

ABSTRACTS

ESSAYS

Gary J. Jacobsohn argues that there are attributes of a constitution that allow us to identify it as a constitutional identity, and that there is a dialogical process of identity formation that enables us to determine the specific identity of any given constitution. Representing a mix of aspirations and commitments expressive of a nation's past, constitutional identity also evolves in ongoing political and interpretive activities occurring in courts, legislatures, and other public and private domains. The article explores these questions drawing on examples, among others, from India, Ireland, Israel, South Africa, Turkey, and the United States.

FORUM

Given the recent sweeping changes in the Hungarian constitutional structure, induced by the coming into force of the Fundamental Law and its substantive amendments, we have asked constitutional law professors about how this affects their curriculum and educational strategies. Given that constitutional identity is in the focus of this issue, we were particularly interested about views on what kind of loyalty is required towards this institutional structure and the constitution itself.

INTERVIEW

László Sólyom, the first President of the Constitutional Court, and former President of the Republic talks with Kriszta Kovács about the new Hungarian constitutional order after the 2011 Fundamental and its Fourth Amendment. Sólyom claims the new constitution envisages a system based on an almost absolute parliamentary sovereignty, in which the amendment power of the Parliament is unlimited, and the Constitutional Court isn't the main body of constitutional protection anymore.

DOCUMENTS AND COMMENTARIES

In his commentary, Tamás Dombos and Eszter Polgári analyze the Constitutional Court's decision quashing the Article 7 and 8 of the cardinal law on the protection of families adopted in December 2011. The definition of family in Article 7 of the Act ignored many possible – and prevalent – relationships outside marriage, both of different and same-sex couples. Furthermore, Article 8 of the Act was in contradiction with other legislation in force, thus creating legal uncertainty. The Court found both provision unconstitutional. According to the authors the decision of the Constitutional Court in spite of the deficiencies of the text is a step forward.

András Hanák wrote a commentary on the Fourth Amendment to the Fundamental Law of Hungary. He considers the amendment as a gesture of the omnipotent constitution-making body. He argues that if the amendment power does not take certain rights seriously, it endangers all other fundamental rights as well.

Based on the decisions of the Constitutional Court Georgina Naszladi examines the standpoint of the Court according to which no constitutional court procedure can be initiated based on a constitutional complaint whose only aim is to prohibit the application of law. According to the author such standpoint of the Court threatens the legal remedy nature of the constitutional complaint.

In his commentary regarding the decision of the Constitutional Court on the law on the status of the churches, Dániel Karsai claims that the legislative procedure has been unconstitutional, and yet the Court failed to annul the law. This practice, Karsai argues endangers the future of the so called "public law invalidity" jurisprudence of the Court.

AFTER DECISION

In this column summaries of some of the recent decisions of the Hungarian Constitutional Court and the European Court of Human Rights are presented.