### Appendix A

### Case Study - The representation of different constitutional reasoning methods through the practice of the Constitutional Court

The case study is intended to show that, although only in a minimal number of them, self-reflection is included in some decisions of the Constitutional Court. This means that the Constitutional Court names the specific methods of reasoning that are applied. The Constitutional Court gives reasons for its decisions based on these methods by explaining the methods of reasoning.

The Constitutional Court has received numerous petitions from individuals, including law professors, lawyers, former constitutional judges, interest organizations, and political parties, on the unconstitutionality of Act CXIX of 2010 amending Act XX of 1949 on the Constitution of the Republic of Hungary. Typically, the petitioners required its annulment ex tunc, i.e., with retroactive effect to its promulgation, because it introduced retroactive taxation in the public sector that was against the rule of law and legal certainty.

Although this was an important decision in terms of content,[[1]](#footnote-1) here we are not concerned with the examination of the content, but with the methods used by the Constitutional Court in its reasoning. In the 61/2011. (VII. 13.) Constitutional Court decision the linguistic, contextual, teleological, historical, ‘beyond the law’ and ‘according to precedent interpretation’ aspects are also reflected, along with the following keywords: linguistic, linguistic interpretation, the text of the Constitution, tradition, values of the Constitution, legislative purpose, beyond the law, extra-legal, constant practice of the Constitutional Court.[[2]](#footnote-2)

Below we present examples of the interpretative methods used in the 61/2011. (VII. 13.) Constitutional Court decision:

**Appendix 1:** Methods of interpretation found in the 61/2011. (VII. 13.) Constitutional Court decision and examples of such methods (author’s own compilation)

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| **Interpretation method** | **Keyword** | **The example sentence in the decision in English** | **The example sentence in the decision in Hungarian** |
| Linguistic | linguistic interpretation | “According to a *linguistic interpretation*, the term ‘source of public charges’ means all income in connection with which there is an obligation to pay public charges.” | „A »közterhek viselésére szolgáló forrás« - *nyelvtani értelmezés* alapján - ugyanis minden olyan jövedelmet jelent, amellyel kapcsolatban a közteherviselési kötelezettség fennáll.” |
| Contextual | System of the Constitution/ the Fundamental Law  Values of the Constitution/ the Fundamental Law | “If there is a conflict between the constitutional amendment and the Constitution, the Constitutional Court has the power to decide based on the text,[[3]](#footnote-3) *system, and values of the Constitution* and to annul the constitutional amendment. If the Constitutional Court were not allowed to do so in these particular cases, it would create a serious crisis of constitutional interpretation and protection.” | “Amennyiben az alkotmánymódosítás és az Alkotmány között kirívó ellentét áll fenn, az Alkotmánybíróságnak módja van arra, hogy az Alkotmány szövege, *rendszere, értékrendje alapján* döntsön és az alkotmánymódosítást is megsemmisíthesse. Ha ezt nem tehetné meg ezekben a kirívó esetekben, akkor az súlyos krízist teremtene az alkotmányértelmezés és az alkotmányvédelem terén.” |
| Teleological | Legislative purpose | “Constitutional amendment and *legislative purpose* that establish an obligation retroactively are contrary to the fundamental constitutional values[[4]](#footnote-4) explicitly accepted by the Constitutional Court.” | “Az ilyen kötelezettséget visszamenőlegesen megállapító alkotmánymódosító és jogalkotói szándék az *Alkotmány alapvető értékrendjével* áll szemben, amely értékrend létét az Alkotmánybíróság kifejezetten elismerte.” |
| Historical | Constitutional tradition | “The essential core of the Constitution is made up of the fundamental principles, which – at the present stage of democratic constitutional development – are accepted in all constitutional states and which are part of the common European *constitutional tradition*.” | “Az Alkotmány lényeges magja körébe azok az alapelvi normák tartoznak, amelyek a demokratikus alkotmányfejlődés jelenlegi állása szerint minden alkotmányos jogállamban elfogadottak, a közös európai *alkotmányos tradíció* részét képezik.” |
| Beyond the law | Beyond the law | “This basic legal value ensures first and foremost that the law gives the measure and form to the exercise of state power, and therefore, it is not possible to give an arbitrary and *beyond the law* interpretation to the state interest.” | “Ez a jogi alapérték elsősorban azt biztosítja, hogy a jog ad mértéket és formát az államhatalom gyakorlásának, ezért nem lehetséges az államérdeknek *jogon túli*, önkényes értelmezést adni.” |
| Decision-based on former decisions | Constitutional Court (uninterrupted) practice; Constitutional precedent | “In reviewing the *Constitutional Court's precedent* decisions [it was]  found that the *practice of the Constitutional Court* is uninterrupted in that it has so far not extended its authority to review either the Constitution itself or laws amending the Constitution. | “Az *Alkotmánybíróság* precedens határozatainak áttekintése során megállapította, hogy *töretlen az Alkotmánybíróság gyakorlata* abban a vonatkozásban, hogy sem magának az Alkotmánynak, sem az Alkotmányt módosító törvényeknek a felülvizsgálatára nem terjesztette ki eddig a saját hatáskörét.” |

In conclusion, we consider that the case study presented here provides an excellent illustration of how the methods of reasoning we have examined could be reflected in the reasoning of the Constitutional Court at the textual level. The problem is that these keywords and methods of interpretation are found only occasionally, rather than systematically in all the decisions of the Constitutional Court.

1. T. Drinóczi, ‘Gondolatok az Alkotmánybíróság 61/2011. (VII. 12.) AB határozatával kapcsolatban’ 1 *Jura*, (2012) pp. 37–44. [↑](#footnote-ref-1)
2. In Hungarian the following keywords appear in the reasoning of the decision: “nyelvtani”; “nyelvtani értelmezés”; “Alkotmány szövege”; “tradíció”; “Alkotmány értékrendje”; “jogalkotó célja”; “jogon túli”; “jogon kívüli”; “Alkotmánybíróság állandó gyakorlata”. [↑](#footnote-ref-2)
3. This sentence is also an example of linguistic interpretation. [↑](#footnote-ref-3)
4. This sentence is also an example of contextual interpretation. [↑](#footnote-ref-4)