



## **Decision 3063/2022. (II.25.) AB**

The panel of the Constitutional Court in the matter of an ex post review of conformity of a legal act with the Fundamental Law has adopted the following

decision:

The Constitutional Court dismisses the petition seeking a finding of unconstitutionality by non-conformity with the fundamental Law and annulment of Section 5 (2) of Act LXVI of 1992 on the Register of Personal Data and Residential Addresses of Citizens.

Reasoning

I

- [1] 1. The petitioner Members of Parliament (contact person: dr. Bertalan Tóth, H-1055 Budapest, Kossuth Lajos tér 1-3.) have petitioned the Constitutional Court on the basis of Article 24 (2) (e) of the Fundamental Law and Article 24 (1) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act") to find unconstitutionality by conflict with the Fundamental Law and annulment with retroactive effect to the date of its entry into force of Section 5 (2), effective as of 1 January 2022, of Act LXVI of 1992 on the Register of Personal Data and Residential Addresses of Citizens (hereinafter referred to as the "Citizens Register Act") as amended by Draft Act T/7277, promulgated by Section 2 of Act CXIX of 2021 on Amending Certain Acts in Connection with the Introduction of the Data Change Management Service and the Reduction of Administrative Burdens for Citizens, as it infringes Articles

B (1), I (3), XXIII (1) and (7) and 2 (1) of the Fundamental Law.

- [2] 2. First of all, the petitioners referred to the fact that the Constitutional Court had already considered the links between residence and the related records and elections and referendums on several occasions. In this context, citing Decision 338/B/2002 AB, as reaffirmed by Decision 6/2007 (II. 27.) AB and Decision 47/2006 (X. 5.) AB, the petitioners stressed that the defect of incomplete and outdated databases affecting the right to vote leads to the impurity of elections and the violation of the rule of law. The petition cites Decision 18/1993 (III. 19.) AB on the exercise of the rights of political participation in the context of referendums, Decision 26/1996 (VII. 3.) AB on the content of records and voting procedures based on them, and Decision 3086/2016 (IV. 26.) AB on the relationship between the content of the right to vote and the place of residence. The petition pointed out that the place of residence as the basis for a more intensive relationship with the State was confirmed by the Constitutional Court in Decision 3032/2020 (II. 24.) AB and, citing Decision 3/1990 (III. 4.) AB [reaffirmed by Decision 6/1991 (II. 28.) AB and Decision 298/B/1994 AB], it was reiterated that the direct relationship between the place of residence and the State is a constant practice of the Constitutional Court. The petitioners also recalled the reference to the ODIHR (*OSCE Office for Democratic Institutions and Human Rights*) in the concurring reasoning of former Constitutional Court Justice Péter Kovács in Decision 47/2006 (X. 5) AB, and also considered relevant the findings of the European Court of Human Rights in certain cases (*Melnichenko v. Ukraine, Py v. France, Podkolzina v. Latvia, Hirst v. United Kingdom, Benkaddour v. France*).
- [3] 3. The petitioners, relying on the case-law of the Constitutional Court, stressed that the place of residence is not only a place of registration in the register of residential addresses but also habitual residence, and that it serves to establish membership of the political community concerned by the place of residence, and that it is the closer connection with the place of residence which makes it possible to distinguish between Hungarian citizens and to confer different content on the right to vote on different groups of Hungarian citizens. In their view, the illegality of the provision challenged in the petition lies in the fact that it renders the legal concept of residence meaningless, since it deprives the register of residential addresses of the ability to verify the actual presence of a person in the place of residence. In their eyes, this deprives the electoral procedure of the guarantees in the absence of which it would not be possible to draw up a register of electoral districts which meets the requirements arising from the case-law of the Constitutional Court. In their position, the absence of such register would undermine the principle of the mixed electoral system in such a manner as to infringe Article B (1) of the Fundamental Law.

- [4] They contend that the substantive requirement of a closer link cannot be departed from in a mixed electoral system because it renders the electoral system and the distinction it makes arbitrary, is incompatible with the rule of law and deprives communities of genuine representation by providing a lawful possibility for the representative of a community not to be the person supported by the majority of the local community.
- [5] The petitioners also allege a breach of Article B (1) of the Fundamental Law in that the provision contested by this petition does not provide the substantive guarantees necessary for the conduct of a fair procedure, since it dilutes the register of residential addresses.
- [6] 4. The petitioners submit that the impugned provision restricts the right of citizens living in Hungary to elect the candidates representing them, since persons who are not part of the political community in question may also intervene in the election, and in an uncontrolled manner, which is contrary to the right to vote and to hold a referendum, as laid down in Article XXIII (1) and (7) of the Fundamental Law, the elements of institutional protection of which are guaranteed by Article 2 (1) of the Fundamental Law. This restriction deprives (local) communities of the possibility of genuine representation without any legitimate grounds and is therefore contrary to Article I (3) of the Fundamental Law, which sets the standards for the restriction of fundamental rights. In their contention, the legislator failed to act for a legitimate reason and thus failed to use the least restrictive means to achieve the objective.

## II

- [7] 1. The provisions of the Fundamental Law invoked by the petition are as follows:
- “Article B (1) Hungary shall be an independent, democratic rule-of-law State.”
- “Article I (3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary and proportionate to the objective pursued and with full respect for the essential content of such fundamental right.”
- “Article XXIII (1) Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of the National Assembly, of local government representatives and mayors and of Members of the European Parliament.

(7) Every Hungarian citizen shall have the right to hold public office according to his or her aptitude, qualifications and professional competence. Public offices that may not be held by members or officials of political parties shall be specified in an Act."

"Article 2 (1) Members of the National Assembly shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in the manner laid down in a cardinal Act."

[8] 2. The provision of the Citizens Register Act invoked by the petition is as follows:

"Section 5 (2) A citizen's place of residence shall mean the address of the dwelling or accommodation (hereinafter collectively referred to as "dwelling") which serves as the basis for the citizen's official relations with the State and with natural and legal persons and organisations without legal personality, as well as for his rights and obligations connected with his place of residence."

### III

[9] 1. The Constitutional Court proceeded in the case in a panel pursuant to Section 50 (1) of the Constitutional Court Act and Section 5 (1) of the Rules of Procedure.

[10] 2. The Constitutional Court found, before considering the merits of the case, that the petition originated from the persons entitled to do so pursuant to Article 24 (2) (e) of the Fundamental Law and Section 24 (1) of the Constitutional Court Act, since it was lodged by one quarter of the Members of the National Assembly. Pursuant to Section 52 (1b) of the Constitutional Court Act, the petition shall contain an explicit request, which the petition satisfies, since the petitioners have indicated Article 24 (2) (e) of the Fundamental Law and Section 24 (1) of the Constitutional Court Act, on the basis of which the Constitutional Court has subject-matter jurisdiction to rule on the petition for the *a posteriori* review of the conformity with the Fundamental Law and which establishes the petitioners' entitlement to petition the Court. The grounds for initiating the proceedings were stated, the provision of law to be considered by the Constitutional Court and the provisions of the Fundamental Law concerned were indicated. The petitioners have given reasons why the provision of law in question is contrary to the provisions of the Fundamental Law and the petition expressly requests the retroactive annulment of the provision of law in question.

### IV

- [11] The petition is unfounded, for the reasons set out hereunder.
- [12] 1. First of all, the Constitutional Court reviewed the provisions of the Citizens Register Act concerning the concept of the place of residence and the provisions more closely related to the concept of the place of residence, as well as the legislative reasons for the amendment of the Act.
- [13] 1.1 Section 5 (2) of the Citizens Register Act, in force before 1 January 2022, defined the place of residence of a citizen as “the address of the dwelling in which the citizen lives. For the purposes of the notification of the residential address, a building or part of a building consisting of one or more dwellings which the citizen uses as his or her home on a regular basis and, with the exception of Hungarian and non-Hungarian citizens living abroad, the premises where a person lives or, if he or she has no other dwelling, stays, shall be deemed to be a dwelling.”
- [14] 1.2 This provision was amended on the basis of Draft Act T/7277, effective as of 1 January 2022, by Section 2 of Act CXIX of 2021 on Amending Certain Acts in Connection with the Introduction of the Data Change Management Service and the Reduction of Administrative Burdens for Citizens, pursuant to which a citizen's place of residence shall mean “the address of the dwelling or accommodation (hereinafter collectively referred to as the “dwelling”) which serves as the basis for the citizen’s official relations with the State and with natural and legal persons and organisations without legal personality, as well as for his rights and obligations connected with his place of residence.”
- [15] Under the general explanatory memorandum to the draft Act, the amendment “provides a regulatory response to the social phenomenon that some of the notifications of residential addresses no longer reflect the reality of the situation. According to the most recent calculation by the Central Statistical Office, more than 6.37% of the Hungarian population, some 625,000 people, do not live at their notified place of residence, despite the fact that the current provisions of the [...] Citizens Register Act require habitual residence as a conceptual element for both the place of residence and the place of stay. The legislative response to this phenomenon is along two different lines: tightening the rules by forcing citizens to provide the State with up-to-date information on their current habitual residence. A different approach would be to examine the extent to which the State has an interest in knowing the habitual place of stay of the citizen and the extent to which the phenomenon described above is a threat to society. The approach taken in the draft Act is that the State only needs to know and administratively shape the daily life of a citizen where and to the extent that

the public interest so requires.”

[16] The detailed explanatory memorandum to the draft Act states the following: “[i]t can be observed today that some of the notifications of residential address do not reflect the reality of the situation, that is, some people do not actually live where their residential address is notified. [...] Several reasons can be identified behind this phenomenon. These include registration based on family ties or entitlements and, more generally, increased social mobility. [...] The draft Act would allow citizens to choose freely the place they consider to be their home and to which they are attached, without having to comply with the requirement of permanent residence. The increase in the autonomy of the citizen in his or her choice of the place of residence and the abolition of the habitual residence requirement do not harm society as a whole for the following reasons:

(a) The residential address cannot be just any dwelling: it remains a cornerstone of the regulation that a citizen can register either in his or her own dwelling or in one for which he or she has a statement from the accommodation provider;

(b) Where the citizen does not reside in his or her place of residence, it will still be possible to notify the place of stay; therefore, the State and, through the State, the persons concerned will be able to obtain information on the actual place of stay from a public register. In the case of the place of stay, the conceptual element of actual and habitual residence remains unchanged.”

[17] 1.3 In contrast to the place of residence, the amendment did not change the content of the concept of the place of stay: The place of stay remains the dwelling other than the place of residence where the citizen stays for a period of more than three months. The definition needed a slight modification because of the change in the place of residence: since the latter is no longer required to be occupied as a habitual residence, it was necessary to replace the intention to leave the place of residence with the intention to change residence. Thus, pursuant to Section 5(3) of the Citizens Register Act, the citizen's place of stay is the address of the dwelling where the citizen stays for a period of more than three months without intending to change his or her place of residence.

[18] 1.4 As a consequence of the amendment, Section 26 (1) of the Citizens Register Act has also been amended, pursuant to which the citizen is obliged to notify the address of his or her residence for registration purposes. The address of the place of stay may be notified (the notification of the place of residence and the place of stay being collectively referred to as the “notification of the residential address”) or it shall be notified as a condition of entitlement as defined in Section 26/A. Where the notification

of residential address is made in connection with moving house, the notification shall be made within three working days of the date of moving in or moving out. As stated in the detailed explanatory memorandum to the draft Act, the amendment to the time limit for the notification of address details was necessary because, by amending the definition of the place of residence, a change of residential address is not necessarily linked to moving house. Accordingly, the provision only states in general terms that the address of the place of residence shall be notified (when it arises, as appropriate) and that if the change of residential address is linked to moving house, the period for notifying such change is three days from the date of moving house, as under the previous rules.

[19] 1.5 In order to avoid abuse, Section 26 (4) of the Citizens Register Act continues to provide as a guarantee rule that the consent of the accommodation provider is required for the notification of residential address, subject to the exceptions provided for by law. Pursuant to Section 26 (5) of the Citizens Register Act, the fact of notification of residential address does not in itself create or terminate any right to the use of the dwelling or immovable property or any other property right. The notified address details shall be invalid if the citizen's right to use the dwelling no longer exists by agreement or has been terminated by a final court decision or by a final administrative decision and such decision has been implemented. Also as a guarantee rule, Sections 26 (5a) and (5b) of the Citizens Register Act also provide that the notified address details shall be invalid if the district office has established that the citizen's notified address details are not genuine and, unless it is proved otherwise, the accommodation provider has provided a written statement substantiating that the notified address details of the citizen who is not the accommodation provider are not genuine. Sections 26 (5a) and (5b) of the Citizens Register Act therefore accords a prominent role to the statement by the accommodation provider in establishing the invalidity (lack of genuineness) of the address details, and the new Section 26 (5c) of the Citizens Register Act as introduced by the amendment clarifies that the sole fact that the citizen does not reside in his or her place of residence cannot be a ground for invalidity.

[20] 1.6 The amendment has added Section 26/A to the Citizens Register Act, stipulating in its Subsection (1) that a statute may require the notification of the place of stay or other proof of habitual residence as a condition for the exercise of a right in connection with a given place, the use of a service, the performance of an obligation or other legal effect. Section 26/A (2) states that, unless otherwise provided by law in respect of a right or obligation, the place of habitual residence of a citizen shall be deemed to be his or her notified place of residence unless it is proved otherwise, if no notification of the place of residence has been made. The explanatory memorandum of the legislator

states that, in the context of the notification of the residential address, it is also necessary to take into account the rights and services which are specifically and closely linked to the place of habitual residence (typically, access to public education services, local taxation, the possibility of preferential parking, proof of habitation in the case of housing benefits). To this end, the legislator expressly provides that the exercise of a right or the receipt of a service may be subject to a mandatory requirement to notify residential address or to provide other proof of habitual residence.

- [21] 1.7 A review of the above-mentioned statutory rules and the legislative explanatory memorandum summarises that the legislator found it necessary to change the concept of the place of residence primarily in order to resolve the discrepancy that often exists between the data content of the publicly authentic register of citizens' identity and residential address and the actual place of residence of citizens as a factual situation. However, the provisions of the Citizens Register Act concerning the notification of the place of residence and the consent of the accommodation provider were only slightly amended primarily due to the different definition of place of residence and also established the statutory presumption that, unless otherwise provided by law with regard to a right or obligation, the place of residence of the citizen shall be the notified place of residence until proven otherwise.
- [22] 2. The petitioners alleged that Section 5 (2) of the Citizens Register Act was contrary to the Fundamental Law on the grounds of a breach of the abstract and unspecified aspect of the principle of the rule of law contained in Article B (1) of the Fundamental Law. In this context, the Constitutional Court considered it to be a requirement of its practice that, since the place of residence also serves to establish membership of the political community concerned by the place of residence, it therefore must also presuppose habitual residence, without which the statutory concept of the place of residence is rendered meaningless, the register of residential addresses is diluted and the principled basis of the mixed electoral system is undermined.
- [23] 2.1 First of all, the Constitutional Court states that its examination in the competence of the abstract ex post review in accordance with Section 52 (2) of the Constitutional Court Act is also limited to the specified constitutional request raised by the petitioner. However, the grounds put forward by the petitioner concerning the infringement of the abstract principle of the rule of law cannot be directly related to Article B (1) of the Fundamental Law, cannot be directly deduced from it and are not connected with any of the requirements hitherto referred to by the Constitutional Court as aspects of the rule of law. The petitioners have raised general allegations relating to the right to vote and the electoral system, alleging a breach of the rule of law, which do not justify a substantive constitutional review of Article B (1).



- [24] 2.2 Following the entry into force of the Fundamental Law, the Constitutional Court has reaffirmed the elements of the rule of law clause already extracted from its previous practice, *inter alia*, in the following decisions: clarity of norms {Decision 38/2012 AB, Reasoning [84], Decision 10/2018 (VII. 18.) AB, Reasoning [49]}; legal certainty {Decision 13/2013 (VI. 17.) AB, Decision 10/2018 (VII. 18.) AB, Reasoning [49]}; non- retroactivity {Decision 16/2014 (V. 22.) AB, Reasoning [32], Decision 13/2015 (V. 14.) AB, Reasoning [55]}; prohibition of retroactive application of the law {Decision 10/2018 (VII. 18.) AB, Reasoning [51], Decision 3221/2019 (X. 11.) AB, Reasoning [20]}; legislation may only be made in accordance with the Standing Orders [Decision 6/2013 (III. 1.) AB]; invalidity under public law {Decision 45/2012 (XII. 29.) AB, Reasoning [92]}; subordination of public administration to law, judicial channels {Decision 38/2012 (XI. 14.) AB, Reasoning [72], Decision 3243/2018 (VII. 11.) AB}; protection of acquired rights [Decision 6/2013 (III. 1.) AB]; the constitutional framework for the exercise of public power {Decision 13/2013 (VI. 17.) AB, Reasoning [80]; Decision 2/2015 (II. 2.) AB, Reasoning [20]}; democratic legitimacy of the exercise of public power [Decision 17/2015 (VI. 5.) AB].
- [25] It can be concluded that the petitioners have not invoked these substantive elements of the rule of law principle, nor have they raised any new constitutional aspect that could be identified as a new substantive element of the rule of law and thus justify the Constitutional Court's assessment of the merits.
- [26] 2.3 However, in connection with the petitioners' submissions regarding Decision 3086/2016 (IV. 26.) AB, the Constitutional Court deems it necessary to note that in that decision, the Constitutional Court, also based on the legal concept of permanent place of residence in force at the time, formulated the following with regard to the existence of permanent place of residence in Hungary: "[i]n the case of a voter with a permanent place of residence, the link is more direct and stronger, which results from a longer period of habitual residence (this is expressed by the establishment and maintenance of a permanent place of residence)" (Reasoning [55]), but it also added that "[a] permanent place of residence also implies, as regards participation in public affairs, a more intensive link with the State, its electoral system and the relevant legislation (Reasoning [55]). Contrary to the petitioners' assertion, the Constitutional Court did not say that the statutory concept of the permanent residence is a necessary element of habitual residence, but that a closer link between the citizen with permanent residence and Hungary can be assumed on the basis of the principle of effectiveness, which makes it possible to distinguish between voters as regards the method of voting (postal voting). However, this closer relationship is also established by Section 5 (2) of the Citizens Register Act, which defines the citizen's place of residence as the place where

he or she has official relations with the State and with natural and legal persons and organisations without legal personality, which serves as the basis for the citizen's rights and obligations linked to his or her place of residence. The changed concept of the place of residence thus continues to express a closer link with a particular place, which the legislator requires to be based not on habitation at a particular place but on the place of official contact. Section 26/A (2) of the Citizens Register Act, on the other hand, establishes the statutory presumption that, unless otherwise provided by law in respect of a right or obligation, the place of habitual residence of a citizen shall be deemed to be his or her notified place of residence unless it is proved otherwise, if no residence has been notified.

[27] 3. The petitioners also consider Section 5 (2) of the Citizens Register Act to be contrary to the Fundamental Law because, in their view, it violates the right to vote and to hold a referendum as laid down in Article XXIII (1) and (7) of the Fundamental Law and, with reference thereto, they have also referred to Article 2 (1) and Article I (3) of the Fundamental Law as guarantee provisions. The petitioners see the restriction of the right to vote caused by Section 5 (2) of the Citizens Register Act as a violation of fundamental rights in that the changed concept of the permanent place of residence can serve as a basis for fictitious notifications of place of residence, which can lead to uncontrolled interference in the election by persons who are not part of the political community. Consequently, they believe that the principle of the mixed electoral system, namely the distinction between voters according to their place of residence in Hungary, is also called into question.

[28] 3.1 In this context, the Constitutional Court first considered the relationship between the right to vote and the right to hold a referendum as rights of political participation and the place of residence.

[29] Under Article XXIII (4) of the Fundamental Law, a cardinal Act may make the right to vote or the full exercise thereof conditional on a place of residence in Hungary, and eligibility to vote conditional on additional conditions. Neither the right to vote and stand as a candidate in parliamentary elections under Article XXIII (1) nor the right to hold a national referendum based on Article XXIII (7) is subject to a place of residence in Hungary. However, Article XXIII (2) of the Fundamental Law requires a place of residence in Hungary for the right to vote and to stand as a candidate in elections to local government and mayoral elections and elections to the European Parliament, and for the right to participate in local referendums through the rule referring to Article XXIII (7) of the Fundamental Law.

[30] Pursuant to the authorisation under Article XXIII (4) of the Fundamental Law, under Section 12 (1) and (3) of Act CCIII of 2011 on the Election of Members of the National

Assembly (hereinafter referred to as the "Elections Act"), the place of residence in Hungary constitutes a restriction on voting, since a voter who is resident in Hungary may vote for one candidate in an single-member constituency and one party list, whereas a voter who is not resident in Hungary may vote only for one party list. In Hungary, the electoral system is not derived from the Fundamental Law but from the Elections Act, since Section 3 (1) and (3) of the Elections Act determines the number of Members of the National Assembly and that one hundred and six Members are elected in single-member constituencies and ninety-three Members on a national list. Pursuant to Section 4 (1) of the Elections Act, one Member of the National Assembly may be elected in each single-member constituency. In accordance with the rules on the allocation of parliamentary seats as laid down in the Elections Act, the Hungarian electoral system is of the mixed type, in which the place of residence is relevant for voting in single-member constituencies. The electoral system is therefore limited by the Fundamental Law only to the extent that the legislator can shape it while enforcing the provisions of the Fundamental Law relating to elections.

- [31] The registration of voters on the electoral roll is essential to the exercise of the right to vote. Pursuant to Section 82 (2) (a) and Section 83 (1) and (2) of Act XXXVI of 2013 on Electoral Procedure (hereinafter referred to as the "Electoral Procedure Act"), the central electoral register shall contain the data of voters entitled to vote in the election and having a Hungarian residential address, based on the register containing the personal and residential address data of citizens. The data contained in this register shall, pursuant to Section 101 of the Electoral Procedure Act, form the basis for the compilation of the electoral district register, and thus for the exercise of the right to vote in single-member constituencies.
- [32] The electoral principles under Article 2 (1) of the Fundamental Law, such as equality of suffrage, must also apply to the definition of constituencies, which is a double requirement. On the one hand, constituencies must be drawn up in accordance with electoral geography—the division of constituencies—and, on the other hand, in accordance with electoral arithmetic—the number of votes required to obtain a given mandate—with regard to equality of votes. The legislator should therefore seek to ensure that the principles of equal representation are also applied to single-member constituencies.
- [33] This requirement is expressed in Section 4 (2) of the Elections Act, pursuant to which single-member constituencies must be formed in such a way that (a) they do not cross county boundaries and the boundaries of the capital, (b) they form a contiguous area, and (c) the number of persons entitled to vote is approximately equal.
- [34] In its Decision 1/2013 (I. 7.) AB, the Constitutional Court expressed that "the

determination of the territory of single-member constituencies and the number of voters in the specific constituencies is related to the enforcement of the right to vote, in particular with the principle of equal right to vote. The distribution of single-member constituencies among the counties and the description of the areas of the specific constituencies have a fundamental effect on the weight of the votes for individual candidates. In this context, the Constitutional Court established as a constitutional requirement that in the single-member constituencies the number of persons with a right to vote must be as close to one another as possible, and that differences are only allowed on the basis of due constitutional grounds." (Reasoning [71])

- [35] Section 4 (4) of the Elections Act provides that, in order to ensure equality of the right to vote, the number of persons entitled to vote in a single-member constituency may deviate from the national average number of persons entitled to vote in single-member constituencies by more than fifteen percent, taking into account geographical, national, historical, religious and other local characteristics, as well as population movements, only in order to comply with the provisions of Subsections (2) (a) and (b). Pursuant to Section 4 (6) of the Elections Act, if the deviation specified in Subsection (4) exceeds twenty per cent, the National Assembly shall amend Annex 2 (which contains the number, seat and territorial division of single-member constituencies). However, no amendment to Annex 2 may be made between the first day of the year preceding the general election of Members of the National Assembly and the day of the general election of Members of the National Assembly, except for elections due to the dissolution or ordering of the dissolution of the National Assembly.
- [36] 3.2 In view of the petitioners' arguments, the Constitutional Court then considered whether the statutory definition of permanent residence under Section 5 (2) of the Citizens Register Act has an impact on the above-mentioned connections between the right to vote and the right to hold a referendum as rights of political participation and place of residence.
- [37] By reviewing the provisions of the Citizens Register Act affected by the amendment and the legislative reasons for the amendment, it can be established that the legislator has given a new concept of the permanent place of residence, which differs from the previous one, whereby the permanent place of residence is not based on the habitation at a given place, but on the citizen's official relations with the State, as well as with natural and legal persons and organisations without legal personality, and on the exercise of rights and obligations linked to the place of residence. The amendment of the concept of the permanent place of residence was necessary for legislative reasons, because the register of personal data and residential addresses of citizens, as established by the Central Statistical Office, did not reflect the reality in a significant

number of cases, and the new definition of the concept of permanent place of residence chosen by the legislator seemed suitable to resolve the difference between the data content of the publicly authentic register and the actual factual situation. It can also be concluded from the other provisions of the Citizens Register Act, which are not contested by the petitioners, that the legislator has not essentially changed the guarantee rules of the register of residential addresses as a publicly authentic register concerning residential address notifications, and the Citizens Register Act invariably does not allow fictitious residential address notifications. It is still provided that a citizen may register either in his or her own dwelling or in a dwelling for which he or she has a statement from the accommodation provider, and that the district office is entitled to establish if the citizen's address details are not genuine. Contrary to the petitioners' assertion, the change in the concept of the permanent place of residence cannot therefore continue to be the basis for fictitious residential address notifications, also in view of the related guarantee rules of the Citizens Register Act.

- [38] Apart from the amendment of the concept of the permanent place of residence in the Citizens Register Act, the legislator did not change either the mixed electoral system or the rules on the right to vote in local and European Parliament elections and local referendums and in single-member constituencies, which are closely related to the permanent place of residence. Nor does the change in the concept of the permanent place of residence in itself affect the conditions for political participation. Apart from the right to participate in local and European Parliament elections and local referendums, the change in the concept of the permanent place of residence can only affect the place where the right to vote in a single-member constituency is exercised, that is, the single-member constituency in which a voter entitled to vote in a single-member constituency can vote. Whether and to what extent the change in the concept will cause a change in the number of voters in single-member constituencies can only be ascertained on the basis of the specific voter mobility. If the number of voters changes due to the establishment or change of the permanent place of residence, according to the data of the register of residential addresses, affecting the principle of equality of the right to vote, the legislator shall change the territorial division of the individual constituencies on the basis of Section 4 (6) of the Elections Act precisely in order to enforce equality of the right to vote. However, in order to ensure the stability of the electoral system and to avoid abuses, such a change may not take place between the first day of the year preceding the general election of Members of the National Assembly and the day of the general election of Members of the National Assembly.
- [39] The fact that, according to the petitioners' view, due to the changed definition of the concept of the permanent place of residence, citizens who are not part of the political

community may also have a say in the affairs of the political community in elections or local referendums presupposes an abuse of a right that is not justified by the facts on the basis of the petition, which is not a question of constitutionality, nor does it reasonably follow from Section 5 (2) of the Citizens Register Act and the closely related guarantee provisions of the law.

- [40] 4. In the light of the above considerations, the Constitutional Court dismisses the petition for a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of with retroactive effect to the date of its entry into force of Section 5 (2) of the Citizens Register Act.

Budapest, 08/02/2022

Dr. Miklós Juhász sgd., presiding Justice on the panel,

Dr. Miklós Juhász sgd., presiding  
Justice on the panel, in lieu of Justice  
dr. Ágnes Czine, prevented from  
signing

Dr. Miklós Juhász sgd., presiding  
Justice on the panel, in lieu of Justice  
dr. Attila Horváth, prevented from  
signing

Dr. Miklós Juhász sgd., presiding  
Justice on the panel, in lieu of Justice  
dr. Imre Juhász, prevented from  
signing

Dr. Miklós Juhász sgd., presiding  
Justice on the panel, in lieu of Justice  
delivering the opinion of the Court  
dr. Tamás Sulyok, prevented from  
signing