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How to Protect the Fundamental Rights to Citizens in China and Hungary: Access to the Justice according the Constitution

Content

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Constitutional Review
System

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1. Definition of Constitutional Review System

Clarify the notion of “constitutional review”

In Vanberg’s book, constitutional review is defined as “the power of judicial bodies to set aside ordinary legislative or administrative acts if judges conclude that they conflict with the Constitution.”

Georg Vanberg, *The Politics of Constitutional Review in Germany* (1st edn, Cambridge University Press, 2005).

1. Definition of Constitutional Review System

In Visser's opinion, the broad sense of constitutional review referred to "the process of assessing whether one's own behavior or that of other actors is in line with the Constitution and other texts or principles with a constitutional rank or role."

Maartje de Visser, *Constitutional Review in Europe: A Comparative Analysis* (1st edn, Hart Publishing, 2015).

1. Definition of Constitutional Review System

Some key words from the two definitions:

- A process procedure
- Objects: Acts or laws and personal behavior
- Question: Is it in line with the Constitution?

2. Constitutional Review System in Hungary

---Establishment of Constitutional Review System in Hungary:

After the Hungarian national round table, Hungary initiated a new constitutional supervisor organ, Constitutional Court. The detailed provisions of this new organ had been presented in the Act XXXII of 1989, which adopted on 29 October 1989.

2. Constitutional Review System in Hungary

---Establishment of Constitutional Review System in Hungary:

In practice, National Assembly in Hungary elected the first five Constitutional Judges in November of 1989. With the result of election, Constitutional Court of Hungary commenced its constitutional review system on 1st January 1990. The rest six Constitutional Judges were elected in June of 1990 by the freely new elected National Assembly.

Janos Kis, *Constitutional Democracy* (Zoltan Miklosi tr, 1st edn, CEU Press). However, in the introduction of the official website of Constitutional Court of Hungary, it mentioned only five Judges were elected. Constitutional Court of Hungary, 'Brief history of the Constitutional Court of Hungary' <<http://hunconcourt.hu/history/>> accessed 9 December 2017.

2. Constitutional Review System in Hungary

---Early practices:

In the early year of the operation of Constitutional Law in Hungary:

1. The first Decision has been published on 24 January 1990 in Budapest.

2. A series of Constitutional Decisions has been published by Constitutional Court of Hungary, in order to (re)establish rule of law (Rechtsstaat) in Hungary.

1. Database of Constitutional Court of Hungary
<<http://public.mkab.hu/dev/dontesek.nsf/0/1A128268B623ECA8C1257ADA00525779?OpenDocument>>, accessed 29 December 2017.

2. Maartje de Visser, *Constitutional Review in Europe: A Comparative Analysis* (1st edn, Hart Publishing, 2014) 343.

2. Constitutional Review System in Hungary

---The Latest Case on Change of Name:
According to the currently Constitution of
Hungary:

- c) shall, on the basis of a constitutional complaint, review the conformity with the Fundamental Law of any legal regulation applied in a particular case;
- d) shall, on the basis of a constitutional complaint, review the conformity with the Fundamental Law of any judicial decision;

Constitution of Hungary, Article 24,
<http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

2. Constitutional Review System in Hungary

---The Latest Case on Change of Name:

The applicant, a transsexual foreign citizen lodged a constitutional complaint seeking the annulment of Decision 36.Kpk.45.927/2016/4 of the Budapest-Capital Administrative and Labour Court (Administrative Court).

<http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis%20ongoing/eng/eur/hun/hun-2018-2-001>

2. Constitutional Review System in Hungary

---The Latest Case on Change of Name:

The applicant had previously been granted refugee status by the Hungarian authorities as he had been pursued in his home country due to his trans-sexuality. The applicant filed an application for gender reassignment with the Immigration and Asylum Office, as his official documents identified him as female but this description did not match his real gender identity.

The Office rejected his request stating that there was no procedure or formal decision-making process available to cover these issues. The reason for the rejection was that the Office had no competence at all in this field and it could not refer the case to a competent authority for the applicant's birth certificate to be amended since his birth had not been registered in Hungary.

<http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis%20ongoing/eng/eur/hun/hun-2018-2-001>

2. Constitutional Review System in Hungary

---The Latest Case on Change of Name:

The Constitutional Court rejected the constitutional complaint.

However, The Constitutional Court holding the opinion that, the existence of a lack of conformity with the Fundamental Law manifested in an omission and called upon the National Assembly to regulate, by 31 December 2018, the procedure of the change of surname of lawfully settled non-Hungarian citizens.

<http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis%20ongoing/eng/eur/hun/hun-2018-2-001>

<https://hunconcourt.hu/kozlemeny/the-constitutional-court-made-a-decision-in-the-case-of-a-transsexual-refugee/>

Decision in Hungarian:

https://alkotmanybirosag.hu/uploads/2018/01/abk_2018_21_alairt.pdf

2. Constitutional Review System in Hungary

---An interesting Study on Constitutional Justices in Constitutional Court of Hungary

Zoltán Szente, 'The Political Orientation of the Members of the Hungarian Constitutional Court between 2010 and 2014' (2016) , Vol. 1 Issue 1, *Constitutional Studies*.

TABLE 3. The rate of support for the government's policies through voting behavior of the judges nominated by the rightist pa

Judges	Proportion pro governn
<i>István Balsai</i> (30)	0.966
<i>Béla Pokol</i> (34)	0.911
<i>László Salamon</i> (20)	0.9
<i>Mária Szívós</i> (35)	0.885
<i>Egon Dienes-Ohm</i> (35)	0.828
<i>Imre Juhász</i> (17)	0.823
<i>Barnabás Lenkovics</i> (37)	0.783
<i>Péter Szalay</i> (33)	0.727
<i>Elemér Balogh</i> (37)	0.432
<i>István Stumpf</i> (36)	0.447
<i>Péter Kovács</i> (36)	0.361
<i>Mihály Bihari</i> (12)	0.25

Judges elected after July 2010 are in italics. The number of decisions in which judge took part are in parentheses.

3. Constitutional Review System in China

Does Constitutional Review System Exist in China?

Article 62 The National People's Congress exercises the following functions and powers:

- (1) to amend the Constitution;
- (2) to supervise the enforcement of the Constitution;

Article 67 The Standing Committee of the National People's Congress exercises the following functions and powers:

- (1) to interpret the Constitution and supervise its enforcement;

Constitution of People's Republic of China, 1982
<http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372965.htm> accessed 8 January 2018.

3.
Constitutional
Review System
in China



You changed my whole life.

3. Constitutional Review System in China

An introduction of Qi Yuling case: Marbury v. Madison in China?

Plaintiff, Qi Yuling, female, 28 years old (in 2001), lives in Shandong Province.

Defendant, Chen Xiaoqi, female, the same age in 2001 and lives in Shandong province.

In 1990, Qi passed the entrance examination, Chen did not. However, with the help of Chen's father, Chen got Qi's admission letter and had the chance to attend the school and got her further education.

11 years later, Qi was unemployed, Chen got a job in Bank of China. Finally, Qi found that her right of education was infringed by Chen and sued Chen Xiaoqi et al. In 1999, the Final Decision made by Shandong Higher People's Court in 2001.

3. Constitutional Review System in China

On July 24, 2001, the Supreme People's Court of China promulgated a new judicial interpretation.

In this official Reply, Supreme People's Court of China mentioned that Chen Xiaoqi infringed Qi Yuling's education right which is regulated in Constitution.

However, On December 18, 2008, the Supreme Court annulled the Reply to Qi Yuling's Case. The reason given for the annulment of the Reply was that the Reply was "no longer applicable."

Zhiwei Tong, 'A Comment on the Rise and Fall of the Supreme People's Court's Reply to Qi Yuling's Case' (2010) Vol. XLIII *Suffolk University Law Review*.

4. Conclusion

Hungary:

A typic European constitutional review system in the structure sense has been fully established.

In practice, still need to be improved.
Constitutional crisis in the future?

4. Conclusion:

China:

The future of constitutional review system in China:

Slowly, but in progress.

It is more and more widely accepted by scholars. However, there are numerous works need to be done, in order to establish the constitutional review system in China.

Thank you for your attention!

