

Decision 42/2012. (XII. 20.) AB

on declaring section 3 (3) (c) of the Act LXXX of 2003 on Legal Assistance to be in conflict with the Fundamental Law and annulling it

In the matter of a judicial initiative submitted by the Commissioner for Fundamental Rights seeking the establishment of a conflict with the Fundamental Law by a law, the plenary session of the Constitutional Court has – with concurring reasoning by Justices *dr. Egon Dienes-Oehm* and *dr. Béla Pokol* – adopted the following

decision:

The Constitutional Court establishes that section 3 (3) (c) of the Act LXXX of 2003 on Legal Assistance is in conflict with the Fundamental Law, and therefore annuls it.

The Constitutional Court publishes its decision in the Hungarian Official Gazette. Section 3 (3) (c) of the Act LXXX of 2003 on Legal Assistance will lose force on the day following the publication of this decision in the Hungarian Official Gazette.

Reasoning

I

[1] The Commissioner for Fundamental Rights has, pursuant to section 2 (3) of the Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: ACFR) and section 24 (2) of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), initiated with the Constitutional Court the review and the annulment of section 3 (3) (c) of the Act LXXX of 2003 on Legal Assistance (hereinafter: ALA) on the grounds of holding it to be contrary to Article I (1), Article XV (2) and (4) and Article XXVIII (7) of the Fundamental Law.

[2] 1. Section 3 (3) (c) of the ALA precludes legal assistance for persons in need in the case of a constitutional complaint, which, according to the Commissioner for Fundamental Rights, is contrary to the State's obligation to protect fundamental rights and the right to legal remedy, as follows.

[3] The Commissioner for Fundamental Rights argues that the abolition of the procedure of ex post review of norms, which could be initiated by anyone without being affected, makes constitutional complaint a tool of extreme importance for the protection of individual fundamental rights, since it means the assertability and the enforceability against public authority of certain fundamental rights enshrined in the Fundamental Law. The initiation of

a constitutional complaint enables individuals to ask the Constitutional Court, as the “final forum”, to remedy a violation of a fundamental right (whether caused by a judicial decision or a legislative provision).

[4] The petitioner argues that, under Article I (1) of the Fundamental Law, the inviolable and inalienable fundamental rights of the individual shall be respected; their protection is “a primary duty of the State”. In his view, this objective obligation of the State to protect fundamental rights means that the rights of the subjects shall be enforceable and that infringements shall be remedied. In order to achieve this, the State shall maintain a system of institutions that is accessible to the legal entities. The petitioner considers that this obligation of the State to protect fundamental rights is breached if these institutions, such as the Constitutional Court, are only accessible with undue difficulty or not at all to those seeking to enforce their rights.

[5] According to the Commissioner for Fundamental Rights, the constitutional complaint – as a case of the concrete review of a norm – has a remedial function, which distinguishes it from the ex-post review of norms. Although, in his view, the right to lodge a constitutional complaint is not in itself a substantive right, it can be understood as part of the right to legal remedy and is also linked to the State's obligation to protect fundamental rights. The law makes the admissibility of a constitutional complaint subject to a number of conditions, one of which is the requirement of compulsory legal representation. However, according to the Commissioner, without appropriate safeguards and counterbalances, this may have a serious deterrent effect or may result in the person concerned not lodging a complaint because he or she cannot bear the additional burden of doing so, especially taking into account that a constitutional complaint may, as a rule, be preceded by a long period of litigation.

[6] 2. According to the Commissioner for Fundamental Rights, section 3 (3) (c) of the ALA also infringes Article XV (2) and (4) of the Fundamental Law on non-discrimination, which also states that the State shall take specific measures to promote equal opportunities. In support of his arguments, he refers to the established case-law of the Constitutional Court, which he considers to be still applicable, as well as to the tests applied by the Constitutional Court in the past, and also points out that, according to the interpretation of the Constitutional Court, discrimination may arise not only in the case when the law-maker makes a distinction between persons in the same situation without a reasonable justification, but also when the opposite is true, i.e. when the distinction between persons in substantially different situations is ignored. In his view, the institution of legal assistance was created in order to ensure that people in a poor financial situation can also obtain adequate legal representation in the enforcement of their (fundamental) rights, of which the Constitutional Court's procedure can be an important stage. The requirement of mandatory legal representation in constitutional court proceedings applies equally to all persons. However, the contested provision of the ALA excludes precisely those in a poor social situation from having recourse to a constitutional complaint, which, according to the petitioner, puts those who cannot bear the costs of “mandatory representation by a lawyer” at a disadvantage on the basis of their property status, while at the same time they may have only constitutional complaint as a last resort. The Commissioner for Fundamental Rights also mentions that the

original text of the bill No. T/4424 on the Constitutional Court [section 51 (4) of the bill] included that mandatory legal representation could be provided under the Act on Legal Assistance, but this was deleted by an amendment, with reference to budgetary considerations.

[7] In his view, no reasonable justification can be given for the law-maker to exclude constitutional complaint from the scope of legal assistance, and justifications given on the grounds of budgetary reasons or the State's capacity to bear the burden are inadmissible.

[8] 3. Finally, the Commissioner for Fundamental Rights states that he has no competence to request a declaration of an infringement of the Fundamental Law by omission, but that he nevertheless draws the attention of the Constitutional Court to the failure of the law-maker to fulfil its legislative duty in relation to a legislative provision. In this case, the ALA fails to regulate the possibility and the forms of legal assistance available in the procedure for a constitutional complaint, which the petitioner considers to be an omission contrary to the Fundamental Law.

II

[9] 1. The affected provisions of the Fundamental Law:

“Article I (1) The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights.”

“Article II Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.”

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

(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

[...]

(4) By means of separate measures, Hungary shall help to achieve equality of opportunity and social inclusion.

“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.”

[10] 2. Challenged provision of the ALA:

“Section 3 (3) In the cases referred to in points (a) to (h) of paragraph (1), no aid may be granted

[...]

(c) in connection with a constitutional complaint,”

[11] The petition is well-founded.

[12] 1. The Constitutional Court, on the initiative of the Commissioner for Fundamental Rights, examined whether the section 3 (3) (c) of the ALA was in conflict with the Fundamental Law.

[13] 1.1. The reason for the creation of the ALA, as stated in the preamble of the Act, was to create an institutional system for the socially disadvantaged to obtain professional legal advice and representation to enforce their rights and resolve their disputes.

[14] The justification attached to the submission of the bill of ALA states that “the State shall set up a legal and institutional environment that enables individuals to assert their claims arising from violations of their rights. In the case of judicial redress, therefore, the State's obligation should not be limited to providing individuals with a judicial channel for the settlement of their disputes, but shall also grant a real possibility of access to the courts. This real possibility is embodied in the fact that individual access to justice shall not be dependent on the individual's legal and practical knowledge or financial conditions. The State should therefore set up a system of support which compensates for any shortcomings in legal knowledge or financial resources; only a system of conditions thus created can ensure the full realisation of the fundamental rights associated with the enforcement of rights.” And: “the existing institutions of legal assistance provided by the State are primarily linked to court proceedings and assistance is available to those in need in the form of various legal aid schemes and legal representation. The Act on Legal Assistance aims to establish a comprehensive system of legal assistance institutions, which, in addition to the existing forms of assistance – legal aid in civil and criminal proceedings, legal representation on the basis of need – also includes assistance outside the judicial and administrative procedures. The law-maker is guided in this by the State's objective, based on the constitutional principle of equal opportunities, to eliminate all forms of inequality of opportunity: to ensure that all those who, for financial, social or other reasons, are unable to recognise their rights and legal opportunities, or are not in a position to enforce their rights before the courts or public authorities, receive assistance and support within an institutional framework. This is a new legal institution for disadvantaged groups of society, which will contribute to the elimination of inequalities by means of positive discrimination and will be a major step towards the creation of equal opportunities.”

[15] The ALA distinguishes between assistance in non-litigious and litigious proceedings, separating assistance in civil and criminal matters, and defines the form and conditions of access to support. In the case of litigation, assistance means the provision of legal representation by a lawyer, the cost of which is borne or advanced by the State; in other cases, it means a complete exemption of cost. Non-litigious assistance includes advice by a legal assistant, drafting of documents, drafting of pleadings or, on the basis of a power of attorney, access to the case file (collectively referred to as “legal services” in the wording of ALA), the fees and costs of which are advanced or paid by the State. Section 3 (1) of the ALA

defines the cases in which legal assistance may be provided to a party [forms of non-litigious assistance include, inter alia, assistance in preparing an application for extraordinary legal remedy in civil or criminal proceedings, section 3 (1) (h) of the ALA], while paragraph (3) lists the cases in which assistance is excluded, including, among others, constitutional complaints. According to the law-maker's justification of the ALA, the latter category includes cases where the party can obtain assistance in another way or where the provision of assistance does not fall within the scope of the legal relationships that might require assistance (the justification does not specify these, but apparently considers constitutional complaint to be included here).

[16] 1.2. On 1 January 2012, the new ACC entered into force, which, compared to the previous one force, the Act XXXII of 1989 on the Constitutional Court, contains, among others, a new rule requiring mandatory legal representation in complaint proceedings before the Constitutional Court [section 51 (2) of the ACC]. The reason for the introduction of mandatory legal representation was partly the transformation of the powers of the Constitutional Court, i.e. the introduction of a new type of constitutional complaint, the so-called genuine constitutional complaint, in parallel with the abolition of the ex-post abstract review of norms (*actio popularis*) which could be initiated by anyone. In addition to the review of the conformity with the Fundamental Law of the law applied in an individual case, the new ACC also allows the Constitutional Court to examine the infringement of the Fundamental Law by a judicial decision in an individual case and, exceptionally, the Constitutional Court may also examine the infringement of a law without a judicial decision, if the infringement of the law has occurred as a result of its application or its entry into force.

[17] Allowing the review of the constitutionality of judicial decisions and the introduction of a new type of constitutional complaint (so-called "genuine" complaint) in general justify the introduction of mandatory legal representation (the so-called "mandatory representation by a lawyer"). At the same time, it is clearly in the interest of the complainants, since the professional formulation of constitutional problems also gives them a better chance of having their complaint admitted and succeed.

[18] 2. In his motion, the Commissioner for Fundamental Rights does not contest the constitutionality of the introduction of mandatory legal representation; he only complains that the exclusion of the possibility of legal assistance in the case of a constitutional complaint may deprive socially disadvantaged people of the possibility of lodging a constitutional complaint, while in some cases this is the only effective (and likely to succeed) remedy.

IV

[19] 1. According to the Commissioner for Fundamental Rights, section 3 (3) (c) of the ALA violates Article XV (2) and (4) of the Fundamental Law, which prohibits discrimination and requires the State to take special measures to promote equal opportunities. In support of his arguments, he refers to the established case-law of the Constitutional Court, which he

considers to be still applicable, as well as to the tests applied by the Constitutional Court in the past, and also points out that, according to the interpretation of the Constitutional Court, discrimination may arise not only in the case when the law-maker makes a distinction between persons in the same situation without a reasonable justification, but also when the opposite is true, i.e. when the distinction between persons in substantially different situations is ignored.

[20] 2. In its Decision 22/2012 (V.11.) AB, the Constitutional Court took a position on the continued applicability of its decisions taken before the entry into force of the Fundamental Law, as follows: "the Constitutional Court's duty is to protect the Fundamental Law. In newer cases, the Constitutional Court may use the arguments contained in its previous decision delivered 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 previous Constitution.

[21] The Constitutional Court interprets the constitution when it acts in its specific competences, even if this interpreting activity is not abstract as in the competence under section 38 (1) of the ACC, but it is connected to the review of a law or a judicial decision. Its interpretation of the institutions, principles and provisions is set out in its decisions. The Constitutional Court's findings on fundamental values, human rights and freedoms and constitutional institutions that have not been fundamentally changed in the Fundamental Law remain valid. The statements of principle expressed in the decisions of the Constitutional Court based on the previous 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 previous Constitution, but requires a comparison of the relevant rules of the previous Constitution and the Fundamental Law and careful consideration. If the result of the comparison is that the constitutional rules are unchanged or substantially similar, there is no obstacle to transposition. On the other hand, if there is a substantive similarity between certain provisions of the previous Constitution and the Fundamental Law, justification is required for disregarding the legal principles contained in the previous Constitutional Court decision rather than in the case of transposing them." [Decision 22/2012. (V.11.) AB, Reasoning [41]].

[22] 3. Article XV of the Fundamental Law contains both the general rule of equality [paragraph (1)] as well as the equality of fundamental rights and the prohibition of discrimination [paragraph (2)]. The general rule of equality was not expressly provided for in the Constitution; the case-law of the Constitutional Court therefore derived this rule, which is indispensable in a constitutional democracy, from the combined interpretation of Article 70/A (1) and Article 54 (1) of the Constitution. [Decision 21/1990 (X.4.) AB, ABH 1990, 73] The Constitutional Court argued that the right to human dignity guaranteed in Article 54 (1) of the Constitution – as the most fundamental ones of the fundamental rights referred to in Article 70/A (1) – necessarily implies the requirement of equal treatment in respect of all the norms of the legal system.

[23] The content of Article XV (2) of the Fundamental Law is identical to that of Article 70/A

(1) of the Constitution; the Fundamental Law also contains Article II, which is identical to Article 54 (1) of the Constitution with regard to human dignity. It is still acceptable to link the two, insofar as the requirement of general equality follows from the dignity to which every human being is entitled; however, this is not always necessary, because the Fundamental Law lays down equality before the law in a separate rule. Having said that, the essential content of equality before the law remains – in line with the previous case-law of the Constitutional Court – the equal dignity of human beings. The human dignity clause of the Fundamental Law precludes any different interpretation of equality before the law, while at the same time it continues to define its content.

[24] Thus, the link between human dignity (Article II of the Fundamental Law) and equality (Article XV of the Fundamental Law) has been maintained under the Fundamental Law, despite the fact that the general rule of equality, which was absent from the Constitution and which was developed in the cited case-law of the Constitutional Court, is now explicitly included in Article XV (1) of the Fundamental Law.

[25] The general rule of equality can thus be based on Article XV (1) of the Fundamental Law. This is a dogmatic simplification, while – according to the above – the necessary link between equal dignity (Articles I and II) and substantive equality before the law remains unchanged, because the ultimate basis of equality is equal dignity.

[26] Therefore, as stated above, no change is justified in the doctrine of the application of the general rule of equality – e.g. in the examination of the formation of groups – and the case-law of the Constitutional Court remains applicable.

[27] It is found therefore that the provisions of the Fundamental Law referred to by the Commissioner for Fundamental Rights and the provisions of the Constitution in force before 1 January 2012 maintain in unchanged form the general requirement of equality, covering not only the fundamental rights, – or as the Constitutional Court often called it: the requirement of the “equality of rights” – as well as the prohibition of discrimination. Therefore, the Constitutional Court considered its previous case-law on the general rule of equality – according to the Decision 22/2012 (V.11.) quoted above – as being applicable in the present case.

V

[28] 1. According to the Constitutional Court’s case law on equality, a different regulation for a given homogeneous group within the same regulatory concept is contrary to the prohibition of discrimination, unless the difference has a reasonable constitutional justification of sufficient weight, i.e. it is not arbitrary [e.g. Decision 21/1990 (X.4.) AB, ABH 1990, 73]. Pursuant to the consistent case law of the Constitutional Court, however, no discrimination in breach of Article 70/A of the Constitution shall be established when the law provides for different rules concerning the scope of subjects having different characteristics as an unconstitutional discrimination is only possible with regard to a comparable scope of

persons who belong to the same group. "Discrimination shall be deemed to exist if the assessment of the subjects, the determination of their rights and obligations is different with respect to an essential element of the regulation. However, no discrimination shall be established when the law provides for different rules regarding a different scope of subjects." [Decision 8/2000 (III. 31.) AB, ABH 2000, 56, 59]

[29] 2. In this case, this means that by section 3 (3) (c) of the ALA, the law-maker excludes without discrimination everyone from legal assistance when preparing a constitutional complaint. However, the identity ("homogeneity") of the grouping characteristics is only apparent, since the exclusion of assistance precludes the right to legal remedy (to a constitutional complaint) of precisely those with regard whom the ALA was created: socially disadvantaged persons.

[30] The legal regulation of constitutional complaint has changed in the meantime. At the time of enacting the ALA, constitutional complaints could be submitted by anyone without legal representation, but this was abolished on 1 January 2012 with the introduction of "real" constitutional complaint, from which time onwards – with a narrow exception [see section 51 (3) of the ACC] – constitutional complaints may only be submitted by legal representation.

[31] The omission of constitutional complaints from the legal services covered by the ALA was constitutionally acceptable before the entry into force of the ACC (1 January 2012), but the change in the legislation created two types of inequality, as follows.

[32] 3. On the one hand, there is inequality between constitutional complaints and other documents that are also drawn up with the mandatory involvement of a lawyer (legal representative) – i.e. between the people who have the documents prepared. Legal assistance is not available for the former, but it is for the latter. In other words, a person who intends to lodge a constitutional complaint may not obtain legal assistance, whereas legal assistance is available for the preparation of a number of other submissions that are similar to a constitutional complaint and also deal with purely legal issues, such as extraordinary remedies in civil or criminal proceedings (in particular, a request for review that requires mandatory legal representation) [section 3 (1) (h) of the ALA].

[33] On the other hand, the change in legislation has necessarily created a social inequality of opportunity between people whose fundamental rights have been – or are perceived to be – violated: those who are able to use legal services are in a more advantageous position than those who are not. The latter may not even turn to the Constitutional Court because, on the basis of their petition – under section 55 (3) of the ACC and section 24 (3) (d), (5) and (6) of the Rules of Procedure – there is no possibility of a procedure being conducted. Thus, in the case of an identical violation of a fundamental right, the person belonging to one group has a way to remedy the violation, while the person belonging to the other group has no chance.

[34] The constitutionality of both forms of discrimination shall be assessed in accordance with the general rule of equality under Article XV (1) of the Fundamental Law, as analysed

above. In its case-law, the Constitutional Court examined in similar cases whether there is a reasonable, constitutional justification for the different treatment under the legislation – in this case, the possibility or lack of legal assistance – and whether the different nature of the legal services used justifies the difference.

[35] According to the Constitutional Court, there is no such reasonable justification. Constitutional complaint is a means of protecting the fundamental rights of all. This is true even if the constitutional complaint also has an objective constitutional protection role (protecting the Fundamental Law), since a successful constitutional complaint leads to the annulment of the norms restricting fundamental rights and thus has an effect for all. Constitutional complaint is similar in all essential respects to a petition for review, for this reason there is no constitutional justification for distinguishing between the two.

[36] It can therefore be concluded that the rule of the ALA at issue is contrary to Article XV (1) of the Fundamental Law.

VI

[37] According to the Commissioner for Fundamental Rights, the contested rule is also contrary to Article XV (2) of the Fundamental Law.

[38] The rule of constitutional equality based on Article XV (1) of the Fundamental Law, which serves as a constitutional standard, differs from the rule of constitutional equality in Article XV (2) of the Fundamental Law, which is in line with Article 70/A (1) of the Constitution. The meaning of this provision in the Fundamental Law differs in part from that of the Constitution, since its role as a bridge in the Constitution, together with Article 54 (1), in establishing the general rule of equality has been removed, as explained in point IV.

[39] Article XV (2) prohibits discrimination with regard to basic rights (“fundamental rights”) on the basis of the listed criteria. To this extent, it is closely linked to Article I (3) of the Fundamental Law, which contains the conditions for restricting fundamental rights. In the present case, it is not necessary to clarify exhaustively the relationship between the two provisions; suffice it to say that Article XV (2) does not make the restriction of fundamental rights subject to the criteria listed in Article I (3) – necessity, proportionality, etc. – but prohibits it independently of or together with them, on the basis of a mere distinction (discrimination) between persons (as legal entities).

[40] Article XV (2) is an open list, i.e. It is not exhaustive. It is found that the qualities mentioned in the provision – race, colour, sex, disability, social origin, etc. – are immutable characteristics of the individual which he or she is not able influence. Religion or political and other opinions can rightly be included here, because for the individual they form an integral part of his or her identity (personality) and as such cannot be changed at will. An individual's property status can of course change, but closer examination shows that the Fundamental Law prohibits discrimination based on property status that is unfavourable to

the individual and, in some cases, cannot be changed by the individual.

[41] The most serious form of making a legal distinction on the basis of an individual's immutable characteristics, which are mostly predetermined and not dependent on the individual's own decision is discrimination. Making such a distinction is generally prohibited under Article XV (2), and therefore any such distinction requires a test stricter than the general equality rule. Such a distinction is deemed to exist if groups with the same characteristics formed on the basis of the law differ from each other according to an immutable characteristic of the individual. If a law prohibits women from driving locomotives, the rule is an unconstitutional restriction on the fundamental right to freedom of occupation because it restricts a fundamental right on the basis of an unchanged characteristic. This is unconstitutional without a detailed examination of the constitutionality of the restriction as required by Article I (3).

[42] The prohibition laid down in Article XV (2) can be extended to the entire legal system, because the discriminatory distinctions listed therein may occur not only in legislation falling within the scope of protection of fundamental rights, but in any legislation. It can be reasonably assumed that the values of the Fundamental Law prohibit such discrimination even if it is not contained in the legislation regulating the subjects covered by the protection of fundamental rights. This is because the prohibition does not serve the equality of fundamental rights, which is guaranteed by Article I and other provisions of the Fundamental Law, but prohibits discrimination on the basis of the (unchanged) characteristics mentioned therein.

[43] It follows that the justifiability of such discrimination shall also be examined with particular rigour in relation to non-fundamental rights.

[44] In the case of constitutional complaints, the Commissioner for Fundamental Rights considers that the contested provision of the ALA also results in discrimination based on property status. Discrimination on grounds of financial status indeed exists, since the mandatory representation by a lawyer, which applies equally to all, affects differently those who are able to pay the lawyer's fees (section 9 of the Act XI of 1998 on Lawyers) and those who are not. This discrimination is a direct consequence of the legislation.

[45] The discrimination at issue – as explained above – can be considered to be discrimination contrary to Article XV (2) because, according to Article XV (2), Hungary guarantees fundamental rights without discrimination on grounds of, among others, property status. Constitutional complaint, as an instrument for the protection of fundamental rights, falls under the same consideration as fundamental rights, therefore the exclusion of the constitutional complaint from the legal assistance provided to “socially disadvantaged persons”, as provided for in section 3 (3) (c) of the ALA. In addition to accepting the constitutionality of mandatory legal representation, equality in fundamental rights, which are enjoyed by all without discrimination, can only be ensured if the constitutional complaint procedure to redress a violation of constitutional rights also allows everyone to assert their rights equally. This is also ensured by the provision of the ACC that

the procedure is free of charge (section 54 of the ACC). It is true that, according to the same rule of the ACC, the costs incurred during the proceedings, including the fees for mandatory legal representation, are to be borne by the petitioner. As a consequence, those in a worse financial situation – who are unable to pay the costs of a lawyer or can only do so at a disproportionate sacrifice – cannot avail themselves of the special remedy of a constitutional complaint to protect their most fundamental rights, which thus results in discrimination based on property situation. In similar cases, this is counterbalanced by the ALA, but not in the case of constitutional complaint.

[46] According to the Constitutional Court, the contested provision of the law has become one in breach of the Fundamental Law because the nature of constitutional complaint and the conditions for lodging it have changed, but the law-maker has not amended the ALA accordingly. This would have been all the more necessary since, in accordance with the obligation laid down in Article XV (4) of the Fundamental Law, the law-maker should have taken specific measures to promote equal opportunities.

[47] As a result of the points V and VI, the legislation under review is also contrary to Article XV (2) of the Fundamental Law, therefore the Constitutional Court annulled section 3 (3) (c) of the ALA on the grounds that it infringes Article XV (1) and (2) of the Fundamental Law.

VII

[48] 1. The Commissioner for Fundamental Rights also argued that the contested provision restricts the right to legal remedy.

[49] In accordance with its previous case-law [Decision 30/2000 (X.11.) AB, ABH 2000, 202; Decision 51/2004 (XII.8.) AB, ABH 2004, 679], it was no longer necessary for the Constitutional Court to examine the violation of Article I (1) and Article XXVIII (7) of the Fundamental Law by section 3 (3) (c) of the ALA due to its annulment on other constitutional grounds.

VIII

[50] Finally, the Commissioner for Fundamental Rights pointed out in his motion that according to section 46 (1) of the ACC, if the Constitutional Court, in its proceedings conducted in the exercise of its powers, establishes an omission on the part of the law-maker that results in violating the Fundamental Law, it shall call upon the body that committed the omission to perform its task and set a time-limit for that.

[51] The Commissioner for Fundamental Rights considers that the ALA fails to regulate the possibility and forms of legal assistance available in the constitutional complaint procedure.

[52] According to the Constitutional Court, there is no infringement of the Fundamental Law in the form of an omission, since after annulling the exception applicable to constitutional

complaints, the rules of the ALA will apply by analogy to the lodging of a constitutional complaint as a form of non-litigious assistance (legal services).

IX

[53] Pursuant to section 41 (1) of the ACC, if the Constitutional Court finds that a law or a provision of the law is contrary to the Fundamental Law, it shall annul the law or a provision of the law in whole or in part.

[54] According to section 45 (1) of the ACC, the annulled law or the provision thereof shall cease to have effect on the day after the publication of the Constitutional Court's decision on annulment in the Hungarian Official Gazette and will not be applicable from this day.

[55] The publication of the decision in the Official Gazette is based on section 44 (1) of the ACC.

Budapest, 18 December 2012.

Dr. Péter Paczolay, President
of the Constitutional Court

Dr. Elemér Balogh, Justice of
the Constitutional Court

Dr. István Balsai Justice of
the Constitutional Court

Dr. Mihály Bihari, Justice of
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Dr. Egon Dienes-Oehm,
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Dr. András Holló, Justice of
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Dr. László Kiss, Justice of
the Constitutional Court

Dr. Péter Kovács, Justice of
the Constitutional Court

Dr. Barnabás Lenkovics,
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Dr. Miklós Lévay, Justice of
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Dr. Béla Pokol, Justice of the
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Dr. István Stumpf, Justice of
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Dr. Péter Szalay, Justice of
the Constitutional Court

Dr. Mária Szívós, Justice of
the Constitutional Court