

Hongrie

Curia

Hungary

Curia

ACA-Europe Seminar: “Soft law, legal norms and sources of law”

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Hierarchy of norms in Hungarian law

The Fundamental Law of Hungary (promulgated in 2011) determines the hierarchy of norms which has not essentially changed the concept of hierarchy adopted by the former constitution of Hungary. Due to 2004 EU accession norms adopted by institutions and bodies of the European Union became integral part of the Hungarian legal order. Additionally recent organisational reforms of central administration had some impact on the hierarchy of norms in relation to decrees issued by the heads of autonomous regulatory bodies as well as by the Governor of the National Bank of Hungary.

I. Norms comprising the Hungarian legal system (by decreasing order of authority)

1. Constitutional norms

The Fundamental Law of Hungary (promulgated on 25 April 2011) sits at the apex of the legislative hierarchy in Hungary, consequently other legal norms must be compatible with it. It was enacted by the National Assembly, and its amendment requires a two-thirds majority of the votes of all members of the Assembly [Article S(2) of the Fundamental Law]. The Fundamental Law of Hungary consists of six sections: a preamble entitled as the National Avowal, as well as the sections entitled Foundation (Articles A–T), Freedom and Responsibility (Articles I–XXXI), the State (Articles 1–54), Special Legal Order and Final Provisions.

Case law:

- Decision of the Constitutional Court (CC Decision) No. 45/2012 on Transitional Provisions with focus on the legal status of Transitional Provisions in hierarchy of norms, formal requirements of the constitutional text
- CC Decision No. 22/2012 on the applicability of former decisions of the Constitutional Court
- CC Decision No. 3032/2012 on competencies of the Constitutional Court in case of conflict with the hierarchy of norms
- CC Decision No. 124/2008 on inadmissibility of providing consultative powers in legislative procedure without constitutional authorization
- CC Decision No. 2/2002 on norms which are not consistent with the hierarchy of norms can be considered as formally unconstitutional

2. International agreements, the fundamental principles of international law and European law

2.1 International agreements and principles of international law

In Hungary, the relationship between international agreements and domestic law is considered as dualist system; which means that international agreements become part of domestic law via promulgation in form of Hungarian legal norms. According to Act L of 2005 on procedures related to international agreements the government of Hungary may conclude international agreements based on its own authority or given by the National Assembly. Regarding the requirements of international the Fundamental Law declares that Hungary shall ensure that Hungarian law be in conformity with international law in order to comply with its obligations under international law [Article Q(2) of the Fundamental Law]. Hungary also accepts the generally recognised rules of international law. Customary international law and the general principles of international law become part of domestic law regardless of formal transformation or promulgation [Article Q(3) of the Fundamental Law]

Case-law:

- CC Decision 53/1993; 4/1997 on the legal status of international agreements and principles of international law between the constitution and parliamentary laws in the hierarchy of norms

2.2 EU law

As Member State of the European Union Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competencies set out in the Fundamental Law jointly with other Member States, through the institutions of the European Union [Article E(2) of the Fundamental Law]. The authorization to recognise the binding nature of the European Union’s founding and amending Treaties, require a two-thirds majority of the votes of all

Members of the National Assembly [Article E(4) of the Fundamental Law]. As Member State of the European Union Hungary also recognises that the EU law may lay down generally binding rules of conduct [Article E(3) of the Fundamental Law].

Case-law:

- CC Decision No. 22/2012 on Treaty of Stability, Coordination and Governance with focus on formal requirements of international agreements
- CC Decision No. 143/2010 on the examination of conflict of Lisbon Treaty with the Hungarian legal order

3. Parliamentary laws

Hungarian acts (parliamentary laws) are adopted by the National Assembly. According to the Fundamental Law the rules for fundamental rights and obligations can only be determined by acts. The National Assembly adopts acts by a simple majority of votes in National Assembly in general, except for so-called cardinal acts, which require a qualified majority of 2/3 of the members of the National Assembly present for their adoption and amendment. According to the Fundamental Law cardinal acts apply i.a. for citizenship, the churches, the rights of the national minorities living in Hungary, the legal status and remuneration of Members of the National Assembly, of the President of the Republic, the Constitutional Court, and the local governments.

Case-law:

- CC Decisions No. 64/1991; 53/1995; 3/1997;1/1999; 53/2001; 9/2002 on regulatory subjects which are to be formulated in law
- CC Decision No. 13/2013 on legal status of cardinal laws in the hierarchy of norms

4. Decrees

4.1. Government decrees

The government's authority to enact decrees may be primary or based on legislative authority. Its primary power is established by Article 15(3) of the Fundamental Law which declares that the government may issue decrees within its sphere of authority on any matter not regulated by an act. No decree of the Government shall conflict with any act. According to the Fundamental Law and Act CXXX of 2010 on legislation the government's authority to enact decrees can also be based on specific legislative authority. Under Section 5(1) of the Act CXXX of 2010 the authorization to issue implementing regulations must specify the holder, subject and scope of the authority.

4.2. Decrees of Prime Minister and the Decrees of Minister

According to the Fundamental Law the Prime Minister may also issue decrees, e.g. appoint a deputy prime minister from among the ministers by decree. This kind of decrees is ranked at the same level as decrees of ministers in the hierarchy of norms. Decrees of Minister are ranked below government decrees in the hierarchy of legislation. According to the Fundamental Law ministers may adopt decrees by authority of an act or a government decree which may not conflict with any other act, government decree or decree of the Governor of the National Bank of Hungary.

Case law:

- CC Decision No. 37/2006 on inadmissibility of delegation of ministerial power of issuing decrees to state secretaries

4.3. Decrees of the Governor of the National Bank of Hungary and Decrees issued by the heads of autonomous regulatory bodies

Acting within his or her competence defined by a cardinal act, the Governor of the National Bank of Hungary may issue decrees by statutory authorization, which may not conflict with any law.

According to Article 23(4) of the Fundamental Law, acting within their competence defined by a cardinal act the heads of autonomous regulatory bodies issue decrees which may not conflict with any act, government decree, decree of the Prime Minister, decree of minister or with any decree of the Governor of the National Bank of Hungary.

Case law:

- CC Decision No. 33/2010 on the requirement that legislative power of issuing decrees requires constitutional authorization

4.4. Local government decrees

According to Article 32(2) of the Fundamental Law, acting within their competencies, local governments may also adopt local decrees in order to regulate local social relations not regulated by any other norm. Therefore local government decrees may not conflict with any other legislation. The detailed rules on decrees of local governments are laid down in Act CLXXXIX of 2011 on local governments.

Case-law:

- CC Decisions No. 63/1991; 17/1998; 39/1998 on admissibility of decrees issued by local governments in case of non-regulation of local relations by parliamentary laws
- CC Decision No. 38/2001 on the hierarchy of decrees issued by different types of local governments

5. Legal instruments of state administration

The Hungarian legal system includes legal instruments of state administration which although they contain normative provisions, cannot be qualified as legally binding abstract norms.

Act CXXX of 2010 on legislation defines two types of legal instruments of state administration: normative decisions and normative orders. These are merely internal provisions, organisational and operational rules relating solely to the issuer or subordinated bodies or persons. Therefore normative decisions and orders cannot determine the rights and obligations of citizens. These instruments of state administration cannot conflict with other legal norms either.

6. Case-law of the courts

In order to fulfil its responsibility of ensuring the uniform application of law and providing judicial guidance to lower courts, Hungary's supreme court, the Curia (prior to 1 January 2012 known as the Supreme Court) renders judicial uniformity decisions and issues judicial decisions on principles. The adopted uniformity decisions are binding for other courts.

Case-law:

- CC Decision No. 70/2006; 3103/2013 on normative character of judicial uniformity decisions

II. Hierarchy of norms in Hungary and the review procedure

According to the Fundamental Law generally binding rules of conduct may be laid down in the Fundamental Law or in legal regulations adopted by an organ having legislative competence and specified in the Fundamental Law that are promulgated in the official gazette [Article T(1) of the Fundamental Law]. The form of norms is exclusively regulated by the Fundamental Law [Article T(2) of the Fundamental Law] which also determines the hierarchy between certain levels of norms.

Regarding the requirements of international and EU law the Fundamental Law declares that Hungary shall ensure that Hungarian law be in conformity with international law in order to comply with its obligations under international law [Article Q(2) of the Fundamental Law]. Additionally Hungary as Member State of the European Union recognises the primacy of EU law.

The Constitutional Court may ex ante (only in relation to parliamentary laws) and ex post review the conformity with the Fundamental Law (preliminary and posterior norm control). In case of posterior norm control the Constitutional Court also performs an abstract norm control as the object of the examination is the norm (norm control in concrete cases). Upon the petition or even ex officio in the course of any of its proceedings the Constitutional Court shall also examine if legal regulations are conform with the provisions of an international treaty. The Constitutional Court may examine the conformity of local government decrees with the Fundamental Law if the purpose of the examination is the determination of conformity with the Fundamental Law exclusively. In other cases the Curia passes decisions if local government decrees violate other legal norms. In the course of posterior norm control, of norm control in concrete cases on judicial initiative, on the basis of constitutional complaints and in the course of examinations of conformity with international treaties, the Constitutional Court shall review conformity with the Fundamental Law or international treaties of normative decisions and orders and of judicial uniformity decisions.