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## THE MAIN ELEMENTS OF THE RULE OF LAW IN THE PRACTICE OF THE CONSTITUTIONAL COURT OF HUNGARY

**Abstract:** *The rule of law is one of the most complex concepts in constitutional law, some principles of which permeate the entire functioning of the state, the relationship between the individual and the state. It is no coincidence that there have been many attempts to define the concept of the rule of law in the literature, legislation and international law as well, but we cannot speak of a uniform, universally accepted concept. The rule of law is strongly linked to the historical development of a given country. This article presents the problems encountered by the Constitutional Court of Hungary in its judgment and how it defined certain principles of the rule of law in practice. These decisions of the Constitutional Court affect the functioning of the state and legislation and are historically linked to the development after the change of regime in Hungary. There are different opinions in the literature that the Court used the concept of the rule of law formally, or as a subsidiary, or as an abstract, mysterious concept in different decisions. According to the position of the present article, no matter how the Constitutional Court approaches the concept, it is certain that the merits of the elaboration of the elements of this important constitutional institution and its application to Hungarian historical conditions are indisputable. In interpreting the concept of the rule of law, the Constitutional Court made it clear that the principle of the rule of law is not an auxiliary, secondary rule, and not merely a declaration, but an independent constitutional norm, the violation of which may in itself justify the unconstitutionality of a legal act.*

**Keywords:** *rule of law, legal certainty, separation of powers, fair procedure, res judicata.*

## 1. INTRODUCTION

This article examines the major challenges and issues faced by the Hungarian Constitutional Court in defining the rule of law during its three decades of operation. The interpretation and elaboration of certain principles of the rule of law are inseparable from the history and legal and political culture of a given country. In this article, I would like to present the main principles on which the Constitutional Court has ruled and developed its own interpretation of these details. There are different opinions in the literature that the Hungarian Constitutional Court used the concept of the rule of law formally in the various stages of its judgment, either as a subsidiary or as an abstract, mysterious concept. However, I believe that in any way the Hungarian Constitutional Court has approached the concept of the rule of law, it still has an indisputable merit in adapting the content elements to Hungarian historical conditions.

The concept of the rule of law has been interpreted by many scholars and international organizations, and its elements and criteria have been defined as well as by the legislation of several countries. All of these aspects cannot be examined in this article as this topic has a whole library of literature, but I have to mention the main requirements of the Council of Europe's and the European Union, as they provide a basis for understanding the approach of the Constitutional Court of Hungary.

Although there is not a uniform European definition of the rule of law but under the auspices of the Council of Europe, the Venice Commission has attempted to do so in its report. It analysed the different theoretical and practical interpretation of this concept, among them the requirements of the European Court of Human Rights (ECtHR).<sup>1</sup> The Commission then decided to draft an operational tool for assessing the level of rule of law compliance in any given state, and this led to the elaboration of the rule of law checklist based on the five core elements of the rule of law, sub-itemised into detailed questions. According to its approach the core elements are: legal certainty, prevention of abuse/misuse of powers, equality before the law and non-discrimination, access to justice.<sup>2</sup>

Another starting point for the rules of law is the European Union's treaties and the judicial practice of the Court of Justice of the EU (hereinafter: CJEU). If a state wishes to join the Union, its accession was preceded by a process of legal harmonization, in the process of which the fulfilment of the requirements had already been indicated. The rule of law guarantee system was, in essence, already one of the political criteria that nation states wishing to join the European Union

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<sup>1</sup> Report on the rule of law, Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), *Rule\_of\_law (coe.int)*, 15 March 2021.

<sup>2</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e), 15 March 2021.

had to meet. These content criteria have been strongly emphasized in the formulation of democracy and human rights, as well as minority rights. It is well known that the European Commission has adopted a “rule of law”, suggesting that if a nation state violates EU values “seriously and persistently”, the procedure under Article 7 on the European Union will take effect.<sup>3</sup>

The CJEU interprets the rule of law and its tasks are not limited to judicial review of acts of the EU institutions. It is not just its job to guide the interpretation of the Treaties. In the course of judicial review, it also examines the enforcement of general principles of law and thus the enforcement of fundamental rights.<sup>4</sup>

Although the requirements of the rule of law actually differ from one Member State to another, but the case law of the Luxembourg and Strasbourg judicial forums, the professional work of the Venice Commission outline the European content of the rule of law. Therefore, the rule of law is a constitutional principle that has both formal and substantive components.

The principle of the rule of law is also one of the most important principles of the Hungarian constitutional system. The rule of law in the most general sense means the primacy of law, the commitment of the state to the Fundamental Law. The principle of the rule of law primarily ensures that the law gives scope and form to the exercise of state power. In another approach, the principle of the rule of law in practice fixes the limits of the activity of the state in public power, according to which the extent of state intervention is determined by law.<sup>5</sup>

After this general approach let’s examine the main element of the concept according to the practice of the Constitutional Court in this respect.

## 2. THE MAIN ELEMENTS OF THE RULE OF LAW ACCORDING TO THE CONSTITUTIONAL COURT OF HUNGARY

The Fundamental Law of Hungary<sup>6</sup>, like the earlier Constitution, defines the concept of the rule of law, so its conceptual elements can be explored from this starting point. In the interpretation of the Constitutional Court – on the basis of both the earlier Constitution and the Fundamental Law – the rule of law in the broadest sense means that bodies of public power within the organizational frame-

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<sup>3</sup> In accordance with Article 7 of the Treaty on European Union.

<sup>4</sup> Thomas von Danwitz, „The Rule of Law in the Recent Jurisprudence of the ECJ”, *Fordham International Law Journal*, 37(2014)/5, 1328–1333.

<sup>5</sup> Kiss László, *A magyar jogállamról és jogállamiságról In Hajas Barnabás és Schanda Balázs (szerk.) Ünnepi Kötet Kilényi Géza professzor hetvenedik születésnapjára*, Szent István Társulat, Budapest 2006, 226.

<sup>6</sup> Article B (1) of the Fundamental Law declares: “Hungary is an independent, democratic state under the rule of law”.

work established by law operate within regulated legal limits.<sup>7</sup> The Constitutional Court also classified as one of the basic requirements of the rule of law that the bodies regulated in the Fundamental Law have a duty to exercise their constitutional significance in good faith, by assisting and cooperating in the performance of their duties.<sup>8</sup>

In the practice of the Constitutional Court, the interpretation of the rule of law did not play a significant role in the early years. The basic decision on the rule of law was drawn up by the Court in the first half of 1992 and has since become the basis for its case law. In connection with the change of regime that was peacefully happened in 1989, the Constitutional Court established the basic requirements of the rule of law. In that decision, it first stated that the classification of Hungary as a state governed by the rule of law was both a finding of fact and a program, too. At the same time, the Constitutional Court also stressed that the fundamental rights and the justice required by the rule of law cannot be set aside during the transition period. The rule of law cannot be established against the rule of law.<sup>9</sup>

In its decisions, the Constitutional Court later emphasized that the fundamental value of the rule of law is detailed in the provisions of the Fundamental Law, but at the same time it does not fully fill its content. Therefore, the interpretation of the concept of the rule of law is one of the priority tasks of the Constitutional Court. The Constitutional Court examines the principles that fulfil the fundamental value of the rule of law in the exercise of its powers.

The Constitutional Court formulated the system of requirements of the rule of law in several decisions. We cannot talk about a uniform and generally accepted concept of interpretation, but at the same time we can identify criteria that typically appear in the decisions of the Constitutional Court.

In a subsequent judgment, the Constitutional Court emphasized that “in such a constitutional democracy, it is part of the freedom of citizens that their actions may be limited only by legal rules which they know in advance and which comply with the formalized rules of law. It therefore infringes the prohibition of retroactive legislation if ... legislation subsequently declares conduct unlawful, imposes obligations on legal persons and subsequently restricts rights”.<sup>10</sup> For these reasons, the Constitutional Court prohibits retroactive legislation as a general rule.<sup>11</sup> This idea leads us to examine an important element of the rule of law, the legal certainty.

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<sup>7</sup> Decision 56/1991. (XI. 8.) AB, *Hungarian Official Gazette* No. 123/91.

<sup>8</sup> Decision 8/1992. (I. 30.) AB, *Hungarian Official Gazette* No.11/92.

<sup>9</sup> Decision 11/1992. (III. 5.) AB, *Hungarian Official Gazette* No.23/92.

<sup>10</sup> Decision 8/2005. (III. 31.) AB, *Hungarian Official Gazette* No.15/05.

<sup>11</sup> Decision 34/1991. (VI. 15.) AB, *Hungarian Official Gazette* No.65/91.

## 2.1. Legal certainty

Legal certainty is in itself a complex concept, several parts of which have been formulated by the Constitutional Court on the basis of the Article B) of the Fundamental Law of Hungary. The issue of legal certainty has generally been examined in norm control proceedings, as the Court does not consider legal certainty as a right that can be examined in a constitutional complaint procedure. According to its practice legal certainty is not a fundamental right, and a constitutional complaint against it can only be established in exceptional cases, namely in the absence of retroactive legislation and lack of preparation time.<sup>12</sup>

### 2.1.1. Clarity of norms

Legal certainty expects the state and, above all, the legislator, that the law as a whole, certain sub-areas and certain rules be clear, unambiguous, predictable in terms of their impact and predictable for the addressees of the norm. It follows, therefore, that the specific yardstick for the clarity of the norm is that the norm should be “clear” and its application “predictable”.<sup>13</sup>

### 2.1.2. Prohibition of retroactive legislation

The Constitutional Court has placed the prohibition of retroactive legislation among the requirements of the rule of law and prohibits retroactive legislation as a general rule. However, in specific cases, the Court also emphasizes that “the prohibition of retroactive legislation is not absolute and can clearly be exercised by the legislator when establishing a new right, extending an existing right or lifting a restriction of a right”. The prohibition of retroactive legislation applies only to legislation which aggravates the situation of legal entities (*ad malam partem*).<sup>14</sup>

However, in addition to the above, it cannot be ignored that retroactive legislation has different options. According to this, a breach of legal certainty may arise not only if the legislature subsequently establishes different legal consequences for a closed legal relationship (so-called genuine retroactive legislation), but also if the legislator creates a new legal relationship affecting that legal relationship with regard to pending legal relationships or when the legislation causes a change in the existing legal relations (so-called legislation with immediate effect).

The essence of immediate legislation is therefore that the legislation establishes different legal consequences for legal relations that have already been established but have not yet been concluded. In this context, the Constitutional Court

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<sup>12</sup> Order 3325/2012. (XI. 12.) AB, Justification [11], *Constitutional Court's Gazette* No.9/12.

<sup>13</sup> Decision 11/1992. (III. 5.) AB, *Hungarian Official Gazette* No.23/92.

<sup>14</sup> Decision 110/2009. (XI. 18.) AB, *Hungarian Official Gazette* No. 162/09.

typically points out that a law may be considered to be in conflict with the prohibition of retroactive effect not only if the law was enacted retroactively by the legislator, but also if the enactment was not retroactive, but the provisions of the law shall also apply to legal relationships existing before the entry into force of the legislation.<sup>15</sup>

In its cited decisions, the Constitutional Court also emphasized that it always examines on a case-by-case basis whether a breach of legal certainty has taken place.<sup>16</sup>

In connection with the decisions of the Constitutional Court referred to above, I consider it important to emphasize that the constitutional requirements contained therein have been prescribed by the Constitutional Court for the legislator. In some cases, however, the extent to which these constitutional obligations apply to law enforcers has already been raised, too.<sup>17</sup>

The Constitutional Court formulated the prohibition of retroactive effect as one of the most important constitutional principles of criminal law as a constitutional principle giving the content of the rule of law. The essence of this is that the limits and conditions of the criminal power of the state defined by law cannot be changed at the expense of the person whose act is judged under criminal law.<sup>18</sup> I have to mention that that the retroactive application of law is a popular ground in respect of legal certainty among constitutional complaints to establish unconstitutionality.<sup>19</sup>

### 2.1.3. Preparation time

In the practice of the Constitutional Court, the requirement of time to prepare for the application of legislation can always be decided only occasionally, so it is difficult to set a general standard. Only a ‘extreme’ infringement can therefore lead to a breach of legal certainty. The extreme lack of preparation time for the application of the legislation was typically found by the Court when the preparation time between the promulgation and entry into force of a new or additional legal provision is so short that it is clear that the recipients of the legislation, despite their good faith, best intentions and or only at the cost of extraordinary efforts could meet their obligations.

The Constitutional Court also pointed out that the condition for both the application of the law and the law-abiding behaviour is the knowledge of the law, so in this respect the preparation for the application of the law and the knowledge of the law are related to each other. Determining and ensuring the necessary time

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<sup>15</sup> Decision 57/1994. (XI. 17.) AB, *Hungarian Official Gazette* No. 113/94.

<sup>16</sup> Decision 1/2016. (I. 29.) AB *Hungarian Official Gazette* No.11/16.

<sup>17</sup> Decision 10/2014. (IV. 4.) AB, *Hungarian Official Gazette* No.51/14.

<sup>18</sup> Decision 9/1992. (I. 30.) AB, *Hungarian Official Gazette* No.11/92.

<sup>19</sup> Agnes Czine, *Das Recht auf ein faires Verfahren*, LexisNexis, Wien 2021, 88-91.

to prepare for the application of the law depends on the discretionary decision of the legislator, in connection with which unconstitutionality can be established only if the time for preparation seriously endangers or violates legal certainty. While assessing exactly how long it takes to prepare for the application of a particular piece of legislation is not a constitutional issue, but a lack of preparation time or an extreme lack of it already results unconstitutionality.<sup>20</sup>

According to the case law of the Constitutional Court, the requirement of legal certainty imposes on the legislator the obligation to determine the date of entry into force of the legislation in such a way that there is sufficient time left i) to get acquainted with the text of the legislation; (ii) for law enforcement authorities to prepare for the application of the law; (iii) for bodies and persons affected by the legislation to decide how to adapt to the provisions of the legislation.<sup>21</sup>

## 2.2. Separation of powers

The Constitutional Court has already defined the principle: the principle of the division of powers is the most important organizational and operational principle of the Hungarian state organization.<sup>22</sup> According to another decision of the Constitutional Court the “separation” of the legislature and the executive today is essentially a division of powers between Parliament and the Government, which, however, are politically intertwined. The parties that make up the parliamentary majority form the Government, and Parliament mostly votes on the Government’s bills. In view of this, the peculiarity of the judiciary is that it is constant and neutral vis-à-vis the other two branches of power of a “political” nature. This neutrality is enshrined in the constitutional provision that judges are independent and subject only to the law.

## 2.3. Judicial independence

The Constitutional Court has pointed out in several judgments that “judicial independence is the most important guarantee of the independence of the judiciary. And an independent judiciary is one of the foundations of the rule of law.”<sup>23</sup>

It follows from the practice of the Constitutional Court presented above that judicial independence is primarily a constitutional principle related to the division of power. In addition, however, the Constitutional Court acknowledged that in some of its elements – in connection with the remuneration of judges and the termination of their employment – a right granted to judges. However, it cannot

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<sup>20</sup> Decision 6/2013. (III. 1.) AB, *Hungarian Official Gazette* No.35/13.

<sup>21</sup> Order 3062/2012. (VII. 26.) AB, *Hungarian Official Gazette* No.3/13.

<sup>22</sup> Decision 31/1990. (XII. 18.) AB, *Hungarian Official Gazette* No.128/90.

<sup>23</sup> Decision 4/2014. (I. 30.) AB, *Hungarian Official Gazette* No.7/14.

be inferred from the previous practice of the Constitutional Court that judicial independence is a fundamental right of the parties to litigation. Judicial independence, even if in some elements it can be interpreted as a right granted to judges, is one of the central organizing principles of the constitutional state organization and, as such, one of the most important guarantees of the rule of law. It ensures that a judge can make his decision only in accordance with the law, on the basis of his internal convictions.<sup>24</sup>

#### 2.4. Fair trial

The Constitutional Court has consistently enforced that legal certainty makes it the duty of the state – and primarily the legislator – to ensure that not only the law as a whole, but also certain sub-areas and individual legal acts are clear and predictable for followers. That is, legal certainty requires not only the clarity of individual norms, but also the predictability of the operation of individual legal institutions. According to the interpretation of the Constitutional Court, it can be deduced from this that procedural guarantees are also fundamental from the point of view of the constitutional requirement of legal certainty. Judicial institutions can only function constitutionally by requiring and complying with formalized procedural rules. These requirements have gained further interpretative content in the subsequent practice of the Constitutional Court in connection with the right to a fair trial.<sup>25</sup>

In the practice of the Constitutional Court, a fair trial is a quality that can only be judged in the light of the whole and the circumstances of the proceedings. Therefore, despite the absence of certain details, as well as the observance of all detailed rules, the procedure may be inequitable or unjust or unfair.<sup>26</sup>

The Constitutional Court takes into account the principles of the ECtHR. A similarity with the interpretation of the ECtHR is shown by the practice of the Constitutional Court, according to which the overwriting and extension of a regulation by the courts no longer means legal interpretation, but *contra legem* law enforcement – in fact, legislative – activity. It also follows from the principle and requirement of the rule of law that the interpretation of law cannot become a means of an arbitrary, subjective decision of the law enforcement body. Otherwise, the requirement of legal certainty, especially the requirement of predictability would be infringed. Thus, an extreme error of legal interpretation – according to the practice of the Constitutional Court – may, in exceptional cases, raise a violation of the rule of law.<sup>27</sup>

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<sup>24</sup> Order 3173/2015. (IX. 23.) AB, *Constitutional Court's Gazette (ABK)* No. 18/15.

<sup>25</sup> Agnes Czine, *A tisztességes bírósági eljárás, Audiatur et altera pars*, hvgorac, Budapest 2020, 156-192.

<sup>26</sup> Decision 6/1998. (III. 11.) AB, *Hungarian Official Gazette* No.18/98.

<sup>27</sup> Order 3026/2015. (II. 9.) AB, *Constitutional Court's Gazette (ABK)* No.8/16.



## 2.5. Legal force

The Constitutional Court stated that a formal and material legal force is a part of the rule of law as a constitutional requirement. In another decision, the Constitutional Court emphasized that the respect for court decisions and the execution of final court decisions belong to the constitutional values related to the rule of law. In the enforcement proceedings, therefore, the constitutional personal rights of everyone should no longer be protected in the abstract. If the enforcement system is weak and easy to circumvent, it will inevitably lead to the underestimation of court decisions, legal uncertainty, deterioration of legal awareness and violation of the rule of law. Overcoming such a threat is clearly a constitutional interest from a civil, social and state perspective.<sup>28</sup>

## 2.6. Material truth

With regard to the rule of law requirement of material truth, the Constitutional Court emphasized that it can be achieved by remaining within the institutions and guarantees serving legal certainty. The Constitutional Court has held in several decisions that the Constitution does not provide a subjective right to the enforcement of material truth. These are the aims and tasks of the rule of law. The Constitution gives the right to the necessary and, in most cases, appropriate procedure for the enforcement of material truth. However, the establishment of the truth regarding the commission of a criminal offense, the person of the perpetrator and his or her criminality appears to be a basic requirement for the procedure of enforcing a criminal claim. This is an essential condition for a fair court decision on the issue of criminal liability.<sup>29</sup>

## 3. CONCLUSIONS

In its initial decisions, the Constitutional Court proceeded from the broadest interpretation of the rule of law and took into account both the concept of the German rule of law and the Anglo-Saxon historical traditions of the rule of law. In the 1990s, the Constitutional Court carried out the work of defining the formal and substantive elements of the concept of the rule of law, as a result of which it designated a framework for the interpretation of the conceptual elements of the rule of law for later practice. In my opinion, there can be no doubt that the Constitutional Court has fulfilled its most important task after the change of regime by defining the concept of the rule of law, especially its verdict decisions in 1992:

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<sup>28</sup> Decision 46/1991. (II. 10.) AB, *Hungarian Official Gazette* No.98/91.

<sup>29</sup> Decision 14/2004. (V. 7.) AB, *Hungarian Official Gazette* No.63/04.

the rule of law has given clear, comprehensible and unambiguous guidelines to society to establish and operate. On the other hand, the interpretation of the rule of law contained in the decisions also served as a solid basis for subsequent practice. This is well illustrated by the fact that the Constitutional Court, without exception, confirmed its former practice in relation to the rule of law after the entry into force of the Fundamental Law.

At the same time, legal literature has criticized the Constitutional Court's interpretation of the rule of law. Namely, the fact that the Constitutional Court places "the rule of law above substantive provisions" (formal rule of law), on the other hand it evaluates it as a "subsidiary rule" (referral to named rights), thirdly, it also interprets as a mysterious substantive rule (from which, unless otherwise provided), a subjective constitutional right that can be deduced. According to *András Zs. Varga* – in agreement with *András Tamás*, an administrative lawyer – the rule of law has already become a normative concept, although the legal concept is defined with a different content.<sup>30</sup>

In my view, however, in the context of these critical remarks, we cannot ignore the following either. With regard to the initial operation of the Constitutional Court, it can undoubtedly be stated that the Constitutional Court has raised the principle of legal certainty as the most important conceptual element of the rule of law. It does not follow, however, that emphasizing the importance of legal certainty precludes the adoption of other constitutional values. *László Sólyom*, the former president of the Court has already emphasized that it is absurd to assume that the Constitutional Court is in favour of the formal rule of law, and this is clearly supported by the particularly extensive practice of the Constitutional Court in the protection of fundamental rights.<sup>31</sup>

Furthermore, it cannot be ignored that in its decisions on the interpretation of the rule of law, the Constitutional Court includes not only legal certainty but also the principle of separation of powers, legality of law enforcement, guarantee of equality, protection of fundamental rights and also equality of rights. According to the case law of the Constitutional Court, the protection afforded by the principles of *nullum crimen sine lege* and *nulla poena sine lege* cannot be limited to the specific elements of criminal law and the penalties contained therein, but covers all relevant rules on criminal-type liability in other branch of law.<sup>32</sup>

The Constitutional Court made it clear that not only itemized legal norms and the operation of state bodies must harmonize with the former Constitution, but that society as a whole must reflect the conceptual culture and values of the former Constitution.<sup>33</sup>

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<sup>30</sup> Varga Zs. András, *Eszményből bálvány? A joguralom dogmatikája*, Századvég Kiadó 2015, 105

<sup>31</sup> Sólyom László, *Az alkotmánybíráskodás kezdetei Magyarországon*, Osiris, Budapest 2001, 708

<sup>32</sup> Decision 16/2014. (V. 22.) AB, *Hungarian Official Gazette* No.73/14.

<sup>33</sup> Decision 2/1992. (III. 5.) AB, *Hungarian Official Gazette* No.7/92.

The rule of law is also considered a form of modern state, its concept has emerged conceptually, in the sense that there is a concept behind the rule of law, and the rule of law seeks to implement a concept. The merits of the Hungarian Constitutional Court in defining the concept and content elements of the rule of law are indisputable. Like the concept of constitutional criminal law in the 1990s, the concept of the rule of law was developed in its resolutions during this period.

In interpreting the concept of the rule of law, the Constitutional Court made it clear that the principle of the rule of law is not an auxiliary, secondary rule, and not merely a declaration, but an independent constitutional norm, the violation of which in itself justifies the unconstitutionality of a legal act. By treating the rule of law as an independent norm of constitutional law and defining the principles that filled it independently, the Constitutional Court essentially endowed rules with constitutional relevance that were not enshrined in the former Constitution but in lower-level legislation. The Constitutional Court thus filled the principle of the rule of law during an independent interpretation.

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## Главни елементи владавине права у пракси Уставног суда Мађарске

**Сажетїак:** Владавина права је један од најсложенијих појмова у уставном праву, чији неки принципи прожимају целокућно функционисање државе, однос појединца и државе. Није случајно што је у литератури, у законодавству и међународном праву било много покушаја да се дефинише појам владавине права, али не можемо говорити о јединственом, општеприхваћеном концепту. Владавина права је снажно повезана са историјским развојем дате земље. У овом чланку приказани су проблеми са којима се сусрео мађарски уставни суд у својој пресуди и како је дефинисао одређене принципе владавине права у пракси. Ове одлуке Уставног суда утичу на функционисање државе и законодавства и историјски су везане за развој након промене режима у Мађарској. У литератури постоје различита мишљења да је мађарски уставни суд користио концепт владавине права формално у различитим фазама своје пресуде, било као суисидијарни или као аспирактивни, мистериозни концепт. По мишљењу овог члана, ма како Уставни суд пристигну концепту, извесно је да су његове заслуге у разради садржајних елемената ове значајне уставне институције и њене примене на мађарске историјске прилике неоспорне. Тумачећи концепт владавине права, Уставни суд је јасно ставио до знања да начело владавине права није помоћно, секундарно правило, него декларација, већ самостална норма уставног права, чија повреда може само по себи оправдавају неуставност закона.

**Кључне речи:** владавина права, правна сигурност, подела власти, правичан постојање, рес јудикација.

Датум пријема рада: 17.03.2021.

Датум прихватања рада: 10.06.2022.