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**Judicial protection and interpretation  
of the right to take part in a referendum  
– an overview of the jurisprudence  
of the Hungarian Constitutional Court  
and the Supreme Court<sup>1</sup>**


## 1. Introduction

Today, the right to take part in a referendum is a fundamental right of political participation besides the right to vote or to stand as a candidate in parliamentary elections. Since it is a genuine fundamental right, the Constitutional Court (CC) interpreted its authentic meaning and stipulated the most important constitutional requirements surrounding this right.

One of the most important requirements was the creation of a remedy system, where the final decision on the certification of a question proposed for a referendum must be taken by the CC. Parliament fulfilled this legislative requirement and starting with 1998 the CC controlled the constitutionality of decisions taken by the National Election Committee on the certification of referendum questions proposed. The 2013 Act on referendum transferred this competence to the Supreme Court. Since then, the CC shall only decide referendum-cases which were submitted with the so-called ‘direct constitutional complaint’, an extraordinary type of constitutional remedy.

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<sup>1</sup>  SUPPORTED BY THE ÚNKP-17-4 NEW NATIONAL EXCELLENCE PROGRAM OF THE MINISTRY OF HUMAN CAPACITIES

This paper compares these two remedy systems created for the protection of the right to take part in a referendum, following an overview of the history of this right's evolution and the analysis of this right's structure – based on the jurisprudence of the CC and insights from scholarship.

## 2. A fundamental right is born

In the course of the nearly three-decade-long history of the third Hungarian Republic, the instrument of referendum played an important role in the political and constitutional system. For example, the first referendum was held just one month after the 'regime changing' constitutional amendment which came into effect on 23 October 1989. The so-called "four-times-yes referendum"<sup>2</sup> was initiated by four parties of the former opposition and thanks to its success the President of the Republic was elected at the constitutive session of the parliament formed in April 1990. This led to the amendment of the procedure for the election of the head of state, a system originally conceived by the "national roundtable"<sup>3</sup> which has as its aim to prevent the appointment of a socialist politician.<sup>4</sup> Hence, one of the crucial turning points of the change of political regime was decided by way of referendum, it had an influence on the form of the government, the system of separation of powers and finally, it prevented the Socialist Party from retaining the power.

While this form of direct democracy was of key significance, exercising referenda was not based on a fundamental right, since the 1989 text of the Constitution did not set forth the right to take part in a referendum. It merely declared that the people shall exercise their power "through their elected representatives or directly."<sup>5</sup> With a 1994 amendment of the Constitution<sup>6</sup> the right to take part in a referendum became a genuine funda-

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<sup>2</sup> The commonly known name of this referendum derived from the number of questions posed in this referendum and the initiating parties' suggestion for the outcome of the vote ("yes" instead of "no").

<sup>3</sup> The National Roundtable was a special body involved in the change of the regime, which included the state party (Hungarian Socialist Party of Workers), the oppositional forces (which could not function as real political parties owing to the single party system) and the so-called "Third Party" (quite weightless next to the state party and the opposition). The role of the National Roundtable was to ensure a peaceful change of the regime, to prevent a revolution. Decisions made by the National Roundtable were accepted by the parliament of the party state, so the Roundtable – and not the parliament – was the forum of real political negotiations and decision-making in questions which were crucial for the democratic transition.

<sup>4</sup> The direct election of the head of state would have presumably resulted in the victory of a socialist politician, because just after the change of the regime, socialist politicians were well known by the people.

<sup>5</sup> Act XX of 1949 on the Constitution of the Republic of Hungary Article 2 (2).

<sup>6</sup> Act LXI of 1994 on the modification of Act XX of 1949 on the Constitution of the Republic of Hungary

mental right.<sup>7</sup> Between 1989 and 1994 the right to take part in a referendum was provided for and regulated by the Act on referendum.<sup>8</sup> The only constitutional basis for exercising direct democracy was the above-mentioned general declaration in the constitution on the forms of democracy. But this also meant that there was no constitutional restriction on the concrete method(s) of exercising direct democratic power. The exercise of direct democratic power may take several forms: from the compulsory referendum through agenda initiatives<sup>9</sup> to the exercise of the freedom of assembly.<sup>10</sup> At the same time, the textual – and restrictive – interpretation of the constitutional provision would allow for the abolition of the referendum as long as one – necessarily weaker – form of direct democracy exists.<sup>11</sup> Nevertheless, in 1991, CC opted for a different interpretation of Article 2 (2) of the Constitution, and declared that “the right to take part in a referendum is a fundamental right derived from the sovereignty of the people.”<sup>12</sup> Thus, the right to take part in a referendum was treated as a fundamental right in the period between 1991 and 1994, notwithstanding the fact that it was (merely) based on the CC’s extensive interpretation of the principle enshrined in the Constitution.<sup>13</sup>

Irrespective of the CC’s 1991 decision, the 1994 referendum got a more solid – codified – constitutional basis, creating a new model of referendum:

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<sup>7</sup> Article 70 (1) of the Constitution: “All adult Hungarian citizens residing on the territory of the Republic of Hungary have the right to be elected and the right to vote in parliamentary elections, local government elections or minority self-government elections, provided that they are present in the country on the day of the election or referendum, and furthermore to participate in national or local referenda or popular initiatives.”

<sup>8</sup> Act XVII of 1989 Article 2 (1): “Voters have the right to take part in a referendum and people’s initiative.”

<sup>9</sup> For the forms of direct democracy see: V. Beramendi et al., *Direct Democracy. The International IDEA Handbook. International Institute of Democracy and Electoral Assistance*, Stockholm, 2008.

<sup>10</sup> Although it is quite strange to classify the freedom of assembly as a form of direct democracy, it is based on the decision no. 30/2015. (X. 15.) of the Constitutional Court, which stated that “the freedom of assembly shall be interpreted as a manifestation of direct democracy.”

<sup>11</sup> Gyórfi, T. et al, 2. § *Alkotmányos alapelvek; ellenállási jog [Constitutional principles, right to resistance]*. [in] *Az Alkotmány kommentárja. [Commentary of the Constitution]*, Jakab A., Századvég, Budapest, 2009, 227. footnote 355.

<sup>12</sup> Decision no. 987/B/1990/3. of the CC.

<sup>13</sup> Hereby it must be noted that the extensive interpretation of the Constitution was a common phenomenon in the CC’s judiciary, especially in the first era of its operation. The so-called “Sólyom Court” – which was named after the president of the CC – developed the concept of the “invisible constitution” in the 1990s, one that was composed of decisions of the CC. Its name expressed that the real meaning of the Constitution could not be read out from the Constitution’s text, it became visible only through the judiciary of the CC – and the CC stipulated for itself a great freedom in interpretation of the Constitution. After the millennium – thanks to the personal changes in the body – the level of the CC’s activism consolidated.

a fundamental right. Since the emergence of the institution of referendum raised a special aspect of the separation of powers by directly involving the people in legislation,<sup>14</sup> the new model also impacted on the parliament's autonomy (increasing its constitutional elbow-room).

A constitutional amendment which came into effect in 1997 also affected the scope of the right to take part in a referendum. Namely, several detailed rules on the scope of this right were enshrined in the Constitution, such as the requirements surrounding the initiation of a referendum (e.g., the subject-matter of the referendum must fall under the competence of the parliament, meanwhile, several subject-matters were also excluded from referenda at the time).<sup>15</sup>

Hungary's new Constitution of 2011, the so-called Fundamental Law, preserved the right to take part in a referendum as a fundamental right. It followed the 1997 regulatory model on the detailed regulation of direct democracy, albeit the list of excluded subject-matters was partly amended.<sup>16</sup> However, it was not just the constitutional provisions that were renewed after 2010: new acts on referendum<sup>17</sup> and the electoral procedure<sup>18</sup> were adopted by Parliament. In what follows, the paper focuses on one of the changes introduced by the new legislation: the new model of protection of right to take part in a referendum.

### 3. Models for protecting the right to take part in a referendum

Just as the evolution of the right to take part in a referendum, the creation of the system for protecting the right was not a straightforward process, involving several changes to the protection models of the referendum process.

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<sup>14</sup> B. Ackerman, *The New Separation of Powers* "Harvard Law Review" 113 3 (2000) 667.

<sup>15</sup> The 1997 constitutional amendment not only elevated the rules on excluded subject-matters to the level of the constitution, but enlarged the scope, the number of excluded topics, too. The 1989 Act on referendum contained only three excluded subject-matters (fiscal questions, personnel decisions and topics relating to international treaties), while the 1997 constitutional amendment listed ten (!) excluded topics. It must also be noted that the most important excluded subject-matter – the amendment of the Constitution – was established by the CC in its decision no. 2/1993. (I. 22.). The case demonstrated the importance of the level of regulation: although the Act on referendum expressly declared that a new constitution shall be reinforced by a national referendum, the Constitutional Court excluded the people from partaking in the constitution-making power, as this is the exclusive competence of Parliament.

<sup>16</sup> Article 8 of the Basic Law.

<sup>17</sup> Act CCXXXVIII of 2013 on Initiating Referenda, the European Citizens' Initiative and Referendum Procedure.

<sup>18</sup> Act XXXVI of 2013 on Electoral Procedure.

### 3.1. The parliament-centred model

In the first years of the Third Republic, the right to take part in a referendum was not supported by a real – judicial – protection mechanism. The first Act on referendum<sup>19</sup> established a parliament-centred model of referendum procedure. The procedure officially kicked off with the delivery of at least 50.000 signatures to the parliament's speaker. The certification of the submission meant only checking the number of valid signatures.<sup>20</sup> There was no preliminary control of the referendum-question to ascertain whether it meets the requirements set forth by the act (i.e., that it falls under the competence of the parliament, and does not pertain to any of the excluded subject matters). This had two important consequences: (1) at the time the signatures were collected it was not for certain that the question put forward by the referendum initiative was even admissible; and (2) that it was the parliament that was to decide on the admissibility of the question (whether it pertains to any excluded subject matter, etc.).

This raised a serious question: is the parliament, as a political body, the appropriate forum for deciding on the legal admissibility of the referendum question initiated? In other words: is this a political or a legal question? Can Parliament be the ultimate guardian of the right to take part in a referendum, a right that, in fact, challenges its autonomy?

From the textual perspective it is questionable whether the lack of judicial protection was unconstitutional or not. The right to take part in a referendum was a statutory right, since the 1989 Act on referendum contained it as the right of each voter. The “ubi ius, ibi remedium” is a general principle in democracies,<sup>21</sup> but the exact scope of the right to legal remedy stipulated in the Hungarian Constitution restricted this requirement, because it read: “In the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions, which infringe on his rights or justified interests.”<sup>22</sup> Since Parliament is not a judicial, administrative body nor an authority, there was no express constitutional basis for creating a remedy against

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<sup>19</sup> Act XVII of 1989.

<sup>20</sup> The 1998 and 2013 Acts on referendum treat the certification of initiated questions and the verification of supporting signatures (i.e. the checking of the number of valid signatures) as different institutions.

<sup>21</sup> See also *Marbury v. Madison* 5 U.S. 137 (1803): “The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right. [...] [W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.”

<sup>22</sup> Act XX of 1949 Article 57 (5) In this context “official decision” means “decision made by an authority (part of the executive power).”

a parliamentary resolution ordering a referendum or rejecting it. Meanwhile, the situation remained unchanged notwithstanding the 1991 decision of the CC, who declared the right to take part in a referendum to be a fundamental one. In fact, even after the 1994 constitutional amendment that enshrined this right into the text of the Constitution the situation remained the same, since the right to legal remedy was not premised on the statutory or fundamental character of the right concerned. In conclusion, it may be noted that when it came to the right to take part in a referendum, the text of the Constitution required a lower level of protection than what should have been guaranteed based on general democratic principles and common sense (namely, it could be the case that it is not in the interest of Parliament to order a referendum).

### 3.2. The Constitutional Court-centred model

In its decision no. 52/1997. (X. 14.) the CC set forth the constitutional requirement that the remedy of a constitutional complaint against decisions on referendum be established, for taking part in a referendum is a fundamental political right. The CC further declared that the preliminary control of the constitutionality of initiated referendum questions must be ensured.

The timing of the CC' decision was quite peculiar: as outlined above, the right to take part in a referendum had been a fundamental right since 1991, that is, the CC waited six years before stipulating these constitutional requirements. Otherwise it was clear that the lack of remedy against the Parliament's resolution on the ordering or rejecting of a national referendum was unconstitutional irrespective of whether the right concerned was a fundamental right or just a statutory right.

In its decision, the CC examined the structure of the right to take part in a referendum. Firstly, it clarified, that this right covers both participation in voting in the referendum (the narrow substance of this right) and submitting the referendum initiative, supporting the initiative by signing it and, what is implied: the collection of signatures (broader substance of this right).

Secondly, the CC distinguished between the permissible levels of restricting the right to take part in a referendum depending on the status of the referendum process. In the majority of cases (the initiation, the collection of signatures, supporting the referendum initiative by signing it, taking part in the voting) the right may be restricted according to the general test governing the restriction of fundamental rights<sup>23</sup> – this means the subjective side of this right, because individual rights are affected in these cases. However, there are several points in the process, where the objective

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<sup>23</sup> The test has been termed “the necessity and proportionality test”.

side of the right will be stronger than the protection of individual rights. This aspect is particularly apparent at the point where the certification of the referendum question initiated takes place (namely, the checking of its admissibility), because at this point, the whole constitutional system is affected by the referendum process. The protection at this point is aligned with the constitutional function of the referendum. While the CC did not expressly emphasize this, in practice, this meant that at the time the level of protection was lower than the strict general test for the restriction of fundamental rights.

Thirdly, the CC declared that the protection of the objective side of the right to take part in a referendum must be reinforced by procedural guarantees, to ensure that referenda initiated can in fact be held with no political factors influencing the process, apart from the will of the voters. This requirement made the establishment of legal controls and remedies necessary at several points of the process. The CC stated that this control shall be ensured by the ordinary courts or by the CC itself. While the CC did not differentiate between the two types of legal control on the ground of the decision, the operative part of the decision stipulated the mandatory involvement of the CC in the system of remedies against certification decisions.<sup>24</sup>

Parliament fulfilled these constitutional requirements, establishing the National Election Committee (NEC) as a body responsible for the preliminary<sup>25</sup> certification of referendum questions submitted with the CC controlling the decisions rendered by the NEC. The ordinary remedy forum of NEC's decisions was the CC, which was empowered and obliged to control whether the NEC's decisions conformed to the requirements laid down in the Constitution and in the Act on referendum. In fact, this competence is an outlier among the ordinary competences of the CC, which are related only to constitutional issues.

Parliament elaborated a detailed referendum process in 1998, with explicit regard to the right to remedy. Besides supervising the certification of referendum questions, the CC controlled Parliament's resolutions ordering or rejecting referenda. Ordinary courts – namely the Supreme Court – were the remedy forum proceeding in cases where NEC's decisions rendered on the authentication of the number of supporting signatures, the number of votes and issues relating to referendum campaigns, were challenged. Although the ordinary courts also held remedy competences, the most important points of the process were controlled by the CC with the opportunity

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<sup>24</sup> Although this paper focuses primarily on the models established for the protection of the right to take part in a referendum, it must be mentioned that the CC extended its own scope of competences with this decision. Later, this competence of the CC acquired great significance and, with it, the CC actually strengthened its status in the system of separation of powers to the detriment of Parliament.

<sup>25</sup> It was preliminary, because it preceded the collection of signatures.

to influence the NEC's practice, developing hereby the conditions of direct democracy on the national level. Since the CC had the final say on the most crucial points of the referendum process, this system is called a Constitutional Court-centred model.

Of course, the CC-centred model has both its benefits and disadvantages. The most important argument in favour of this model is the strong constitution-centredness of the certification of referendum questions. The interpretation of the requirements governing the referendum questions certification (both as to whether it falls under Parliament's competence and is not an excluded subject-matter) and the relationship between direct and representative forms of democracy (fine-tuned by each decision rendered on the certification of a referendum question) go to the heart of constitutionalism, often resulting in "hard cases". From this point of view, the most competent forum for taking the final decision on the referendum questions certification is the CC. The difficulty of this task is well evidenced by the fact that in respect of the scope of parliamentary competence, the CC changed its jurisprudence twice within just two decades.<sup>26</sup> But the interpretation of several excluded subject-matters – such as hidden amendments of the constitution or questions concerning fiscal issues – were also specified in the CC's practice, which must be interpreted in the light of other rules and principles of the Constitution. Owing to its competence in referendum cases, the CC could develop a consistent practice on issues related to referenda and other cases, too.

The biggest disadvantage of this model was that it exacerbated the case-load of the CC. Especially in 2006 and 2007, when the number of referenda initiated and remedy cases was extremely high, with their topics often frivolous,<sup>27</sup> adjudicating these cases necessitated ample time, increasing the number of remainder cases.<sup>28</sup>

### 3.3. The Curia-centred model

In the framework of the general overhaul of Hungary's legal system between 2010 and 2014, the referendum procedure and the competences of the

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<sup>26</sup> Erdős Cs., *A rendeleti szabályozás esete az Országgyűlés hatáskörével – avagy az Országgyűlés hatáskörébe tartozás mint népszavazási szűrő értelmezésének változásai.* [Changes in the Interpretation of the Parliament's Competence as a Filter of Referendum Initiatives.] [in] *Új Nemzeti Kiválóság Tanulmánykötet.* [Proceedings of New National Excellence Program] Széchenyi István Egyetem, Győr, 2017, p. 168-179.

<sup>27</sup> For example: "Do you agree that beer shall be free in restaurants and bars?" or "Do you agree that the President of the Republic shall use a scooter instead of a ministerial car?" Although these questions are obviously inappropriate for a referendum, the decision-making was nevertheless surprisingly complex.

<sup>28</sup> In 2010, the CC faced a four-year (!) delay. See: [https://alkotmanybirosag.hu/uploads/2017/08/statisztika\\_2010.pdf](https://alkotmanybirosag.hu/uploads/2017/08/statisztika_2010.pdf)



CC were also amended. The first step of the referendum procedure remained almost unchanged: the NEC decides on the certification of the referendum questions initiated. The remedy forum against NEC's decision changed: the Curia – formerly named SC – became the general control body of the NEC.

This change positively impacted on the case-load of the CC and clearly shows that the legislator sought to develop the Curia into a general forum of administrative supreme court.<sup>29</sup> This strengthening of the ordinary judiciary resulted in the weakening of the CC. Although the will of the legislator is clear, the disadvantages of this model must also be mentioned. Firstly, as a formal aspect, the issue of case-load should be addressed: Curia judges have a much higher case-load, than the members of the CC, owing to their other competences. Accordingly, the Curia can dedicate much less time to a referendum case than the CC.<sup>30</sup> This is all the more problematic if we take into account the difficulty of these cases. As mentioned above, several aspects of the certification of referendum questions require an interpretation of the Constitution. Apart from the lack of time, another problem may be raised in relation to the interpretation of the Constitution: due to the Curia's new competence, the number of the constitution-interpreting body's members was doubled. Although the decisions of the CC are binding upon everyone, in practice, the Curia can cut itself adrift from the CC. The reason for this is quite simple: the real chance to relegate the Curia's decision to the CC is quite low. With 2012 the institution of constitutional complaint was extended and, following the German model, the so-called 'real constitutional' complaint was introduced by the Fundamental Law and the 2011 Act on the CC.

The point of the real constitutional complaint is to create a quasi-remedy forum against the decisions of the ordinary courts if they are based on an unconstitutional interpretation of the law. The real constitutional complaint is not an ordinary type of remedy,<sup>31</sup> and it is really difficult to submit an admissible complaint. The following requirements must be met for an admissible complaint:

- a) it can be submitted by the person or organisation affected by the court decision;
- b) the court decision is contrary to the Fundamental Law;
- c) the court decision violates their rights laid down in the Fundamental Law, and

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<sup>29</sup> The strengthening of the ordinary judiciary, especially the Curia, also had another aspect: the largest share of cases relating to the scrutiny of local self-governments' decrees was transferred to the competence of the Curia from the CC.

<sup>30</sup> Radics K.A., *Ami a Parlamentet is köti: népszavazás a jogalkalmazók szemszögéből*. [By What Even the Parliament is Bound: Referendum from the Point of View of those Applying the Law] "Parlamentari Szemle" ["Parliamentary Review"] 2018/1, 161.

<sup>31</sup> In the exact words of the Hungarian law, the constitutional complaint is not a "remedy", it just has the characteristics of one.

- d) the possibilities for a legal remedy have already been exhausted by the petitioner or no possibility for a legal remedy is available to him or her;
- e) the decision was made regarding the merits of the case or was another decision terminating the judicial proceedings;
- f) the conflict with the Fundamental Law significantly affects the court decision, or the case raises constitutional law issues of fundamental importance.

Points e) and f) are classical ‘de minimis’-rules giving a broad margin of discretion to the CC in deciding whether or not to accept a complaint. These conditions are the most important filters preventing the CC from turning into a part of the judiciary. The CC relies on these points often as the basis for refusing complaints,<sup>32</sup> but it has particularly stressed the significance aspect in referendum cases, because the CC only deals with those parts of the Curia’s decision that are directly based on the Fundamental Law. As pointed out above, there are several requirements that must be met for the certification of the referendum question; these are based on Act on referendum, not the Constitution. The CC’s decision will be without prejudice to the Curia’s decision in these (non-constitutional) aspects, even if they influence the enforcement of the right to take part in a referendum.<sup>33</sup>

The condition laid down in point d) is automatically met, since the Curia is the highest forum in the system of the ordinary judiciary, therefore, legal remedy is not available against its decisions. The requirement under point b) is fulfilled in case the complaint meets the requirement set forth in point c): a decision that violates a fundamental right is *per se* contrary to the Fundamental Law (because it is the Fundamental Law that contains the fundamental rights).

In respect of point c), it is of course the right to take part in a referendum and the right to fair trial upon which the complaint may be based. Therefore, most of the decisions of the CC dealing with the Curia’s decisions on the certification of referendum questions interpret the scope of the right to take part in a referendum. This element of the acceptance-test is particularly strict: there are hundreds of rules in a constitution that do not form part of the chapter on fundamental rights (fundamental principles, values, procedural rules, rules on competences, etc.). The CC interprets this requirement extremely narrowly: a complaint stated, that the Curia erred in its interpretation of Parliaments’ competence (see the requirements applicable to the certification a referendum question), yet the CC did not consider this to be grounds for allowing the complaint. Hence, a general reference to the violation of the right to take part in a referendum owing to the

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<sup>32</sup> Decision no. 3195/2015. CC.

<sup>33</sup> Decision no. 28/2015. (IX. 24.) CC.

misinterpretation of a certification requirement (even where this is contained in the Fundamental Law) shall not suffice for the CC to declare the violation of this right.<sup>34</sup>

Point a) is also a narrowly interpreted element of the acceptance-test, because the CC stated that the mere fact that an individual has the right to vote shall not make him directly concerned by the Curia's decision.<sup>35</sup>

#### 4. Conclusion

During three decades of the Third Hungarian Republic, the legal status and the model of protection of the right to take part in a referendum have been changed at least three times. Although the core of these amendments concerned the (fundamental) right, the changes have also had institutional consequences. In fact, the interpretation and protection of this right led to the modification of the system of the division of powers. It also caused bodies involved in the application of the relevant rules, and in particular, the CC to have a great impact on the development of the regulatory framework. Indeed, the jurisprudence of the CC has been decisive for the most recent change in the protection model: without the strict interpretation of the acceptance test elements for the admissibility of constitutional complaints, access to the CC would be easier, and, as a result, the Curia would not have a leading role in the interpretation of the constitutional rules regarding the certification of referendum questions.

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<sup>34</sup> Decision no. 3003/2014. (I. 31.) CC.

<sup>35</sup> Decision no. 3150/2016. CC.

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Decision no. 3150/2016. CC.

Marbury v. Madison 5 U.S. 137 (1803).

JUDICIAL PROTECTION AND INTERPRETATION OF THE RIGHT TO TAKE PART  
IN A REFERENDUM – AN OVERVIEW OF THE JURISPRUDENCE  
OF THE HUNGARIAN CONSTITUTIONAL COURT AND THE SUPREME COURT

**Abstract:** This paper gives an overview of the jurisprudence of the Hungarian Constitutional Court and the Supreme Court regarding the right to take part in a referendum. This is a fundamental right of political participation, not unlike the right to vote and to stand as a candidate in parliamentary elections. It being a genuine fundamental right, the Constitutional Court interpreted its authentic meaning and stipulated the most important constitutional requirements related to this right. One of the most important requirements was the establishment of a system of remedies, where the final decision on the certification of a question proposed for a referendum must be taken by the Constitutional Court. Parliament fulfilled this legislative requirement and since 1998 the Constitutional Court has controlled the constitutionality of the decisions taken by the National Election Committee on the certification of the referendum questions proposed. The 2013 Act on referendum transferred this competence to the Supreme Court. Since then, the Constitutional Court shall only decide referendum-cases which were submitted with the so-called 'direct constitutional complaint', an extraordinary type of constitutional remedy. The present paper compares these two remedy systems introduced for the protection of the right to take part in a referendum.

**Keywords:** RIGHT TO TAKE PART IN A REFERENDUM, DIRECT DEMOCRACY, POLITICAL PARTICIPATION, HUNGARY