Decision 5/2022 (IV. 14.) AB

on establishing the judgement of the Curia No. Pfv.III.21.484/2019/12, the partial judgement of the Budapest-Capital Regional Court of Appeal No. 4.Pf.20.124/2019/16 and the partial and interlocutory judgement of the Budapest-Capital Regional Court No. 36.P.24.412/2015/139 to be in conflict with the Fundamental Law and annulling them

The Constitutional Court, sitting in plenary session, in the subject-matter of a constitutional complaint – with the concurrent reasoning of the Justices *Dr. Ágnes Czine, Dr. Ildikó Marosi, Dr. Zoltán Márki, Dr. László Salamon* and *Dr. Marcel Szabó*, and the dissenting opinion of Justice *Dr. Egon Dienes-Oehm* – has adopted following

decision:

The Constitutional Court establishes that the judgement of the Curia as the review court No. Pfv.III.21.484/2019/12, the partial judgement of the Budapest-Capital Regional Court of Appeal No. 4.Pf.20.124/2019/16 and the partial and interlocutory judgement of the Budapest-Capital Regional Court No. 36.P.24.412/2015/139 are in conflict with the Fundamental Law and annuls them.

The Constitutional Court orders the publication of its decision in the Hungarian Official Gazette.

Reasoning

I

[1] 1 The petitioners, acting with *legal representation* (Dr. János Cseszlai, lawyer), submitted a constitutional complaint pursuant to section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), requesting the Constitutional Court to state that the judgement No. Pfv.III.21.484/2019/12 of the Curia as the review court is in conflict with the Fundamental Law and to annul it, with effect also to the partial judgement No. 4.Pf.20.124/2019/16 Budapest-Capital Regional Court of Appeal.

[2] The main elements of the facts established in the course of the procedure underlying the constitutional complaint, which are relevant for the assessment of the present constitutional complaint, can be summarised as follows.

[3] 1.1 A real property in Budapest XXIIIth district was owned by the Hungarian State from 2 May 1950 until 1 September 1991. From 14 July 1967, the property was managed by the Housing Management Directorate of the Budapest XX District Council Executive Committee, the predecessor of the Budapest XIX, XVIII and XX District Property Management Company (which finally ceased to exist without legal successor on 8 March 1996).

[4] The ownership of the property was transferred to the Pesterzsébet-Soroksár Municipality of Budapest XX District on 1 September 1991, with the entry into force of the Act XXXIII of 1991 on the transfer of certain state-owned assets to municipalities (hereinafter: Act XXXIII of 1991). The registered manager of the property remained unchanged in the land registry at that time.

[5] The new owner, the municipality, transferred the property to the private individual who was the defendant II in the main proceedings by a contract of sale and purchase dated 30 November 1993. On 24 January 1994, the ownership of the private individual defendant II was entered in the land registry and the right of management was also deleted at that time.

[6] On 5 December 2003, the defendant II sold the property to the company that participated as

defendant I in the main proceedings by a contract of sale and purchase dated 5 December 2003, and the ownership title was registered on 16 February 2004. The defendant I subsequently built two new three-apartment residential buildings on the property, which were sold by the defendant I in 2006-2007 to the plaintiffs I and II, plaintiffs IV and V, plaintiffs VI and VII, plaintiffs VIII, IX and X of the main proceedings, and to the defendants V and VI. Defendants V and VI sold the property to plaintiff III in 2010.

[7] 1.2 On 19 August 1954, craftsman W. Gy. applied for a manufacturing licence for the production of purine acid, picric acid and volatile salt for food purposes. On 10 December 1954, the Industrial Department III of the Budapest XX District Council Executive Committee issued industrial licence to W. Gy. and the Industrial Department IV of the Executive Committee granted manufacturing licence.

[8] In addition to the above, by the Decision No. 59/V/44-1954 (23 August 1954) of the XX District Council, W. Gy. was also granted a licence to carry out small-scale chemical activities in the interest of the national economy, for national defence purposes. On the basis of Decisions Nos 9371/55 and 599/V/582-954 of 28 April 1955, W. Gy. primarily used picric acid in his activity. On 7 May 1955, the Executive Committee Division of the XX District Council sent a transcript to the Executive Committee Division III of the XIII District Council, according to which W. Gy. "chemical craftsman intends to bind export articles manufactured in the interests of the national economy".

[9] W. Gy. continued his chemical activities, reconstructed as described above, on the property at issue from 1955 until his death on 10 December 1979.

[10] 1.3 From 1955 onwards, the Executive Committee of the District Council received several specific complaints from neighbours and people living in the neighbourhood about the chemical activity of W. Gy. According to the complaints (the first of which was made on 11 June 1955, shortly after W.Gy.'s activities had begun), the chemical plant was poisoning the air, was dangerous for the residents, domestic animals and vegetation, the chemicals released into the open air were polluting the groundwater, the water in the surrounding wells was discoloured and the water was unfit for drinking, washing and laundry. Despite the complaints, the public authorities did not take any substantive action, and W. Gy. continued his activities unhindered until his death on 10 December 1979.

[11] 1.4 Following the death of W. Gy., the Technical Department of the XX District Council Executive Committee surveyed the property in 1980, and according to the report, the building on the property was in a poor condition, it was recommended to be renovated, and the property was found to be dangerous for human habitation. On 3 June 1981, the Administrative Department of the Budapest XX District Council Executive Committee issued a decision calling upon the heir and widow of the late W. Gy. to hand over the property to the XX District Council on the same day. It is not possible to verify the exact date on which the heir and widow of the late W. Gy. handed over the property, but it is clear that after his death the property was no longer used for chemical activities.

[12] 1.5 According to a transcript of the Technical Department of the Capital XX District Council Executive Committee dated 10 February 1987, "the area contains a large amount of toxic and explosive compounds". On 15 October 1987, the Technical Department of the Capital XX District Council Executive Committee entered into a contract with an environmental and IT business partnership for the removal of hazardous waste from the site. According to the contract, the purpose of the works was to remove and professionally dispose of the hazardous waste found on the property, which was polluting, toxic, explosive, flammable and harmful to health, in order to prevent further pollution and to avoid any risk to the environment, the workers and the future occupants of the property.

[13] In 1988, the Technical Department of the Capital XX District Council Executive Committee also contracted with the Surveying and Soil Testing Company to carry out soil contamination tests, during which it was established on the basis of drilling samples taken from 35 locations that part of the property was contaminated with hazardous waste. The expert report recommended the demolition

of parts of the buildings on the property and the excavation of the heavily contaminated soil around them to a depth of 0.5 m, in particular because “the property is to be sold for the construction of a detached house”.

[14] 1.6 After the real property became the property of the Pesterzsébet-Soroksár Municipality of Budapest XX District (on 1 September 1991, in accordance with the provisions of the Act XXXIII of 1991), the new owner ordered an expert opinion from a limited liability company, but this expert opinion can no longer be found. However, on the basis of subsequent documents, it can be established beyond doubt that the owner municipality considered it justified to decontaminate the soil, requiring the excavation of 15 m3 of soil and the backfilling of 600 m3 of soil, and that after the excavation of the soil, monitoring tests should be carried out on the site, with a total of 50 drilling points.

[15] The municipality then sold the property to the defendant II, an individual. The sale contract stated that the soil on the property was contaminated and therefore the property required soil replacement. The defendant II undertook to have an expert opinion for the elimination of the pollution to the environment drawn up at their own expense and approved by the Central Danube Valley Environmental Inspectorate and, on the basis of the approved report, to have the property decontaminated at their own expense within a maximum period of 6 months. Decontamination of the property was a condition of the acquisition of ownership by the defendant II under the contract of sale and purchase.

[16] Acting in accordance with the terms of the contract of sale and purchase, the defendant II obtained an expert opinion from a small-scale cooperative and, on the basis of the expert opinion, according to the available documents, between 1 June and 6 July 1994, soil exchange was carried out and a flat area suitable for construction was formed. According to the Central Danube Valley Environmental Inspectorate's transcript No KF:20.000-3/1994, dated 21 September 1994 and addressed to the Mayor's Office of Budapest District XX, it can be established that the contaminated soil was removed from the property, thereby the defendant II eliminated the contamination of the property and the defendant II thus fulfilled his obligations under the contract of sale and purchase and could became the owner of the property.

[17] 1.7 Following the referendum held on 11 December 1994, Soroksár Municipality of Budapest District XXIII (defendant III of the lawsuit) was formed by secession, and on 24 April 1996 it concluded an agreement with Pesterzsébet Municipality of Budapest District XX (defendant VII in the lawsuit). The agreement stipulated that the municipal properties within the boundaries of the contract are the property of the administratively competent municipalities, and that the rights or obligations on these properties are vested in and are the responsibility of the competent municipality.

[18] 1.8 The defendant II private individual, after the soil decontamination as certified in accordance with clause I/1.6 above (Reasoning [14] et seq.), intended to make the property available to a company which he partly owned for the construction of an assembly workshop and a vehicle storage facility. The company prepared planning application documents and submitted an application for a building permit to the Mayor's Office of the Municipality of Soroksár, District XXIII of Budapest (defendant VIII). In the building permit procedure, the competent authorities were also requested and none of which raised any objections related to the soil. The construction was ultimately abandoned and the defendant II offered the property as security for a bank loan, in connection with which a real estate expert's report was drawn up which did not record any exceptional circumstances relating to the property.

[19] 1.9 The defendant II sold the property to the defendant I company by a contract of sale and purchase dated 5 December 2003, the acquisition of ownership was entered in the real estate register on 16 February 2004. The parties concluded the contract in the knowledge of the minutes of the Planning Council of Soroksár Municipality of Budapest District XXIII dated 2 December 2003, which stated that the property was suitable for the construction of two three-family apartment buildings.

[20] By a decision of 21 June 2004, the Urban Development Department of the Mayor's Office, defendant VIII, granted planning permission for the construction of two new three-apartment residential buildings on the property. The grounds for the decision state that the authority also carried out an on-site inspection, where it did not find any facts or circumstances that could justify refusal of the permit. Following the construction, on 15 December 2006, the Urban Development Department of the Mayor's Office, defendant VIII, granted a definitive occupancy permit for four apartments and subsequently for two more. The decision was based on the grounds that the building work carried out complied with the building permit, that the building was fit for its intended and safe use and that there were no objections to the granting of the authorisation for the use of the building from the point of view of town planning, building regulations, public health, fire safety or other aspects.

[21] Thereafter, defendant I sold the apartments to plaintiffs I and II, plaintiffs IV and V, plaintiffs VI and VII, plaintiff VIII, plaintiffs IX and X, and defendants V and VI. The defendants V and VI subsequently sold their residential property to plaintiff III on April 12, 2010. Several banks, which were subsequently defendants in the action, provided loans for the conclusion of the individual contracts of sale and purchase, and mortgages were registered on the individual properties to secure the loan amounts.

[22] 2 On 18 June 2010, several explosions occurred in the apartment owned by the plaintiffs IX and X under the apartment and in front of the front door, and a few days later, on 21 June 2010, another explosion occurred. The explosions caused serious damage to the two flats located at the sides of the building (the flats owned by the plaintiffs VIII and IX and X) and the plaintiffs had to move out of the real property.

[23] On 21 June 2010, the Technical Department of the Mayor's Office as defendant VIII jointly and severally ordered the plaintiffs IX and X to remedy the unsafe condition of the apartment and jointly and severally ordered all owners of the real property to have an expert opinion prepared within 10 days and to submit it to the defendant VIII. It also prohibited the use of the apartments by the plaintiffs IX and X until it was restored to a state fit for its intended use. According to the static expert who visited the site on behalf of the Mayor's Office as defendant VIII, the basic structure of the building was not dangerous to life, but probably there was a cavity under the internal subfloor of the apartment which made the use of the apartment dangerous to life. Subsequently, on 20 July 2010, the Technical Department of the Mayor's Office as defendant VIII also ordered the plaintiff VIII to remedy the unsafe condition of the apartment and prohibited the use of that apartment until the remediation was completed.

[24] In accordance with the decision of the defendant VIII, the plaintiffs commissioned an expert to determine the cause of the explosion. During the excavation, the expert found four boundary walls of a cellar and also asked a company to examine the materials found on the spot. According to the analysis of this company, the samples contained residues of explosives and catalysts (picric acid, nitrate), as well as highly carcinogenic substances. According to the company's analysis, the contamination makes it risky to carry out any kind of near-surface excavation work in the area, and it cannot be excluded that the entire area under the buildings is similarly contaminated with highly carcinogenic and explosive substances.

[25] At the request of the expert commissioned by the plaintiffs, the environmental forensic expert's opinion was issued on 18 October 2010, according to which there is a serious level of environmental pollution on the real property, the environmental condition of the area and the residential function are incompatible. The expert ruled out the responsibility of the current owners of the property for the generation and disposal of hazardous waste and stated that the chemical composition of the pollution implied a chemical activity which could only have been carried out with an appropriate chemical infrastructure, with official permits and under constant supervision.

[26] In the light of the forensic expert's opinion, the expert commissioned by the applicants

concluded that all the apartments in the building should be vacated immediately because of the presence of harmful, cancer-causing and toxic substances, explosions and unforeseeable damage that could occur at any time. The plaintiffs in the main case have moved out of all the apartments in the condominium.

[27] 3 On 9 February 2011, the plaintiffs I-X (the owners of the total of six apartments at the time of the explosion) brought their action before the Budapest-Capital Regional Court against the former natural and legal person owners of the real property (defendants I and II), the former state and municipal owners of the property (defendants III, IV and VII), the previous owners of the apartment transferred by a contract of sale and purchase in 2010 (defendants V and VI), the mayor's office of the municipality that issued the occupancy permits (defendant VIII), the legal successor of the Central Danube Valley Environmental Protection Inspectorate, which certified the execution of the decontamination works (defendant IX), and the credit institutions which had granted loans for the purchase of the apartments (defendants X to XIII, of which the court subsequently dismissed the case against defendant XII on the grounds of withdrawal). Subsequently, on 8 May 2014, the family members and children of the plaintiffs I to X, with whom they moved into the properties were also joined as plaintiffs (plaintiffs XI to XXIV).

[28] The plaintiffs brought an action against the defendants I and V to VI for defective performance and against defendants I to IV for joint and several payment of damages. The plaintiffs subsequently supplemented and amended their claim and also sought a declaration that the contract of sale and purchase concluded by defendant VII with defendant II on 30 November 1993 was invalid, with the result that the contract of sale and purchase concluded by defendant I with defendant II on 5 December 2003 was invalid, and as a consequence, the contracts of sale and purchase of the plaintiffs I to X concluded with the defendant I and of the plaintiff III with the defendants V to VI are also invalid. In this context, the applicants sought *restitutio in integrum*. In their amended claim for action, the plaintiffs also sought damages against defendants VII to IX, also jointly and severally, while they claimed against defendants X to XIII the declaration that the mortgage contracts were invalid.

[29] By its partial and interlocutory judgement No. 36.P.24.412/2015/139 of 6 November 2018, the Budapest-Capital Regional Court dismissed the actions against the defendants II to VII, IX to XI and XIII, as well as the actions for a declaration of invalidity of the contracts of sale and purchase, and terminated the action against the defendant XII.

[30] The Budapest-Capital Regional Court found the defendant I company (which had been liquidated in the meantime) liable because it must have obviously detected the cellar during the construction of the condominiums, but nevertheless continued the construction without further action. According to the judgement, the defendant II should not have necessarily detected the existence of the cellar when it decontaminated the soil and therefore the court did not find the defendant II liable due to the absence of tortious conduct. Defendants III and VII are the successors in title to the municipality that acquired ownership of the real property in 1991, but that municipality did not engage in any activity that was harmful to the environment (i.e. no tortious conduct was attributable to it), and therefore, liability of defendants III and VII was not established.

[31] The petitioners alleged the liability of the Hungarian State as defendant IV on three grounds. Firstly, W. Gy. carried out his activities in the interest of the national economy, on the basis of a State licence, and thus, in their view, clearly in the interest of the State (liability as a business operator). On the other hand, the real property was owned by the State prior to the change of regime and managed by a State-owned company, first by the Housing Management Directorate of the Budapest XX District Council and then by the Budapest XIX, XVIII and XX District Property Management Company (which was dissolved in 1996 without legal succession, therefore liability can only be asserted against the Hungarian State as the owner). Lastly, under the former Act II of 1976 on the Protection of the Human Environment (hereinafter: APHE), the State, as the owner and holder of public authority, was obliged to comply with and enforce the rules on the protection of the environment, i.e. to prevent pollution,

to take action against the polluter and to eliminate the pollution, which the Hungarian State failed to do, despite the fact that it had been demonstrably aware of the pollution from the outset. However, the Budapest-Capital General Court concluded that it was not possible to hold the State of Hungary liable on any of the grounds.

[32] According to the first instance judgement of the Budapest-Capital Regional Court, however, the liability for damages of the defendant VIII, the issuer of the occupancy permit of the building, could be established due to the irregularity committed during issuing the permit. The court also failed to establish the liability for damages of the municipality as defendant VII and the defendant IX (the successor to the Central Danube Valley Environmental Inspectorate).

[33] 4 The Budapest-Capital Court of Appeal, acting in the second instance on the appeal of the petitioners and the defendants II, III and VIII, by its partial judgement of 7 May 2019, No. 4.Pf.20.124/2019/16 partially reversed the judgement of first instance and set aside the order dismissing the action against the defendants VII and IX and the order holding the defendant VIII liable for damages, and ordered the court of first Instance to hold a new hearing and issue a new decision in this regard. In the repeated procedure, the proceeding courts subsequently failed to establish the liability of the defendant VIII for damages.

[34] In connection with the claim for damages of the petitioners against the Hungarian State as defendant IV, the Budapest-Capital Court of Appeal concluded that the Hungarian State, as the former owner of the real property, was not liable for damages, the claim could only have been asserted against the property manager, which ceased to exist after the change of regime (in 1996) without legal succession.

[35] 5 The petitioners filed an application for review against the partial judgement of the court of second instance, in which they primarily requested its annulment and partial alteration of the partial and interlocutory judgement of the court of first instance, a declaration that the contracts of sale and purchase were invalid, and a declaration that the defendants II to IV were liable for damages. In the alternative, the petitioners' request for review sought to set aside the final partial judgement, including the partial and interlocutory judgement at first instance, and to order the court of first instance to reopen the proceedings. By the judgement of 27 October 2020, No. Pfv.III.21.484/2019/12, the Curia upheld the final partial judgement.

[36] The Curia agreed with the findings and legal reasoning of the final judgement with regard to the invalidity of the contracts of sale and purchase. The Curia (in agreement with the court of second instance) recorded that the chemical activities carried out on the real property at issue until 1979 had caused the pollution to the environment that led to the explosions in June 2010 (Curia judgement, reasoning [103]). Accordingly, the liability for damages of the private individual defendant II (the owner of the real property between 1993 and 2003) cannot be established in the action, not least because the Central Danube Valley Environmental Protection Inspectorate had given its approval for the decontamination obligation undertaken in the sale and purchase contract of 1993, i.e. no wrongful conduct can be established in the case of the defendant II.

[37] With regard to the liability of the defendant IV (the Hungarian State) for damages, the Curia held that the APHE stipulated the obligation of the person causing the pollution (and not the Hungarian State as the owner) to act, and thus there is no legal provision that could establish the direct liability of the defendant IV, the Hungarian State, for damages in the absence of active polluting conduct. Moreover, the Curia fully agreed with the provisions of the final judgement finding that the Hungarian State was not liable for damages.

[38] 6 The petitioners then submitted their constitutional complaint pursuant to section 27 of the ACC, in which they requested a declaration that the judgement of the Curia No. Pfv.III.21.484/2019/12 was contrary to the Fundamental Law and its annulment, with effect also extending to the partial judgement of the Budapest-Capital Regional Court of Appeal No. 4.Pf.20.124/2019/16. According to the constitutional complaint, the challenged judicial decisions are contrary to Article VI (1), Article XV

(1), Article XXI, Article XX (1) and (2), Article XXVIII (1) and (7) and Article 28 of the Fundamental Law, as well as Articles 2, 6, 8, 13 of the European Convention on Human Rights (ECHR) and Article 1 of the First Additional Protocol as follows.

[39] 6.1 In the petitioners' view, the finding of the competent courts that the Hungarian State cannot be held directly liable for damages at all is in breach of Article XXVIII (1) and Article XV (1). In the petitioners' view, in the present case, it can be established either that W. Gy. acted in the interest of the State (in the civil law sense in the present case: as an operator of the business), in which case the State is vicariously liable for his conduct, or that W. Gy. acted independently of the State, in which case, however, the State has undoubtedly failed to fulfil its duty of control under the law. In this context, the petitioners also referred to the 1984 Council of Europe Recommendation on State Liability for Damage as a standard for interpretation.

[40] The petitioners point out that the soil on the real property in question was already classified as hazardous waste under MT Decree No. 56/1981 (XI. 18.) on the control of the generation and the decontamination of hazardous waste, and it can be established beyond doubt that there have been numerous notifications from the public concerning the activities of W. Gy., yet there is no sign of any control or action by the State.

[41] The petitioners argue, however, that the State can be held directly liable for W. Gy.'s conduct: it can be established from the archival documents attached to the lawsuit that it was necessary for the national economic interest to allow W. Gy. to continue his activities. According to the petitioners, it can be established beyond doubt that the "national economy interest" in fact meant "State interest", an aspect which the Curia did not take into account at all in its judgement.

[42] 6.2 According to the petitioners, the statement of the Curia that "there is therefore no provision on the basis of which the direct liability of the defendant IV can be raised for the polluting conduct of another person" is also contrary to Article XXVIII (1), Article 28 and Article XV (1) of the Fundamental Law. In their constitutional complaint, the petitioners also point out that the Curia itself had previously held, in a similar environmental pollution case, that "the dominance of State property prevailed during the period of the litigation, and therefore the role of the State in public law must also be assessed when assessing the State's conduct" (Case No. Pfv.I.20.474/2018), which the Curia also failed to take into account in the present case. The petitioners also consider it to be contrary to the Fundamental Law that the Curia held that the owner's rights were exercised by the manager of the property (and not by the Hungarian State, the defendant IV), which has since ceased to exist without succession, and that the dissolution of the manager, according to the Curia's judgement, has caused the petitioners being left without a chance to assert their claim for damages against anyone.

[43] The petitioners point out: at the time of W. Gy.'s activity, there were already in force legal provisions on environmental protection that clearly regulated the issue of liability for damages, but these rules were arbitrarily disregarded by the Curia (and the Budapest-Capital Regional Court of Appeal), despite the fact that the petitioners expressly referred to this, and thus the challenged judicial decision became not simply *contra legem*, but *contra constitutionem* due to the disregard of the applicable law without justification.

[44] 6.3 According to the petitioners, the violation of Article 28 of the Fundamental Law results from the fact that the courts in the proceedings did not consider the provisions of the Constitution in force earlier as a legal norm that would be suitable for the finding of an infringement of law under section 200 (2) of the Act IV of 1959 on the Civil Code (hereinafter: "old Civil Code").

[45] 6.4 The petitioners consider it a violation of Article XXVIII (7) of the Fundamental Law and the right to an effective remedy under Article 13 of the ECHR that neither the Budapest-Capital Regional Court of Appeal nor the Curia provided them with effective legal protection by disregarding in their adjudicating activity the law in force, the provisions and the spirit of the Fundamental Law.

[46] 6.5 The petitioners consider the approach of the Curia, which excluded even the possibility in principle of the Hungarian State's liability for damages as the defendant IV, as a violation of Article

2, Article 6 and Article 8 of the ECHR, Article 1 of the First Additional Protocol, Article VI (1), Article XX (1) and (2) and Article XXI of the Fundamental Law. In this respect, the petitioners reiterate that, first, the Hungarian State disregarded the interests of individuals over the interests of the national economy (the interests of the State) between 1955 and 1979, and then, after becoming aware of the environmental pollution, failed to take effective State measures to eliminate the pollution, and also failed to provide effective information on the decontamination of the damage to the environment.

II

[47] The provisions of the Fundamental Law affected by the petition:

"Article VI (1) Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected. Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others."

"Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity."

"Article XX (1) Everyone shall have the right to physical and mental health."

(2) Hungary shall promote the effective implementation of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment."

"Article XXI (1) Hungary shall recognise and endorse the right of everyone to a healthy environment.

(2) Anyone who causes damage to the environment shall be obliged to restore it or to bear the costs of restoration, as provided for by an Act.

(3) The transport of pollutant waste into the territory of Hungary for the purpose of disposal shall be prohibited."

"Article XXVIII (1) Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act."

"Article XXVIII (7) Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests."

"Article 28 In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of that law and the justification of the proposal for or for amending the law. In the interpretation of the Fundamental Law and of the laws one should assume that they serve a moral and economic purpose, which is in line with common sense and the public good."

III

[48] In accordance with section 56 (1) of the ACC, the Constitutional Court first decides on the admissibility of the constitutional complaint.

[49] 1 In accordance with section 30 (1) of the ACC, the constitutional complaint under section 27 of the ACC may be submitted within sixty days from the date of delivery of the challenged decision. The Constitutional Court has found that the legal representative of the petitioners received the judgement of the Curia on 21 January 2021 and that the constitutional complaint was lodged with the court of first instance on 21 March 2021, within the time limit. The legal representative of the petitioners has verified his right of representation in the proceedings before the Constitutional Court. The petitioners have exhausted their legal remedies, the petition therefore also meets the statutory

requirements in this respect. The petitioners are considered to be entitled to turn to the Constitutional Court and they are affected in the case, given that they were parties to the legal proceedings on which the constitutional complaint was based.

[50] 2 The statutory condition for filing a constitutional complaint under section 27 of the ACC Act [section 27 (1) (a) of the ACC, Section 52 (1b) *(b)* of the ACC] is that the petitioners refer in their complaint to a violation of a right guaranteed by the Fundamental Law. In accordance with the consistent case-law of the Constitutional Court, Article XX (2) and Article 28 of the Fundamental Law do not contain any right guaranteed by the Fundamental Law for the purposes of the adjudication of constitutional complaints, and therefore the alleged violation of these provisions of the Fundamental Law cannot give rise to a violation of the petitioners' right guaranteed by the Fundamental Law {regarding Article XX (2): Decision 27/2021. (X. 5.) AB, Reasoning [55]; regarding Article 28: Decision 3525/2021. (XII. 13.) AB, Reasoning [14]}. Therefore, in this element, the constitutional complaint does not fulfil the conditions under section 27 (1) *(a)* of the ACC.

[51] 3 The Constitutional Court may admit a constitutional complaint that meets the requirements of section 27 (1) of the ACC if it contains an explicit request. Pursuant to section 52 (1b) *(b)* of the ACC, an application shall be explicit if it states the essence of the violation of the right guaranteed by the Fundamental Law, and pursuant to item *(e)* the application should contain a clear statement of reasons as to why the challenged judicial decision is contrary to the provisions of the Fundamental Law.

[52] The Constitutional Court held that the petitioners' constitutional complaint does not contain any substantive, constitutionally assessable grounds in relation to Article VI (1), Article XV (1), Article XX (1) and Article XXI (1) to (3) of the Fundamental Law. According to the Constitutional Court's case-law, the mere assertion that the challenged judicial decision is unfavourable to the petitioners cannot be considered a constitutionally valuable statement of reasons, and it is an obstacle to the substantive examination of the petition if it does not link the provision of the Fundamental Law invoked with the challenged judicial decision or legal provision in a constitutionally assessable manner {for example, most recently: Decision 29/2021. (XI. 10.) AB, Reasoning [21]}. Therefore, the constitutional complaint does not fulfil the requirements of an explicit request under section 52 (1b) *(b)* and *(e)* of the ACC.

[53] 4 In their constitutional complaint, the petitioners also claim that the judgement of the Curia violates an international treaty (Article 2, Article 6, Article 8 and Article 13 of the ECHR and Article 1 of the First Additional Protocol), which argument cannot be considered as an element of the petition suitable for a substantive assessment. Pursuant to Article 24 (2) *(f)* of the Fundamental Law, only the examination of the conflict between a provision of the law (rather than an individual judicial decision) and an international treaty may be requested, and the Constitutional Court has no competence to examine the conflict of a judicial decision with an international treaty in proceedings under section 27 of the ACC {for example, most recently: Decision 3207/2021. (V. 19.) AB, Reasoning [20]}. In this context, the Constitutional Court also notes that under section 32 (2) of the ACC, the examination by the Constitutional Court of the conflict with an international treaty may be initiated by a specific group of petitioners (one quarter of the Members of Parliament, the Government, the President of the Curia, the Prosecutor General, the Commissioner for Fundamental Rights, or the judge proceeding in an individual case), and the petitioners do not fall within this scope of petitioners as defined in an exhaustive manner in section 32 (2) of the ACC, and would therefore not be entitled in any case to initiate an examination of the conflict with an international treaty.

[54] 5 The Curia upheld the final partial judgement of the Budapest-Capital Regional Court of Appeal by its judgement Pfv.III.21.484/2019/12, which means that after the judgement of the Curia the proceedings continued in part for establishing the liability for damages by the defendants VII, VIII and IX before the lower courts at the time the constitutional complaint was lodged, but in other respects, in particular with regard to the liability of the Hungarian State as defendant IV for damages,

the proceedings have been closed. In their constitutional complaint, the petitioners challenged those elements of the contested judicial decision which concern the exclusion of the liability of the Hungarian State as defendant IV, in which respect, in the light of the guideline of the Constitutional Court No. 1/2019 (XI. 25.) AB Tü., there is still room for a constitutional complaint despite the pending proceedings.

[55] 6 According to section 29 of the ACC, the constitutional complaint may be admitted if a concern of conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. These admissibility conditions are of an alternative nature, therefore the Constitutional Court examines their existence separately {Decision 3/2013. (II. 14.) AB, Reasoning [30]}

[56] With regard to the element of the petition alleging a violation of Article XXVIII (7) of the Fundamental Law, the Constitutional Court states that, in accordance with its consistent case-law, the right to legal remedies enshrined in Article XXVIII (7) of the Fundamental Law applies to ordinary legal remedies and therefore it does not extend to review as an extraordinary remedy and therefore it cannot be linked to a judicial decision taken in the course of the review {for example, most recently: Decision 3558/2021. (XII. 22.) AB, Reasoning [36]}. Furthermore, the Constitutional Court also holds that the petitioners were able to exercise their right to legal remedy in the legal proceedings on which the constitutional complaint was based and that they indeed exercised it beyond any doubt, and that the legal environment provided the courts hearing the case with the opportunity to change the first instance decision in favour of the petitioners. However, Article XXVIII (7) of the ECHR only guarantees the right to legal remedy and not the right to have the application for legal remedy decided in favour of the petitioners {for example, most recently: Decision 3558/2021. (XII. 22.) AB, Reasoning [36]}, and therefore this element of the petition does not raise any concern regarding a conflict with the Fundamental Law which would have a material impact on the judicial decision or any fundamental constitutional issue.

[57] The element of the petition alleging a violation of Article XXVIII (1) of the Fundamental Law, in the light of the Constitutional Court's previous case-law in relation to Article XXVIII (1) of the Fundamental Law, does not raise any issue of fundamental constitutional significance either. However, a concern regarding a conflict with the Fundamental Law which could have a material impact on the judicial decision in the context of Article XXVIII (1) of the Fundamental Law could be be raised as a result of the interpretation of the law, which in part excludes the possibility, even in principle, of the Hungarian State being liable for damages in relation to environmental pollution on a real property owned by the Hungarian State in the period before the change of regime, because the property also had a manager (a State enterprise) which has since ceased to exist without legal succession (in the context of the State's liability as owner), and partly because the Hungarian State's failure to act cannot be the basis for liability for damages for the breach of rules on the protection of the environment, since it can only be based on active, positive conduct (in the context of both the State's liability as owner and its liability as public authority).

[58] The Constitutional Court therefore reviewed the merits of the constitutional complaint with the application of section 31 (6) of the Rules of Procedure, without a specific procedure of admitting the complaint.

IV

[59] The constitutional complaint is well-founded.

[60] 1 The petitioners considered the liability of the Hungarian State as defendant IV in the litigation to be established on the following grounds.

[61] On the one hand, the petitioners consider that the Hungarian State is liable because W. Gy. carried out chemical activities on the real property at issue “in the interest of the national economy”, i.e. in the interest of the Hungarian State (liability of the operator). On the other hand, the Hungarian

State can also be held liable because the real property was managed by the Property Management Company, which was the sole property of the Hungarian State and which ceased to exist on 8 March 1996 without legal succession, and therefore the claim can only be asserted against the Hungarian State. Thirdly, the liability of the Hungarian State is also based on the fact that the bodies of the Hungarian State granted a licence to W. Gy. to carry on chemical activities, and the Hungarian State, despite its express statutory obligation, did not monitor and failed to enforce compliance with the obligations under the relevant licence, and did not ensure that the area was decontaminated after the end of the polluting activity (the death of W. Gy.).

[62] The judgement of the Curia No. Pfv.III.21.484/2019/12 did not establish the liability of the Hungarian State as defendant IV on any of the grounds identified by the petitioners. In its judgement, the Curia accepted the finding of the lower courts that it could not be established that W. Gy. had acted in the interest of the State as an operator, the reason being that the designation "in the interest of the national economy" was not included in the licence under which W. Gy. had carried out on the real property at issue the chemical activity for food purposes. Secondly, the Curia concluded that, given that the real property at issue had a manager with legal personality and independent liability, only that body (namely the Property Management Company, which ceased to exist in 1996 without legal succession), and not the Hungarian State as defendant IV in the litigation, would be (or, in the present case, could have been) held liable for damages. Finally, based on the provisions of the APHE, the Curia held that the Hungarian State as defendant IV was not bound under any obligation to act in connection with the environmental pollution, but only had a duty to act against the person causing the pollution (in this case W. Gy.), and thus the Hungarian State as defendant IV could not be held liable for damages for the polluting conduct of W. Gy. (the Curia's judgement, reasoning [105]).

[63] 2 First in its Decision No. 20/2017 (VII.18.) AB and most recently in its Decision No. 29/2021 (X.10.) AB, the Constitutional Court examined in detail the question of when the decision of the court acting beyond the scope of interpretation provided by the Fundamental Law may result in a violation of Article XXVIII (1) of the Fundamental Law.

[64] The Constitutional Court stated in the Decision 20/2017. (VII. 18.) AB that "subordination to the law is not a limitation of judicial independence, it is much more a guarantee of it: the judge shall make his decision on the basis of the laws. If the court frees itself from the subordination to the law, it dispenses with one of the material bases of its own independence. A court that does not obey the law is actually misusing its own independence, which may, in a given case, thus result in the violation of the right to a fair trial." (Reasoning [23])

[65] In itself, a *contra legem* judgement is not necessarily a judgement contrary to the Fundamental Law (*contra constitutionem*). In exceptional and sufficiently serious cases, however, a *contra legem* application of the law may rise to a level assessable under constitutional law and lead to holding the judicial decision being contrary to the Fundamental Law {Decision 29/2021. (X. 10.) AB, Reasoning [28]}. Such an exceptional case was mentioned by the Constitutional Court in its Decision 29/2021 (X. 10.) AB, when the court's judgement violates the range of interpretation provided by the Fundamental Law, and thus the court's decision becomes one contrary to the Fundamental Law, since courts may only interpret legislation within the framework provided by the Fundamental Law, in accordance with Article 28 of the Fundamental Law. Accordingly, the Constitutional Court cannot intervene in the activity of the courts in every case where some (alleged or actual) unlawful interpretation or application of the law has taken place, since any error of fact or law by a judge does not automatically render the whole procedure unfair {see for example the Decision 3234/2021. (VI. 4.) AB, Reasoning [68]}. In cases, however, where the courts in charge of the proceedings go beyond the scope of interpretation provided by the Fundamental Law, the Constitutional Court has not only the possibility, but also the constitutional obligation, as the supreme body for the protection of the Fundamental Law, to annul a judicial decision that is contrary to the Fundamental Law. In addition to the above, the Decision 29/2021 (X. 10.) AB also stated that "if the Constitutional Court, in a decision,

takes a position on the interpretation of a legal provision in accordance with the Fundamental Law without formally stating a constitutional requirement, or, on the contrary, states that an interpretation is contrary to the Fundamental Law, the court acting in the case must also take this into account when rendering its judgement." (Reasoning [29])

[66] 3 The case-law of the Constitutional Court is consistent also by holding that "in the course of assessing a constitutional complaint submitted on the basis of section 27 of the ACC, the competence of the Court is limited to examine the judicial interpretation of the law regarding its conflict with the Fundamental Law and its harmony with the fundamental rights, and it is not extended to repeatedly reviewing the judicial weighing and the evaluation of the pieces of evidence or the entirety of the court procedure" {for example, most recently: Decision 3516/2021. (XII. 13.) AB, Reasoning [48]}. The Constitutional Court may not examine whether the evidence and arguments presented in the reasoning and the facts of the case are well-founded or whether the judiciary has correctly assessed the evidence and arguments presented in the proceedings, since according to the procedural rules, the establishment of facts, the assessment and weighing of evidence is a task reserved to the judiciary {Decision 3309/2012. (XI. 12.) AB, Reasoning [5]}. At the same time, the constitutional requirement of fair procedure sets the minimum expectation in each case for judicial decisions to have the participating parties' comments on the essential parts of the case examined with due scrutiny and to give account of evaluating it in the decision {Decision 7/2013. (III. 1.) AB, Reasoning [34]}. The right to receive a reasoned judicial decision "does not imply any obligation to refute one by one each note made by the parties, and it does not require in particular the presentation of an argumentation deep enough to satisfy the parties' subjective expectations" {Decision 3107/2016. (V. 24.) AB, Reasoning [38]}, however, the reasoning must, in each case, address all relevant issues in the context of the merits of the case {for example, most recently: Decision 3557/2021. (XII. 22.) AB, Reasoning [28]}. In this context, the Constitutional Court observes that where the proceeding court departs on a point of law from the Constitutional Court's finding made on interpreting a legal norm in conformity with the Fundamental Law, the proceeding court must take particular care to state the reasons for that departure in its decision in accordance with Article XXVIII (1) of the Fundamental Law, since that departure may in any event be regarded as a question relevant to the merits of the case.

[67] 4 The Constitutional Court has come to the following conclusions in relation to the possibility of excluding the (proprietary) liability of the State under private law.

[68] According to the facts of the case, from 14 July 1967, the property was managed by the Housing Management Directorate of the Budapest XX District Council Executive Committee, the predecessor of the Budapest XIX, XVIII and XX District Property Management Company, a company finally ceased to exist by liquidation without legal successor on 8 March 1996. Partly in view of the existence of this management right and partly in view of the dissolution of the management company without legal successor, the courts hearing the case ruled that the liability for damages of the Hungarian State as defendant IV and as the owner of the real property could not be directly invoked, since the liability of the owner can (could have been) asserted only against the management company.

[69] 4.1 The Constitution in force before the change of regime provided in Article 8 (2) that "State property shall include, above all: the treasures of the earth, State land, natural resources, major factories and mines, railways, roads, waterways and airways, banks, postal services, telegraph, telephone, radio and television". In line with this, according to section 89 of the old Civil Code, which was in force before the change of regime: "State socialist property is the property of the people as a whole: it plays a decisive role in the national economy. State socialist property covers primarily the basic means of production and other assets of decisive importance for the national economy, and is the main material basis and guarantee of the country's prosperity and strength." Section 170 of the old Civil Code provided that State property was unitary and indivisible, according to section 171 (1), "[t]he State's right of ownership shall not be affected by the fact that it entrusts particular items of

its property to State bodies, in particular State enterprises and State farms; the State shall direct and control the management of its bodies and shall have the right to reallocate and redistribute the property entrusted to certain bodies".

[70] 4.2 Section 11 (1) – in force until 31 December 1999 – of the Decree 27/1972 (XII. 31.) MÉM on implementing the Law-Decree 31 of 1972 on the Real Estate Registry provided that "at the registration of the ownership of the State, the State of Hungary shall be indicated as the owner and at the same time the right of management shall be registered". Under section 11 (2), "only a State body or a social organisation may be registered as the property manager". According to section 6 of the Government Decree 9/1969 (II. 9.) on the management of State-owned real property, the property manager exercised the rights and fulfilled the obligations of the owner.

[71] 4.3 The specific nature of management right in the period before the change of regime has already been examined by the Constitutional Court in several decisions. According to the Decision 17/1992 (III. 30.) AB, "in the legal order before the change of regime, the concept of property was, although in different ways in different periods, still dominated by social property, in particular the role of State property; the explanation of State property was not sought primarily in the framework of civil law institutions, but was characterised by the predominance of public authority elements. The old Constitution and the prevailing provisions of the law assumed the 'unity and indivisibility' of state property." (ABH 1992, 104, 105) The Decision 17/1992 (III. 30.) AB also made it clear that the right of management "cannot be identified with the right of ownership, but is a mutation of the right of ownership developed in the earlier Hungarian legal system, where, within the ownership relation itself, the rights of the owner are reorganized into rights and obligations of legal relationships of internal (contractual) and external (in rem) nature" (ABH 1992, 104, 107). The reason for this is that "within the ownership relation, the role of the State has always been predominant: State has had full owner's power of disposal over the object of property which it has allocated under management. This was expressed by the constitutionally declared unity and indivisibility of State property; the State could at any time take back its property from the managers and could divide it up, redistribute it, etc. among them." (ABH 1992, 104, 106) The Constitutional Court has subsequently considered this finding to be authoritative and has cited it in an affirmative way [see for example: Decision 50/2004. (XII. 6.) AB]. This also means that, as a direct consequence of the Constitutional Court's interpretation, it would be contrary to the unity and indivisibility of State property if the manager were allowed to assume the position of the owner in respect of certain real properties encumbered with a management right. On the contrary, the legal relationship between the manager and the State as owner was merely an "internal" relationship within the ownership right, which did not constitute a basis for the State as owner to be relieved of its liability to third parties, but, on the contrary, created the liability of the manager in addition to (and not instead of) that of the owner.

[72] 4.4 In its Decision 3009/2012 (21.VI.) AB, the Constitutional Court held that "the right to property was also contained in Article 13 (1) of the Constitution in a formulation identical in content. According to Article 24 (1) of the Fundamental Law, the Constitutional Court is responsible for the protection of the Fundamental Law. In newer cases, the Constitutional Court may use the arguments contained in its previous decisions before the entry into force of the Fundamental Law in connection with the constitutional issue considered at that time, provided that this is possible on the basis of the specific provisions and rules of interpretation of the Fundamental Law, which are identical or similar in content to those contained in the Constitution. The statements of principle expressed in the decisions of the Constitutional Court based on the Constitution are, by analogy, also applicable to the decisions of the Constitutional Court interpreting the Fundamental Law. However, this does not mean an unquestioning, mechanical adoption of the decisions based on the Constitution, but requires a comparison of the relevant rules of the Constitution and the Fundamental Law and careful consideration. In the present case, it can be concluded that the right to property, as a fundamental right, is guaranteed by the Fundamental Law, as it was by the Constitution, therefore the findings of

the Constitutional Court can still be considered as authoritative in the interpretation of the right to property." {Reasoning [49]; most recently reinforced in: Decision 25/2021. (VIII. 11.) AB, Reasoning [97]}.

[73] After the entry into force of the Fundamental Law, the Constitutional Court did not examine (in the absence of a petition) the nature of the right of management of certain exclusively State-owned real property in the period before the change of regime. In view of the identical content of Article 13 of the former Constitution and Article XIII of the current Fundamental Law, the Constitutional Court considers its previous findings on the nature of the management right in the period before the change of the regime to have the same guiding force.

[74] However, all this also means that when the proceeding courts took the position that the fact that the real property at issue had a registered manager exercising the owner's rights from 14 July 1967 automatically excluded the liability for damages of the Hungarian State as defendant IV, they conferred the right of management with a content and at the same time limited the rights of the owner in a way that was contrary to the findings resulting from the cited decisions of the Constitutional Court. As the Constitutional Court has already pointed out above, where the proceeding court departs on a point of law from the interpretation of a norm (in this case, the legal nature of the management right) formulated by the Constitutional Court as being in conformity with the Fundamental Law, the proceeding court must take particular care to state the reasons for that departure in its decision in accordance with Article XXVIII (1) of the Fundamental Law. In the case of an adequate reasoning assessable from a constitutional law point of view, the Constitutional Court must, on the basis of a petition to that effect, examine whether the interpretation of the law chosen by the proceeding court (and differing from that of the Constitutional Court) goes beyond the constitutional limits of the scope of interpretation provided for by Article 28 of the Fundamental Law, and only on the basis of that assessment can it be established whether the judicial decision under review has become one *contra constitutionem*. However, disregarding the interpretation of the law which follows from the decision of the Constitutional Court without stating reasons necessarily results in the challenged judicial decision being contrary to Article XXVIII (1) of the Fundamental Law and in the annulment of the challenged judicial decision by the Constitutional Court.

[75] In the present case, the Constitutional Court's interpretation of the law [going back as far as the Decision 17/1992 (III. 30.) AB] is consistent on the issue that the holders of the management right before the change of regime were not considered owners in the civil law sense, and the legal relationship between the manager and the State as owner was only an "internal" legal relationship. It was for this reason that the Constitutional Court had previously found constitutional (as being in line with the provisions of the right to property) the legal provisions which provided for the termination of the management right without compensation (indemnification). Obviously, the interpretation of the law according to which, in the period before the change of regime, the holder of the management right was placed in an in rem position of the law (ownership or equivalent) in external legal relations, thus excluding the liability of the State as owner, which otherwise would have been directly derived from his capacity as owner, is in contradiction with this approach. This interpretation of the law is contrary to the very essence of the unity and indivisibility of State property and the constitutional content of management right. It follows from the unity and indivisibility of State property in the period before the change of regime that the liability of the Hungarian State for damages based on its ownership can be invoked in all cases without exception, but in certain cases the liability of the property manager can also be invoked in addition to the liability of the Hungarian State as owner. However, since in its judgement the Curia failed to provide any reasons why it chose an interpretation of the law in determining the substantive content of management right which expressly contradicts the approach taken in the decisions of the Constitutional Court, i.e. the constitutional content of management right, in the present case, the Constitutional Court did not have to assess (and could not even assess in the absence of an adequate reasoning of the judgement)

whether the interpretation of the law chosen by the Curia was within the range of interpretation under Article 28 of the Fundamental Law, but had to establish that the contested judicial decision became unconstitutional in itself because of the lack of reasoning on an essential element of the main case.

[76] In this context, the Constitutional Court notes that it is also a fact that the right to manage the property was established on 14 July 1967, whereas complaints concerning the activities of W.Gy. on the property owned by the State have been received continuously since 1955. This also means that, for more than a decade, polluting activities had been carried out on the property with the verifiable knowledge of the owner of the real property (the Hungarian State, defendant IV), without there being any property management entity during that period, according to authentic data in the real estate register.

[77] 5 In addition to what was discussed in the previous point, the courts proceeding in the case also held that the Hungarian State, as defendant IV, could not be held liable for damages simply because "the polluting activity was not carried out by a body of the State or by a person or body acting in the interest of the State". The Curia thus interpreted the applicable provisions of the law in the case as meaning that liability for damages for environmental pollution can only be invoked in the case of active conduct, and that omission cannot be the cause of the pollution and the liability for it.

[78] 5.1 It is a fact stated in the litigation that, in connection with the chemical activities of W.Gy. on the real property in question, the Executive Committee of the District Council received complaints from neighbours as early as 1955, because they noticed the pollution of the water of the well and of air. According to the reports, the activity carried out by W.Gy. "pollutes and poisons the air, is dangerous for the inhabitants, as well as for domestic animals and vegetation. Minor children of the neighbours are constantly exposed to danger", and W.Gy.'s activity "contaminates not only the air but also the groundwater, harmful liquids released into the soil have leaked and have also stained the well in the complainant's yard yellowish, making it unfit not only for drinking but also for cleaning and washing" (partial and interlocutory judgement of the Budapest-Capital Regional Court, page 4). It was also established beyond doubt that the Technical Department of the Capital XX District Council Executive Committee stated on 10 February 1987 that "the area contains a large quantity of toxic and explosive compounds" (partial and interlocutory judgement of the Budapest-Capital Regional Court, page 5).

[79] 5.2 The Constitution in force prior to the regime change recognized, with effect from 26 April 1972, that "in the Hungarian People's Republic citizens have the right to the protection of life, physical integrity and health. This right shall be realized by the People's Republic of Hungary through the organization of labour safety, health care institutions and medical care, and the protection of human environment." [Article 57 paras (1) and (2)] This provision established at the constitutional level the State's obligation related to the institutional protection of the environment, as stated in the reasoning of the Act I of 1972 amending the Constitution: "Since the adoption of our Constitution, the scope of guarantees of citizens' rights has been broadened. This makes it necessary to introduce the achievements in this field in the provisions of our Constitution. Accordingly, in the context of the protection of life, physical integrity and health – in addition to the organisation of medical care – the draft refers to labour safety, health institutions and the increasingly necessary protection of the human environment a guarantees [Article 57 (2)]."

[80] 5.3 According to section 3 of the APHE in force as of 1 April 1976, "State bodies, companies, cooperatives, social organisations and citizens are obliged to observe and maintain the rules for the protection of the human environment and to promote environmental protection in their sphere of activity". Accordingly, the Act made it possible to invoke the responsibility of the State in two respects: complying and enforcing compliance with the rules for the protection of the human environment.

[81] Pursuant to section 46 of the APHE, "any person who causes damage to another person by an activity endangering the human environment shall be liable to pay compensation for the damage in accordance with the rules of the Civil Code applicable to activities involving increased risk". Section 43 of the Act also made it clear that the conduct endangering the environment may take the form of an act or omission. This interpretation is also confirmed beyond doubt by the legislative reasoning of section 43 of the Act: "The rules of liability for breach of the provisions for the protection of the human environment shall apply to all cases in which, as a result of an act or omission, pollution or damage is caused to the human environment."

[82] At the same time, the State was also subject to additional obligations arising from the provisions of the APHE, in particular section 3, namely the obligation to comply with the rules on the protection of the environment. For example, section 38 (1) of the APHE can be considered such an additional obligation on the State as a public authority, which expressly provided that "all plants, facilities built or maintained in municipality environment, and all activities carried out there shall be without harmfully affecting the living conditions of the population". The obligation to comply with this provision of the law imposed a duty on the State as a public authority to take action against polluting activities, coupled with a duty of the owner on the part of the State in the case of State-owned real property.

[83] The interpretation of the content of the provisions of the APHE itself can be considered a specialised question of interpreting the law, the examination of which is outside the competence of the Constitutional Court. However, the provisions of the APHE that contain rules on the protection of the environment, and in the present case on the activities of the State, can be directly traced back to Article 57 (1) and (2) of the Constitution in force as of 26 April 1972. In accordance with the consistent case-law of the Constitutional Court, it is always a matter for the Constitutional Court to examine whether the proceeding courts have interpreted the applicable legislation in the case giving rise to the procedure before the Constitutional Court in a manner which is in conformity with the constitutional (the Fundamental Law's) provisions, in a manner giving effect to the content of the fundamental rights formulated at constitutional level.

[84] 5.4 In the period before the regime change, State ownership was dominant, with all significant economic activities being carried out either through a State-owned company or with the explicit permission of the State. Accordingly, the conduct of the State can and must be examined in accordance with the Act on the protection of the environment in force at the time and the liability rules of the Civil Code, both as an owner and as a public actor. Even in exceptional circumstances, the fact that the State, as a public actor, authorised or, despite its official knowledge, tolerated through failure to act an obvious polluting activity on State-owned property at a time when there were already clear legal provisions in that regard, cannot be assessed in favour of the State as the owner. In that context, the Constitutional Court observes that, if only to avoid situations such as the explosion in the present main case, it would be desirable to have a publicly accessible, comprehensive and authentic database (either as part of the real estate register or in a separate form), which, on the basis of the data available to the public authorities, would contain as complete a record as possible of the pollution level of individual real properties in Hungary, the acts of the authorities performed in relation thereto and the decontamination measures taken as well as the results thereof.

[85] 5.5. According to the consistent case-law of the Constitutional Court, "the precautionary principle and the principle of prevention are of decisive importance in the context of the right to a healthy environment." {Decision 4/2019. (III. 7.) AB, Reasoning [74]}. The Constitutional Court stated as early as in its decision 28/1994. (V. 20.) AB that "prevention has precedence over all other means to guarantee the right to a healthy environment, for subsequent penalties for irreparable damages cannot ensure restoration of the original condition. (ABH 1994, 134, 140). The preventive principle "means an obligation to act at the source of the potential pollution but even before the pollution takes place: it should guarantee the prevention of the occurrence of processes that may damage the

environment." {Decision 13/2018. (IX. 4.) AB, Reasoning [20]}.

As laid down by the Constitutional Court in the Decision 3223/2017. (IX. 25.) AB: "the level of protection of the environment and nature guaranteed by law cannot be reduced by an individual decision of an authority. While the law-maker has the possibility to continuously promote the protection of the environment and nature by adopting new legislation, the judiciary must enforce the principle of non-derogation within the existing legal framework, partly by respecting and enforcing the existing legislation and partly by taking due account of environmental and natural aspects in the case of a regulation allowing for multiple options (among others with a view to the test of necessity-proportionality)." (Reasoning [29]). The reason for this is that "the failure to protect the nature and the environment may induce irreversible processes" {Decision 13/2018. (IX. 4.) AB, Reasoning [20]}.

[87] The principle of "polluter pays", which is now also specifically referred to in Article XXI (2) of the Fundamental Law, is of paramount importance in Hungarian, international and EU law, and is closely related to the preservation, protection and improvement of the quality of the environment, the protection of human health, and the careful use and conservation of natural resources that are part of the common heritage of the nation. The polluter pays principle "not only imposes an absolute substantive limit on legislation, but also requires those who administer the law in individual cases to have regard at all times to the enforcement of that principle in the application of the law." {Decision 3162/2019. (VII. 10.) AB, Reasoning [18]}.

[88] 5.6. As the Constitutional Court has already pointed out above, even the APHE clearly established the obligation for State bodies and companies to observe and comply with the rules for the protection of the human environment (section 3), and the same Act expressly established the rules of liability for environmental pollution (section 46) by referring back to the provisions of the old Civil Code. From a constitutional point of view, these provisions can be traced directly back to Article 57 (1) and (2) of the Constitution in force at the time. The judicial interpretation of the law which holds that – notwithstanding the above – the liability of the State, as the owner and, at the same time, as the exerciser of public authority, for failure to comply with and observe the rules on the protection of the environment, as expressly laid down in the law, may not be examined, deprives the essential content of the right to a healthy environment under Article XXI of the Fundamental Law of its substance. This is all the more true since, in the context of the right to a healthy environment, the Constitutional Court has expressly and consistently emphasised that "it is part of the objective and institutionalised protection side of the right to life, specifying the State's obligation to maintain the natural foundations of human life as an independent constitutional right" {first: Decision 48/1998 (XI. 23.) AB, ABH 1998, 333, 343; after the entry into force of the Fundamental Law, correspondingly: Decision 16/2016 (VI. 5.) AB, Reasoning [85]; subsequently, for example: Decision 17/2018 (X. 10.) AB, Reasoning [83]}. The right to a healthy environment is both a fundamental subjective right (to which everyone is subject) and an objective obligation of the State to protect institutions. The State must therefore take particular care in creating, enforcing and complying with environmental protection legislation, as individuals may hold the State accountable for it on the basis of Article XXI of the Fundamental Law.

[89] The Constitutional Court notes that environmental pollution (like any other type of damage) may occur not only as a result of positive, active conduct, but also as a result of omission, since in this respect (i.e. among the forms of conduct giving rise to liability) liability for environmental pollution has no specificity in comparison with other types of damage. In this respect, it is particularly important to assess cases in which a provision of law (such as the rules of the APHE in the present case) has expressly created an obligation to act against polluting conduct. It is clearly contrary to the essence of the right to a healthy environment under Article XXI (1) of the Fundamental Law [and, in the present case, also to the substance of the Article 57 (1) and (2) of the Constitution previously in force] to interpret the law in such a way as to exclude the liability in the event of polluting conduct

of an actor (in the present case, the Hungarian State, the defendant IV) who is bound by the law, both as a public actor and as a property owner, to observe and enforce the rules for the protection of the environment. By interpreting the rules of the APHE establishing liability for environmental pollution in such a way as to exclude the possibility of liability for pollution resulting from negligence, the Curia not only interpreted the relevant provisions of the APHE in a *contra legem* manner, but also deprived the right to a healthy environment of its essential content, and the judgement of the Curia has thus become one being in conflict with the Fundamental Law, in substantive terms as well.

[90] 6 In the light of all these aspects, the Constitutional Court found that the judgement No. Pfv.III.21.484/2019/12 of the Curia was contrary to the Fundamental Law and annulled it as set out in the holdings of the decision.

[91] 7 According to section 43 (4) of the ACC, the Constitutional Court, when annulling a judicial decision, may also annul judicial decisions or the decisions of other authorities which were reviewed by the given decision. The Constitutional Court found that the Budapest-Capital Regional Court of Appeal in its partial judgement No 4.Pf.20.124/2019/16 and the Budapest-Capital Regional Court in its partial and interlocutory judgement No. 36.P.24.412/2015/139 ruled – the same way as the annulled judgement of the Curia – that the liability of the Hungarian State as defendant IV for damages was in principle excluded (in particular: partial judgement of the Budapest-Capital Regional Court of Appeal, page 19; partial and interlocutory judgement of the Budapest-Capital Regional Court, pages 35 to 36). Therefore, the Constitutional Court, acting within its powers under section 43 (4) of the ACC, also annulled the partial judgement No 4.Pf.20.124/2019/16 of the Budapest-Capital Regional Court of Appeal and the partial and interlocutory judgement No. 36.P.24.412/2015/139 of the Budapest-Capital Regional Court, as set out in the holdings of the decision.

[92] 8 The Constitutional Court ordered the publication of the decision in the Hungarian Gazette in view of the findings of principle contained therein, on the basis of the second sentence of section 44 (1) of the ACC.

Budapest, 22 March 2022.

Dr. Tamás Sulyok,
President of the Constitutional Court

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Ágnes Czine* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Egon Dienes-Oehm* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Tünde Handó* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Attila Horváth* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Ildikó Hörcherné dr. Marosi* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Miklós Juhász* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on

Dr. Tamás Sulyok, President of the Constitutional Court on

behalf of Justice *dr. Zoltán Márki* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. László Salamon* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of rapporteur Justice *dr. Marcel Szabó* unable to sign

behalf of Justice *dr. Béla Pokol* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Balázs Schanda* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Péter Szalay* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Mária Szívós* unable to sign