

Pázmány Péter Catholic University  
Faculty of Law and Political Sciences

dr. Attila Mihály Nagy

The legal protection of local governments before the Constitutional Court, with special regard  
to the institution of constitutional complaints

theses of the doctoral dissertation

Supervisor:

Dr. habil. Balázs Szabolcs Gerencsér associate professor

Budapest

2023

## I. Aim and methodology of the research

Local government is one of the basic institutions of any state of constitutional democracy<sup>1</sup>, and it is one of the constitutional depositories of public power.<sup>2</sup> In order to be and remain a real depository, it must have constitutional guarantees. In this context, the guarantees that the Constitutional Court has for the protection of local government rights are of great importance.<sup>3</sup> This is the focus of the present research.

When examining the relationship between local governments and the Constitutional Court, it can be stated that although these two bodies are apparently very distant from each other, as they are distinguished by their place in the state organisation, their area of jurisdiction, their tasks and powers, there are nevertheless many points of necessary connection in their daily activities.<sup>4</sup>

It is also noteworthy that the first two constitutional bodies of the evolving Hungarian constitutional state were in fact the local government and the Constitutional Court. Both institutions “[...] came into being in the process of building a new state organisation based on the separation of powers and the principle of checks and balances.”<sup>5</sup> In the words of András Holló, “With an only slight time difference, they <burst into> the Hungarian constitutional structure almost simultaneously. With a slight advantage in favour of the Constitutional Court, but not long afterwards the institutional system of local governments followed the Constitutional Court.”<sup>6</sup> Their birth differed, however, in that the idea of local government had a tradition, whereas the Constitutional Court had to be created from scratch.

Unravelling the complex interconnections between the two bodies is not evident. My choice of topic was also primarily motivated by personal reasons. I was born and raised in Soroksár. It was a great joy for our family when, after its annexation to Budapest in 1950, the municipality became an independent administrative unit again in 1994, following a valid and successful local referendum. It was then that the XXIII district of Budapest was formed and my interest in local government began. In addition to my university studies, I worked in several municipalities, and

---

<sup>1</sup> The European Charter of Local Self Government

<sup>2</sup> Kilényi, G. Az Alkotmánybíróság és az önkormányzatok. *Magyar Közigazgatás*. [The Constitutional Court and local governments. *Hungarian Public Administration*] 1992/12. p. 699-708.

<sup>3</sup> Fürcht, P. Önkormányzatok és Alkotmánybíróság. *Magyar Közigazgatás*. [Local governments and the Constitutional Court. *Hungarian Public Administration*.] 1993/3. p. 129.

<sup>4</sup> Kilényi, G. op. cit., p. 699.

<sup>5</sup> Ibid.

<sup>6</sup> Holló, A. Az Alkotmánybíróság és az önkormányzatok. A magyar alkotmányosság ezer éve. Tudományos konferencia. [The Constitutional Court and local governments A thousand years of Hungarian constitutionalism. Academic conference.] 1998, p. 21.

in the course of my professional career, I first worked as a civil servant in the Mayor's Office of the Municipality of Pesterzsébet, and then in the State Secretariat for Territorial Administration and Elections of the Ministry of Public Administration and Justice, at the very time when the restructuring of the territorial administration was beginning, which also affected local governments. Following that, I started to work at the Constitutional Court. The change took place between the adoption of the Fundamental Law and the entry into force of Act CLI of 2011 on the Constitutional Court (hereinafter: Abtv.), therefore, I was involved in the preparation of several drafts in which the Chamber was the first to interpret its new powers, including those in relation to local governments. This shift and the change in the legal context alone had several aspects that could be the subject of academic study. I have always followed the decisions affecting local authorities with particular interest: the initially parallel and sometimes divergent interpretations and positions of the Constitutional Court's councils - for instance, on the right of local authorities to petition - and the evolution of this practice have also attracted my academic interest. This is what led me to make this issue the backbone of my academic work. I am particularly pleased that, as Principal Advisor of the Constitutional Court, I have been able to play an active part in the development (and change) of this practice.

It is important to emphasise at the very beginning of this thesis that the subject of the legal protection of local government is a broad category. Under this category, it is possible to examine disputes between local authorities arising from private law relationships and cases involving public law disputes between local authorities and their bodies or between local authorities and public bodies. It is also possible to examine the means of legal protection against the operation of local government from the point of view of the means available to individuals.<sup>7</sup> This dissertation does not aim to be a comprehensive account of all these matters, but rather to focus specifically on the role of the Constitutional Court in the legal protection of local governments. For this reason, the research does not include an analysis of the legal defence of local governments before the ordinary courts, whether it is based on private or public law disputes.

While writing the dissertation, I relied mainly on library sources and used the classical jurisprudential approach (normative and dogmatic). Other methods of analysis and results from public administration, settlement studies or political science have been used in cases where they are accompanied by real explanatory power. In the conduct of my research, I have reviewed the

---

<sup>7</sup> Siket, J. A helyi önkormányzati jogok védelme. *Közjogi szemle*. [Protection of local government rights. *Public Law Review*.] 2016/1. p. 51.

regulation of local government in several countries. Since it is true that the results of German dogmatics have influenced the Hungarian legislator in the case of both local governments and the Constitutional Court, I have presented primarily these findings in my thesis. The drawing of German parallels cannot be ignored since the Hungarian Constitutional Court has been looking to the German Constitutional Court (Bundesverfassungsgericht) as a point of reference ever since its establishment. In this respect, therefore, legal comparison has also played a role.

The terminological, introductory chapters, the first on local government and the second on the Constitutional Court, are based on national and foreign literature and use a descriptive method. These sections also include a brief historical overview.

The next part of the essay presents the Constitutional Court's practice in the field of legal protection of local governments. The chapters of this section are organised according to the powers of the Constitutional Court. There is not only a summary of the literature and a description and interpretation of the legal context in each section, but also a focus on the practice of the Constitutional Court. The biggest challenge in analysing the Constitutional Court cases was their scope. It is often only possible to highlight the interrelationships between individual cases or the divergent practice if the reader becomes familiar with the facts. I have not only presented the relevant case law but also systematised the decisions and presented the conclusions of my comparisons at the end of each chapter.

In my research, I was looking for the answer to the following questions:

- what are the means of legal protection of local governments before the Constitutional Court,
- how effective these instruments of legal protection are,
- how the case law on constitutional complaints has evolved with the changes in the legal environment,
- what conclusions can be drawn from the development of the case law, what new findings and correlations can be identified,
- whether there is a need to propose changes to the legal framework to ensure more effective legal protection of local governments by the Constitutional Court.

A detailed presentation of the results of the research is included in the last section of the dissertation.

## II. Brief summary of new scientific findings

### II. 1. The significance and implementation of the legal protection of local government through the powers of the Constitutional Court

Local governments have an exceptional position in the organisation of public administration in Hungary. Local government is the guardian of constitutional traditions and a fundamental form of voter participation in public affairs; thus, it conveys and represents a constitutional value. According to some approaches, the community of voters living in a given territory could be identified not so much as the subject of the right as the source of local government, with the elected body being the subject of the right to local government.<sup>8</sup>

Local authorities are both on the active and passive side of the exercise of public power, thus they have a specific legal status: they have powers which are seen as obligations towards the inhabitants, while towards the central public institutions they are seen as rights. The protection of local government rights is a guarantee that the powers legitimately exercised by local authorities are not infringed by other branches of state power.<sup>9</sup> Legal protection is needed when the views of smaller communities need to be protected from the whole of the state which holds the ultimate power.<sup>10</sup>

In addition to a system of legal supervision, local governments have several legal protection mechanisms and legal remedies to help maintain their balance of operation within the public law system, all of which are necessary for their existence under the rule of law. Of these, the Constitutional Court is of particular significance and has an *ultima ratio* compared with all other possibilities.

The Constitutional Court is the primary institution for the protection of the Fundamental Law and constitutional rights. Through its activities, it ensures that the values of the Fundamental Law are applied throughout the legal system. The Constitutional Court is therefore the body whose main responsibility it is to ensure that both legislation and the application of the law by the courts are in accordance with the Fundamental Law.

---

<sup>8</sup> Patyi, A. Gondolatok a magyar helyi önkormányzati rendszer általános szabályairól. [Reflections on the general rules of the Hungarian local government system.] In: Szoboszlai-Kiss, K. – Deli, G. (ed.): *Tanulmányok a 70 éves Bihari Mihály tiszteletére.* [Studies in honour of the 70 year-old Mihály Bihari.] Universitas-Győr Nonprofit Kft. Győr. 2013. p. 394.

<sup>9</sup> Varga, Á. Önkormányzati jogvédelem az Alkotmánybíróság gyakorlatában. *Közjogi Szemle.* [Legal protection of local governments in the practice of the Constitutional Court. *Public Law Review.*] 2020/3. p. 66.

<sup>10</sup> Hans, P. Grenzen der kommunalen Selbstverwaltung in Preussen. [Limits of Local Self-Government in Prussia.] Springer. Berlin. 1926. p. 43.

“The core of constitutional judicial work is, of course, the unravelling of the content of certain fundamental rights and other constitutional provisions and the relating of other norms of the legal system to them.”<sup>11</sup> The procedures and instruments assigned to the protection of fundamental rights have a decisive influence on the scope and effectiveness of the protection of constitutional law by the Constitutional Court.<sup>12</sup>

Although the components of local government autonomy are defined in the Fundamental Law itself, and thus cannot be taken away by law, at the same time, its specific powers of legal protection are not specified in it.<sup>13</sup> The legal protection clause is currently found in Article 5 of Act CLXXXIX of 2011 on Local Governments of Hungary. However, it should be noted that, apart from the fact that it is not a provision of the Fundamental Law, it is not a rule of competence per se. It can therefore only form the basis for legal protection if the legislator imposes specific rules of jurisdiction on the Constitutional Court.<sup>14</sup>

At present, the Constitutional Court protects local governments not based on powers specifically created for this purpose, but through its general powers, except in the case of the expression of opinions in connection with dissolution. The exercise of these powers and, in this way, the obligations and the potential for giving substance to the constitutional protection of rights, is in many respects a matter for the institution.

Many researchers study local government, and many examine the operation of the Constitutional Court from an academic perspective. Personally, I have investigated the intersection of the two areas, focusing on the part of the field that has undergone the most interesting and measurable changes in the last decade.

Although I have reviewed the regulation of local government in several countries in the context of this dissertation, I have mainly drawn parallels with German practice, since it is true that both in the case of local government and the Constitutional Court, the Hungarian legislator has been influenced by the results of German doctrine.

The assessment of local governments by the Constitutional Court requires a different approach and different criteria of analysis for each competence, due to their dual legal status resulting

---

<sup>11</sup> Köblös, A. A kivételes alkotmányjogi panasz gyakorlata. [The practice of exceptional constitutional complaints] In: Berkes Lilla-Csink, L. (ed.): Az ombudsmani rendszer és az alkotmánybíráskodás átalakulása. Tanulmányok az alapjogvédelem köréből. [The ombudsman system and the transformation of constitutional justice. Studies in the field of fundamental rights protection.] Pázmány Press. Budapest. 2015. p. 89.

<sup>12</sup> Ibid.

<sup>13</sup> Patyi, A. in: Szoboszlai-Kiss, K. – Deli, G. op. cit., p. 385.

<sup>14</sup> Decision 3311/2019 (XI. 21.) AB, Reasoning [33].

from the system of separation of powers. Substantial differences arise as a result of the type of body or person initiating the procedure, on the basis of what authority and what type of procedure.

*In my view, in the absence of a constitutional definition of a fundamental collective right, the protection of the rights of local government can be achieved by effective constitutional protection of powers alone. Moreover, the protection of rights does not in fact consist in the way in which the Constitution designates the powers of local government to manage local public affairs and exercise local public authority, but in the protection, they are granted in practice.*

In the next steps, I present the conclusions and results of my research on the specific powers of the Constitutional Court.

## II. 2. Ex post constitutionality review- the issue of petitioners' standing and guarantees of participation

The Constitutional Court provides local authorities with two-way protection in the context of ex-post constitutionality review procedure.

On one hand, it protects local governments as law practitioners when it examines the compliance with the Fundamental Law of the various levels of legislation affecting the fundamental rights and powers of local governments, based on the petitions of those entitled to do so. This includes, for instance, when the subject of the examination is the authorising provision which regulates the implementing regulation to be adopted by the local government.

On the other hand, local governments are entitled to adopt regulations and instruments regulating the organisation of public law. As the main instrument of public power of local government, the decree plays a key role in the autonomous functioning of local government and should therefore be given special protection. This protection is embodied in the ex-post review procedures of the Constitutional Court and, in the case of a municipal decree conflicting with other legislation, of the Curia. By virtue of the fact that only the Constitutional Court, as the supreme body for the protection of the Fundamental Law, and the Curia, as the supreme judicial body, are empowered to annul a municipal decree, a protection mechanism is already in place to prevent central government bodies from directly interfering in the decree-making activities of local authorities.

Since the entry into force of the Fundamental Law and Act CLI of 2011 on the Constitutional Court (hereinafter: Abtv.), local governments as petitioners cannot initiate this type of procedure before the Constitutional Court, they themselves and the decrees they have adopted are "passive subjects" of the investigation.

In this context, it is important to note that the fourth amendment to the Fundamental Law modified Article 57. of the Abtv. It has become a general rule of procedure for the Constitutional Court to decide on the merits of motions on the basis of the available documents and after having heard the opinion of the legislator, the initiator of the law. At the same time, the legislator or the initiator of the law has the right to inform the Constitutional Court of its position on the matter.

This possibility may be relevant in the context of the ex-post review procedure, the judicial initiative as a specific review procedure, the old-style constitutional complaint procedure and the direct constitutional complaint procedure in relation to the regulation adopted by local authorities. As a result of my research, in contrast to the procedures where a law or a government decree is the subject of a Constitutional Court review, I found only two cases where a local government submitted its own position to the Constitutional Court.<sup>15</sup>

In constitutional complaint procedures, the Constitutional Court, demonstrating that it considers the right to a fair hearing guaranteed by Article XXVIII (1) of the Fundamental Law to be binding on its own procedure, shall also inform the opposing party of the proceedings.<sup>16</sup>

---

<sup>15</sup> Both cases are pending, the submissions can be found here:

[http://public.mkab.hu/dev/dontesek.nsf/0/906ac1ec84bf1d9dc1258893005b0b98/\\$FILE/IV\\_1703\\_2\\_2022\\_amicus\\_Bp.F%C5%91polg.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/906ac1ec84bf1d9dc1258893005b0b98/$FILE/IV_1703_2_2022_amicus_Bp.F%C5%91polg.pdf)

[http://public.mkab.hu/dev/dontesek.nsf/0/5cf900474263f906c12588a8005aeac6/\\$FILE/IV\\_1884\\_2\\_2022\\_amicusBFF\\_anonim.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/5cf900474263f906c12588a8005aeac6/$FILE/IV_1884_2_2022_amicusBFF_anonim.pdf)

<sup>16</sup> The Rules of Procedure of the Constitutional Court No. 1001/2013 (II. 27.) AB TŰ. Decision of 1 May 2021:

"31. § (...)

(5) (...) The rapporteur constitutional judge shall notify the petitioner, the opposing party and the court of first instance of the admission of the complaint, with the exception of the procedures under the Act on Electoral Procedure and Act on Referendum.

(6) The rapporteur constitutional judge may, instead of deciding on the admission of the complaint, submit a draft decision to the panel containing the decision on the merits of the complaint. In such a case, the rapporteur constitutional judge shall, except for the procedures under the Act on Electoral Procedure and the Act on Referendum, notify the opposing party of the fact that a constitutional complaint has been filed with the Constitutional Court before submitting the draft decision on the merits.

(7) In the notification pursuant to Article 31(5) and Article 31(6), except for the procedures specified therein, the opposing party shall also be informed that the anonymised text of the motion for a constitutional complaint submitted by the petitioner is available electronically on the website of the Constitutional Court."



However, *this information is not provided either in the ex post review procedure, in the judicial initiative as an individual review procedure or in the direct constitutional complaint procedure. The local government is not informed of the procedure, even though it is itself that has adopted the local government decree containing the alleged infringement of the Fundamental Law.*<sup>17</sup>

*In the light of the above, I believe that the Constitutional Court would ensure even more complete protection of local authorities as legislative bodies with autonomy if it also consulted the position of the bodies during these proceedings.*

In my view, the legislator should allow local governments to once again directly initiate ex-post review of legislation affecting their legal status and operation. I believe that, given their place and importance in the constitutional system, they would certainly be entitled to initiate such a review, and that it would not impose a disproportionate burden on the Constitutional Court to do so. An acceptable form of this could be a change in the legal regulation of direct constitutional complaints, to which I make a specific proposal in a later section.

### II. 3. Conflict of jurisdiction - a specific means of defending autonomy

Resolving conflicts of jurisdiction is also one of the Constitutional Court's tasks that may affect the functioning of local government. The resolution of a conflict of jurisdiction is clearly a means of protecting autonomy, since it guarantees that the local government is not deprived of powers that are its own, but it can also prevent it from being forced to carry out a task that, under the law, would not be the responsibility of the local government. Although the Board's jurisdiction in this area is explicitly rare, the theoretical possibility of this type of dispute still exists, despite the small number of practical cases. For all these reasons, the existence of this power of the Constitutional Court is justified, as it constitutes a kind of final guarantee for the conclusion of administrative proceedings once they have been initiated. In addition to the designation of the competent body and thus the satisfactory conclusion of the specific procedure, the interpretation of the competences of the bodies concerned, including local authorities, based on the Fundamental Law, will also help the legislative bodies in the longer term in the creation of rules establishing the competence.

---

<sup>17</sup> It would be unrealistic to expect local governments to constantly monitor the website of the Constitutional Court.

### III. 4. Expression of opinion in the context of the dissolution of an unconstitutionally functioning body of representatives - the real legal effect of a binding decision for all

The expression of an opinion in connection with the dissolution of an unconstitutional representative body is a special case of legal protection by the Constitutional Court. Its function is twofold. On the one hand, the dissolution and the constitutional court proceedings that go with it protect the rights of the community behind the local government itself, since a dysfunctional representative body deprives the electorate of the possibility to exercise their rights through their elected representatives. On the other hand, the multi-stage, multi-actor procedure is a guarantee that dissolution can only take place in justified cases, a feature that protects the autonomy of local government.

It is the responsibility of the state to ensure the conditions and framework for the exercise of local public authority. The legal operation of local self-government is ensured by Hungarian legislation at several levels. In the event of the inability of the body of representatives of a local government to function, it is primarily the responsibility of the body of representatives itself to restore its ability to function (by initiating and concluding within a reasonable time procedures suitable for resolving conflicts) or to decide on its own dissolution. Failing this, it is the responsibility of the Metropolitan and County Government Office to make use of the supervisory and coordination instruments used in the context of the supervision of the legality of local government.

If, as a result, the lawful functioning is not restored, it is the responsibility of the Government to take the initiative, and it is the responsibility of Parliament to take the necessary measures to restore the lawful functioning of the local government that is violating the right of the electorate to local self-government and is operating in violation of the Constitution. However, the Constitutional Court should not be left out of this process, as this would undermine the effective system of constitutional protection for local authorities.

*The opinion of the Constitutional Court - which in my view is binding on everyone - answers the legal question whether, in principle, a certain way of functioning of a local government representative body or the lack thereof is unconstitutional, and what are the generally definable requirements of constitutional functioning. The Constitutional Court can set out the*

constitutional framework of the operation of the representative bodies in its opinion in principle, and can abstractly define the cases of unconstitutionality, which the Parliament uses as a yardstick when deciding on the dissolution of a given representative body.

*The Constitutional Court rarely acts in its function of expressing opinions on the dissolution of local government representative bodies, but the general findings contained in the reasons for its decisions provide long-term guidance for local governments and serve as a point of reference for the government offices of the capital and counties in exercising their powers of supervision of legality.* In this way, they constitute an important pillar of the exercise of local public power, which in my opinion is the basis for the inclusion of this power in the Constitutional Court's 'portfolio' of legal protection for local authorities.

### III.5. Constitutional complaint - a public authority on the petitioners' side

Finally, I will turn to the constitutional complaint procedures. The practice of the Constitutional Court in local government constitutional complaint procedures, particularly in the field of the examination of the eligibility of petitioners, has followed a long and interesting trajectory over the past decades. During these proceedings, every single aspect is of importance, since it is not always the same for admissibility: which body, on the basis of which law, against whom, would initiate the proceedings.

Under the Act XXXII of 1989 on the Constitutional Court, the dominant procedure of the Constitutional Court was the ex post abstract review of norms, which could be initiated by anyone, which also meant that local governments had a broadly applicable legal protection instrument at their disposal. This is perhaps partly the reason why the Constitutional Court applied very strict criteria in the assessment of constitutional complaints since it was not so much a matter of meat and potatoes for local authorities whether they could lodge a constitutional complaint. In examining the cases, it was found that, although the law did not exclude local authorities from being petitioners in the procedure, the panel concluded that there was no fundamental constitutional right of the public authority exercising public power which would give it the right to lodge a constitutional complaint as a guarantee against the State. The situation of local authorities as bodies exercising public power is special in comparison with other bodies because they are both active and passive in the exercise of power.

At the same time, the adoption of the Fundamental Law and the Constitutional Act meant that the ex-post abstract review procedure was no longer available to local governments and was replaced by the extended constitutional complaint procedure. From then on, the practice of examining the petitioner's eligibility and its outcome became of paramount importance for them.

In my view, the practice of the Constitutional Court shows a nice and forward-looking development in this area. One of the turning points in the development of judicial law described above was the parallel reasoning of Dr. Béla Pokol, Judge of the Constitutional Court, as described in the thesis, and the culmination was the legal environment of the Constitutional Court as amended in 2019 on the basis of the practice. On the one hand, the amendment has further strengthened the objective, general constitutional protection function of the state in constitutional complaint procedures, and on the other hand, Article 11 of the European Charter of Local Self-Government<sup>18</sup> has thus become truly alive and certainly exercisable before the Constitutional Court.

The Constitutional Court, with its decisions that led to the 2019 amendment of the Constitutional Court Act, and with the decisions made since then, has also made it clear that it examined in its entirety what is included in Article 55 (4a) of the Act on the Constitutional Court. This shows that the limitation of the powers of public authorities, including local governments, in violation of the Fundamental Law, can indeed be "measured" by the Constitutional Court. The body can fulfil its task of protecting the Constitution even in the case of restrictions on the powers of public authorities granted by the Constitution, on the powers necessary for the exercise of their constitutional status, or on certain powers in violation of other provisions of the Constitution.

It has also demonstrated that it is worthwhile for local governments to apply to the Constitutional Court for legal protection through a constitutional complaint, since the Constitutional Court, as the main body for the protection of the Fundamental Law, also exercises its powers in this way and stands up for the autonomy and the exercise of rights and powers of local governments.

---

<sup>18</sup> Article 11: „Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.”

*Overall, it can be concluded that, compared to other legal persons, local governments have additional rights in the constitutional complaint procedure, due to the autonomy granted to them, and the legal protection granted to them is therefore even more extensive.*

*At this point, I would like to note that, in my view, the domestic legislation provides for a broader scope of legal protection for local governments than the German model and has developed a wider range of practices on that basis.*

This legal protection mechanism may seem to be jeopardized by the 2023 amendment to the Act on the Constitutional Court. It is important to point out, however, that the amendment does not affect the old-style and direct constitutional complaints, and as regards the legal institution of a genuine constitutional complaint, it is not yet known whether the practice of the Constitutional Court will change and, if so, what the overall impact will be on the legal protection of local governments.

I am confident that the Constitutional Court's established practice regarding the right of local governments to petition will not change substantially, and the level of legal protection provided by the Court will not be substantially reduced. The exclusion of local governments as bodies exercising public authority from being petitioners of constitutional complaints in the future would represent a serious setback in the legal protection of local governments.

Such a change cannot be supported either because it would violate Article 11 of the Charter, the enforcement of which Congress has already found problematic. In the context of the adequacy of the level of legal protection, it should also be pointed out that the Constitutional Court, when assessing a constitutional question, takes into account Hungary's obligations under international treaties, which are inherent in EU membership, as well as the generally recognized rules of international law, the fundamental principles and values reflected therein, and adapts the level of domestic constitutional protection to the international level.

The Constitutional Court has also shown that it can interpret the possibilities granted to it by the cardinal law in an expansive manner, where appropriate, to ensure effective legal protection in accordance with its legal status and mission. In its Decision No. 8/2021 (2.3.21) AB, the Constitutional Court did not formulate a constitutional requirement for the place of legislation

under examination or applicable in court proceedings and its application, but interpreted the Fundamental Law itself and, based on its public law structure, formulated a requirement for the Parliament and the Government as legislative bodies to be generally observed in order to protect the whole of self-government. In my view, that requirement must be considered in all legislative acts, once promulgated, which provide for or reduce the proportionate budgetary or other material support necessary for the exercise of the compulsory functions and powers of local authorities.

*Based on this case, I propose that the legislator should grant the Constitutional Court a general power to formulate constitutional requirements, i.e., to abolish the link between the application of this legal consequence and a specific legal provision. This amendment would enable it to provide more effective legal protection, not only to local authorities but to all entities, and in fact to exercise its basic task of protecting the Constitution more widely.*

The practice of the Constitutional Court proves that the abolition of the *actio popularis* can also provide adequate constitutional protection for autonomous local governments through the legal institution of constitutional complaint.

To further strengthen this, I also propose the amendment of Article 30 (1) of the Act. I consider it necessary to abolish the provision requiring the submission of direct constitutional complaints within one hundred and eighty days of the entry into force of the legislation deemed to be contrary to the Fundamental Law.

With due regard for the right to a fair trial it would be much more realistic if the regulation allowed for the submission of a direct constitutional complaint in a similar way to the provision on the failure to publish a decision [Section 30 (2) of the Act on the Constitutional Court].

## II.6. Changing times, unchanging expectations

The constitutional establishment of a state governed by the rule of law is a long-lasting one. Legal, social, and economic changes in a given state and its international environment often have an impact on constitutional institutions, without affecting the constitutional order. These effects are felt with varying intensity and depth in the operation and life of the Constitutional Court and local authorities.

It is particularly true of the Constitutional Court that the dynamics of its operation are subject to a significant change in the environment in which other constitutional bodies operate. Among the bodies with constitutional status, I have examined the exercise of certain powers of the Constitutional Court and the evolution of its practice in relation to local self-government.

The constitutional protection of the Court of Justice is the ultimate forum of guarantee for local authorities in their relations with the various public authorities. The findings of the Constitutional Court and the legal consequences of its decisions, which are binding on all, are thus the foundations for preserving and building local government autonomy.

Of course, it is not possible to make valid conclusions about the autonomy of local government as a whole on this basis alone, but the research I have conducted also confirms that *the true measure of the evaluation of the content of the written provisions on certain legal institutions, powers and legal remedies, which appear in the Fundamental Law and in individual legal acts, is the practice of the constitutional bodies applying them.*

## **I. List of publications**

- András, Téglási; Attila, Mihály Nagy  
Elections in Hungary and in other Countries Under Special Legal Order – Especially During the Pandemic  
ZBORNIK RADOVA PRAVNI FAKULTET (NOVI SAD) 55: 4 pp. 1241-1265, 25 p.  
(2021)
- Nagy, Attila Mihály; Sándor, Lénárd; Péter-Delbó, Márta  
The exercise and enforceability of the right to a fair trial by bodies and persons exercising public authority  
In: Tóth, J Zoltán (ed.) The right to a fair trial  
Budapest, Hungary: Wolters Kluwer Hungary (2021) 288 p. pp. 233-266., 34 p.
- Nagy, Attila Mihály  
Electoral challenges in a special legal order  
PARLAMENT REVIEW p. 23 (2021)
- Nagy, Attila Mihály  
Elections during an epidemic

In: Rixer, Ádám (ed.) Long-term impact of the epidemic on the Hungarian public administration  
Budapest, Hungary: Károli Gáspár Reformed University Faculty of Law and Political Sciences  
Lőrincz Lajos Public Law Research Workshop (2021) 488 p. pp. 149-163. 15 p.

- Téglási, András; Nagy, Attila Mihály  
Elections in Hungary during a situation of pandemic: Conference lecture (2021)  
Medzinárodná vedecká konferencia „Základné práva a slobody a ich ochrana v núdzovom stave a iných osobitných právnych režimoch – X. ústavné dni“, Kosice, Slovakia, 2021.09.28., Published: Slovakia.
- Nagy, Attila Mihály  
Examination of special cases of petitioner's entitlement in the admission procedure of the Constitutional Court  
In: Anon (ed.) Enforcement of the Fundamental Law in judicial practice II: Complaints to the Constitutional Court - questions of jurisdiction  
Budapest, Hungary: HVG-ORAC (2019) 587 p. pp. 528-538., 11 p.
- Nagy, Attila Mihály  
Local authorities and public administrations before the Constitutional Court  
LEGAL THEORY REVIEW p. 254 (2018)
- Nagy, Attila Mihály  
Constitutional Court proceedings that may be brought by local authorities  
(2016)
- Nagy, Attila Mihály  
The practice of the Constitutional Court in relation to the dissolution of local government representative bodies  
NEW HUNGARIAN PUBLIC ADMINISTRATION pp. 8-11., 4 p. (2016)
- Delbó, Márta; Nagy, Attila Mihály  
Models of local government  
In: Gelencsér, Balázs Szabolcs (eds.) Comparative and European Union administrative law Administrative law IV.  
Budapest, Hungary: Pázmány Press (2015) pp. 61-81., 21 p.
- Nagy, Attila Mihály  
Sweden  
In: Gerencsér, Balázs Szabolcs (ed.) Comparative and EU administrative law: Administrative law IV.



Budapest, Hungary: Pázmány Press (2015) 185 p. p. 78

- Nagy, Attila Mihály  
Spain  
In: Gerencsér, Balázs Szabolcs (ed.) Comparative and EU administrative law:  
Administrative law IV.  
Budapest, Hungary: Pázmány Press (2015) 185 p. p. 75
- Nagy, Attila Mihály  
Germany  
In: Gerencsér, Balázs Szabolcs (ed.) Comparative and EU administrative law:  
Administrative law IV.  
Budapest, Hungary: Pázmány Press (2015) 185 p. p. 69