Constitutional Politics in Action - Part I

The Petitions for the Constitutional Review of the 16th and the 17th Amendments of the Hungarian Fundamental Law

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The Fidesz-KDNP parliamentary group submitted petitions to the Constitutional Court in July 2026 challenging Hungary's newly adopted Sixteenth and Seventeenth Amendments to the Fundamental Law as the first constitutional steps in its regime change and constitutional reconstruction. The petitions challenging the constitutionality of the amendments to the Fundamental Law demonstrate how constitutional doctrine can be strategically reconfigured when political actors move from exercising constitutional power to challenging its exercise by others. The case contributes to debates on the use and abuse of constitutional ideas and documents a backlash against democratic front-sliding: after losing control of constitutional power, a former governing party, Fidesz, strategically reconfigures elements of domestic doctrine that had been used to resist its own autocratization and redeploys international and supranational authorities, including standards and judgments previously invoked against its conduct, as constraints on democratic reconstruction.

The 16th and the 17th Amendments of the Hungarian Fundamental Law

The Sixteenth Amendment introduced immediate constitutional reforms by limiting the Prime Minister's tenure, creating the constitutional framework for dismantling the public-interest asset management foundations performing public duty, and ensuring the recovery of public assets. The Seventeenth Amendment complemented these immediate reforms through a broader package of institutional changes, including the removal of the President of the Republic, reforms concerning the Constitutional Court, including the reintroduction of a retirement age affecting 5 judges in 2026, the removal process of the President of the Curia, term limits for Members of Parliament, and reduction of the number of cardinal laws. It expressly presented itself as creating the constitutional framework for restoring constitutional democracy until the adoption of a new constitution through an inclusive constitution-making process.

The Petitions

According to the website of the CC, in July 2026, members of the Fidesz-KDNP parliamentary group submitted four petitions challenging provisions of the Sixteenth and Seventeenth Amendments on procedural grounds (in addition to challenging the implementing legislation thereof). The petitions concern the termination of the President's mandate, the dismantling of the public-interest asset management foundation system, parliamentary term limits, and the application of a newly introduced retirement age to five sitting Constitutional Court (CC) judges. The petitioners seek the annulment of the challenged provisions, generally with retroactive effect, on a procedural ground, based on Article S) of the FL. Two petitions also request a preliminary reference to the Court of Justice of the European Union concerning democracy, the rule of law, and legality under EU law, also in light of rule of law restoration.

The Reasoning of Fidesz-KDNP: The Strategic Reconfiguration of Doctrine and its Weaknesses

As the CC does not have the power to conduct substantive review of constitutional amendments, the petitioners are explicit in their intention not to ask the Court to perform it. They repeatedly emphasize that they accept the CC's limited jurisdiction and instead

argue that the challenged provisions are not genuine constitutional amendments at all. The petitions challenging the constitutional amendments rely on the same conceptual argument, which is as follows. Article S) FL does not authorize every two-thirds political decision, and constitutional amendments must have normative constitutional content. That is why, according to the petitioners, one-off measures directed at identifiable persons are outside the material scope of a constitutional amendment.

The following five features of their argument reveal how Fidesz has reconfigured constitutional doctrine after moving from exercising constitutional power to challenging its exercise by others.

Who Holds the Constituent Power

First, citing Hungarian scholarship, the petitioners argue that the constitutional amending power is a distinct power from the constituent power. They conceptualize the constitutional amending power as a legally limited power with its own material scope. This departs from Fidesz's earlier treatment of constitutional amendment as an exercise of constituent power, under which compliance with the formal constitutional requirements was sufficient to produce a valid amendment. Each amendment adopted during its period in government presented Parliament as acting in that capacity, beginning with the formula: "Parliament, acting as the constituent power …".

The Extent of the Procedural Review

Second, the petitioners maintain that self-classification does not determine the constitutional status of a legal instrument. The petitions argue that the Sixteenth and Seventeenth Amendments cannot qualify as genuine constitutional amendments merely because Parliament adopted them in that form. Their constitutional status depends on the nature of the rules they contain. Provisions terminating individual mandates as proposed without reforming the institutions to which those mandates belong back, according to the petitioners, the required normative constitutional character.

This argument directly contradicts the position taken by Fidesz when it adopted the Transitional Provisions of the Fundamental Law (TP FL). This legal instrument contained important elements of the emerging illiberalism and was strongly criticized. It was not a constitutional amendment but "part of the Fundamental Law" (as it declared itself) and entered into force together with the FL on 1 January 2012. Fidesz argued that this declaration – "part of the Fundamental Law" – and the adoption process – 2/3 parliamentary majority – were sufficient to establish its constitutional status. In *Decision 45/2012*, the still not yet fully compromised CC rejected that position: an instrument's self-classification could not determine its place in the hierarchy of legal sources. The Court held that the instrument's self-classification was insufficient, annulled the provisions that lacked genuinely transitional character, and required provisions intended to form "part of" the Fundamental Law to be incorporated into its text. The decision came in 2012, shortly after constitutional measures had restricted the Court's review competence, increased the number of its judges, and changed the appointment process. At that point, the Court was still able to fight back.

To reach its conclusion, and keeping in mind that the constitutional context indicated that the TP FL is indeed part of the FL, the CC had to move beyond its existing doctrine. Review and potential annulment of provisions forming part of the constitution would thus have amounted to substantive constitutional review for which neither the constitution nor the CC has established any competence. That is why, in 2012, the CC took an innovative step, claiming that the TP FL, notwithstanding its self-classification and the adoption process, does not constitute part of the constitution because it comprises different types of norms and is not incorporated into the text of the FL. This classificatory move enabled the Court to scrutinize the substantive nature of the provisions and annul those it considered non-transitional while presenting the exercise as review of public-law validity rather than substantive review of the constitution. It is important to note here that the TP FL, including rules annulled in the CC's *Decision 45/2012*, was subsequently incorpo-

rated into the FL through the harshly criticized Fourth Amendment to the FL (2013). That amendment, among others, expressly confined the CC's review of constitutional amendments to procedural requirements, seeking to foreclose the possibility of substantive review that the Court had tentatively left open in response to repeated abusive amendments.

Decision 45/2012 created a difficulty for the governing Fidesz majority, which it overcame by incorporating the relevant provisions into the FL. Fidesz now relies on and further develops the reasoning used by the Court in that decision against its own TP FL. It seeks to place the constitutional challenge within procedural review, although determining the legal nature of the rules contained in a constitutional amendment requires an examination of their substantive characteristics. This weakness of the argument, of course, results from the review framework that Fidesz itself created through the Fourth Amendment: having confined the review of constitutional amendments to procedural requirements, it must now formulate its challenge to the new majority's amendments within that limitation.

The Purpose of the Amendments

Third, the petitioners address the purpose of restoring the rule of law selectively. They invoke this purpose in relation to the Sixteenth Amendment, although that amendment does not expressly identify rule-of-law restoration as its objective. They do not give the Seventeenth Amendment's expressly stated restoration purpose a comparable interpretative role. Article R) requires the Fundamental Law to be interpreted in accordance with its purposes. The Seventeenth Amendment states its purpose in its text, and its legislative materials elaborate upon it. Taking that purpose into account would have placed the challenged provisions within the broader project of constitutional reconstruction. It would also have supplied a legitimate objective against which their character as allegedly individualized public-law decisions could be assessed. The petitioners avoid this contextual analysis, which reveals the selectivity of their reasoning.

Selectivity of Legal Sources

Fourth, the petitioners display the same selectivity in their use of legal authorities. They rely on CC decisions adopted before the FL entered into force, although Fidesz itself used the Fourth Amendment to declare that decisions delivered before 1 January 2012 had lost their force. This is still doctrinally permissible under *Decision 13/2013*, but only one petition expressly relies on that methodology. The significance lies in Fidesz's extensive use of doctrinal propositions originating in that jurisprudence once they become useful for constraining its successors.

They also invoke supranational and international hard and soft law concerning judicial independence and the constitutional position of the head of state – standards to which Fidesz attached little significance during its sixteen years in power. The authorities cited include *Baka v Hungary*, which arose from the premature termination of András Baka's mandate as the President of the then Supreme Court under the Fidesz government and resulted in findings that Hungary had violated the European Convention on Human Rights.

Their selection of international sources is also temporally selective. The petitions cite numerous Venice Commission opinions but do not engage with its recent opinion on Poland and its Updated Rule of Law Checklist. Both recognize the particular challenges of restoring the rule of law, including within the judiciary, and provide a directly relevant framework for evaluating measures affecting judicial officeholders. The petitioners' silence on these recent sources allows them to invoke European standards without confronting their application to democratic reconstruction – which they challenge in these petitions.

Preliminary Reference Proceeding

Lastly, the petitioners also request preliminary references to the Court of Justice of the European Union. This is significant in the Hungarian context, where the captured Constitutional Court has so far declined to initiate it, even in cases involving constitutional identity issues, which usually prompted other constitutional courts to enter into direct judicial dialogue with

the CJEU. The petitions now ask the Court to seek an interpretation of EU values, particularly democracy, the rule of law, and legality.

Doctrine and Politics: Who Serves Whom?

The case reveals the positional character of constitutional doctrine: its content changes with the political actor's relationship to constitutional power. After losing constitutional power, Fidesz invokes a restricted conception of the constitutional amending power, earlier Constitutional Court reasoning, European standards, and judicial dialogue with the CJEU as constraints on democratic reconstruction, repurposing authorities previously used against its own autocratization. The petitions thus document a legal backlash against democratic front-sliding: doctrine and standards used to obstruct and criticize Fidesz's autocratization are reworked by Fidesz to obstruct the dismantling of the resulting autocratic system.

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