Organic Laws/Cardinal Laws

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A. Definition and Historical Development

1 During the last decades, a growing number of constitutions have entrenched a special subcategory of laws whose adoption is subject to stricter procedural rules than ordinary (unqualified) legislation. These laws have to be enacted by qualified → *majority*, by the consent of the two chambers of the legislature, and they are subject to mandatory constitutional review before their promulgation and other additional safeguards not applicable to ordinary legislation. Qualified laws affect the operation of the → *separation of powers* and the constitutional principle of → *democracy* significantly. Therefore, the main aim of this entry is to conceptualize the most contested issues linked to the legal nature of qualified laws, and to provide a deeper understanding of the interdependence between qualified laws and the → *rule of law*.

2 As a preliminary consideration, the term of qualified law shall be defined. The relevant national constitutions use the concept of qualified law differently; however, certain common points can be identified among the various approaches. Qualified law is a constitutionally prescribed subcategory of laws, which covers at least theoretically the most crucial legislative fields and whose adoption is subject

to stricter procedural safeguards than the ordinary legislation (Camby (1998) 1686–1698; Jakab 96–110; Avril and Gicquel 267–307).

3 The different national legal systems use different terms for the laws that are defined by these requirements; this diversity demonstrates well the different functions of the legal concept. The term ‘organic law’ is most commonly used and refers to the constitutional function of the law (ie, to regulate in detail the composition, powers and procedures of the institutions or ‘organs’ of government established by the constitution) It is used by the Constitution of France: 4 October 1958 (as Amended up to the Constitutional Law No. 2008–724 of 23 July 2008), Art. 46 (Fr) and by the Constitution of Spain: 27 December 1978 (as Amended to 2011) (Spain), as well as by many constitutions in Africa and Latin America which have followed their model .

4 The category of ‘laws with constitutional force’ was introduced in Hungary during the democratic transition. These laws had the same legal force as the Articles of the Constitution (Kilényi 201–9). The category of ‘laws adopted by two-thirds majority’ was also used during two decades in Hungary between 1990 and 2011. It highlighted the political salience of these laws, which had to be adopted or amended with broad consent instead by simple majority.

5 More recently, the Fundamental Law of Hungary: 18 April 2011 (as Amended to 2020), Art. T (4) (Hung) established a new legal concept, the cardinal law, a device which follows a similar logic as the former ‘laws adopted by two-thirds majority’. This symbolic step served to strengthen the historical rhetoric of the new Fundamental Law (Küpper 2–5).

6 For the purpose of this entry, qualified law is used as a general term, but where the particular national solutions are discussed, the terminology used in the respective country is referred to.

7 France, Spain and Hungary represent the three main models for legislation with qualified majority and other special procedural requirements. However, the issue of qualified law concerns not only these three countries, but also more than fifty constitutional systems from all around the world. In spite of the fact that some elements of the English constitutional development were close to the logic of qualified law (Leyland 25–2), the modern history of qualified law dates back to 1958, when Art. 46 of the current Constitution of France was adopted . After the → *decolonization* of Africa, numerous African countries have imported the concept of ‘organic law’ into their constitutional law (David, Jauffret and Goré630). Currently approximately 21 African Constitutions provide expressly for organic laws, such as the Constitution of Algeria: 30 December 2020, Art. 145 (Alg); the Constitution of the Republic of Senegal: 22 January 2001 (as Amended to 2016), Art. 78 (Sen); the Constitution of the Republic of Tunisia: 26 January 2014, Art. 65 (Tunis); the Constitution of the Republic of Angola: 21 January 2010, Arts 166(2)(b) and 169(2) (Angl); the Constitution of Benin: 1 March 1990, Art. 97 (Benin); the Constitution of Burkina Faso: 2 June 1991 (as Amended to 5 November 2015), Art. 155 (Burk Faso); the Constitution of the Republic of Chad: 4 May 2018, Art. 134 (Chad); the Constitution of the Republic of Djibouti: 15 September 1992, (as Amended to 2010), Art. 66 (Djib); the Constitution of Equatorial Guinea: 1991 (as Amended to

2012), Art. 104 (Eq Guinea); the Constitution of Côte d'Ivoire: 8 November 2016, Art. 71 (Côte d'Ivoire); the Constitution of the Republic of Gabon: 26 March 1991 (as Amended to 2011), Art. 60 (Gabon); Art. 83 of the Constitution of Guinea of 7 May 2010 ; the Constitution of the Democratic Republic of Congo: 18 February 2006 (as Amended to 2011), Art. 124 (Dem Rep Congo); the Constitution of the Republic of Congo: 20 January 2002 (as Amended to 2015), Art. 125 (Congo); the Constitution of the Central African Republic: 27 March 2016, Art. 95 (Cent Afr Rep); the Constitution of Madagascar: 14 November 2010, Arts 88 and 89 (Madag); the Constitution of the Kingdom of Morocco: 17 June 2011, Arts 85 and 86 (Morocco); the Constitution of the Islamic Republic of Mauritania: 12 July 1991 (as Amended to 20 March 2012), Art. 67 (Mauritania); Constitution of Niger (Seventh Republic): 31 October 2010 (as Amended to 2017), Art. 131 (Niger); the Constitution of the IVth Republic of Togo: 27 September 1992 (as Amended to 2007), Art. 92 (Togo); the Constitution of the Republic of Cabo Verde: 4 September 1992 (as Amended to 2010), Arts 73(2) and 86(2)(b) (Cape Verde).

8 The second wave of the spread of qualified law was triggered by the fall of the nationalist dictatorships and the drafting of new democratic constitutions in Spain and Portugal: qualified laws were introduced in both constitutions (Section 81 (1) of the Constitution of Spain and Art. 166 of the Constitution of the Portuguese Republic: 2 April 1976 (as Amended to 2005) (Port)) (see also Conversi 223–244). Their example was followed by a considerable number of Latin-American countries, such as Ecuador (Constitution of the Republic of Ecuador: 28 September 2008 (as Amended to 2021), Art. 133 (Ecuador)) or Venezuela (Constitution of the Bolivarian Republic of Venezuela: 15 December 1999 (as Amended to 2009), Art. 203 (Venez)), but also the Dominican Republic (Constitution of the Dominican Republic: 13 June 2015, Art. 112 (Dom Rep)) Colombia (Political Constitution of Colombia: 1 July 1991 (as Amended to 2015), Art. 151 (Colom)); Panama (Constitution of the Republic of Panama: 11 October 1972 (as Amended to 2004), Art. 164 (Pan)), and Peru (Political Constitution of Peru: 29 December 1993 (as Amended to 2021), Art. 106 (Peru)).

9 The third wave of constitutions that have embraced the concept of 'qualified law' followed the end of the communist regimes in Central and Eastern Europe (→ *communism*). Qualified laws as a distinct form of (constitutional) legislation were incorporated in the Hungarian Constitution (see para. 6 above), in the Constitution of Romania: 21 November 1991 (as Amended to 2003), Art. 73(3) (Rom); the Constitution of and in the Republic of Moldova: 29 June 1994 (as Amended to 2016), Art 73(3) (Mold), while legislation to be adopted with qualified majority also features in the Constitution of the Republic of Croatia: 22 December 1990 (as Amended to 2013), Art. 82 (1) and (2) (Croat), the Constitution of Montenegro: 19 October 2007 (as Amended to 2013), Art. 91 (Montenegro); the Constitution of Georgia: 24 August 1995 (as Amended to 2018), Art. 66(2) (Geor).

B. The Scope of Qualified Laws

10 The fields of qualified legislation can be divided into two main groups: the basic institutions of the state, and the → *fundamental rights*. The following subchapters will illustrate the approach of the different national constitutional systems.

1. The Scope of Qualified Laws in France

11 In France, most of the organic laws cover institutional matters, inter alia the functioning of the Parliament (Art. 25 (1) of the French Constitution), the status of the members of the → *judiciary* (Art. 64 (3)), the status of the → *Constitutional Council of France (Conseil Constitutionnel)* (Art. 63), the functioning of the Economic, Social and Environmental Council (Art. 71), the powers and actions of the Defender of Rights (Art. 71–1 (3)). Moreover, limitations of the **sovereignty** of France may only be agreed to by way of organic law. The most conspicuous element in the French use of organic laws is the almost total dominance of the institutional aspect. Since fundamental rights with a very few exceptions (see Art. 66) were not included in the text of the Constitution of the Fifth Republic, they also escaped regulation by organic law. However, as the prohibition of arbitrary → *detention* of individuals in Art. 66—whose enforcement is entrusted to the ordinary courts 'in accordance with the law'—shows, this restriction of the scope of application of organic laws to institutional matters was a deliberate choice made by the drafters of the Constitution. Since 1958, the scope of organic law has only been extended slightly by constitutional amendments, for instance, for instance to the regulation of the powers of the defender of rights in 2008 (→ *amendment or revision of constitutions*).

12 In the practice of the Constitutional Council, the character of 'organic law' is assigned only to those provisions in a codification or a law which are identified by the Constitution as being subject to regulation by organic law (Camby (1998) 1690). As a consequence, there are several statutes, which contain organic as well as ordinary provisions. Accordingly, in case of legal doubt, it is the task of the Constitutional Council to determine the character of individual provisions in the same legal text as being either of an 'organic' or of ordinary (statutory) nature (→ *statutory law*). This has important practical consequences, as statutory provisions of an organic character may be modified only by a law which has itself been adopted in accordance with the procedural requirements prescribed by the Constitution for organic laws (decision No. 84–177 DC (1984) (Fr)). Each law shall indicate explicitly the organic or non-organic character of its provisions; organic laws may contain ordinary provisions, but these dispositions shall be (Decision No. 88–242 DC (1988)(Fr)); by contrast, organic provisions shall not be placed within ordinary laws (Decision No. 86–217 DC (1986) (Fr)).

2. The Scope of Qualified Laws in Spain

13 The Spanish approach differs significantly from the French one. A separate article determines the two main areas of regulation by organic law '*ley organica*'): the

statutes of the autonomous communities, and the fundamental rights and freedoms (Section 81(1) of the Constitution of Spain).In addition, several Articles of the Spanish Constitution prescribe organic laws on further institutional matters: for instance, the organization of → *military forces* (Section 8), the succession to the throne (Section 57 (5)), the referendum (Section 93), the organization of the judiciary (Section 122 (1)), and the functioning and organization of the → *Constitutional Court of Spain (Tribunal Constitucional de España)* (Section 165). Fundamental rights subject to regulation by organic law are exclusively those guaranteed in Sections 15 to 29 of the Spanish Constitution (Ruling No. 76/1983 (1983) (Spain); Ruling No. 160/1987 (1987) (Spain)). An organic law has also been adopted to authorize the accession of Spain to the European Union (Iliopoulos-Strangas 153). Organic laws are generally required for the limitation of Spanish sovereignty in favour of international organizations (Section 104 (1) of the Spanish Constitution).

14 Since the Spanish Constitution outlines the scope of application of qualified laws in very broad terms, it is the task of the Constitutional Tribunal to clarify its precise contours in cases of doubt. In its practice the Spanish Constitutional Tribunal, is uses the concept of 'constitutional domain reserved for organic law' to this effect (Ruling No. 236/2007 (2007) (Spain)). If an ordinary law intervenes in this domain, it will be struck down by the Constitutional Tribunal.

3. The Scope of Organic Law in Central and East Europe

15 After the end of Communist rule in Hungary, qualified laws were introduced as an instrument to extend constitutional protection to the allegedly most important statutes. Following the constitutional revision in 1990, the concept of 'qualified law' occupied a prominent place in constitutional doctrine and practice. Instead of providing a general definition of the scope of application of organic laws, the Hungarian constitution followed the Spanish approach by enumerating those matters, essentially fundamental rights, which should be subject to regulation by organic law.

16 The new Fundamental Law of 2011 has modified the scope of qualified laws once more: most of the fundamental rights were removed from the list of the cardinal matters, with the institutional issues becoming the preferred area for regulation by cardinal laws (Szentgáli-Tóth (2019) 10). Currently, the Fundamental Law classifies around 35 fields of legislation as cardinal, most of them concerning the basic institutions of the state, such as the status, the competences and the functioning of the president of the republic (Art. 12(5) of the Fundamental Law of Hungary), the Parliament and its members (Arts 2(2), 4(4) and (5)), the → *Constitutional Court of Hungary (Magyarország Alkotmánybírósága)* (Art. 24 (2)(g) and (3), (7) and (9)), the → *Ombudsman* and the Vice-ombudsmen (Art. 30 (5)), the judicial system (Art. 25 (6) and (8), Art. 26 (1) and (2)), the National Bank (Art. 41 (6)) and the detailed rules on the parliamentary (Art. 2 (1)) and the municipal → *elections* (Art. 35 (1)).

17 Similarly to the Spanish approach, Art. 72 (3) of the Constitution of Romania enumerates most of the legislative matters which shall be subject to regulation by organic law. In addition, several other constitutional provisions require a qualified majority for the regulation of certain issues. The same legislative act may contain both ordinary and organic provisions (see the Rulings of the Constitutional Court No. 88/2.06.1998 (1998) (Rom); No. 442/10.06.10 (2015) (Rom); No. 568/2015.09.15 (2015) (Rom); No. 622/2016.10.13 (2017) (Rom). The scope of the Romanian organic law with regard to institutional matters is significantly broader than that of the Hungarian cardinal laws, but the required level of majority support is lower in Romania.

18 In Moldova, the full scope of organic laws is not evident from the Constitution alone (Carnat 114–15, 129–30). Like the Romanian constitution, Art. 72 (3) of the Moldovan Constitution provides an extensive list of organic legislative fields, but other constitutional Articles also stipulate qualified majority requirements for certain issues (Art. 72 (3) point P) of the Constitution of Moldova).In addition, Parliament may also adopt organic laws on matters which are not specifically classified by the Constitution as matters subject to regulation by organic law, but where nevertheless the application of a stricter procedural regime appears justified (Art. 72 (3) point R). Based on this authorization, the Parliament has adopted organic laws amongst others on the public prosecutor, the organization of the armed forces, the status of the judiciary and of lawyers, and the security forces (Carnat 129–30). In practice, this means that the Moldovan constitutional framework is based in its entirety on organic laws, and that, different from all other countries, qualified laws in Moldova are not the exception but the normal instrument of legislation.

19 Croatia and Montenegro diverge from Romania and Moldova in that their constitutions do not include a detailed list of the fields of legislation, which are subject to organic law, but only some general clauses on the scope of qualified laws. The Croatian Constitution stipulates that

> laws (organic laws) which elaborate the constitutionally defined human rights and fundamental freedoms, the electoral system, the organization, authority and operation of government bodies and the organization and authority of local and regional self-government shall be passed by the Croatian Parliament by a majority vote of all representatives (Art. 82 (1) of the Constitution of Croatia).

20 The Montenegrin Constitution refers also to the fundamental rights and freedoms guaranteed by the Constitution as primary areas of regulation by organic law. However, the list on qualified legislative matters is longer and more detailed (Art. 91 of the Constitution of Montenegro). Its approach is very similar to that followed by the 2011 Hungarian Fundamental Law, based as it is on a broad reference to the fundamental rights and duties, which is complemented by an exhaustive enumeration of the institutional matters that are to be regulated by qualified laws (meaning cardinal laws in the Hungarian case).

21 The Georgian model is again closer to the French and the current Hungarian solution: organic laws and the corresponding procedural safeguards for their

adoption are defined in general terms by the Constitution (Art. 66 (2) of the Constitution of Georgia). In addition, the Constitution provides on a case-by-case basis which issues should be regulated by organic law (Art. 106 § 3).

4. The Scope of Organic Laws in Africa

22 Organic laws in Africa have an important role in protecting fundamental rights and freedoms, especially the freedom of religion and → *citizenship*. Although the African concept of organic laws is strongly influenced by the French model, it has developed some autochthonous characteristics. For example, its scope is narrower (except in the case of **Burundi** where it is focused on institutional matters). Organic laws in Africa deal with the institution of the legislature (Arts 103, 108, 112 and 115 of the Constitution of Algeria; Art. 86 of the Constitution of Burkina Faso; Arts 37 and 62, the Constitution of Gabon; Art. 79 of the Constitution of Madagascar) and the judiciary (Art. 123, 153, 157 and 158 of the Constitution of Algeria; Arts 77, 85, 89, 92, 93, and 99, of the Constitution of Central African Republic, 2004; Arts 28 and 29 of the Constitution of Comoros: 30 July 2018 (Comoros); Arts 90(2), 96(2), 100(2) and 104 of the Constitution of Equatorial Guinea; Art. 63 of the Constitution of Guinea; Arts 125, 136, and 141 of the Constitution of Niger; Art. 60 of the Constitution of Senegal). Organic laws are also to be used in the regulation of electoral management bodies (Art. 211 of the Constitution of the Democratic Republic of Congo), elections (Arts 79, 88 (3) and (10) of the Constitution of Madagascar; Art. 48 (1) of the Constitution of Mauritania; Art. 35 of the Constitution of Senegal) and the conduct of referenda (Art. 164 (g) of the Constitution of Angola; Art. 187 (1) c of the Constitution of Cape Verde; Art. 176 of the Constitution of the Republic of Congo). Although this may create the impression that in Africa organic laws do not serve to protect fundamental rights and freedoms, this is not generally the case. In Morocco, for example, the right to → *petition* (Art. 15 of the Constitution of Morocco) and to take industrial action (Art. 29) have to be implemented by organic law (→ *implementing legislation*).

C. The Procedural Rules for the Enactment of Qualified Laws

1. Preliminary Considerations

23 The adoption of qualified laws follows one of two models: according to the first model they have to be adopted by a two-thirds majority of the members of Parliament, whereas under the alternative approach an absolute majority of the members present and voting is sufficient. The requirement of a two-thirds majority provides a separate ground for constitutional review: qualified laws adopted without the necessary two-thirds majority are subject to invalidation by the constitutional court (Ruling No. 4/1993 (1993) (Hung) of the Constitutional Court). This dimension of the separation of powers deserves attention especially in situations in which qualified laws are subject to a mandatory a priori constitutional review. It should be noted, however, that even such a system cannot reliably prevent

the violation of the two-thirds requirement, since laws adopted by the parliament with a simple majority will not be sent to the constitutional court, unless in the highly unlikely case that the legislature is prepared to flag out the adopted piece of legislation as qualified law despite its failure to honour the procedural requirements which go with such a classification.

24 The requirement of a two-thirds majority shifts the balance of power between the government and the parliament as the governmental majority is normally not sufficient for the enactment of such a bill, providing parliament with the power to impose substantial limits on the legislative agenda of the government. While it may have this opportunity also in cases of legislation, this may also occur in requiring a simple parliamentary majority, this constitutes the exception in a functioning majoritarian parliamentary democracy where the government can rely on parliamentary support for its policies (Kilényi).

25 When a qualified majority requirement correlates with a mandatory *a priori* constitutional review, the constitutional court has a special role. The constitutional court acts as a negative legislator as its validation of the legislation is necessary for it to become effective. This quasi-legislative role gives a special weight to the constitutional court but can also undermine the independence of the body by involving it in too closely in the political debates framing the legislative process.

2. Constitutional Practice

26 The French, the Spanish and the Portuguese constitutions implement the concept of qualified law (in their case called 'organic law') with an absolute parliamentary majority requirement in a bicameral system (Art. 46 of the Constitution of France; Section 81 (1) of the Constitution of Spain; Art 169 (2) of the Constitution of Portugal)(→ *bicameralism*). In France, the mandatory *a priori* constitutional review applies, while in Spain its application is restricted to the statutes of the autonomous communities.

27 Hungary has introduced three different procedural regimes of qualified laws over the last three decades; a result of the political instrumentalization of the concept (Tóth (2016)187–253). On the other hand, the Romanian constitution requires absolute majority support in the → *Chamber of Deputies* as well as in the Senate for the adoption of this kind of legislation (Art. 74 (1) of the Constitution of Romania). Unlike in France however, it is not subject to mandatory constitutional review prior to its entry into force, as most Central and East European countries have followed the German, not the French model of constitutional adjudication (Szentgáli-Tóth (2020) 62–74). In Africa, where the French influence on the organization of constitutional review was stronger, mandatory *a priori* constitutional review has been embraced by a huge number of countries (Gitiri and Szentgáli-Tóth).

28 Moldova applies the absolute majority requirement in the framework of a unicameral system (Art. 74 (1) of the Constitution of Moldova). However, a special exception, probably inspired by the French and the Spanish constitutions, concerns the organic law on the status of the Autonomous Community of Gagauzia, which

has to be adopted by a majority of at least three-fifth of the members of Parliament rather than the absolute majority prescribed for other organic laws (Art 111 (7) of the Constitution of Moldova).

29 Croatia combines both models. The Constitution prescribes that organics law on the rights of the national and ethnic minorities shall be enacted or amended with the consent of two thirds of the members of Parliament (Art. 82 (1) of the Constitution of Croatia), while for other organic laws the absolute majority is sufficient (Art. 82 (2)) (→ *ethnicity*; → *protection of ethnic minorities*). In Montenegro, most qualified laws shall be adopted with the absolute majority of the parliamentary members, while the act on the political rights and the properties of foreigners is subject to a with two-third majority. An intermediate solution applies to the rights of the national minorities and the use of Montenegrin armed forces abroad, which must enjoy the support of at least two-third of the parliamentarians in the first and absolute majority in the second vote (Art. 91 of the Constitution of Montenegro).

30 Similarly to Romania, Georgia has introduced the requirement of absolute majority support in both chambers of Parliament, but with additional safeguards (Art. 66 (2) of the Constitution of Georgia). If the President issues a → *veto* against the adopted organic law, the Parliament may confirm the legislation only with a three-fifth majority of its members (Art. 68 (4)).

31 Most of the African countries enact qualified laws with absolute parliamentary majority, but in some a two-thirds majority is required (Arts 75 and 86 of Constitution of the Republic of Burundi: 17 May 2018 (Burundi); Art. 173 (3) of the Constitution of the Cape Verde; Art. 26 of the Constitution of Comoros; Art. 83 of the Constitution of Guinea. On the other hand, **Rwanda** and Tunisia require a three-fifths majority for the enactment of such legislation.

D. The Rank of Qualified Laws in the Hierarchy of Legal Norms

32 The position of qualified laws in the legal hierarchy is of considerable theoretical and practical relevance. The starting point is that such laws are designed to implement specific aspects of the Constitution and must therefore be subject to the relevant constitutional norms. However, qualified law with constitutional force may also exist, as was the case in Hungary between 1989 and 1990. On the other hand, the relationship between qualified laws and ordinary statutory law has to be determined.

33 The rank of qualified laws can be determined by explicit constitutional provisions. Where this is not the case, it is up to the constitutional courts to resolve the issue by way of interpretation of the applicable constitutional rules (→ *interpretation of constitutions*). They may turn to legal scholarship, which has focused on the issue of legal rank more than on any other aspect related to the application and interpretation of this type of legislation.

1. Theoretical Approaches

34 The dominant view in legal scholarship is that qualified laws shall be placed somewhere between constitutional and statutory level in the hierarchy of norms

(Avril and Gicquel 271–73), but the details are highly debated (Tushnet) (→ *theories concerning the hierarchy of norms*). However, as the issue is of great practical relevance, legal doctrine serves mainly to clarify or criticize the solutions, which are spelt out by the constitutional courts in interpreting the applicable constitutional framework.

35 The relationship between qualified laws and the provisions of the Constitution is shaped by the purpose of qualified laws, that is to implement specific provisions of the Constitution. The constitution is a document with limited specificity; consequently, it cannot cover all details of essential matters. Qualified laws can be used as an instrument to extend quasi-constitutional protection to the statutory details of a particular subject matter (Avril and Gicquel 271–73). Nevertheless, the scope, the substance and the legal nature of qualified law are subject to the relevant provisions of the constitution; qualified laws must therefore comply with all applicable constitutional requirements.

36 As regards the relationship between qualified and ordinary law, the principle of hierarchy is essential. Ordinary statutory law may not contradict any qualified law with constitutional force, and this has important consequences for the → *jurisdiction* of the constitutional court (Drinóczy 12; Varga Zs. 21–25).

37 An alternative approach is based on the framework of ordinary laws: qualified statutes do not differ from ordinary statutes as regards their legal value; they are just adopted by stricter proceedings and cover just a different domain. The additional constitutional requirements do not mean substantial differences, they are just technical rules. Qualified law is a subcategory of law, it does not constitute a separate legal framework, and ordinary law may even contradict qualified norms (Sirat 153–60).

38 Most scholarly doctrine on qualified laws is situated within this spectrum. It focuses either on the constitutional or the statutory aspects of qualified law, depending on the functions assigned to qualified law. If it is accepted that the extension of quasi-constitutional character to the rules contained in the qualified laws as a primary goal of such legislation (Camby (1989) 1401), these would have almost constitutional force. But the basic rules of the framework of qualified laws are always provided by the constitution.

2. Constitutional Jurisprudence

39 Although, in light of the specific national context, constitutional courts apply slightly different models and concepts in dealing with the constitutional issues raised by qualified laws, the main issues are almost the same in the three model countries:France, Spain and Hungary.

(a) France

40 In France, despite their constitutional foundation, the Constitutional Council has clarified that organic laws are neither part of the Constitution, nor of the constitutional bloc (Decision No. 84–177 DC (1984) (Fr)). The Council bases its view on three considerations.

41 Firstly, the Council recognizes the different legal character of organic and ordinary statutes, but refuses to create some sort of clear hierarchy between them (Camby (1998) 1690). This approach finds support in the drafting history of the 1958 Constitution (''Comité national 350), and by the academic literature (Luchaire and Conac 179–207). The competence of both the organic as well as the ordinary legislator enjoy the same level of constitutional protection in the light of the competence principle, both are prohibited any interference in the other domain (Decision No. 87–234 DC (1988) (Fr)). Organic laws fall outside the constitutional bloc (Verpeaux and Maryvonne 101); nevertheless, the contradiction between an ordinary statutory and an organic provision has the same consequences as the contradiction between an ordinary statutory rule and a constitutional provision (Decision No. 60–8 DC (1960)(Fr)).

42 The second consideration concerns the distinction between ordinary and qualified provisions within the same legal text. The competence of the organic legislator is circumscribed by particular subject matters listed in the Constitution, and not by statutes. A legal text can include the provisions from both domains, but the Council will strike down such organic provisions, which have been adopted under the ordinary → *legislative procedure* (Decision No. 84–177 DC (1984) (Fr); Decision No. 86–217 DC (1986) (Fr)).

43 The third consideration concerns the diversification within the category of organic law: there is some sort of hierarchy even amongst institutional acts. Some groups of organic law demand special treatment (Camby (1998) 1695). For example, the organic law on → *public finance* and → *social security* prevails over other organic laws (Genevois 323) and has a quasi-constitutional character (Decision No. 98–401 DC (1998) (Fr)).

(b) Spain

44 Spanish constitutional practice follows broadly the lines that have been established in France. Spanish organic laws are subject to constitutional review (Troper and Chagnollaud 344). Although hierarchic elements are not absent in the relationship between organic and ordinary laws (Troper and Chagnollaud 344–45), the principle of competence is given priority over the principle of hierarchy and organic laws are not recognized as a separate constitutional category (Ruling No. 236/2007 (2007) (Spain)). Although organic laws are taken into consideration in the constitutional review of ordinary statutes (Troper and Chagnollaud 344–45), the constitutional character of qualified laws has not been accepted (Prakke, Kortmann and Brandhof 743). Organic laws must comply with the relevant constitutional provisions (Ruling No. 53/1985 (1985) (Spain).

45 The Spanish approach is more pragmatic than the French one: The organic law is placed within a certain domain, based on the subject matter to be regulated. The Constitutional Tribunal strikes down ordinary and organic provisions, which infringe the constitutionally prescribed boundaries between both domains (Ruling No. 236/2007 (2007). In spite of the fact, that organic laws form part the constitutional bloc in Spain, they have only intermediate rank between the constitutional and the statutory level (Troper and Chagnollaud 346).

(c) Hungary

46 The Hungarian constitutional practice is quite close to the French one with only slight differences. Despite some doctrinal concerns (Cserne and Jakab 42), the application of hierarchical consideration to qualified laws has been consistently refused (Decision No. 4/1993 (1993) (Hung) ; Decision No. 53/1995 (1995) (Hung); Decision No. 3/1997 (1997) (Hung)). Instead the constitutional review of qualified laws has been based on the distribution of subject matters. Qualified laws are considered as a separate constitutional category of laws situated at the same level within the hierarchy of norms as ordinary statutes. A qualified law shall not be amended by an ordinary law, and an ordinary law shall not contain qualified provisions (Decision No. 1/1999 (1999)). Under the previous constitution, the Constitutional Court had developed the concept of 'essential content' of cardinal subject matters to define the scope of both qualified and ordinary law (Cserne and Jakab 44).

47 The Fundamental Law of 2011 has undertaken major efforts to create a more predictable framework for legislation which must be adopted by qualified majority. It contains an explicit list of cardinal provisions, thus providing the legislature with a clear guideline to decide whether qualified majority is required for a piece of legislation. The cardinal clauses can be contested before the Constitutional Court (Barnaand Szentgáli-Tóth). The importance of constitutional review is thus maintained, despite the efforts to give an exact list of cardinal provisions in the Fundamental Law. Another major change is that the Fundamental Law stresses the principle of competence for the distinction between cardinal and ordinary domain (art. T (1) of the Fundamental Law of Hungary). As a consequence, the Constitutional Court has held that a cardinal law shall not contradict an existing ordinary statute (Decision No. 43/2012 (2012) (Hung)).

E. Conclusion

48 The concept of qualified law/organic law provides an excellent example for the migration of a constitutional idea around the world (→ *borrowing and migration of constitutions*). Its global career demonstrates that the migration in this case consisted in more than the mere copying of foreign ideas: these were adapted to the local circumstances. As countries have adopted quite different versions of the concept; this has resulted in a remarkable variety of outcomes. Regardless of the model followed, the peculiar constitutional tradition of the receiving country almost always had a remarkable impact on the concrete form given to the concept of qualified law/organic law, even more so in countries which endeavoured to combine the features of various foreign models. The French and the Spanish models have been most influential, while in doctrinal terms Hungarian constitutional practice has made a distinct contribution.

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