eds.), Nemzetközi jogi olvasókönyv. Dokumentumok, szemelvények [Textbook of International law. Documents, Fragments], Osiris, 2004. 109-136.; JAKAB András – MOLNÁR Tamás – SULYOK Gábor: *7 § [Nemzetközi jog és belső jog, jogalkotási törvény] [International Law and Internal Law, the Act on Legislation]*. In: JAKAB András (szerk./ed.): Az Alkotmány kommentárja [The Commentary of the Constitution], vol. I. Századvég, Budapest, 2009. 375-386.

[13] Czech Republic: Art. 1(1)(b) of the Constitution („obligations under international law"); Poland: Art. 9 of the Constitution (respect of „international law binding upon it").

[14] Estonia: Art. 3(1) of the Constitution.

[15] Bulgaria: Art. 5(4) and Art. 24(1) of the Constitution („principles and norms of international law"); Lithuania: Art. 135(1) and Art. 138(3) of the Constitution („universally recognized principles and norms of international law"); Romania: Art. 10 and Art. 11(1) of the Constitution („the principles and other generally recognized provisions of international law"); Slovakia: Art. 1(2) of the Constitution („general rules of international law"); Slovenia: Art. 8 of the Constitution („generally accepted principles of international law").

[16] See the German Federative Constitutional Court's Judgment of 14 October 2004, case 2BVR 1481/04, cited by the Latvian Constitutional Court. It concluded, like the Karlsruhe Court, that „when interpreting the Satversme [i.e. the Constitution – A.B.] and international liabilities of Latvia, one should look for the interpretation, which ensures harmony, but not confronting." See the Latvian Constitutional Court's Judgment of 13 May 2005, case No.2004-18-0106.

[17] The Constitution of the Republic of Hungary in effect until 31 December 2011 [Act XX of 1949 as revised and restated by Act XXXI of 1989] as of 2 January 2011. English translation available on the website of the Constitutional Court, see http://www.mkab.hu (2/10/2011). As the Constitutional Court highlighted, the constitutional amendments promulgated on 23 October 1989 amounted to an entry into effect of a new constitution. See Decision 11/1992. (III. 5.) AB.

[18] Most authors consider the first part of this clause as a general adoption, see JAKAB András: *Az új Alaptörvény keletkezése és gyakorlati következményei* [*The Adoption of the New Fundamental Law and its Practical Consequences*], HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2011. 198.; SONNEVEND, 2004. 111-112.; *Javaslatok a Magyar Köztársaság Alkotmányának szabályozási koncepciójához* [*Proposals to the Codification Concept of the Constitution of the Republic of*

ligations are „assumed". It/This is based on a dualist concept of the relationship of international law-internal law.[19] As stated in another article of the 1989 Constitution, the EU clause details, an international treaty becomes part of the domestic legal order by „ratification and promulgation"[20] by the Parliament in the form of domestic legislation, i.e. by „special transformation".

The drafters of the Fundamental Law have decided to include the provisions of the 1989 Constitution related to international cooperation and international law in one single article (Art. Q), and amended them only slightly as follows:

(2) Hungary shall ensure harmony between international law and Hungarian law in order to fulfill its obligations under international law.

(3) Hungary shall accept the generally recognized rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in the form of legislation.

As for the second paragraph, no change has been made: it is the State that obliges itself to ensure the harmony between the two legal orders, thus all courts and public authorities shall respect Hungary's international obligations. Since the harmony is worded as a State goal, one can argue that this phrase implies the courts' right to request the Constitutional Court's review of treaty-conformity of domestic acts.[21] Para. 3 confirms the incorporation of international customs and general principles of law.

Ad 2: Five out of the nine constitutions recognize that international treaty norms have precedence over domestic acts in case of a conflict between them.[22] Two constitutions recognize the same rule, but limit either to human rights and self-executing treaties (Slovakia) or to human rights treaties (Romania).[23] In the two jurisdictions where the constitution is silent on the rank of treaties in the hierarchy of sources, the act on the constitutional court or the latter's practice has clarified the same rule.[24] Some of the constitutions expressly, but all of them (at least by referring to the preliminary constitutional review of treaties) consider the constitution itself as the supreme source with which international treaties must be in

---

Hungary], Magyar Tudományos Akadémia Jogtudományi Intézete [Hungarian Academy of Science Institute of Legal Science], 10 September 2010, 18.; However, the CC speaks about an „abstract and general transformation" in its Decisions 7/2005 (III.31.) AB and 53/1993 (X.13.) AB, whereas scholars consider transformation as a method that applies international law only after having adopted a domestic act including expressly the same content as the international norm. See e.g. GEIGER Rudolf, *Grundgesetz und Völkerrecht mit Europarecht. Die Bezüge des Staatsrechts zum Völkerrecht und Europarecht* [*Basic Law and International Law with European Law. Relationships of Domestic Law to International Law and European Law*]. Verlag C.H.Beck, München, 2009. 141.

[19] SONNEVEND, 2004. 114.

[20] The official translation uses the words „ratification and adoption" („megerősítéséhez és kihirdetéséhez"), but the term „kihirdetés" is used in the sense of „publication in the form of [domestic] legislation" or „adoption in the form of [domestic] legislation", but not a simple „publication" of the text of the treaty.

[21] JAKAB, 2011. 198.

[22] Czech Republic: Art. 10 of the Constitution; Bulgaria: Art. 5(4) of the Constitution; Estonia: Art. 123(1)-(2) of the Constitution; Poland: Art. 91(2) of the Constitution; Slovenia: Art. 8 and 153(2) of the Constitution. For the Slovenian distinction between the hierarchical rank of treaties ratified by the National Assembly and that of other treaties, see *infra*, note 46.

[23] Slovakia: Art. 7(5) of the Constitution; Romania: Art. 20(2) of the Constitution.

[24] Latvia: under the Constitutional Court Law, it is clear that international treaties are superior to contrary „national legal norms", but the Constitution has primacy over international treaties. See Section 16(6) [former 6(9)] and Section 17(1) of the Constitutional Court Law; Lithuania: it is the case law of the Constitutional Court that recognized the precedence of international treaties over domestic acts in case of a conflict of norms several times. See e.g. Constitutional Court ruling of 14 March 2006 (cited by KURIS Egidijus, „Constitutional Law as Jurisprudential Law: The Lithuanian Experience", Venice Commission, CDL-JU(2010)022, 3 December 2010, 5., note 1); with regard to the EU Founding treaties, see Constitutional Court ruling of 8 May 2007, Case No. 47/04 (Decision on the application to the Court of Justice of the European Communities for a preliminary ruling).

conformity.[25] However, some constitutions expressly provide for a „polite way of coordination" between the two legal orders in the sense that they allow a constitutional amendment in order to allow the application of an international treaty otherwise violating the constitution.[26]

In Hungary, before 2012, the Latvian solution was in use: no constitutional article provided for the precedence of international treaties over domestic acts, the Act no. XXXII of 1989 on the CC and the new Act no. CLI of 2011 on the CC, the case law of the CC and of domestic courts all consistently recognized it.[27] The FL reflects the existing practice and expressly provides, not in the international law clause but among the CC's competences, for the review of treaty-conformity of any piece of legislation [Art. 24(2)(f)].

Ad 3: Irrespective of the dispute whether monism or dualism has influenced more the constitutions of Central-Europe,[28] one can observe that in most of the ten jurisdictions, a ratified and published treaty becomes applicable in internal law,[29] without the need to transform it into a domestic act.[30]

In Hungary, the novelty of Art. Q(3) of the FL is the express reference to special transformation, i.e. that other sources must be transformed by domestic laws. This clause corresponds to the actual practice: the Act on the procedure related to international treaties requires, under the dualist concept, the publication of all international treaties either in the form of legislative statute (if the subject matter relates to the legislative matters of the Parliament), or, in case of treaties of a lesser importance from the point of view of State's international relations, in the form of Government decrees.[31]

Ad 4: As mentioned before, most Central-European Constitutions refer to generally recognized principles of international law, which term may be interpreted as implying the respect of general principles of law and (universal) customary international law.[32] Four constitutions recognize that the acts of certain international organizations apply directly in internal law: while two constitutions reserve it for the acts of the EU (Lithuania, Slovakia), adding the primacy of EU law over the laws,[33] the Polish Constitution applies the same rule to „the laws established by the international organization", and the Slovenian Constitution

---

[25] The ex ante constitutional review (see *infra*) can be considered as an implied recognition of this rule. Express reference: Bulgaria: Art. 5(1) of the Constitution; Estonia: Art. 123(1) of the Constitution; See also the „polite way of coordination", *infra*.

[26] Bulgaria: Art. 85(4) of the Constitution; Romania: Art. 11(3) of the Constitution.

[27] The Supreme Court considered this principle as a „principle of law recognized by the community of States", „part of customary international law". See Supreme Court, BDT2004. 966.

[28] On this question see MALENOWSKY Jiri: Dix ans après la chute du mur: les rapports entre droit international et droit interne dans les Constitutions des Pays d'Europe central et orientale. *Annuaire Français de Droit International* (1999) 29.; SZYMCZAK David: *La Convention européenne des droits de l'homme et le juge constitutionnel national*. Bruylant, Bruxelles, 2006. 51.; BODNÁR, 1997. 47-54.

[29] Czech Republic: Art. 10 of the Constitution; Bulgaria: Art. 5(4), Art. 85(1)-(2) of the Constitution; Estonia: Art. 121 and Art. 123(2) of the Constitution; Latvia: Art. 68 of the Constitution; Lithuania: Art. 138 of the Constitution; Poland: Art. 87(1), Art. 89(1) and Art. 91(1) of the Constitution; Romania: Art. 11(2) of the Constitution; Slovakia: Art. 7(4) and Art. 87(4) of the Constitution; Slovenia: Art. 8 of Constitution.

[30] See e.g. in Poland, Constitutional Tribunal, 176/11/A/2006, Procedural Decision, of 19th December 2006, Ref. No. P 37/05.; However, the Czech and the Slovakian constitutions require the „promulgation" of ratified international treaties.

[31] Art. 7. of the Act no. L of 2005 on the procedure related to international treaties.

[32] SONNEVEND, 2004. 111-112.

[33] Lithuania: Law on the Alteration of the Constitution No. IX-2343, Constitutional Act of the Republic of Lithuania on the Membership of the Republic of Lithuania in the European Union, Art. 2, declaring the supremacy of the Founding treaties over the laws and other legal acts of the Republic of Lithuania; Slovakia: Art. 7(2) and, on the promulgation of EU law, Art. 87(4) and Art. 120(1)-(2) of the Constitution.

refers to „legal acts and decisions adopted within international organizations to which Slovenia has transferred the exercise of part of its sovereign rights".[34]

In Hungary, the CC's practice clarified the status generally recognized principles of international law and concluded that *jus cogens* norms may supersede even constitutional provisions in case of conflict.[35] „Other sources" of international law may include treaties, resolutions of international organizations and judgments of international courts and even unilateral acts of the State. Without going into details, the new BL, similarly to its predecessor, does not provide for the status of acts of international organizations in internal law, including acts of secondary law of the EU. The case of judgments of international tribunals seems less problematic. Under Art. 13 of the Act no. L of 2005 on the procedure related to international treaties, the judgment of an international court binding Hungary must be „promulgated" in the Official Gazette of Hungary[36], and, in domestic criminal procedures, they can have some legal effects. For example resolutions of the International Criminal Court influence the inquiry of Hungarian prosecution authorities;[37] and if an international human rights body established by a treaty ratified by Hungary found that a judgment of a Hungarian court violated the international agreement which Hungary ratified previously, the violation can be remedied by reopening the procedure, if possible.[38] What is more regrettable is the fact that until now, the Parliament and the Government have neither adopted any coherent act on the status of binding acts of other (not judicial) international organizations such as the Chapter VII resolutions of UN Security Council.[39]

In conclusion, one can state that the new Fundamental Law's perception on international law corresponds to the Central-European trends, since it expressly refers to the „generally recognized rules of international law" and recognizes the superiority of treaties to domestic statutes in case of conflict, although not in Art. Q. One can ask what are the

---

[34] Poland: Art. 91(3) of the Constitution; Slovenia: Art. 3(a)(3) of the Constitution.

[35] See the case law of the CC: Decision 53/1993 (X. 13.) AB; 36/1996. (IX. 4.) AB; However, in a recent case, four judges of the CC claimed that „generally recognized principles of international law" might constitute an exemption regarding the enforcement of Article 57(4) (*nullum crimen sine lege*) of the 1989 Constitution, without referring to *jus cogens* norms. See Concurring opinion of Judge Péter Paczolay and three other judges, Decision 32/2008 (III.12.) AB.; On the CC's perception on general principles of law, see SULYOK Gábor: Az általános jogelvek nemzetközi jogforrási jellegéről. [General Principles of Law as a Source of International law]. *Közjogi Szemle* 24 (2011) 34.

[36] One must add that the CC consistently considers the judgments of international tribunals not as norms („although the procedure of the International Court of Justice is based on the consensus of the concerned States on the recognition of jurisdiction, expressed in an international treaty"), but as acts deciding in a concrete dispute. See CC, Order 988/E/2000 (October 2003); Order 97/B/2002 (10. 11. 2003.), para. III/2.

[37] Code of Criminal Procedure, Art. 188(2), which provides that the inquiry must be continued if the Act promulgating the statute of the international criminal court and implementing the obligations issuing from the statute provides so.

[38] Code of Criminal Procedure, Art. 416(1)(g), Art. 416(3); The provision allows thus primarily for the effective enforcement of the judgment of the ECtHR, but eventually it can also be the enforcement of any international human rights monitoring body which has jurisdiction to hear individual complaints, such as the quasi-judiciary UN human rights treaty bodies (Human Rights Committee, Committee against Torture, Committee on the Elimination of Discrimination against Women, Committee on the Elimination of Racial Discrimination). See also the same provision in Poland, Art. 540(3) of the 1997 Code of Criminal Procedure, cited by NOLLKAEMPER André: *National Courts and International Rule of Law*. Oxford Univerity Press, Oxford, 2011. 212., fn. 262.

[39] Such as resolutions adopted by international organizations and especially UN Security Council resolutions of which enforcement has been very inconsistent in Hungary. See MOLNÁR Tamás: Mit kezd a magyar jog az ENSZ Biztonsági Tanácsának kötelező erejű határozataival? (az utóbbiak beépülése és helye a belső jogrendben). [What does Hungarian Law do with Binding Resolutions of the UN Security Council? (The Implementation of the Latter into the Domestic Legal Order)]. *Grotius* (2011) 1-18., available at the website of the electronic journal: http://www.grotius.hu/default.asp (16. 11. 2011.).

possible criticisms on this new Hungarian international law clause? It is regrettable that it did not precise the status of other sources of international law like judgments of international courts binding Hungary, or resolutions adopted by international organizations, and did not design any international norms of qualified importance which cannot be violated by a constitutional amendment.[40] Some experts argued that the Hungarian constitution should have declared expressly that courts shall interpret internal law in conformity with the international obligations binding Hungary.[41] However, one can derive this duty from Art. Q(2) of the FL.[42] The Constitutional Court has also confirmed the Matter principle (the German *völkerrechtsfreundliche Auslegung*), i.e. that even the provisions of the Constitution must be interpreted in harmony with international law.[43] Furthermore, as the next part will detail, some special international treaties could have been granted a constitutional recognition.

B. Lack of new constitutional provisions on the status of special international treaties

Among the ratified international treaties, some of the nine Central-European constitutions grant certain types of treaties, especially human rights treaties a privileged status in the hierarchy of sources. In Slovakia, the primacy over legislative acts is reserved for self-executing treaties and international treaties on human rights and fundamental freedoms.[44] In Romania, human rights treaties serve as a basis of the interpretation of the Constitution: under Art. 20(1), „Constitutional provisions concerning the citizens' rights and freedoms shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to."

In Hungary, neither the 1989 Constitution, nor the FL do not privilege any specific international treaty.[45] The only distinction among treaties is made on the basis of the hierarchical rank of the act promulgating the treaty.[46] Nevertheless, the CC recognized that trea-

---

[40] As some authors argued, such a non-amendable provision could be the protection of human life and fundamental freedoms, the republic as a constitutional governmental form or the prohibition of the use of force in international relations. See Institute of Legal Science, 2010. 6.

[41] This reference to international law is inspired by Art. 39 of the constitution of South Africa, which requires that fundamental rights shall be interpreted in the light of international law and comparing other foreign jurisdictions. See European Commission for Democracy through Law (Venice Commission), *Opinion on the New Constitution of Hungary*, Adopted by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011), Opinion no. 618/2011, Doc. no. CDL-AD(2011)016 (Strasbourg, 20 June 2011), para. 30. [hereinafter: Venice Commission, *Opinion on the New Constitution of Hungary*].; E.g. JAKAB András: 2011. évi … törvény. A Magyar Köztársaság Alkotmánya Magántervezet, szakmai álláspont kialakítása céljából [*Act no. … of 2011, The Constitution of the Republic of Hungary, Private Draft, with the purpose of taking a professional position*] 2011. január 10., 9., available at the website of the Pázmány Péter Catholic University: http://www.jak.ppke.hu/tanszek/alkotm/letolt/alkt.pdf (16. 11. 2011.) [hereinafter: Jakab, *Private Draft*], 58.

[42] Venice Commission, *Opinion on the New Constitution of Hungary*, para. 30.

[43] Decision 14/2001 (IV.9.) AB; KOVÁCS Péter: La collision d'une norme constitutionnelle et du droit international dans la pratique de la Cour Constitutionnelle hongroise. 7(1) *Miskolc Journal of International Law* 14 (2010) 15-16.; On the limits of such a treaty-conform interpretation, see Decision 30/1998. (VI.25.) AB.

[44] Art. 7(4) of the Constitution of Slovakia.

[45] The Venice Commission expressed its regret that the Fundamental Law did not grant international human rights treaties a more important role, and did not even mention them. See Venice Commission, *Opinion on the New Constitution of Hungary*, para. 30.

[46] The Slovenian Constitution also provides for that distinction. See Art. 153(2) of the Constitution of Slovenia, which grants the treaties ratified by the National Assembly a higher rank: „Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties." As for Hungary, see Art. 7 of the Act no. L of 2005 on the procedure related to international treaties which, under the dualist concept, requires the publication of all international treaties either in the form of legislative statute (Act of Parliament), if the subject matter relates to the legislative matters of the Parliament, or, in case of treaties of a lesser importance from the point of view of State's international relations, in the form of Government decree.

ties reflecting a *jus cogens* norm may supersede, in case of a conflict, the Constitution itself.[47] Furthermore, the case law indicates some tendency to recognize the special status of two specific treaties: 1. the European Convention on Human Rights (ECHR) and 2. the Founding treaties of the EU and their amending treaties.

Ad 1: As for the ECHR, it is obviously the most frequently applied international convention by the CC. Considered as „a constitutional instrument of European public order",[48] it has a particular importance in constitutional case law, since its material rules are of constitutional matter.[49] The CC daily refers to the European Court of Human Rightss' (ECtHR) case law and invisibly develops its Europe-wide application.[50] By the way, the ECtHR has confirmed this obligation of national courts, holding that Art. 13 (the right to effective remedy) is considered the „direct expression to the States' obligation to protect human rights first and foremost within their own legal system".[51] Under this so-called subsidiary principle, if a case can be resolved on the national level, the applicant must not file the application with the Court.

Strictly speaking, the case law of the ECtHR has no binding force in the domestic legal order,[52] and the CC does not feel itself bound by single Strasbourg judgments, mainly because the Strasbourg Court decides on the violation of the Convention in a concrete dispute, whereas the Hungarian CC examines the harmony of norms *in abstracto*.[53] However, Sólyom claims that such a distinction is neither possible nor necessary,[54] and even the CC stated in one of its decisions that the case law of the ECtHR „binds and influences" Hungarian legal practice.[55] Even if the majority view does not consider courts and the CC bound by the case law of the ECtHR, one cannot deny the major importance of the case law of the ECHR in the daily work of the Hungarian CC.

Ad 2: Under the case law of the CC, the Founding treaties of the European Union (EU) as well as their amending treaties, until their entry into force, are considered interna-

---

[47] Decision 30/1998. (VI.25.) AB, para. VI/3. This precedence of a *jus cogens* norm, namely the non-prescription of crimes against humanity was applied indeed in the Decision 53/1993 (X. 13.) AB, where the CC gave precedence to the *jus cogens* norm of the non-prescription of war crimes and crimes against humanity over the constitutional provision of *nulllum crimen sine lege*. See SONNEVEND, 2004. 113.

[48] ECtHR, Case of *Loizidou v. Turkey* (Preliminary objections), Appl. no. 15318/89, Judgment of 23 March 1995, para. 75.; Case of *Bankovic and Others v. Belgium and Others* (Decision on Admissibility), Appl. No. 52207/99, Judgment of 12 December 2011, para. 80.

[49] Concurring opinion of Judge András Bragyova, Decision 1149/C/2011. AB (19. 12. 2011.); On the hierarchical rank of the ECHR in the constitutions of Central and Eastern European States, see SZYMCZAK, 2006. 51-54. and 62-67. (Hungary, Romania, Republic Czech).

[50] T application of the ECHR by the Hungarian CC obviously exceeds the limits of this article. Among the numerous publications on that issue, see e.g. SÓLYOM László: *Kölcsönhatás az Emberi Jogok Európai Bíróságának esetjoga és a szólásszabadság védelme között Magyarországon. [Interaction between the Case Law of the European Court of Human Rights and the Protection of the Freedom of Expression in Hungary]*. In: SÓLYOM László: Az alkotmánybíráskodás kezdetei Magyarországon [The Beginnings of Constitutional Court Practice in Hungary], Osiris, Budapest, 2001. 201-222.

[51] ECtHR, *Kudla v. Poland*, Appl. no. 30210/93, Judgment of 26 October 2000, para. 152.

[52] Even the Hungarian court revising a case on the basis of the ECtHR's judgment held that it is not bound by the latter. See Supreme Court, BFv. X. 1.055/2008/5., Reasoning, 15-16.; RAISZ Anikó: *LB:EJEB – 2:1 Avagy kié a minősítés joga az emberiség elleni bűntettek esetén? [Supreme Court:ECtHR – 2:1 or Who Has the Right of Qualification in Case of Crimes Against Humanity?]*. In: KIRS Eszter (Szerk./ed.): Egységesedés és széttagolódás a nemzetközi büntetőjogban [Integration and Disintegration in International Criminal Law] (Studia Iuris Gentium Miskolciensia – Tomus IV), Bíbor, Miskolc, 2009. 129-136.

[53] Dissenting opinion of Judges Tersztyánszky and Zlinszky, Decision 36/1994 (VI.24.); Concurring opinion of Judge Bragyova and Dienes-Oehm, Decision 1149/C/2011. AB (19. 12. 2011)

[54] SÓLYOM, 2001. 212.

[55] Decision 18/2004. (V. 25.) AB, para. II/1.1.

tional treaties,[56] even if the Parliament has already ratified them.[57] However, once they enter into force, the CC considers them „not as international treaties",[58] probably because the CC, due to its lack of any legislative provision on its competence related to EU law, consistently avoids the constitutional examination of thesis, including primary law. Thus, the conflict between a domestic act and the primary law of the EU does not constitute an unconstitutionality.[59] This judicial policy is strongly disputed[60] and in contrary to some other constitutional courts' policy in the region, which reserved their right to review the constitutionality of all (primary and secondary) acts of the EU.[61]

The CC itself recognized that allowing to exercise certain sovereign competences jointly with other member States through the institutions of the European Union is a major constitutional reform where the *ex ante* review of the constitutionality of the international treaty is desirable.[62] However, major treaties of primary law, such as the Association Agreement, the Treaty on Accession to the EU, and the Lisbon Treaty, were not submitted to preliminary review of constitutionality, and the CC dealt with them only after their ratification, and even after their entry into effect (Association Agreement, Accession treaty). After the accession to the EU in 2004, primary law became binding in Hungary, and the insistence of the CC to treat it „not as international law" led to self-contradictions in its decisions.

The special, but contradictory status of primary law of the EU in Hungarian law can be analyzed through the example of the Hungarian *Lisbon* case, where the Constitutional Court had to examine *ex post* the constitutionality of the Lisbon Treaty, after its ratification and entry into force (1 Dec. 2009). Although the Court confirmed that it does not consider the Founding and amending treaties as international law, in fact it reviewed the constitutionality of the legislative act promulgating the treaty (and one can argue that even the Treaty itself) on its merits. Furthermore, it nevertheless recognized the characteristics of the Lisbon document as an international treaty, since it was affirmed that in case of finding the promulgating act unconstitutional, the Court's decision cannot have any effect on the obligations of Hungary as a Member State within the EU. The only consequence, according to the CC, would be the legislative power's obligation to „create a situation in which the Re-

---

[56] Decision 61/2008. (IV. 29.) AB.

[57] Decision 61/2008. (IV. 29.) AB.

[58] Decision 1053/E/2005 AB (16 June 2006) ; Decision 72/2006 (XII.15.) AB; Decision 61/2008. (IV. 29.) AB; Decision 76/2008 (V.29.) AB etc.

[59] That is the opinion of Judge András Bragyova, and the practice of the veto right of the President of the Republic also reflects this principle. Cited by FAZEKAS Flóra – SZILÁGYI Emese: Hat év tapasztalatai az uniós jogalkalmazásban. [Six Years of Experience in the Application of EU Law]. *Közjogi Szemle* 70 (2011) 70-71.

[60] VINCZE Attila: *Osztott szuverenitás – többszintű alkotmányosság. [Shared Sovereignty – Multilevel Constitutionality]*. In: KOCSIS Miklós – ZELLER Judit (szerk./ed.): A köztársasági alkotmány húsz éve. Tanulmánykötet [The Twenty Years of the Republican Constitution. Studies]. Pécs, 2006. 374-376.; Since several initiatives holding a national referendum seemed contrary to EU law, Fazekas argues that for the purpose of Art. 28/C of the 1989 Constitution (on the national referendum, see under Art. 8 of the FL), the CC should consider the Founding treaties as „international agreements" under Art. 2/A(1) of the 1989 Constitution (or Art. E of the FL). See FAZEKAS Flóra: Az Európai Unió és Magyarország közötti hatáskörmegosztás problematikája az Alkotmánybíróság határozatainak tükrében. [The Problem of the Sharing of Competence Between the European Union and Hungary under the Decisions of the Constitutional Court]. In: KOCSIS – ZELLER, 2006. 398.

[61] See the Czech Constitutional Court's decision reviewing the *ultra vires* acts of the EU, 2008/11/26 – PL. ÚS 19/08: Treaty of Lisbon I, para. 120., 139. Note, however, that the Czech Constitutional Court can only proceed in a preliminary review of international treaties.; The Polish Constitutional Tribunal, which does review ratified treaties, confirmed its right „to review the Treaties founding and modifying the Communities and the European Union". See Judgment of 11th May 2005, K 18/04, para. 4. And 14. („the norms of the Constitution within the field of individual rights and freedoms indicate a minimum and unsurpassable threshold, which may not be lowered or questioned as a result of the introduction of Community provisions").

[62] Decision 143/2010. (VII. 14.) AB, para. IV/2.2.

public of Hungary could entirely enforce its European Union obligations without the breach of the Constitution."[63] However, it is not clear how the Parliament could have repaired such a hypothesis,[64] but it seems unlikely to amend Hungary's obligations under the Lisbon Treaty as a Member State subsequently. Since the request was submitted in December 2008, but the CC deliberated it only in July 2010, the *ex post* finding of unconstitutionality of the act could, in no case, lead to an amendment of Hungary's obligations under the Lisbon Treaty, being already part of EU primary law (as it modified the Founding treaties). As Justice Paczolay, Judge Lévay and more vehemently Judge Bragyova pointed out, the Hungarian CC could have decided on the annulment of the Hungarian Act on the ratification of the Lisbon Treaty, in case of finding a ground of unconstitutionality, only between 22 December 2007, publication of the act, and 1 December 2009, the entry into effect of the Lisbon Treaty.[65] Since the Court started to deliberate the petition only in 2010, the question necessarily made no sense any more, except for confirming *a posteriori* the constitutionality of the Lisbon Treaty.

The *Lisbon* decision of the CC provided more questions than answers on the status of the Founding and amending EU treaties (e.g. whether the CC in fact examined the constitutionality of the Treaty, as such, whether an amending treaty is still „in force" after it modifies the Founding treaties,[66] what could have been the consequence of finding an unconstitutionality) that the present article could not analyze. It suffices to note that in very similar circumstances (*ex post* review, decision after the entry into effect), the Polish Constitutional Tribunal clearly reviewed the constitutionality of the Lisbon Treaty as an international agreement, establishing a „special presumption of constitutionality' of the Treaty.[67]

At least one can draw the conclusion from the decision that in such a case, where the challenged international treaty will become primary European law after it enters into effect, probably no more susceptible of leading to the amendment of Hungary's EU obligations, a fastened proceeding would be necessary. Thus, this case creates an exclamation mark on the necessary reform of the rules of procedure of the CC.[68] Since the concerned petition was filed in December 2008, the CC would have had the possibility to examine it for a whole year, before the Treaty came into effect. Having failed to take the case among its priority cases, its decision in July 2010 could in no case have changed the applicable norm being in effect, i.e. the founding treaties as modified by the Lisbon Treaty.

To sum it all up, the new FL has not altered the internal status of the sources of international law and the related uncertainties. The lack of any constitutional amendment recognizing a special status of the ECHR does not raise any problems due to the consistent practice of the CC, applying the Strasbourg case law as a major inspiration of its decisions. However, the lack of provisions in the FL or the new act on the Constitutional Court on the competence of the CC related to EU primary law continues to lead to contradictions. At least a consistent use of the preliminary review (before the ratification) and a fastened

---

[63] Decision 143/2010. (VII. 14.) AB, para. IV/1.

[64] Probably the subsequent amendment of the Constitution would have been necessary, or, as Judge Bragyova claimed, Hungary's withdrawal from the EU. See Dissenting opinion of Judge András Bragyova, para. 1.

[65] Concurring opinion of of Judge Péter Paczolay and Judge Miklós Lévay, para. 3. and Dissenting opinion of Judge András Bragyova, para. 3., Decision 143/2010. (VII. 14.) AB.

[66] It was contested that the Lisbon Treaty, as opposed to the rejected European Constitution, is an amending treaty modifying the founding treaties which entered to effect and as such, it ceased to exist as an independent norm. See Dissenting opinion of Judge András Bragyova, para. 2., Decision 143/2010. (VII. 14.) AB.

[67] Polish Constitutional Tribunal's Judgment of 24 November 2010, Ref. No. K 32/09, para. 1.1.1.-1.1.2.

[68] 2/2011. (XII. 28.) számú Tü. határozat (*az Alkotmánybíróság új ügyrendje*) [Resolution of the Plenary Session of the Constitutional Court (*The new rules of procedure of the Constitutional Court*)].

proceeding would be necessary in the case of future treaties amending EU primary law. Even if the FL does not grant certain *jus cogens* norms or some international treaties a qualified role, an internationally engaged judiciary, the Constitutional Court, and some constitutional mechanisms can ensure the coherence between international law and internal law, as the next part explains.

The possible novelty under Art. Q: the enhanced role of international treaty law in the procedures of the Constitutional Court

Although Art. Q of the FL has not made major changes in the status of international law in internal law, the procedures before the Hungarian CC provide real, but rarely used possibilities to enhance the role of international treaties in the search for harmony between the two legal orders, international law and internal law. First, the interdependence and interchange between international law and internal law in the procedures of the CC must be presented (A.). Second, the article details how the review of the conformity of acts with an international treaty could be used for the search for higher standards than that guaranteed by the domestic law (B.).

The interdependence of international law and internal law in the procedures of the CC

It is useless to explain how far international law influences national legislation, and more generally, how far globalization (in the broad, i.e. economic, political, cultural and even legal sense of the term) determines the development of domestic law, including the national constitution.[69] The phenomenon of the „internationalization of internal law" entails a broad interaction between constitutional law, internal law, international law and EU law. Blutmann describes the interactions within each of the four groups of norms (e.g. between two constitutional norms, two international treaties etc.) and between them (e.g. between an internal norm and an EU regulation) by his „rhomb model".[70] Under this model, norms are interconnected firstly within the same group of norms (constitutional law, internal law, international law and EU law) and secondly, even the four groups of norms are interconnected. Finally, there are three possible types of interconnection: conflicts of norms, interpretation and joint application,[71] which lead to three different „rhomb models". This mutual interconnection of the different groups of norms is followed by the multiplication of the quantity of norms applicable to the same social relation. Thus, the final decision in a legal dispute becomes more uncertain, the judge's margin of appreciation more important what Blutmann calls the „hypothesis of cumulative indeterminateness".[72]

---

69 The drafters of the Hungarian FL made efforts to follow the technique and the contents of the ECHR and to some extent the EU Charter closely; furthermore, constitutions of other European States, such as Poland, Finland, Switzerland or Austria, have been used as a source of inspiration. See Venice Commission, *Opinion on the New Constitution of Hungary*, para. 18.; on the question of globalization in constitutional law, see PETERS Anne: *„The Globalization of State Constitutions"*. In: NIJMAN Janne – NOLLKAEMPER André (eds.): *New Perspectives on the Divide Between National and International Law*. Oxford University Press, Oxford, 2007. 251-308.

[70] BLUTMANN László: *A jogrendszer nemzetköziesedése alkotmányjogi szempontból (Normák kapcsolódásai, konfliktusai a mai alkotmányos rendszerben) [The Internationalization of the Legal System from the Point of View of Constitutional Law (Connections, Conflicts of Norms in the Contemporary Constitutional System)]*. In: KOCSIS– ZELLER, 2006. 351-362.

[71] As for the interpretation of one group of norms with the other, see e.g. Decision 1746/B/2010. AB (19/12/2011), where the CC interpreted the notion and the standard of protection of the disclosure of journalists' sources; as for the joint application, see e.g. Decision 58/1995. (IX. 15.), where the CC held that the judge must decide on the publicity of the criminal procedure with due regard to the ICCPR and the ECHR as a guidance of the judge.

[72] BLUTMANN, 2006. 360.

The large interdependence and interchange between international law and internal law is manifested in the procedure of the CC: very often the same domestic act can be challenged not only on the basis of the Constitution, but also under one or more international treaties. As Bragyova and Dienes-Oehm claimed, a domestic act violating the ECHR very probably breaches a provision of the Constitution,[73] and one can suppose that inversely, the violation of the fundamental rights enshrined in the Constitution breaches in most cases the ECHR. In the review, the Court has a wide liberty to base its decision exclusively on the Constitution or in combination with different international or EU norms.[74]

The notorious CC decision on the annulment of the Act no. XC of 2010 on the "adoption and modification of some acts in economic and financial matters", which led the Parliament to restrict the competence of the Constitutional Court in financial matters, is a good example of this interchange. Although some petitioners referred to Art. 4 of the European Social Charter and to Art. 11 of the ILO Agreement no. 132 as international treaties violated by the Act no. XC of 2010, the CC, in accordance with its traditional case law, refused this part of the petition, since the petitioners had no standing under Art. 21(3) of the Act on the CC. However, the Constitutional Court examined nevertheless, by curiosity or just to set aside one of the cited legal bases, Art. 4 of the European Social Charter, and concluded that it was in the present case not violated by the challenged act.[75] Although the CC annulled the act on the basis of Art. 70/I(2) of the Constitution (obligation to contribute to public revenues), it recognized that „the legislative power's liberty can apply only within the limits of international law and European Union law".[76] Moreover, the concurring opinions also referred to the violation of international human rights' obligations. Thus, one can argue that the annulment of the challenged act could have been derived even on the basis of other international treaty provisions, such as Art. 1 of Protocol 1 of the ECHR (right to property) in conjunction with Art. 14 (prohibition of discrimination)[77] or Art. 18 (restriction of rights).

However, one must admit that the standards of domestic law and that of international law are sometimes different: there were exceptional cases where it came out that the standard of the human rights protection enshrined in Constitutions differs from the standard applied by the ECtHR.[78] The difference of standards leads to the question of the constitutional control of international treaties. In such cases, constitutional courts prefer the protection of the human rights higher standard.[79] At first sight, the procedures in which the CC „protects" the Constitution from any international treaty violating may seem to contra-

[73] Concurring opinion of Judge András Bragyova, Decision 1149/C/2011. AB (19. 12. 2011.).
[74] BLUTMANN, 2006. 359.
[75] Decision 184/2010. (X. 28.) AB, para. III.7.
[76] Decision 184/2010. (X. 28.) AB, para. III.5.
[77] See also the Concurring opinion of Judge Mihály Bihari, para. 1.; Concurring opinion of Judge Dr. László Kiss, para. 3.2.; Concurring opinion of Judge Barnabás Lenkovics.
[78] This was the case of the red star, considered by the CC as a prohibited dictatorial symbol [Decision 14/2000 (V.12.) AB], whereas the ECtHR protected the freedom of expression (*Vajnai v. Hungary*, Appl. no. 33629, Judgment of 8 July 2008). Similarly, in the conflict between the protection of personal data and that of information of public interest, the Hungarian law protected the former, whereas the ECtHR chose the latter (*Társaság a Szabadságjogokért v. Hungary*, Appl. no. 37374/05, Judgment of 14 April 2009). See CSINK Lóránt: *Közösségi jogon alapuló jogszabályok és a normakontrol. [Acts Based on Community Law and the normative control]*. In: KOCSIS – ZELLER, 2006. 377-378.
[79] That is the inspiration of Art. 20(2) of the Constitution of Romania, which provides that „where the Constitution or national laws comprise more favorable provisions", the precedence of the application of international covenants and treaties on fundamental human rights over national laws does not apply.; In the Czech Republic, the Constitutional Court confirmed this rule, see Judgment no. Pl. ÚS 31/94, cited by Judgment 2005/01/25 – III. ÚS 252/04: Constitutionally conforming interpretation.

dict the abovementioned interchange between the two legal orders. The idea of such procedures is to establish certain guarantees protecting the harmony of the domestic legal order and the supreme law of the hierarchy of sources, the national constitution itself. In fact, no sovereign State can leave the door completely open to external sources of law,[80] and all Central-European constitutions establish such domestic filter mechanisms. Thus, do such mechanisms not „oppose" the interchange between the two legal orders?

Central-European States apply two models, considered as general in European constitutions.[81] One is the preemptive control of constitutionality over international treaties: the partisans of this model argue that it generates legal certainty, since it guarantees that the treaty being ratified is not in conflict with the constitution. All of the ten Eastern EU Member States,[82] including Hungary, apply such an *ex ante* constitutional review of international treaties.[83] The new FL and the new Act on the CC do not amend this competence of the Court.[84] In most of the Central-European jurisdictions, including the one in Hungary, the finding of an unconstitutionality blocks the ratification of the treaty,[85] and entails the subsequent obligation to eliminate the conflict (either by amending the constitution, or by modifying the treaty obligations at the international level)[86]. Generally, only the highest constitutional bodies have the rights to request the *ex ante* review[87] and similarly in Hungary, only the Parliament, the President of the Republic and the Government can initiate the procedure. Until 31 December 2011, only three such *ex ante* review of constitutionality of international treaties were requested (the first two in 2004!), all of them by the President of the Republic, and all of them led to the finding of an unconstitutionality. Although in the first two decisions, it was the legislative act's „fault" that led to the declaration of the unconstitutionality,[88] in the third case, there was a contradiction between the material pro-

[80] Even in Kosovo, considered as one of the „most monist" constitutional systems of the world, where the Constitutional Court has no power to review the constitutionality of international treaties, the supremacy of the Constitution over international treaties is unquestionable. See Art. 16(1) of the Constitution; Furthermore, as some authors argue, it is the President of Republic and the Assembly who should check the constitutionality of treaties prior to ratifying them. See MORINA Visar – KORENICA Fisnik – DOLI Dren: The Relationship between International Law and National Law in the Case of Kosovo: A Constitutional Perspective. *International Journal of Constitutional Law* 274 (2011) 286.

[81] Ibid. 285.; see a detailed analysis of the European models in the Slovenian Constitutional Court's Decision Rm-1/97 of 5 June 1997, para. 6-12.

[82] Czech Republic: Art. 87(2) of the Constitution and Art. 71a-e of the Constitutional Court Act; Bulgaria: Art. 149(4) of the Constitution; Estonia: Art. 2(2), 6(1)(4) and 15(1)(3) of the Constitutional Review Court Procedure Act; Latvia: Section 16(2), Section 17(1) of the Constitutional Court Law; Lithuania: Art. 105(3)(3), Art. 106(5) of the Constitution and Art. 73(3) and 74 of the Law on the Constitutional Court of the Republic of Lithuania; Poland: Art. 122(3) of the Constitution; Art. 25.1(1)(d) of the Constitutional Tribunal Act: Romania: Art. 146(b) of the Constitution; Art. 2(1), Art. 11(1)(A)(b), Art. 24(1) of the Law on the Organisation and Operation of the Constitutional Court; Slovakia: Art. 102(1),. 119(h) of the Constitution and Art. 41(c) of the Act on the Constitutional Court; Slovenia: Art. 70 of the Act on the Constitutional Court.

[83] Art. 26(4) of the 1989 Constitution; Art. 1(a), 21(1) and 36 of the Act no. XXXII of 1989 on the CC.

[84] Art. 6(2)-(9), Art. 9(3)(i), Art. 24(2)(a) of the FL; Art. 23(4) of Act no. CLI of 2011 on the CC.

[85] However, in two jurisdictions, the decision of the body responsible for the constitutional review has no mandatory effect, just an advisory role. See Lithuania, Art. 107(3) of the Constitution; Slovenia: Art. 70 of the Act on the Constitutional Court.

[86] An interesting exception is Latvia, where Section 32(4) of the Constitutional Court Law provides for the mandatory action on the international plan (!), without mentioning the possibility of a constitutional amendment.

[87] An exception is Latvia, where the long list of entitled applicants (including the Ombudsman) for the *ex ante* and the *ex post* review for constitutionality is the same. See Section 17(1) of the Constitutional Court Law.

[88] Since the promulgating act intended to apply the treaty retroactively, the CC examined whether the concerned treaty retroactively made conducts of individuals unlawful, imposed obligations or limited rights – provisions that the constitutional principle of the prohibition of retroactive effect covers. After it found such an effect, it declared

visions of the treaty and the Constitution's *nullum crimen sine lege principle* [Art. 57(4)] which could later be eliminated by the amendment of the Constitution.[89] This Hungarian *Arrest warrant* case has proved that the *ex ante* review can discover certain conflicts between the two legal orders.

The other filter mechanism is the repressive control of a treaty's constitutionality, where the constitutional court may review the domestic act of ratification.[90] This procedure is especially interesting in the sense that it challenges a treaty that has already become applicable in the domestic legal order. However, in the five jurisdictions applying an *ex post* review of international treaties,[91] particular attention must be made to the protection of the principle *pacta sunt servanda*[92] and the possible avoidance of the modification of treaty relations.[93] In Hungary, neither the Act no. XXXII of 1989 on the CC, nor the new Act no. CLI of 2011 on the CC do not expressly refer to the *ex post* review of the constitutionality of international agreements, but the CC confirmed, after several years of inconsistent practice, that it is possible.[94] The review concerns the act promulgating the treaty and the treaty's provisions themselves.[95] As in the case of the *ex ante* review, the CC follows a „treaty-friendly" approach: it held that the decision on the unconstitutionality of a treaty has no effect to the international obligations of the Republic of Hungary. Furthermore, the elimination of the conflict between international and internal law may include even the amendment of the constitution and until this establishment, the CC can suspend the decision-making in respect of the date of the annulment for a reasonable time.[96] Finally, this procedure has served to „approve" *a posteriori* the ratification of international agreements of major importance (as mentioned before: EC Association Treaty, Treaty on the NATO Acces-

---

the challenged provision of the act unconstitutional. See Decisions 7/2005. (III. 31.) AB and 8/2005. (III. 31.) AB.

[89] A opposed to the act on the promulgation of the Agreement on the surrender procedure between the EU Member States, Iceland and Norway, the Hungarian Criminal Code did not contain a statutory definition on the illicit trafficking in hormonal substances and other growth promoters, thus the CC held this provision of the treaty unconstitutional. See Decision 32/2008 (III. 12.) AB.

[90] MORINA – KORENICA – DOLI, 2011. 285.

[91] Bulgaria: similarly to Hungary, it was recognized by the case law of the Constitutional Court, see STOICHEV Krassen: *Constitutional Justice in Bulgaria: Rules and Tendences*. 5., article accessible on the website of the Bulgarian constitutional Court, www.constcourt.bg (12. 12. 2011); Estonia: Art. 15(1)(3) and. 15(3) of the Constitutional Review Court Procedure Act; Latvia: Art. 16(2), 17(1) of the Constitutional Court Law; Lithuania: Art. 105(3), 106(5) of the Constitution and Art. 73(3), 74 of the Law on the Constitutional Court of the Republic of Lithuania; as for Hungary, see *infra*.

[92] See e.g. Constitutional Court of the Republic of Lithuania, Case No. 23/08, 15 March 2011, para. III/10 [„The observance of international obligations undertaken on its own free will, respect to the universally recognized principles of international law (as well as the principle *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (Constitutional Court ruling of 14 March 2006)."].

[93] However, under the constitutions of the three Baltic Member States, the unconstitutionality of the ratified international treaty entails the State's obligation to eliminate the conflict at the international level (by withdrawing from it, or commencing denunciation of the international agreement or amendment thereof in a way which would guarantee its conformity with the national constitution). See *supra*, note 91.

[94] Whereas the CC held in its Decision 30/1990. (XII. 15.) AB that it can review the constitutionality of the provisions of the act promulgating the treaty (but not the treaty itself), its Decision 61/B/1992. AB found the contrary and rejected a similar claim. Finally, in its Decision 4/1997. (I. 22.) AB the CC clarified the situation and confirmed that it had the competence to examine the constitutionality of a promulgated treaty, including both the promulgating law and the provisions of the treaty.

[95] Decision 4/1997. (I. 22.) AB.

[96] Decision 4/1997. (I. 22.) AB.

sion, Lisbon Treaty[97]) in cases where the *ex ante* review had not been requested, without any decision finding an unconstitutionality until now.

To answer our initial question, if one considers the harmony of the domestic legal order as a guarantee of the effective internal application of international treaties,[98] one can conclude that there is no contradiction. The CC also confirmed this idea in its first major decision related to international law, when it held that in case of a domestic act implementing an international obligation, the Court has to examine not only its conformity with an international obligation, but also the international obligation's constitutionality.[99] It added that:

„The constitutionality of an internal act connected to international law must be also examined under other conditions than a norm exclusively concerning domestic law. Depending on the observance of or the disregard for international law, the review of the same norm may lead to different results. Thus, the Constitutional Court must also include in the review for constitutionality paragraph (1) of Article 7, since the harmony required by it forms part of the constitutionality of acts implementing international obligations."[100]

The „treaty-friendly" provisions of the act on the CC (elimination of the conflict eventually by amending the constitution, leaving a reasonable time for preparation before the annulment) and the relatively poor case law of the establishment of an unconstitutionality show that the constitutional control of international treaties does not „oppose" the internationalization of internal law, but supports its harmonious application, especially when the standards are different.

A rarely used remedy: the review of treaty-conformity

Even if neither the 1989 Constitution, nor the Fundamental Law do not recognize expressly the precedence of promulgated international treaties over domestic legislative acts, two procedures of the CC clearly confirm and protect such a hierarchy of sources: the review of the unconstitutionality by omission to fulfill legislative task issuing from an international treaty, and the review of the conformity of acts with an international treaty.

The CC's competence to review the unconstitutionality by omission to fulfill legislative task issuing from an international treaty[101] is a Hungarian particularity that one cannot find in other Central-European States.[102] This competence is based on the idea that the constitutional provision on the harmony between international law and internal law includes not only the prohibition to adopt a legislation violating international obligations, but also the duty of State organs to adopt acts which are indispensable for the enforcement of international treaty obligations.[103] The CC finds an unconstitutionality by omission to fulfill legislative task issuing from an international treaty if an international agreement binding Hungary is not or not properly implemented by domestic legislation - contrary to the Constitu-

---

[97] Decision 30/1998. (VI. 25.) AB. (EC Association Treaty); Decision 5/2001. (II. 28.) AB. (Treaty on the NATO Accession); Decision 143/2010. (VII. 14.) AB (Lisbon Treaty).

[98] The CC confirmed that the Constitution and the internal law must be interpreted so that international law (in the specific case: generally recognized rules of international law) could apply effectively. See Decision 53/1993. (X. 13.) AB, para. III.a.; Decision 14/2001 (IV.9.) AB.

[99] Decision 53/1993. (13 Oct.), para. II.2.

[100] Ibid. (translated by the author).

[101] Art. 1(e), 21(7), 47 of the Act no. XXXII of 1989 on the CC; Art. 46(2)(a) of the new Act no. CLI of 2011 on the CC.

[102] The Slovakian „complaint by natural persons or legal persons objecting to the violation of their basic rights and freedoms, or the basic rights and freedoms ensuing from an international treaty" is a similar institution, although it is based on the concerned individual's request, thus it seems closer to the Hungarian constitutional complaint. See Art. 127 of the Constitution of Slovakia.

[103] Decision 16/1993. (III. 12.) AB.

tion's international law clause [Art. 7(1)] –, which omission results in the violation of constitutionally guaranteed fundamental rights of individuals.[104]

However, this competence has been rarely used by the CC for several reasons: first of all, because only a restricted scope of entitled petitioners has legal standing in this procedure[105] and second, because even if many of them requested the Court to proceed *ex officio*, the Court held consistently that there is no possibility to „request" the *ex officio* proceedings of the CC in that regard.[106] Nevertheless, these limitations did not hinder the Court to undertake the review *ex officio* in certain cases where individuals submitted the request,[107] or where the request was presented in a constitutional complaint procedure,[108] or where entitled petitioners (Members of the Parliament) did not invoke an additional omission to fulfill legislative task issuing from an international treaty.[109] Thus, even if the review of the unconstitutionality by omission to fulfill legislative task issuing from an international treaty is relatively rare, the CC's activism can contribute to its effectiveness.

As for the review of the conformity of acts with an international treaty, the procedure is not unknown in Central-Europe, since five out of the ten Eastern EU member States apply it.[110] In Hungary, this procedure has three particularities:[111] 1. The lack of constitutional basis of the procedure until 2012; 2. The restricted scope of entitled petitioners having legal standing in the procedure; 3. The search for an „unconstitutionality of second degree". It seems useful to detail each of these characteristics.

Ad 1: Whereas the 1989 Constitution does not provide on the procedure of the CC to review the compatibility of domestic acts with binding international treaties, the reference to „the tasks assigned to its jurisdiction by statute"[112] permitted to provide for this competence in the Act on the CC. Unlike the 1989 Constitution, the Fundamental Law clarifies the competences of the CC by adding the responsibility to „examine any piece of legislation for conflict with any international agreement"[113] expressly.

---

[104] Decision 30/1990. (XII. 15.) AB.

[105] As the CC consistently held [see e.g. Decision 45/2000. (XII. 8.) AB], it is the same group of entitled petitioners as in the case of the review of treaty-conformity, based on Art. 21(3) of the Act no. XXXII of 1989 on the CC; Art. 32(2) of the new Act no. CLI of 2011 on the CC.

[106] Decision 4/1997. (I. 22.) AB; Decision 440/D/2001. (7 June 2005) AB; Decision 1053/E/2005 (16 June 2006) AB; Decision 72/2006. (XII. 15.) AB

[107] Decision 30/1990. (XII. 15.) AB; Decision 16/1993. (III. 12.) AB.; Decision 30/2005. (VII. 14.) AB.

[108] Art. 1(e) and 48 of the Act no. XXXII of 1989 on the CC; Art. 24(2)(c)-(d) of the FL and Art. 26-31 of the new Act no. CLI of 2011 on the CC. Under the latter, any individual or organization may lodge a constitutional complaint at the Constitutional Court for the violation of their rights guaranteed by the Constitution, if the injury is consequential to the application of the unconstitutional law by the court (or, exceptionally, directly, without any judicial procedure), and if all other possible legal remedies have been exhausted, or no further legal remedies are available. In its Decision 30/1990. (XII. 15.) AB, the CC undertook the *ex officio* review and found an unconstitutionality by omission to fulfill legislative task issuing from an international treaty.

[109] Decision 54/2004. (XII. 13.) AB.

[110] Bulgaria: Article 149(4) of the Constitution and Art. 12(1)(4) of the Constitutional Court Act, State Gazette No 67/16.08.1991 and e.g. the Constitutional Court's Decision no. 1 of 13 February 2007 on CC No 9/2006; Latvia: Section 16(6) of the Constitutional Court Law and e.g. the Constitutional Court's Judgment of 11 May 2011, Case No. 2010-55-0106 (ECHR) or that of 17 February 2011, Case No. 2010-20-0106 (ECHR); Poland: Art. 188(2)-(3) of the Constitution and Art. 2(1)(2)-(3) of the Constitutional Tribunal Act of 1 August 1997 and e.g. the Constitutional tribunal's Judgment of 31st January 2005, P 9/04 (ICCPR as a basis of decision) or that of 11 October 2011, K 16/10 (Convention on the Rights of the Child); Slovakia: Art. 125(1) of the Constitution and e.g. Ruling of the Constitutional Court of the Slovak Republic Ref. No. II. ÚS 165/02 of 2 October 2002 (ECHR); Slovenia: Art. 160(1) of the Constitution and Art. 21(1) and Art. 22(2) of the Constitutional Court Act.

[111] Concurring opinion of Judge András Bragyova, Decision 1149/C/2011. AB (19. 12. 2011.).

[112] Art. 32/A(1) of the 1989 Constitution.

[113] Art. 24(2)(f) of the Fundamental Law.

Ad 2: Although the CC has not yet published any statistics on the frequency of its different procedures, it seems that the review of non-conformity with an international treaty has rarely been used. One of its reasons is that only a limited group of petitioners, persons holding the highest public offices, could initiate the procedure under the Act no. XXXII of 1989 on the CC.[114] The restriction of the persons having standing considerably limits the number of admissible cases,[115] whereas it seems that even among the mandated persons, only two of them used, in fact, this entitlement: Members of the Parliament, and once, the President of the Supreme Court.[116] On the one hand, the new Act of 2011 on the CC maintains the restricted scope of mandated persons (with slight modifications),[117] but, on the other, the inclusion of the Commissioner for Fundamental Rights might lead to a more important case law in the framework of this review.

However, the CC has the competence to initiate the procedure *ex officio*[118] and the new Act of 2011 on the CC maintains this possibility. Moreover, it provides that the *ex officio* review of the treaty-conformity is possible „in any of its procedures".[119] On the one hand, one can derive the Court's *ex officio* competence to examine the compatibility of any piece of legislation with a ratified and promulgated international treaty from the constitutional obligation to ensure the harmony between domestic law and international law.[120] On the other, the harmony of the domestic legal system without contradictions is a natural requirement of the justice and law enforcement system.

Finally, the conflict between an international treaty and an act of legislation can be a question of a constitutional complaint[121] or of an ongoing judicial procedure, in which case the judge may initiate the review of compatibility of the given act of legislation with an international treaty.[122]

Nevertheless, the CC's activism could contribute to the effective use of the procedure. For example, in one early case, the Court even referred the inadmissible request to the people having legal standing to decide on the submission of the petition.[123] Furthermore, even if the CC could not proceed under the review of the non-conformity with an interna-

---

[114] The Parliament, its standing committees or any MP; the President of the Republic; the Government or its members; the President of the State Audit Office; the President of the Supreme Court; the Chief Prosecutor. See Art. 21(3), 21(7) of the Act no. XXXII of 1989 on the CC.

[115] The total number of petitioners invoking the non-conformity with an international treaty seems relatively high: there are dozens of requests (entirely or partially) found inadmissible since the petitioner was not entitled to initiate the procedure under Art. 21(3) of the Act no. XXXII of 1989 on the CC. See e.g. Decision 42/1993. (VI. 30.) AB; Decision 1/1994. (I. 7.) AB; Decision 23/1995. (IV. 5.) AB; Decision 277/D/1995 (16. 10. 2001.); Decision 1044/B/1997 (6 July 2004); Order 683/B/2000 (24. 11. 2003.); Order 97/B/2002 (10. 11. 2003.); Decision 689/B/2003 (12. 12. 2006.) AB; Decision 20/2005. (V. 26.) AB; Decision 3/2006. (II. 8.) AB; Decision 1/2008. (I. 11.) AB; Order 294/B/2009 (21. 06. 2011.).

[116] The President of the Supreme Court's request: Decision 1149/C/2011. AB (19 December 2011); MP's requests for an unconstitutionality by omission to fulfill legislative task issuing from an international treaty: Decision 988/E/2000 AB (7 October 2003); Decision 54/2004. (XII. 13.) AB; MP's requests for a review of non-conformity of an act with an international treaty: Decision 1/2011. (I. 14.) AB; Decision 1149/C/2011. AB (19. 10. 2011.).

[117] It grants this competence to the Government, one-fourth of the Members of Parliament, the President of the Curia, the Supreme Prosecutor and the Commissioner for Fundamental Rights. See Art. 31(2) of the Act no. CLI of 2011 on the CC. This list does not include the President of the State Audit Office anymore, who, it seems so, has never acted under this competence.

[118] Art. 21(7) of the Act no. XXXII of 1989 on the CC.

[119] Art. 32(1) of the Act no. CLI of 2011.

[120] Explanatory note of the Bill of the later Act no. CLI of 2011, Doc. T/4424 (3. 10. 2011.), 23.

[121] See *supra*, note 108.

[122] Art. 32(2) of the Act no. CLI of 2011.

[123] Order 980/C/1990 (5. 10. 1990.).

tional treaty because of the lack of standing, it was willing to apply the given treaty as a means of interpretation of the Constitution.[124] Moreover, as the abovementioned omission-cases showed, the Court is willing to examine the alleged violation of an international treaty obligation on the merits notwithstanding the lack of procedural entitlement of the petitioner[125] and, if it finds justified, to proceed *ex officio*.

Ad 3: As Judge András Bragyova claims, the non-conformity of an act with an international treaty is an „unconstitutionality on the second degree":[126] the norm, contrary to the international treaty is in itself, materially not unconstitutional, but it does violate the constitutional rule of *pacta sunt servanda* enshrined in Art. 7(1) of the 1989 Constitution/Art. Q(2) of the FL.[127] Thus it is unconstitutional, because its content violates a treaty concluded by Hungary currently in effect, contrary to the international law-clause of the Constitution.

One can ask what is the rank of the requests to be examined by the CC if the petitioner based his or her requests both on the non-conformity with an international treaty and on the material violation of the Constitution. In most cases, where the Court could find a material breach of the Constitution, it finished the procedure and avoided the review of the non-conformity with an international treaty.[128] As an exception, in a recent case, the CC annulled four paragraphs of the Code of Criminal Procedure based both on the violation of the Constitution and that of the ECHR.[129] However, the review of the non-conformity with an international treaty is necessary when the act is found in conformity with the material provisions of the Constitution, or when the petitioner did not invoke the material violation of the Constitution.[130] The latter ground justified the Decision 1/2011. (I. 14.) AB, where the CC annulled an annex of a ministerial decree exclusively on the basis of an international treaty. In any case, it seems worth to base the request both on the non-conformity with an international treaty and on the material violation of the Constitution, since in case of a different standard, one legal order may materially be breached, whereas the other may not.[131]

Finally, in the future, the review of the „unconstitutionality of second degree" is susceptible of becoming a powerful arm against domestic acts violating international law, which cannot be challenged under the material breach of the FL. As a result of the strongly disputed amendment of the competence of the Constitutional Court, namely the limitation of its competence in the review of acts in the domain of financial matters,[132] any request of

---

[124] See e.g. Decision 59/2006. (X. 20.) AB.

[125] Decision 380/B/2004 AB (2. 07. 2007.), para. II/2.; Decision 23/2010. (III. 4.) AB, para. III/1.3.; Decision 184/2010. (X. 28.) AB, para. III.7. In these decisions, the Court found the petitioner's request to examine the compatibility of a Hungarian act with an international treaty inadmissible, but impliedly examined the question, giving a short remark on the merits of the question.

[126] Concurring opinion of Judge András Bragyova, Decision 1149/C/2011. AB (19. 12. 2011.).

[127] Ibid.

[128] Judge András Bragyova endorses this way of proceedings CC. See Ibid.; see e.g. Decision 1279/B/2011. AB (19. 12. 2011.).

[129] Decision 1149/C/2011. AB (19. 12. 2011.). According to Judges Bagyova and Dienes-Oehm, there is no double unconstitutionality and the CC must have based its decision on one particular ground.

[130] Concurring opinion of Judge András Bragyova, Decision 1149/C/2011. AB (19. 12. 2011.).

[131] In the Decision 1149/C/2011. AB (19/12/2011), the CC could not hold that the provision prohibiting the access to legal assistance for forty-eight hours (2nd phrase of 554/G. § of the Code of Criminal Procedure) in itself violates in all circumstances the ECHR, but found that it does violate Art. 57(3) and (5) of the Constitution. In other words, the test developed by the Constitutional Court („the right to legal assistance can only be restricted to an indispensably necessary and proportionate extent, but its essential content cannot at all be restricted") was higher than the standard of the ECHR case law.

[132] See the amendment of the 1989 Constitution (Art. 32/A) and that of the Act no. XXXII of 1989 on the CC (Art. 40) entered into force on 20 November 2010. The new FL and the new Act no. CLI of 2011 on the CC.

review of acts in financial matters that does not invoke any of the exceptional grounds (violation of the right to life and human dignity, the right to the protection of personal data, the right to freedom of thought, conscience and religion or the rights connected to Hungarian citizenship) must be rejected by the Court.[133] Whereas the 1989 Constitution clearly states that in such a request, the CC must not review the challenged statute, the new FL adopted minor modifications in the restriction of the competence of the CC.[134] What matters here is that the FL provides for the precise competences of the CC to which the restriction applies: it limits the exclusion of the review to the Court's „competence set out in Article 24(2)b-e)" (procedures of *ex post* review of constitutionality), which does not cover the review of treaty-conformity [Art. 24(2)(f)]. Thus, it seems that the persons holding public offices, including the Commissioner for Fundamental Rights, having the right to initiate the review of treaty-conformity, can challenge even the „untouchable" statutes of financial matters, if they base their request on the violation of a ratified international treaty such as the ECHR. It seems that the Constitutional Court's policy to interpret the restriction of its competence in financial matters restrictively and the exceptions under this rule extensively[135] may endorse such a petition.[136]

In sum, the multiple interactions between international law and internal law open the door to different legal conclusions drawn from the same legal provisions. In the procedure of the CC, the review of the unconstitutionality by omission to fulfill legislative tasks issuing from an international treaty, and the review of the conformity of acts with an international treaty have been rarely used. Nevertheless, the interconnectivity of the two legal orders allows petitioners for some procedural strategies, such as founding the request both on the non-conformity with an international treaty and on the material breach of the FL or the use of the review of treaty-conformity to challenge statutes of financial matters which seem to violate fundamental rights.

Conclusions

The new Fundamental Law's Art. Q has neither altered the status of the sources of international law in internal law, nor has added any novelty, except for the recognition of the special transformation of treaties. Nevertheless, the real novelty is, or can be the enhanced role of international treaty law in the practice of the Constitutional Court. Recent modifications in the procedure of the CC may result in a case law in which invoking international law can be a remedy. Especially the Commissioner for Fundamental Rights' initiative and the Court's activism to initiate the *ex officio* review of the treaty-conformity „in any of its procedures" may enhance the importance of international law in the procedure of the CC. As the last part explained, international law could even serve as a „last resort" to bypass the restriction of the CC's competence in financial matters, in order to eliminate any legislation violating international, especially international human rights obligations.

---

[133] 1/2011. (VI. 21.) számú Tü. állásfoglalás (*az Alkotmánybíróság pénzügyi tárgyú törvények alkotmányossági felülvizsgálatára vonatkozó szűkített hatáskörébe tartozó ügyekben benyújtott indítványok elbírálásának egyes kérdéseiről*) [Opinion of the Plenary Session of the Constitutional Court (*on certain questions of the decision on petitions submitted in cases concerning the restricted competence of the Constitutional Court to review the constitutionality of legislative acts of financial matter*)], para. I/1(b).

[134] Namely, it added a time limit („As long as state debt […]") and the CC's „the unrestricted right to annul the related Acts for non-compliance with the Fundamental Law's procedural requirements for the drafting and publication of such legislation." See Art. 37(4) of the FL.

[135] 1/2011. (VI. 21.) számú Tü. állásfoglalás, para. I/5.

[136] For another opinion, see JAKAB, 2011. 281-282.

Summary
The present article argues that even if Art. Q of the Fundamental Law has not made major changes in the status of international law in internal law, the procedures before the Hungarian Constitutional Court (CC) provide real, but rarely used possibilities to enhance the role of international treaties in the search for harmony between the two legal orders. Recent modifications in the procedure of the CC may result in a case law in which invoking international treaties can be a remedy. Especially the Commissioner for Fundamental Rights' initiative and the Court's activism to initiate the *ex officio* review of the treaty-conformity „in any of its procedures" may enhance the importance of international law in the procedure of the CC. Finally, international law could even serve as a „last resort" to bypass the restriction of the CC's competence in financial matters, in order to eliminate any legislation violating international, especially international human rights obligations.

ANTAL BERKES

„Das Völkerrecht nach dem ungarischen Grundgesetz und die Verfahren vor dem Verfassungsgericht".

(Zusammenfassung)

Dieser Artikel behandelt das Verhältnis von Völkerrecht und nationalem Recht: auch wenn Art. Q des Grundgesetzes keine größere Änderungen im Status des Völkerrechts im nationalem Recht vorgenommen hat, die Verfahren vor dem ungarischen Verfassungsgerichtshof (VfGH) stellen reale, aber selten verwendete Möglichkeiten zur Verfügung um die Rolle der Völkerrechtsverträge in der Harmonisierung der zwei Rechtsordnungen zu verstärken. Die neuen Änderungen im Verfahren des VfGH können zu einer Rechtsprechung führen in der die Anwendung von Völkerrechtsverträge ein Rechtsmittel sein kann. Besonders die Initiative des Ombudsmanns für Grundrechte und das Aktivismus des Gerichtshofs den Verstoß von Rechtsvorschriften gegen internationale Verträge „in jedem seiner Verfahren" *ex officio* zu untersuchen können den Wert des Völkerrechts im Verfahren des VfGH verstärken. Zum Schluss, das Völkerrecht kann als letztes Mittel dienen um die Einschränkung der Kompetenz des VfGH in finanziellen Sachen umzugehen, um irgendwelche Gesetzgebung, die das Völkerrecht, besonders internationale Menschenrechtspflichte verletzt zu beseitigen.