Decision 32/2015 (XI. 19.) AB

On a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of certain provisions of Act XXXIX of 2015 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims

In the matter of constitutional complaints, with concurring reasonings by Justices *dr. László Kiss, dr. László Salamon* and dissenting opinions by *dr. István Stumpf,* as well as Justices *dr. István Balsai, dr. Egon Dienes-Oehm, dr. Imre Juhász, dr. Béla Pokol, dr. Mária Szívós* and *dr. András Varga Zs.*, the Constitutional Court, sitting as the full court, delivered the following

decision:

1. The Constitutional Court holds that Section 1 of Act XXXIX of 2015 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims is contrary to the Fundamental Law; therefore, this Court hereby annuls the statutory provision.

2. The Constitutional Court further holds that Section 4 (5) to (9), Section 6 (d) and Section 13 of Act XXXIX of 2015 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims are contrary to the Fundamental Law; therefore, this Court hereby annuls such the statutory provisions.

3. The Constitutional Court dismisses the constitutional complaints seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of Act XXXIX of 2015 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims in its entirety as well as its Section 4 (1) to (4) and (10), Section 10 (6) to (7) and Section 11 (1) to (3).

4. As to the remainder, the Constitutional Court rejects the constitutional complaints. This decision of the Constitutional Court shall be published in the Hungarian Official Gazette.

Reasoning

I

[1] 1. Pursuant to Section 26 (2) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act"), three legal persons, as members of the Investor Protection Fund have filed constitutional complaints with

substantially the same content against the entirety and certain provisions of Act XXXIX of 2015 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims (hereinafter referred to as the "claims settlement Act"), since, in their view, such rules ran counter to Article B) (1), Article C) (1), Article M), Article I (3), Article XIII (1) and (2) and Article XV (1) and (2). In addition to the above, an Investor Protection Fund member petitioner lodged a constitutional complaint in connection with the Act as a whole (without indicating specific legal provisions), claiming infringement of Article B) (1), Article I (3), Article XII (1), Article XIII (1) and (2) and Article XV (1) and (2) of the Fundamental Law.

[2] In addition, private individuals injured by Buda-Cash also filed for a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 1 (1) of the Claims Settlement Act. The unconstitutionality by being contrary to the Fundamental Law of the contested legal provision is based on the violation of Article XV (2) of the Fundamental Law by the private individual petitioners.

[3] 2. In their petition, the Investor Protection Fund members complained, in particular, that the Claims Settlement Act entails payment obligation for the petitioners payable to the Fund for claims settlement of Quaestor victims (hereinafter referred to as the "Quaestor Fund").

[4] 2.1 The petitioners submitted the following in the context of certain provisions of the Claims Settlement Act.

[5] The petitioners take the view that Section 14 of the Claims Settlement Act, pursuant to which the claims settlement Act entered into force on the day following its promulgation, does not provide sufficient preparation time for those concerned and, therefore, violates Article B) (1) of the Fundamental Law. The petitioners considered the violation of the requirement of sufficient preparation time to be justified in connection with the Claims Settlement Act as a whole and the advance payment [Section 4 (5) and (6)], and more specifically, in connection with Section 4 (8) establishing the obligation of advance payment for the year 2015. Taking into account the entry into force of the provisions, as the financial institutions concerned, they do not have the possibility to properly allocate the payment obligation and prepare for the fulfilment of such obligation. The petitioners submitted that the financial institutions must plan the business year taking into account a number of circumstances. The amendment to the regulations for the year 2015 is particularly objectionable. In the context of these provisions, the petitioners also alleged a violation of the constitutional provision of the rule of law [Article B) (1) of the Fundamental Law].

[6] 2.2 In connection with Section 1 (1) and (2), Section 4 as well as Section 10 (1) to (4) and Section 11 of the Claims Settlement Act, the petitioning Investor Protection Fund members also alleged a violation of the prohibition of discrimination.

[7] 2.2.1 The petitioners advanced the argument that the Claims Settlement Act preferred a group of aggrieved investors (the Quaestor victims) and that only they were subject to an increased amount of compensation compared to the level of compensation provided by Investor Protection Fund due to the subjective scope of the claims settlement Act (positive discrimination). However, as contended by the petitioners, several other investor groups suffered in the years 2014–2015 due to the insolvency of various investment service providers [Hungária Értékpapír Zrt. (Hungária Securities Zrt.), Buda-Cash Brókerház (Buda-Cash Brokerage House), DRB Bank, Orgovány és Vidéke Takarékszövetkezet (Orgovány és Vidéke Savings Association) or ALBA Takarékszövetkezet (ALBA Savings Association)].

[8] 2.2.2 The definition of the scope of insured claims (the material scope of the Act) is also unusual, as put forth by the petitioners. Unlike Act CXX of 2001 on the Capital Market (hereinafter referred to as the "Capital Market Act"), pursuant to the Claims Settlement Act, the compensation also covers securities not issued by Quaestor, that is, invalid legal transactions.

[9] 2.2.3 The extent of the claims settlement was also considered by the petitioners to be contrary to the principle of non-discrimination. It was argued that pursuant to Section 11 (1) of the Claims Settlement Act, the settlement of claims applies to a claim exceeding the compensation to be paid by the Investor Protection Fund, the amount of which may not exceed HUF 30 million per person together with the compensation paid by the Investor Protection Fund. [Pursuant to Section 217 (2) of the Capital Markets Act, the Investor Protection Fund shall otherwise pay the claim to the investor entitled to compensation up to a maximum of EUR 20,000 (approximately HUF 6 million) per person and per Fund member.]

[10] 2.2.4 Nor is the date of the settlement clear, in the petitioners' view. It was pointed out that pursuant to Section 216 of the Capital Market Act, the Investor Protection Fund's compensation obligation arises when the court orders the liquidation of the company concerned; however, Quaestor victims may receive compensation earlier than the liquidation of Quaestor.

[11] 2.2.5 The obligation of advance payment pursuant to Section 4 of the Claims Settlement Act was also violated by the Investor Protection Fund member petitioners. Pursuant to this provision, the Investor Protection Fund members have an obligation of advance payment; however, service providers licensed in another Member State of the European Union and providing investment services in Hungary do not have such an obligation, which results in a more unfavourable situation for the Investor Protection Fund members compared to the Capital Market Act.

[12] 2.3 The petitioners saw the violation of the right to property [Article XIII (1) of the Fundamental Law] in the fact that pursuant to the Claims Settlement Act, the Investor

Protection Fund members are obliged to contribute to the operation of the Quaestor Fund in the form of an advance payment "in order to pay the loan instalments (maturities) of Section 4 (4)". In so doing, the legislature essentially obliges the investment service providers and credit institutions concerned to grant a loan in such a way that, although the obligation to repay is laid down in the Claims Settlement Act, it does not contain any guarantees. Moreover, Section 13 of the Claims Settlement Act explicitly provides for the possibility that the advance will not be repaid (it provides for a tax deduction in this case, on the basis of a separate Act of Parliament to be enacted later). As put forth by the petitioners, even in the case of repayment, it is a restriction of property, and if such repayment does not occur, it constitutes a deprivation of property, which is contrary to the Fundamental Law, as the restriction of fundamental rights is not justified by the protection of other fundamental rights or constitutional values. In this connection, the petitioners have identified several legal provisions in different parts of the petition [at page 2: Section 4 (4) to (7) of the Claims Settlement Act; page 16: Section 4 (4) to (8), Section 6 (d), Section 11 of the Claims Settlement Act; page 17: Section 4 (5) and (6), Section 6 (d), Section 13 of the Claims Settlement Act; page 19: Preamble to the Claims Settlement Act, Section 1, Section 4, Section 5 and Section 13, as well as the Claims Settlement Act as a whole].

[13] 2.4 Certain rules of the Claims Settlement Act [Section 1, Section 2 (1) and (2), Section 3 (1) and (3) to (4), Section 4 (4) to (8), Section 10 (1) to (7), Section 11 (1) to (3) and Section 13] also violate the requirement of legal certainty (clarity of the norm and unambiguity). The rules of repayment are not elaborated, the contributors are not aware of these rules, nor is there any guarantee rule in the system. The material scope of the Claims Settlement Act cannot be determined in an accurate manner either, let alone other problems of interpretation arising during the application of the Claims Settlement Act. One such example is that the Claims Settlement Act uses the terms compensation, claims settlement and compensation for damages inconsistently.

[14] 2.5 Finally, the petitioners alleged that certain provisions of the Claims Settlement Act [Section 1, Section 4, Section 10 (6) and (7) and Section 11 (1) to (3)] also infringe the right to enterprise [Article M) of the Fundamental Law], as the operation of the enterprise is made difficult due to a special advance payment insurance obligation. It is not clear from the legislation, as contended by the petitioners, what other fundamental right the purpose of the restriction of the right to an undertaking is to enforce, nor whether the restriction is proportionate.

[15] 3. The petitions of the private individuals contain the following:

[16] 3.1 The petitioners are all the victims of Buda-Cash Brókerház Zrt., against which, according to the petition, liquidation proceedings were initiated on 5 March 2015. In the liquidation proceedings initiated, all the petitioners filed a creditor claim.

[17] As alleged by the petitioners, the contested provision (Section 1 of the Claims Settlement Act), which defines the personal scope of the Act, is contrary to the prohibition of discrimination enshrined in Article XV (2) of the Fundamental Law, since the legislator did not treat the victims who were facing the same problem in terms of time and legal basis as persons of equal dignity.

[18] In support of the unjustified and discriminatory distinction, the petition relies on the following circumstances.

[19] The victims of Quaestor, as defined by the contested legislation, will be reimbursed extraordinarily in accordance with the provisions of the Claims Settlement Act, while the victims of Buda-Cash will have to wait for the liquidator to investigate the actual amount of finances and available.

[20] The victims of Buda-Cash are only compensated by the Investor Protection Fund, which amounts to a maximum of EUR 20,000 (HUF 6,105,400), while pursuant to the Claims Settlement Act, certain victims of Quaestor receive compensation of up to HUF 30,000,000. As alleged in the petition, it is a well-known fact that the ultra-high-interest bond marketed by Quaestor was not provided by the Investor Protection Fund either, that is, all clients were aware that they were taking more risk in the hope of a higher return than if they had turned to another investment service provider.

[21] As a further unjustified discrimination, the petition refers to the fact that the Claims Settlement Act provides a significant amount of additional compensation for investments for which a brokerage firm has provided a guarantee, while for other injured parties who have invested in, for example, a sovereign bond guaranteed by the Hungarian State or a discount treasury bill, only the compensation provided by the Investor Protection Fund remains available to them.

[22] As a further reason for unconstitutionality by non-conformity with the Fundamental Law, in the petition reference was made to the fact that the vast majority of Quaestor's victims had extraordinary and full access to their claims, as opposed to the victims of Buda-Cash, who would be forced to assert their claims in order to enforce their non-settled damage by the Investor Protection Fund in a further lawsuit with significant additional costs, which is likely to take several years, the outcome and successfulness of which are uncertain.

[23] 3.2 The petitioner of another constitutional complaint, who is also a client of Buda-Cash, primarily sought, pursuant to Section 26 (2) of the Constitutional Court Act, a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of the Claims Settlement Act as a whole and, in the alternative, that of Section 1 (1) and (2), Section 3 (1) and (3) and (4), Section 10 (1) to (7), Section 11 (1) to (3), Section 13 and Section 14, of the Claims Settlement Act. As regards the

unconstitutionality by conflict with the Fundamental Law of the contested provisions, there is reference in the petition to the infringement of Article B) (1), Article C) (1), Article I (3), Article XIII (1) and (2) as well as Article XV (1) and (2) of the Fundamental Law.

[24] As contended in the petition, the preference of Quaestor's victims within a homogeneous group of investor-depositor victims is unconstitutional discrimination that is not justified by the enforcement of other fundamental rights or is not objectively justified.

[25] Pursuant to the constitutional complaint, the concept of a claim secured by a settlement of claims as defined in Section 1 of the Claims Settlement Act will cover a significantly wider scope than the scope of a claim defined by the Capital Market Act. Pursuant to Section 213 (2) of the Capital Markets Act, the compensation covered by the Investor Protection Fund only came into the possession of the company concerned and covers claims for the issue of assets (securities and money) registered in the name of the investor; however, it does not cover additional claims, in particular the risk of default due to the insolvency of the issuer. However, the scope of claims covered by the Claims Settlement Act covers not only settled transactions (based on bonds actually issued and produced by the company) but also invalid legal transactions, for which no bond has actually been issued and produced as dematerialised securities. Thus, unlike the rules of the Capital Markets Act, the legislator also subsequently creates issuer (insolvency) risk insurance for bonds not actually issued, that is, invalid legal transactions, which, however, does not apply to other bond issuers, nor has the legislator previously provided such insurance for other bond issuers.

[26] As described in the constitutional complaint, the date of payment of the claims settlement is not clear under Section 10 (1) to (4) of the Claims Settlement Act, as the claims settlement Act itself fails to provide for a specific date at all.

[27] The petitioner maintains that, similar to the argument put forward by the financial institutions, the limit on compensation set out in Article 11 of the Claims Settlement Act also gravely infringes the right to property of non-Quaestor victims.

[28] The petition supported a violation of the requirement of clarity of norms forming part of the rule of law enshrined in Article B) (1) of the Fundamental Law with respect to Section 1, Section 3 (1), (3) and (4), Section 10, Section 11 and Section 13 of the Claims Settlement Act, along similar arguments as the Investor Protection Fund member petitioners. Pursuant to Section 1 (1) of the claims settlement Act, the claim of Quaestor victims falls within the scope of the Claims Settlement Act even if the legal transaction is invalid. In this case, however, it is not clear what the legal basis for the "claim" under Section 1 (2) of the Claims Settlement Act is, no "claim" arises from an invalid legal transaction; thus, Section 1 of the Claims Settlement Act does not meet

the requirement of the clarity of the norm; therefore, the material scope of the Claims Settlement Act cannot be established in this way. However, as the conflict with the Fundamental Law of Section 1 affects the whole Claims Settlement Act, this legal uncertainty implies the conflict with the Fundamental Law of the Claims Settlement Act as a whole.

[29] Pursuant to Section 1 (2) of the Claims Settlement Act, the subjective scope of the Act, as a person entitled to settle claims, also extends to "other organisations" without their definition being included in the Claims Settlement Act. The uncertainty of the definition of the subjective scope violates the requirement of clarity of the norm and legal certainty; therefore, in the opinion of the petitioner, the conflict with the Fundamental Law of Section 1 (2) of the Claims Settlement Act can be established.

[30] 4. The Constitutional Court joined the cases and adjudicated them in a single proceeding pursuant to Section 58 (2) of the Constitutional Court Act.

[31] 5. The Constitutional Court obtained the opinion of the Hungarian National Bank in connection with the constitutional complaints.

II

[32] 1. The relevant provisions of the Fundamental Law concerning the constitutional complaints are as follows:

"Article B (1) Hungary shall be an independent, democratic rule-of-law State.

"Article C) (1) The functioning of the Hungarian State shall be based on the principle of the separation of powers.

"Article M) (1) The economy of Hungary shall be based on work which creates value, and on freedom of enterprise.

(2) Hungary shall ensure the conditions for fair economic competition. Hungary shall act against any abuse of a dominant position, and shall protect the rights of consumers.

"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 XIII (1) Everyone shall have the right to property and inheritance. Property shall entail social responsibility.

(2) Property may only be expropriated exceptionally, in the public interest and in those cases and ways provided for by an Act, subject to full, unconditional and immediate compensation."

"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."

[33] 2. The relevant provisions of the Claims Settlement Act concerning the constitutional complaints are as follows:

"Section 1 (1) The scope of this Act shall cover the transactions in which the client's legal statement was aimed at purchasing bonds marketed by QUAESTOR Securities Trading and Investment Private Limited Liability Company or its affiliate as per legislation on accounting, issued or designated as such by QUAESTOR FINANCIAL HRURIRA Consulting and Service Limited Liability Company, and the client has complied with the obligation to pay the consideration, regardless of whether the legal transaction has been validly entered into or has been fully executed.

(2) Private individuals, legal persons and other organisations who have a claim against the companies referred to in Subsection (1) as a result of the issue of bonds pursuant to Subsection (1) on the date of entry into force of this Act shall be entitled to compensation."

"Section 2 (1) In order to settle claims arising from claims under Section 1, Claims Fund for Claims Settlement of Quaestor Victims (hereinafter referred to as the "Fund") shall be established by virtue of this Act.

(2) The transfer of the claims of the persons entitled to settlement of claims to the Fund for consideration pursuant to this Act shall not affect the compensation pursuant to Section 213 of Act CXX of 2001 on the Capital Market (hereinafter referred to as the "Capital Market Act")."

"Section 3 (1) The Fund shall be responsible for settling claims, during which it pays the consideration for the claims under Section 1 in the event of its transfer to the Fund by virtue of this Act, and shall enforce the claims in respect of the claims transferred to it. The Fund shall publish on its website a list of affiliates of the business organisations under Section 1 in accordance with accounting legislation.

[...]

(3) The settlement of claims shall take place in the currency of the claim. (4) The settlement of claims shall be exempt from public charges."

"Section 4 (4) In order to ensure its operation, the Fund may issue bonds with a State guarantee for a period of maturity not exceeding 10 years, take out a loan from a credit institution for a maximum period of 10 years, and take out a loan from the Hungarian National Bank, subject to a State guarantee, a bridging loan with a maximum maturity of 3 months.

(5) The Board of Directors of the Fund may request an advance payment from the members of the Investor Protection Fund in order to pay the repayment instalments (maturities) of the loan pursuant to Subsection (4), with a repayment obligation to supplement its own resources.

(6) The Investor Protection Fund members are obliged to pay the advance in the calendar year 2014 in proportion to their annual fee payment obligation to the Investor Protection Fund. Upon determining the annual advance payment when calculating the ratio,

(a) the annual fee payment obligation to the Investor Protection Fund shall be disregarded for an Investor Protection Fund member which: (aa) has ceased to exist without a successor; and

(ab) the liquidation of which has been finally ordered;

(b) in the case of an Investor Protection Fund membership occurring after 10 April 2015, the annual membership fee payment obligation of such members shall be considered as the 2014 annual membership fee payment obligation.

(7) For the purposes of this Act, an Investor Protection Fund member is also a non-Investor Protection Fund member undertaking that was still a member of the Investor Protection Fund on 10 April 2015, as well as successors of the undertakings that were members of the Investor Protection Fund on or after 10 April 2015.

(8) The advance to be paid in a calendar year shall be fixed once a year, but no later than 15 December of the year preceding the calendar year. The advance to be paid in the calendar year 2015 shall be established by the 150th day after the entry into force of this Act. In the case of an Investor Protection Fund membership created after the establishment of the annual advance, only the advance payment of the new member shall be established, within 60 days following the creation of the membership, the advance payments already established shall not be redetermined.

(9) As to the remainder, the rules for the payment of the Investor Protection Fund membership fee shall apply to the payment of the advance.

(10) The Fund is obliged to use the return of claims transferred to the Fund pursuant to Section 1 and the return on the Fund's assets for the early repayment of the loan pursuant to Subsection (4) and for the early repurchase of the issued bonds. When taking out a loan pursuant to Subsection (4), only a contract may be concluded which allows for the early repurchase of the issued bonds and the early repayment of the borrowed loan at least once every six months, in an unlimited amount."

Section 6 The Board of Directors shall

[...]

(d) determine the amount of the annual advance to be paid by the Investor Protection Fund members and provide for the repayment of the advance,

[...]"

Section 10 (1) The Fund shall review the application within 30 days of its receipt, which may be extended in order to determine the conditions for claims settlement.

(2) In order to establish the conditions for claims settlement, the Fund is entitled to process the personal data of the applicants registered by the Investor Protection Fund and the data on the claims provided in the application, and to request information from business organisations pursuant to Section 1 (1). The data shall be provided out of line.

(3) In order to verify the exclusionary condition pursuant to Section 3 (2) (a) and (b), the Fund is entitled to request data provision from the relevant organisations, including the State tax authority, in order to determine the excluded persons. The data shall be provided out of line.

(4) If the application meets the conditions for claims settlement, the Fund shall inform the person entitled to such claims settlement. The Fund shall make the payment to the such person within 30 days of the provision of information.

(5) After the payment has been made, the Investor Protection Fund shall become entitled to claims settlement up to the amount of the compensation paid by the Investor Protection Fund.

(6) The guarantees for the claim of the person entitled to settle the claim, as well as the claims related to the claim, including claims for damages caused by a criminal offence or other claims for damages, shall be transferred to the Fund at the same time as the information.

(7) In connection with legal transactions pursuant to Section 1, the transfer ratio of claims on money and bonds to the Fund shall be equal to the ratio of claims on money and bonds within all claims."

"Section 11 (1) The settlement of claims shall apply to a claim in excess of the compensation to be paid by the Investor Protection Fund, the amount of which shall not exceed the amount of claims existing per person pursuant to Section 1, but not exceeding HUF 30 million together with the compensation paid by the Investor Protection Fund.

(2) Claims pursuant to Section 1 in the amount not exceeding HUF 30 million shall be taken into account at capital value and bonds at nominal value.

(3) If the investor's claim is transferred to the Fund in accordance with this Act, in addition to the provisions of Subsection (1), the Investor Protection Fund shall also pay the compensation due to the investor pursuant to the claim under Section 1 of the Capital Market Act through the Fund."

"Section 13 Following the final report of the Fund, a separate Act shall provide for the deduction from tax of claims advanced by the contributors to the Fund but not recovered from the annual repayments."

"Section 14 This Act shall enter into force on the day following its promulgation."

III

[34] The constitutional complaints are in part well-founded.

[35] 1. The Constitutional Court first of all assessed whether the petitions complied with the formal and substantive conditions laid down in the Constitutional Court Act.

[36] As regards the fulfilment of the formal conditions, it had to be reviewed whether the constitutional complaints were received on time [Section 30 of the Constitutional Court Act] and whether they met the conditions set out in Section 52 of the Constitutional Court Act for an explicit request.

[37] 1.1 Pursuant to Section 30 of the Constitutional Court Act, a constitutional complaint submitted pursuant to Section 26 (2) of the Constitutional Court Act must be submitted within 180 days from the entry into force of the legislation. The Claims Settlement Act entered into force on the day after its promulgation, that is, on 18 April 2015. The constitutional complaints were mailed on 1 June, 4, 12 and 15 July 2015, that is, within the prescribed period, or received directly by the Constitutional Court.

[38] 1.2 The Constitutional Court has established that some of the submitted complaints constitute an explicit request meeting the conditions set out in Section 52 (1) and (1b) of the Constitutional Court Act, since they contain a reasoned reference to the jurisdiction of the Constitutional Court under Article 26 (2) of the Constitutional Court Act, the reasons for initiating the procedure and the nature of the infringement, a detailed statement of reasons for the unconstitutionality by non-

conformity with the Fundamental Law of the contested provisions; furthermore, the complaint makes an explicit request for the annulment of the legislation (as well as its provisions) found to be in conflict with the Fundamental Law.

[39] However, one of the petitions sought the annulment of the Act in its entirety, but failed to specify precise legal provisions in this regard. As explained above, this petition does not meet the conditions of an explicit request; therefore, the Constitutional Court dismissed this petition on the basis of Section 64 (d) of the Constitutional Court Act.

[40] 2. During the assessment of the content of the constitutional complaints, the panel examined concernment pursuant to Section 26 (2) of the Constitutional Court Act and the exhaustion of legal remedies.

[41] 2.1 The petitioners lodging the constitutional complaint requested the procedure of the Constitutional Court within the competence pursuant to Section 26 (2) of the Constitutional Court Act. Pursuant to Section 26 (2) of the Constitutional Court Act, the procedure of the Constitutional Court may exceptionally be initiated if due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights. "The primary purpose of the legal institution of a constitutional complaint under both Article 24 (2) (c) and Article 24 (2) (d) of the Fundamental Law [...] is an individual and subjective legal protection: remedying an actual infringement caused by a legal act contrary to the Fundamental Law or a judicial decision in conflict with the Fundamental Law. [...] [T]he admissibility of the complaint is conditional upon concernment, namely, the fact that the piece of legislation which the complainant considers to be contrary to the Fundamental Law establishes a provision which directly and actually affects the person and his specific legal relationship and, as a result, the complainant's fundamental rights are violated. {Decision 33/2012 (VII. 17.) AB, Reasoning [61] and [62], [66]}" Order 3367/2012 (VII. 15.) AB; Reasoning [13] and [15]} Thus, "[i]n the case of an exceptional complaint, since it is directed directly against the norm, the assessment of concernment is of particular importance, since a personal, direct and actual violation of the complainant's fundamental right distinguishes an exceptional complaint from an earlier version of ex-post norm control that could be initiated by anyone. [Section 20 (2) of Act XXXII of 1989 on the Constitutional Court (former Constitutional Court Act)]" {Order 3105/2012 (VII. 26.) AB, Reasoning [3]}.

[42] 2.2 It is in this spirit that the Constitutional Court has had to assess whether the concernment of the petitioners (the Investor Protection Fund members or private individuals) can be established, and with regard to which elements of the petition is well-founded.

[43] 2.2.1 First, the concernment of the Investor Protection Fund member petitioners was reviewed by the Constitutional Court.

[44] With regard to Section 1 (1) and (2), Section 4 and Section 10 (1) to (4) and Section 11 of the Claims Settlement Act, the petitioners complained that the above provisions infringe the prohibition of discrimination (only Quaestor victims are covered by the Act, the scope of claims differs from the provisions of the Capital Market Act, the amount of compensation is much higher compared to the Investor Protection Fund compensation, the date of settlement is not clear and it is more favourable compared to other victims.) The Constitutional Court found that the petitioners' concernment was not established in this context. The obligation to make payment to the Quaestor Fund is a circumstance which justifies the concernment of the petitioning Investor Protection Fund members; however, the rules under which the Quaestor Fund makes payments to aggrieved investors are irrelevant to the petitioners. The interest of the Investor Protection Fund members is related to the fact that it makes the payment (which is in fact a credit or a loan) to the Quaestor Fund, and the rules pursuant to which such payment is repaid and credited to this amount. However, the question concerning to whom and under what provisions the Quaestor Fund distributes the amount advanced by the petitioners does not affect the person liable for payment. In view of all this, the Constitutional Court dismissed this part of the petitions on the basis of Section 64 (d) of the Constitutional Court Act in the absence of concernment.

[45] 2.2.2 Among the indicated legal provisions, only the rules of the Claims Settlement Act regarding the advance payment by the Investor Protection Fund members can be related to the right to property of the petitioning Investor Protection Fund members [Section 4 (5) to (9); Section 6 (d) and Section 13 of the Claims Settlement Act]. The Claims Settlement Act as a whole and other challenged provisions do not affect the petitioner's right to property for the reasons indicated in the request. Therefore, under Section 64 (d) of the Constitutional Court Act, the Constitutional Court dismissed the petitions based on Article XIII of the Fundamental Law seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of the entirety of, the Preamble to, Section 1, Section 4 (1) to (4) and (10), Section 5 and Section 11 of the Claims Settlement Act.

[46] 2.2.3 In their constitutional complaint, the petitioning Investor Protection Fund members alleged a violation of Article B) (1) of the Fundamental Law in connection with certain provisions of the Claims Settlement Act [Section 1, Section 2 (1) and (2), Section 3 (1) and (3) to (4), Section 4 (4) to (8), Section 10 (1) to (7), Section 11 (1) to (3) and Section 13].

[47] A constitutional complaint is a means of protecting the rights guaranteed only in the Fundamental Law pursuant to Sections 26 and 27 of the Constitutional Court Act.

Even after the entry into force of the Fundamental Law, the Constitutional Court maintained its previous interpretation that legal certainty is not a fundamental right in itself; thus, a constitutional complaint raised concerning a violation of Article B) (1) of the Fundamental Law may only be established in exceptional cases: in case of retroactive legislation or in the absence of preparation time {Order 3268/2012 (X. 4.) AB, Reasoning [14] to [17]; Order 3322/2012. (XI. 12.) AB, Reasoning [10]; Order 3323/2012. (XI. 12.) AB, Reasoning [9]; Order 3324/2012. (XI. 12.) AB, Reasoning [9]; Order 3325/2012. (XI. 12.) AB, Reasoning [11]}. The petitioners complained about the lack of preparation time, there is therefore no obstacle to a substantive review in this respect; however, it is not possible to review the constitutionality of further objections (e.g. clarity of the norm) based on Article B) (1) of the Fundamental Law, formulated in a constitutional complaint, in the procedure under Section 26 (2) of the Constitutional Court Act. In view of this, the Constitutional Court rejected the constitutional complaints in this respect also on the basis of Section 64 (d) of the Constitutional Court Act.

[48] 2.2.4 In connection with the petitions by the Investor Protection Fund members in connection with the Claims Settlement Act as a whole, Section 4 (5) and (6) as well as Section 14 thereof, the Constitutional Court makes the following findings.

[49] In view of the narrower scope of concernment, the petitioners do not have standing to seek the annulment of the Claims Settlement Act as a whole. Section 14 of the Claims Settlement Act, which establishes the entry into force of the Act, cannot be challenged in the present case with a constitutional complaint either, as its constitutional assessment necessarily affects the Claims Settlement Act as a whole.

[50] Section 4 (5) of the Claims Settlement Act, as contested by the petitioners, provides the basis for claiming the advance, while Section 6 (6) provides for whom and to what extent the advance payment is to be made. However, these provisions cannot be substantially linked to the requirement of sufficient preparation time, as they only provide the legal basis for claiming an advance payment, that is, the obligation to pay an advance.

[51] In view of all the foregoing, the Constitutional Court dismissed this part of the petitions on the basis of Section 64 (d) of the Constitutional Court Act due to the lack of concernment, as well as on the grounds of lack of substantive connection.

[52] 2.2.5 The private individual petitioners are all clients of an investment service provider not covered by the Claims Settlement Act, and their concernment has been confirmed by the balance sheet, account statements and contracts enclosed to the petition. The contested provision contained in Section 1 of the Claims Settlement Act establishes the scope of the Act, and this does not apply to the investment service provider related to the petitioners. The Constitutional Court points out that in the

context of the personal scope of a given legal act granting an advantage, the infringement of non-discrimination may also be claimed by a legal entity belonging to a homogeneous group to which the scope of the given legal act only indirectly extends. Discrimination contrary to the Fundamental Law can also take the form of the legislator excluding certain persons from the application of a particular piece of legislation (from the benefits provided by the law) by express provision or silence. An interpretation to the contrary would be inconsistent with the requirement of equality guaranteed by Article XV of the Fundamental Law and the purpose of an institutionalised constitutional complaint in order to remedy violations of fundamental rights. If the Constitutional Court were to refrain from reviewing the constitutionality of the underlying norm, the prohibition of discrimination by the Fundamental Law could rendered nugatory. With regard to Article XV of the Fundamental Law, the violation of the petitioners' rights may result from the fact that the more favourable conditions and circumstances provided by the Claims Settlement Act do not extend to other persons who are alleged to be in the same or similar situation. On this basis, with regard to Section 1 of the Claims Settlement Act, which determines the scope of the Act, the Constitutional Court established personal, direct and actual concernment required by the Constitutional Court Act.

[53] However, with regard to the provisions of the Claims Settlement Act which contain provisions on the Claims Fund for Claims Settlement of Quaestor Victims, the claims settlement and the Investor Protection Fund members contributing to the Quaestor Fund, the concernment of private individual petitioners cannot be established. Therefore, with regard to the Claims Settlement Act as a whole and its Section 3 (1), (3) and (4), Section 10, Section 11, Section 13 and Section 14, the Constitutional Court rejected the constitutional complaints of the private individual petitioners on the basis of Section 64 (d) of the Constitutional Court Act.

IV

[54] Subsequently, the Constitutional Court reviewed the content of the petitions as follows.

[55] 1. First, the Court assessed the merits as to whether, in the light of Section 14 (8) of the Claims Settlement Act, which provided for the entry into force of the same Act, sufficient preparation time had been ensured.

[56] 1.1 In the context of the petition of the Investor Protection Fund member petitioners, the Constitutional Court reviewed the practice developed so far in

connection with the requirement of sufficient preparation time, which has been taken into account in this Decision.

[57] Since the beginning of its operation, the Constitutional Court has considered the requirement of sufficient preparation time to be an integral part of the rule of law and legal certainty. In its Decision 28/1992 (IV. 30.) AB, the Constitutional Court summarised the main criteria for the interpretation of sufficient preparation time. Pursuant to that Decision, "[a] democratic rule of law [...] differs, among many other things, from a dictatorship in that [...] it guarantees a realistic possibility that legal entities can really learn about the legal provisions that apply to them and be able to adapt their behaviour to such provisions. [...] [t]he date of entry into force of the legislation shall be determined in such a way as to allow sufficient time

(a) to obtain the text of the legislation [...] and to study it;

(b) for those applying the law to prepare for the application of the law; and

(c) for persons and bodies affected by the legislation to decide how to adapt to the provisions of such legislation" (ABH 1992, 156-157.). The Constitutional Court reaffirmed these criteria even after the Fourth Amendment to the Fundamental Law, *inter alia*, in Reasoning [58] for Decision 34/2014 (XI. 14.) AB (hereinafter referred to as the "2014 Court Decision").

[58] The case law of the Constitutional Court (the 2014 Court Decision, Reasoning [57] to [59], Decision 6/2013 (III. 1.) AB, Reasoning [241], Decision 20/2014 (VII. 3.) AB, Reasoning [122]) can be summarised as follows: Compliance with the requirement of sufficient preparation time is always assessed in the light of the given circumstances, that is, the promulgation and entry into force of legislation, or the time elapsed between the elaboration of the normative content of the regulation, the nature of the regulation imposing a new obligation or imposing an additional obligation. It is appropriate to establish unconstitutionality by non-conformity with the Fundamental Law if, in view of the foregoing, preparation time is so brief that it would be extremely difficult to adapt to the new regulations, it is virtually impossible or no preparation time has been provided at all.

[59] 1.2 Reviewing the contested provisions of the Claims Settlement Act, the Constitutional Court found that although the Act does not directly impose an obligation to pay an advance on the investor Protection Fund members, it not only creates the possibility of imposing the obligation, but it also realistically regards it as a plan. Section 4 (5) of the Claims Settlement Act contains the wording "may request an advance payment"; however, the Constitutional Court takes the view that the Claims Settlement Act does not only consider the term "may request" as an option for advance payment by the Investor Protection Fund members, but also prescribes it in a covert

normative manner. The term "may request" implies that it cannot be disputed by the person concerned, that is to say, it constitutes an obligation to be fulfilled by the person concerned. The previous statement is further confirmed by Section 4 (8) of the Claims Settlement Act, which takes into account the obligation to pay an advance in the year of entry into force of the Claims Settlement Act and in the following years as well (*see* the wording "shall be fixed").

[60] 1.3 Draft Act No. T/4347 on the Establishment of a Claims Fund for Claims Settlement of Quaestor Victims was submitted on 10 April 2015. The draft Act was adopted by the National Assembly on 14 April 2015 and promulgated on 17 April 2015. Pursuant to Article 14 thereof, the Claims Settlement Act entered into force on 18 April 2015, the day following its promulgation.

[61] Thus, a short time elapsed between the submission of the draft Act and the entry into force of the Claims Settlement Act, but this circumstance, in view of the case law of the Constitutional Court, does not in itself justify the declaration of unconstitutionality by non-conformity with the Fundamental Law. {*See* e.g. the 2014 Court Decision, Reasoning [60])}.

[62] 1.4 The Constitutional Court finds that, pursuant to the Claims Settlement Act, the advance payment is essentially an obligation for the investor Protection Fund members, thus, including the petitioners. The advance payment is therefore a previously non-existent additional obligation imposed on investment service providers only after the entry into force of the Claims Settlement Act. In order to keep sufficient preparation time, it is therefore important whether the exact extent and duration of the additional obligation could be known to the petitioners and whether they were given sufficient time for fulfilment.

[63] Section 4 (5) of the Claims Settlement Act stipulates that the Board of Directors of the Quaestor Fund may request an advance from the Investor Protection Fund members to repay the instalments of the loan under Subsection (4), in addition to its own resources, with a repayment obligation. Pursuant to Section 4 (6), the Investor Protection Fund members are obliged to pay the advance in proportion to their annual fee payment obligation to the Investor Protection Fund in 2014. Pursuant to Section 4 (9) of the Claims Settlement Act, the provisions of the Capital Market Act concerning the payment of the Investor Protection Fund membership fee shall be applied in matters not settled in the Claims Settlement Act. The specific amount of the annual fee to be paid by the Investor Protection Fund members is determined by Section 222 (4) and (5) of the Capital Market Act. However, the Claims Settlement Act stipulates that the amount of the advance is not to be determined on the basis of the specific amount of the annual fee paid by the Investor Protection Fund members, but on the basis of the proportion of the fee payable by each Investor Protection Fund

member. The Claims Settlement Act does not provide for the exact amount of the advance payment, it only states that it will be paid by the Investor Protection Fund members in proportion to their Investor Protection Fund membership fee payment, as determined by the Board of Directors of the Quaestor Fund. This therefore means that Investor Protection Fund members only have information on the ratio of their payment obligations to each other; however, they are unable to determine the extent of this obligation, as this depends solely on the decision of the Board of Directors of the Quaestor Fund, which results in a degree of legal uncertainty which also violates the constitutional requirement of sufficient preparation time. The Constitutional Court maintains that the obligation to be fulfilled is not clearly defined in a way that can be precisely calculated by the parties concerned, thus by the petitioner. Where appropriate, the obligation to pay an advance may also be significant, which may be particularly prejudicial to those concerned, as it may arise as an extraordinary statutory payment obligation which they could not have foreseen when planning the financial year to which they were accustomed. The advance payment under the Claims Settlement Act therefore requires Investor Protection Fund members to have a clearly indefinable amount of money from which they can pay the amount claimed. Uncertainty about the level of advance payment therefore calls into question exactly what obligation the persons concerned must be prepared to fulfil.

[64] In summary, on the side of the Investor Protection Fund members, the advance payment appears as a *praestare* obligation, its drawdown is open, which means that they cannot anticipate it, which makes it difficult to plan their business year. However, the Constitutional Court had to take into account that the operation of the Quaestor Fund set up by the Claims Settlement Act and the claims settlement mechanism make it uncertain from the outset that Investor Protection Fund members with an obligation to pay an advance can become aware of the amount to be paid. The Claims Settlement Act envisages the advance payment for the repayment of the loan taken out in order to ensure the operation of the Quaestor Fund [Section 4 (5)]. The obligation to pay an advance therefore depends from the outset on the amount of damage, not measured until the entry into force of the Claims Settlement Act, the rate of subscription of bonds issued by the Quaestor Fund and, above all, the amount of the loan taken out to operate the Quaestor Fund [Section 4 (4)].

[65] The Constitutional Court notes that the Board of Directors of the Investor Protection Fund may still order extraordinary payments to Investor Protection Fund members pursuant to Section 222 (7) of the Capital Market Act. The essence of this provision, the possibility of extraordinary payment—albeit with various amendments—has been part of the normative text since the entry into force of the Capital Market Act. The Investor Protection Fund members concerned could therefore and did have to reckon with an extraordinary payment obligation that could be imposed by the Investor

Protection Fund's Board of Directors. However, the advance payment obligation based on the Claims Settlement Act does not correspond to any extraordinary payment obligation of the Investor Protection Fund; therefore, it cannot be covered from the assets allocated for this purpose in advance. Thus, for the year 2015, the relevant Investor Protection Fund members could reckon with an extraordinary payment by the Investor Protection Fund but not with the advance payment by the Claims Settlement Act. The Constitutional Court also points out that the amount of the extraordinary payment is a maximum and precisely definable amount in the Capital Market Act (*see* Section 222 (7) of the Capital Market Act), while this rule does not apply to advance payments; thus, there is no upper limit to the amount to be paid.

[66] 1.5 The Constitutional Court has found on the basis of the text of the Claims Settlement Act that the exact amount, timing and duration of the payment obligation required by the Board of Directors of the Quaestor Fund is not clear to the parties concerned, including the petitioners. The parties concerned will only be able to know the exact content of their obligation when the advance payment is requested or determined by the Quaestor Fund's Board of Directors. The content of the obligation cannot be deduced from the text of the Claims Settlement Act, it can only be estimated. Taking into account the consistent practice of the Constitutional Court, it also follows from the requirement of sufficient preparation time that the additional obligation introduced by the new norm must be precisely defined. Infringement of the requirement of sufficient preparation time can therefore be established not only in the light of clear rules, but also in the absence of a precise definition of the obligation. In the course of its practice in relation to sufficient preparation time, the Constitutional Court has so far conducted its procedure only with regard to a clearly defined obligation. However, the review of the normative content and, only in this respect, the sufficient preparation time are inseparable, mutually presupposing criteria. The inaccuracy of the normative content regulating the advance payment established by the Claims Settlement Act, for both 2015 and the following years, results in the fact that, where appropriate, the persons concerned would be able to fulfil their obligations only with extreme difficulty, they would not be able to prepare for it only with (even significant) violation to interests or, due to the uncertainty of the extent of the obligation, not at all. Confidence in the rule of law, which in this case does not imply a reference to the principle known as the "protection of legitimate expectations" previously developed by the Constitutional Court, requires that, on the one hand, a newly established obligation be precisely defined and, on the other hand, that sufficient preparation time be provided in accordance with the principles laid down in the practice of the Constitutional Court. The above finding is particularly true in the case of the introduction of additional obligations which do not constitute a public charge but which serve the purpose of solving a problem which has not been caused by the obligors.

[67] Section 4 (8) of the Claims Settlement Act entered into force on 18 April 2015 in the same manner as the Claims Settlement Act as a whole. However, the provision prescribes the advance payment obligation in several stages as, for 2015, it is set by the Board of Directors of Quaestor Fund until the 150th day from the entry into force of the Claims Settlement Act, and thereafter an annual rate is set until 15 December of the previous year. In the present case, the Constitutional Court did not have to take into account the entry into force of the provision, but the date of setting out its normative content. Although the Claims Settlement Act entered into force on the day following its promulgation, the advance payment obligation will be borne by the relevant Investor Protection Fund members, including the petitioners, only later, in accordance with Section 4 (8) of the Act. Section 4 (8) only provides for the establishment of an advance payment obligation, but as it regulates the payment of an advance on an annual basis, the whole Subsection makes it clear that it shall actually take place in the given year. The advance payment obligation for 2015 shall be established by the Board of Directors of the Quaestor Fund by the 150th day following the entry into force of the Claims Settlement Act. The wording of the Claims Settlement Act makes it uncertain when an inaccurate obligation must be fulfilled by the parties concerned. It follows from the wording of the Claims Settlement Act that the advance payment will not be established immediately after the entry into force of the Act, since whereas it is preceded by the establishment of the Quaestor Fund, the determination of damage, the issuance of bonds and borrowing; however, it can be realised even within an extremely tight time frame. In view of the above, compared to the fact that the advance payment can even result in a significant violation of interests, the Claims Settlement Act does not provide sufficient preparation time for the parties concerned with regard to the advance payment due for the year 2015.

[68] Taking all the foregoing into account, the Constitutional Court found that Section 4 (8) of the Claims Settlement Act, due to the inaccuracy of the obligation as a whole and due to the absence of the possibility of actual preparation for the year 2015, does not provide sufficient preparation time for those concerned, therefore this rule is contrary to the Fundamental Law.

[69] 2. Second, the Constitutional Court reviewed the element of the petition alleging the unconstitutionality by non-conformity with the Fundamental Law of Section 1 of the Claims Settlement Act, which was submitted by private individuals in connection with the violation of the prohibition of discrimination.

[70] 2.1 The basic institution for the protection of financial investors is the Investor Protection Fund regulated in the Capital Market Act. The purpose of the Investor Protection Fund is to provide partial compensation to investors in the event of the liquidation of undertakings specialising in investment services. [Pursuant to Section 210 (1) of the Capital Market Act, within the framework of regular business

activities relating to financial instruments, receiving and transmitting client orders, execution of orders on behalf of clients, dealing on own account and portfolio management (as set forth in Section 5 of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities) shall only be performed as a member of the Investor Protection Fund]. The Investor Protection Fund's compensation obligation arises if the court orders the liquidation of the Investor Protection Fund member [Section 216 (1) of the Capital Market Act] and the amount of compensation shall not exceed EUR 20,000 [Section 217 (2) of the Capital Market Act]. (The rate of compensation paid by the Investor Protection Fund is one hundred percent up to the amount of HUF 1 million, and above the HUF 1 million limit, HUF 1 million and ninety percent of the part above HUF 1 million.) Up to the extent of the compensation paid by the Investor Protection Fund, the investor's claim is transferred from the client to the Investor Protection Fund and its claim is enforced during the liquidation proceedings [Section 220 (2) and (3) of the Capital Market Act].

[71] The compensation provided by the Investor Protection Fund in the above form, therefore, covers the full range of financial investors, given that the investment services activity can only be carried out with the financial service provider being an Investor Protection Fund member.

[72] The system of compensation provided by the Investor Protection Fund under the Capital Market Act is maintained by the Claims Settlement Act within the line of regulation under its scope, when it provides that the settlement of claims provided by it shall apply to a claim in excess of the compensation to be paid by the Investor Protection Fund [Section 11q(1) of the Claims Settlement Act]. In addition, however, the Claims Settlement Act includes a special compensation scheme.

[73] The personal scope of the Claims Settlement Act is limited to a specific group of aggrieved financial investors, the category of persons defined by Section 1 as challenged by the petitioners. This aggrieved group of persons comprises financial investors with receivables based on specific transactions (bond issues) concluded with specific investment service providers (members of the Quaestor group of companies). The Claims Settlement Act provides compensation of up to HUF 30 million for the group of injured parties thus defined, together with the compensation provided by the Investor Protection Fund (up to approximately HUF 6 million). This compensation is provided by the Claims Settlement Act to investors (buyers) of bonds issued or designated as such by a member of the Quaestor Group and sold by another member of the Group, regardless of whether the transaction has been validly entered into or fully executed. The Claims Settlement Act therefore provides the said compensation to investors both on the basis of legal transactions related to the (fictitious) bonds not actually issued and on the basis of invalid legal transactions. By contrast, the compensation to be paid by the Investor Protection Fund can only be determined on

the basis of a claim based on an obligation to release assets (securities, money) acquired by the service provider and registered in the name of the investor in order to fulfil the agreement between the investor and the financial service provider [Section 213 (2) of the Capital Market Act].

[74] Another specificity of the regulation is that it sets a calendar-based time limit for the enforcement of the claims [Section 9 (4) of the Claims Settlement Act], as well as special rules for the assessment of the application and the fulfilment of the claim [Section 10 (1) and (4) of the Claims Settlement Act].

[75] Pursuant to Section 9 (1) of the Claims Settlement Act, claims enforced under the Act, in return for consideration, are transferred by operation of law to the Quaestor Fund pursuant to Section 2 (1) of the Claims Settlement Act. However, the cited rule restates the provision of Section 220 (2) of the Capital Market Act, pursuant to which the Investor Protection Fund becomes entitled to the claim up to the amount of the compensation paid by the Investor Protection Fund [Section 10 (5) of the Claims Settlement Act]. However, additional claims are not transferred to the Quaestor Fund up to the amount of the claim already settled, but in their entirety; moreover, the guarantees of the claim of the person entitled to settle the claim, as well as the other claims related to the main claim, including the compensation for the damage caused by a criminal offence, as well as the claims for other damages, are transferred to the Quaestor Fund by virtue of law [Section 10 (6) of the Claims Settlement Act].

[76] 2.2 The Claims Settlement Act will therefore set up a claims settlement and claims management fund for the aggrieved investors in the Quaestor group of companies affected by the issuance of the bonds, which guarantees the investors the reimbursement of their investments up to HUF 30 million, together with the compensation by the Investor Protection Fund, to the entitled persons defined in Section 1 of the Claims Settlement Act, which is contestes by the petitions. In line with to the explanatory memorandum to the draft Claims Settlement Act, this amount is significantly higher than what could be realistically obtained by the clients in an individual lawsuit or in the liquidation proceedings.

[77] No investor has any individual right to compensation, in whole or in part, in the event of the insolvency or liquidation of investment service providers. In order to mitigate the risks arising from the legal or illegal operation of the system of financial institutions, the State may establish a special system of institutions and may of course also determine the rules and conditions of their operation. Given that the parties concerned have no individual right to compensation, the establishment of an institutional system of compensation and the regulation of its operation is an *ex gratia* solution based on equity, even if the legislator does not currently place these burdens directly on the State, but advanced by the Hungarian National Bank [*see* Section 4 (4)

of the Claims Settlement Act on the bridging loan], and ultimately, in view of the State guarantee written in Section 4 (4) of the Claims Settlement Act and the repayment obligation written in Section 4 (5), it is borne by the State. *Ex gratia* solutions are characterised by the fact that "the legislator does not satisfy legal needs, nor does it discriminate between those who are already entitled, but provides assets on equitable grounds" (Decision 775/B/2009 AB, ABH 2010, 2125, 2128.). As "no one has the right to receive a specific form of *ex gratia* benefit", [Decision 16/1991 (IV. 20.) AB, ABH 1991, 58, 62.]; consequently, the legislature has "broad discretion both in determining the scope of entitlement and in determining the amount and other conditions of the benefit. The limitation of discrimination is the principle limit of positive discrimination: unconditional observance of treatment as a person of equal dignity, and non-violation of the fundamental rights enshrined in the Constitution. [...] More specifically, only a reasonable ground for unequal treatment, that is,not being considered arbitrary, can be required. [Decision 16/1991 (XI. 20.) AB, ABH 1991, 58, 62, Decision 922/B/2000 AB, ABH 2001, 1444,1452]" (Decision 775/B/2009 AB, ABH 2010, 2125, 2128) This means that, although no one is individually entitled to an *ex gratia* advantage if the legislator, at its discretion, decides to apply such solutions, the scope of entitlement, the degree and other conditions of entitlement cannot be determined arbitrarily. {*Cf.* Decision 3147/2015 (VII. 24.) AB, Reasoning [32]}

[78] 2.3 Article XV (1) of the Fundamental Law provides that everyone is equal before the law, and pursuant to paragraph (2) referred to by the petitioners, Hungary guarantees fundamental rights to everyone without any discrimination, namely race, colour, sex, disability, language, religion, political or other status. Article XV of the Fundamental Law thus "contains both the general rule of equality [paragraph (1)] and the equality of fundamental rights and the prohibition of discrimination [paragraph (2)]" {Decision 42/2012 (XII. 20.) AB, Reasoning [22]}.

[79] The private individual petitioners based their request on Article XV (2) of the Fundamental Law, which provision prohibits discrimination on the basis of the characteristics referred to therein (the list is not exhaustive but open, since discrimination based on the criterion known as "other status" is also prohibited). The characteristics listed are primarily "characteristics of the individual person"{Decision 42/2012 (XII. 20.) AB, Reasoning [41]}. However, the differentiation created by the definition of the scope of the Claims Settlement Act cannot be linked to any of the characteristics within the meaning of Article XV (2) of the Fundamental Law. It follows that the constitutionality of the impugned legal provision must be assessed not on the basis of Article XV (2) but on the basis of Article XV (1) of the Fundamental Law, which, under the general rule of equality, "guarantees the requirement of equal treatment with respect to all the rules of law of the legal order because the ultimate basis for equality is equal dignity"{Decision 8/2015 (IV. 17.) AB, Reasoning [41]}.

[80] In revieweing the constitutionality of discrimination, it must be assumed, in essence, that "the prohibition of discrimination does not mean that all discrimination is prohibited, but presupposes that the law must treat everyone as an equal person" {Decision 3024/2015 (II. 9.) AB, Reasoning [47]}. Unconstitutionality by non-conformity with the Fundamental Law due to a violation of Article XV (1) of the Fundamental Law may be established if the legislation distinguishes between legal entities belonging to the same, or homogeneous, group (in a comparable situation) from the point of view of regulation and the distinction cannot be justified: there is no reasonable or sufficiently weighty constitutional reason for the different regulation; therefore, in other words, it is arbitrary {*See* in particluar Decision 3009/2012 (VI. 21.) AB, Reasoning [54], Decision 43/2012 (XII. 20.) AB, Reasoning [41], Decision 14/2014 (V. 13.) AB, Reasoning [32]}

[81] 2.4 Pursuant to Section 1, which determines the scope of the Claims Settlement Act, which is challenged by the petitions, the Act shall cover the transactions in which the client's legal statement was aimed at purchasing bonds marketed by QUAESTOR Securities Trading and Investment Private Limited Liability Company or its affiliate as per legislation on accounting, issued or designated as such by QUAESTOR FINANCIAL HRURIRA Consulting and Service Limited Liability Company, and the client has complied with the obligation to pay the consideration, regardless of whether the legal transaction has been validly entered into or has been fully executed. Private individuals, legal persons and other organisations who have a claim against the companies referred to in Subsection (1) as a result of the issue of bonds pursuant to Subsection (1) on the date of entry into force of this Act shall be entitled to compensation. Under Section 11 (1) of the Claims Settlement Act, the settlement of claims shall apply to Subsection a claim in excess of the compensation to be paid by the Investor Protection Fund, the amount of which shall not exceed the amount of claims existing per person pursuant to Section 1, but not exceeding HUF 30 million together with the compensation paid by the Investor Protection Fund.

[82] Thus, Section 11 (1) of the Claims Settlement Act explicitly provides for claims in excess of the compensation to be paid by BEVA, which provides for compensation of up to HUF 30 million for the entitled parties specified in Section 1. That is, the regulation is (rightly) based on the premise that the claim of each of the entitled parties under Section 1 is known as a secured claim, that is, the compensation made possible by the Claims Settlement Act shall, in part, be covered by the Investor Protection Fund. The claims covered by the Investor Protection Fund, pursuant to the rules of the Capital Market Act, cover each aggrieved financial investor (*see* Reasoning [70] to [75]). Consequently, the construction of the regulation can (also) be defined as highlighting the group of persons defined by Section 1 of the Claims Settlement Act from among

the (potentially) aggrieved financial investors and providing them with additional compensation pursuant to Section 11 (1) of the Claims Settlement Act.

[83] The Claims Settlement Act provides compensation to the entitled parties up to HUF 30 million, as opposed to the compensation of EUR 20,000 (HUF 6 million) granted by the Investor Protection Fund to other injured investors. This is obviously detrimental to the latter group of investors. However, such a distinction is contrary to the Fundamental Law only if the different rules apply to legal entities belonging to a homogeneous group in a comparable situation, and if so, there is no reasonable ground for to differentiation; therefore, it is arbitrary.

[84] The first question is therefore whether the group of persons defined in Section 1 of the Claims Settlement Act (Quaestor injured parties) and other aggrieved financial investors (including the petitioners) to be compensated by the Investor Protection Fund are in a comparable situation.

[85] In the case of the law under review, the most significant grouping criterion is that the damage suffered by the aggrieved parties was caused by the conduct of the financial investment service provider with which they have a business relationship, or by its insolvency and liquidation, and such damage is partly covered by the Investor Protection Fund. In the case of all the investment companies concerned, there is a phenomenon known as securities shortage (presumably fictitious transactions or other irregularities have taken place), and in this respect the aggrieved investors are in a comparable situation; thus, they are considered a homogeneous group. However, the scope of the Claims Settlement Act is limited to victims related to the Quaestor group of companies.

[86] The question then is whether there is a reasonable justification for the discrimination, that is, whether the legislator relies on considerations which preclude the arbitrariness of the discrimination.

[87] The explanatory memorandum to the draft Claims Settlement Act contains the following. "The purpose of this Act is to settle the situation of investors affected by the issuance of bonds by the Quaestor group of companies. The Quaestor Group's illegal and partially unrealistic bond issuance has made the return on their previous investments uncertain for some 32,000 investors. The abuses committed by the Quaestor group of companies are associated with a number of unique features, unlike other anomalies in the money market. On the one hand, the bonds were issued and marketed exclusively for the benefit of the group of companies and its financing.

On the other hand, this activity is similar to deposit collection in several respects. Clients placed money with members of the group of companies for which they received securities. A significant part of these securities was later found to be fictitious, that is,

no actual securities were issued. Nevertheless, a civil law relationship was established between the company distributing the bonds and the customer providing cash at hand. This shows partly the characteristics of a loan agreement and partly the characteristics of a deposit agreement, as the client provided the money for the involved member of the group in return for interest.

The creation of a separate Act is also necessary because, given the large number of victims, individual enforcement of claims would be extremely difficult. It would be a difficult challenge for the courts to overcome if the victims asserted their claims individually. This would also put victims at a disadvantage as they would have to bring a civil action to recover their investment or, as creditors, they would have to register as creditors in liquidation proceedings against a member of the group, bearing the risk of when and to what extent their claim would be repaid in the insolvency proceedings."

[88] Based on the explanatory memorandum of the draft Act and the information provided to the Deputy Governor of the Hungarian National Bank, the Constitutional Court established that the Quaestor Group had financed its activities to a large extent by issuing bonds, through which it built up a significant portfolio of bonds with yield promises in excess of current bank interest rates. With the help of the established continuous quotation mechanism and the unlimited repurchase practice, it could give the appearance of liquid investment and quasi-"bank-like" operation. Despite being warned of a higher-than-usual risk, clients may have believed that they had invested in a liquid financial instrument, erroneously concluding that the corporate bond they had purchased was closer to a bank deposit than to capital market transactions based on its risk characteristics.

[89] Differences due to the operational characteristics of some investment service providers, with careful (economic, financial, social) consideration, may allow one group of victims to be singled out from the others and special compensation rules to be introduced for them.

[90] However, the explanatory memorandum of the draft Act refers only to the distribution of fictitious securities and the large number of victims, but these considerations are by no means limited to Quaestor victims and cannot be considered as sufficient grounds for differentiation in themselves. The Constitutional Court has repeatedly and emphatically stated in previous decisions that in order to substantiate the constitutionality of discrimination, the Constitutional Court cannot accept arguments concerning preferred groups which do not apply exclusively to this group [Decision 16/1991 (IV. 20.) AB, ABH 1991, 58, 62.; Decision 11/2003 (IV. 9.) AB, ABH 2003, 153, 167.]. Furthermore, it is irrelevant for the aggrieved investors that the bonds were issued and marketed solely for the benefit of a single group of companies

specifically mentioned in t he Claims Settlement Act, and for financing the losses of such group. There are no other arguments in the explanatory memorandum.

[91] Therefore, the arguments of reasoning could not be accepted by the Constitutional Court as a reasonable ground for differentiation on the basis of an objective consideration.

[92] On the basis of all the foregoing, the Constitutional Court found that Section 1 of the Claims Settlement Act was contrary to the Fundamental Law due to the violation of Article XV (1) of the Fundamental Law; therefore, it annulled said provision in accordance with the provisions of the operative part.

[93] The Constitutional Court emphasises that the annulment of Section 1 of the Claims Settlement Act does not entail that the settlement of the damage of Quaestor victims would in itself be contrary to the Fundamental Law. The reason for the annulment is merely that, as stated above, the legislative solution chosen in the Claims Settlement Act in its current form, because the legislature failed to treat victims in a comparable situation in the same manner, does not satisfy the constitutional requirement of the prohibition of discrimination. The legislator has the possibility to re-regulate the settlement of claims in accordance with constitutional considerations. In doing so, the manner, conditions and extent of the settlement of claims, based on careful consideration, are within the decision-making competence of the legislator.

[94] In addition, the Constitutional Court notes that the fact that the compensation of the victims is done without taking into account the previously realised benefits may also be a matter of concern from the point of view of discrimination. This would mean that some investors, who have essentially "capitalised" on the returns of previous years, presumably higher than the market, on an annual basis, would receive compensation not only for capital but also for returns. This circumstance must be taken into account by the legislator in the event of possible re-regulation.

[95] 3. The Constitutional Court then reviewed the part of the petitions of the investment service providers which alleged a violation of the right to property.

[96] 3.1 The Claims Settlement Act does not directly order Investor Protection Fund members to make a payment to the Quaestor Fund; however, it creates the legal basis for ordering the payment (Section 6 (d) of the Claims Settlement Act empowers the Board of Directors of the Investor Protection Fund, as the body managing the Quaestor Fund, to make a decision on payment). It is clear from the rules of the Claims Settlement Act that the legislator considers payment to be not only a distant and incidental but also a realistic option. It specifically regulates who is an Investor Protection Fund member for the purposes of the Claims Settlement Act [Section 4 (7)], the rate of payment the Investor Protection Fund members are required to make [Section 4 (6) of

the Claims Settlement Act], and also the time limit for determining the advance to be paid per calendar year [Section 4 (8) of the Claims Settlement Act]. However, the Claims Settlement Act does not contain the rules for the reimbursement of the advance: Section 6 (d) of the Claims Settlement Act provides that the provision of reimbursement falls within the competence of the Board of Directors; moreover, the "deduction of" unpaid claims "from tax is provided for in a separate Act" following the final report of the Quaestor Fund, that is, the termination of the activities of the Quaestor Fund (Section 13 of the Claims Settlement Act).

[97] 3.2 The advance payment obligation imposed by the contested Claims Settlement Act is intended to ensure the operation of the Quaestor Fund set up to settle the claims of the Quaestor victims (such as the payment of the instalments of the loan taken out by the Quaestor Fund).

[98] The payment obligation imposed by the Claims Settlement Act on monetary assets does not constitute a public charge. The Quaestor Fund is not part of the budget, it is not intended to perform State/community tasks or to cover the common needs of society [*Cf.* Article O) and XXX of the Fundamental Law, and Section 28 (1) regarding public charges of Act CXCIV of 2011on the Economic Stability of Hungary], but, pursuant to its Preamble, "to compensate by claims settlement investors who have been harmed as a result of the sale of bonds issued by a particular business organisation by another company" (and its affiliates) belonging to the group of companies concerned. Another important factor is that in the case of public charges, the amount paid is not reimbursed in cash, if the payer is entitled to a share in the public services, benefits or allowances financed by the payments, if any, shall not be considered reimbursement (e.g. the person paying personal income tax becomes entitled to the benefit). In the case of the Quaestor Fund, on the other hand, the Claims Settlement Act expects the reimbursement of the advance to be paid by the Investor Protection Fund members; therefore, it is in fact a loan. This fact precludes the advance payment from being classified as a public charge.

[99] 3.3 It must be emphasised, however, that the public interest cannot be served only by public charges. If the Board of Directors of the Quaestor Fund orders an advance payment, it must be made by the Investor Protection Fund members from their existing resources in accordance with the Claims Settlement Act. The Quaestor Fund will use the contribution ("advance") made by the Investor Protection Fund members to pay the instalments of the loan taken out by it from Quaestor to settle claims and the maturities of the bond issued by it. This therefore clearly means that part of the resources (assets) of the Investor Protection Fund members can be used temporarily through an indirect legal solution to settle the claims of the Quaestor victims. The Constitutional Court considers that from the point of view of constitutional law, this

solution constitutes a restriction on the right to property guaranteed in Article XIII (1) of the Fundamental Law.

[100] The Constitutional Court recalls that, pursuant to Article I (4) of the Fundamental Law, fundamental rights do not necessarily belong only to natural persons, legal persons may also invoke the infringement of certain rights. The right to property is considered to belong with such fundamental rights.

[101] Under Article I (3) of the Fundamental Law, a fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right. Thus, a restriction is unconstitutional if it is not unavoidable, that is, if it takes place without a compelling reason, and if the weight of the restriction is disproportionate to the objective pursued by the restriction. However, when assessing the constitutionality of a restriction on property, the Constitutional Court assumes that since the Fundamental Law only requires the public interest for expropriation (that is, the most serious interference, the deprivation of property), a stricter necessity is not a constitutional requirement even in the case of restriction, either; moreover, "[t]he constitutional review of the public interest enforced by law [...] is not directed at the absolute necessity of the choice of the legislature but, even if it is not formally aimed at the existence of a public interest but applies the criteria of necessity and proportionality, it must confine itself to whether a reference to the public interest is justified or whether the public interest solution does not in itself infringe any other constitutional right [...]. However, in assessing public interest and the proportionality of the restriction of property, the Constitutional Court may also generally determine the criteria that determine the constitutionality of the interference. In doing so, it can offset the necessary loss of legal certainty caused by a limited review of the necessity of public interest. For example, the Constitutional Court considers a restriction on property to be disproportionate if its duration cannot be calculated. [...] In other cases, compensation may be necessary for the proportionality of the restriction of ownership." {Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 381-382; this practice was reaffirmed after the entry into force of the Fundamental Law by Decision 20/2014 (VII. 3.) AB, Reasoning [154], based on Decision 13/2013 (VI. 17.) AB, Reasoning [28] to [34]}.

[102] In summary, in the context of the contested provisions [Section 4 (5) to (9), Section 6 (d) and Section 13 of the Claims Settlement Act], the Constitutional Court had to consider 1. whether there is a need for the restriction, that is whether the law restricts the right to property in order to protect a fundamental right or a constitutional value, possibly in the public interest; and if so, 2. whether the restriction is proportionate. As there is no specific requirement for proportionality in the rule of the right to property laid down in the Fundamental Law, the general test of proportionality

applies: The importance of the objective pursued by the restriction must be commensurate with the seriousness of the violation of fundamental rights.

[103] 3.4 In accordance with the above, the Constitutional Court first examined whether the necessity of the restriction existed, and in this context, for the first time, whether it was made in the public interest.

[104] A stable financial sector is a precondition for the sustainable functioning of the economy. The confidence of customers in the sound operation of the sector and the security of their deposits and investments contributes greatly to the stability of the financial system. It is up to the legislator to create the legal conditions and instrument to achieve this. On the one hand, the state needs to act in a preventive and proactive manner (this includes the development of the legal framework for the operation of investment service providers and its supervision), but in some cases it may be necessary to implement appropriate corrections and apply individual measures.

[105] With the adoption of the Claims Settlement Act, the legislator decided to provide, on an equitable basis, for the compensation by "claims settlement of investors harmed" by the activities of investment service providers belonging to a particular group of companies, also mentioned in the preamble and Section 1 of the Claims Settlement Act. The Quaestor Fund is therefore not a risk pool, as in the case of a risk pool, the participants share the financial risk of a future (damage) event in such a way that any participant - or client - could be a potential beneficiary of this scheme. However, the Claims Settlement Act aimed to address the negative effects of a specific event that had already occurred in the past. The participation of Investor Protection Fund members is also unilateral: they may merely contribute to the settlement of claims through their possible payment, as ordered by the Board of Directors, but in reverse (e.g. if they face financial difficulties), they would not be able to benefit from the fund's resources (they could only hope that the legislator provides for the establishment of a financial compensation fund similar to the Quaestor Fund).

[106] The beneficiaries are therefore a well-defined, relatively narrow group: The legislator intends to compensate only for the losses suffered by the customers of a given group of companies, and only those of the clients of the company concerned who have purchased a specific product (more precisely, if the client has fulfilled his obligation to pay the consideration, the settlement of claims will take place regardless of whether the transaction has been validly concluded or has been fully executed).

[107] The size of the group and the fact that it is a piece of legislation that favours the investors of a particular group of companies do not in themselves preclude the establishment of public interest. The Constitutional Court recalls that in its practice, primarily in connection with restrictions on real estate ownership, the public interest is given a broad interpretation: "In interpreting the public interest, it is acceptable that,

although the private interest is paramount, it is indirectly a matter of serving the interests of the whole community by solving social problems” {Decision 42/2006 (X. 5.) AB,ABH 2006, 520, 529; reaffirmed by Decision 18/2015 (VI. 15.) AB, Reasoning [25], based on Decision 13/2013 (VI. 17.) AB, Reasoning [28] to [34]}. The point of departure for this approach was already contained in Decision 64/1993 (XII. 22.) AB, which stated that “although more and more restrictions on property are subject to protection similar to expropriation, more and more restrictions must be tolerated without any compensation. Restrictions apply in particular to property ownership, where the public benefit or public interest which constitutes the public interest content of the classical expropriation also changes in the sense that the restriction or deprivation of property is often directly for the benefit of other individuals (and only by solving social problems for the benefit of the public) such as in many cases of urban planning, land reforms, tenant protection” (ABH 1993, 373, 381.).

[108] The public interest can be established if there is a clear and obvious public interest behind the overriding private interest under the law. The size of the beneficiary group is not a conclusive argument in the public interest. Where appropriate, a rule in favour of a narrower group may also be in the public interest if, for example, the standard in question has a broader, more general and possibly social impact than the impact on the group. However, the size of the group of beneficiaries, and the choice of the group of beneficiaries, may influence the assessment of whether the restriction on fundamental rights embodied in the norm is in the public interest. The smaller the beneficiary group, the more stringent scrutiny and verification may be required for a property restriction.

[109] However, the review of the public interest cannot be confused with that of discrimination. In each case, the public interest test must focus on whether there is a public interest behind the solution adopted in the interest of the beneficiary group. The exclusion of the persons from the use of compensation by the legislator should not be assessed in the context of assessing the public interest.

[110] Full or partial compensation for damage suffered as a result of the activities of investment service providers on the basis of equity and social solidarity can contribute to maintaining (restoring) client confidence in the financial sector, which can have a positive impact on the security of the sector’s operations. State interference may even, as in the present case, take the form of an *ex gratia* solution. In the case of Claims Settlement Act, the private interest of the relatively large number of investors involved (protection of their right to property) clearly comes to the fore, as the aim of the legislation is to compensate for the losses they have suffered, that is, to settle claims. However, safeguarding the stability of the financial sector can also be seen as a legislative objective. Due to the operation of the Quaestor group of companies, confidence in the actors of the financial sector has been critically shaken, which could

have caused serious disruption in the entire securities market, including other investment service providers or even financial institutions (the banking sector as a whole). Thus, while the Investor Protection Fund members in fact contribute directly to the compensation of the injured parties concerned, in reality the Claims Settlement Act helps to restore market confidence in the securities market and, more broadly, in the money market as a whole. Just as one of the fundamental values of private law is the security of assets, so one of the fundamental values of the financial market is the security of payments. Ex-post State interference, where a large number of injured parties are involved, can strengthen the confidence not only of the injured clients but also, indirectly, of all depositors and investors in the financial sector. This confidence, in turn, contributes to the stability of the functioning of the financial system, which is also indirectly in the national economic and social interest, that is, in the public interest. The regulation thus undoubtedly goes beyond the scope of recipients of compensation and their individual interests.

[111] The Constitutional Court does not consider the reference to the public interest to be unfounded.

[112] 2.5 Given that the Constitutional Court held that it could be established, as stated above, that the restriction of the property of Investor Protection Fund members was in the public interest, it was then necessary to review whether the proportionality of the restriction could be established. The proportionality of a restriction on a fundamental right requires that the restriction not exceed what is necessary to achieve the constitutionally justified objective. This means that the importance of the objective pursued and the gravity of the infringement of fundamental rights caused must be adequately proportionate in relation to one another. Furthermore, in enacting a limitation, the legislator is bound to employ the most moderate, that is, the least restrictive, means suitable for reaching the specified purpose.

[113] The Constitutional Court reviewed the provisions for the advance payment regulated by the Claims Settlement Act and found the following. The Claims Settlement Act allows the temporary use of part of the financial assets of the Investor Protection Fund members to settle the claims of a large number of Quaestor victims; however, it does not provide for 1) the annual amount of the contribution (only the proportion to be distributed among the payors), 2) the total number of years for which the advance payment may be ordered by the board of directors, as well as the fact that 3) the rules of the Claims Settlement Act do not indicate the maximum period for which the advance must be made available. Based on a comparison of the legal requirements, an advance payment can be made every year, and in the final case this process can take up to more than ten years: "non-recovered claims" (meaning the contribution paid by the Investor Protection Fund members in the form of an advance payment which is not reimbursed by the Quaestor Fund in a given year) may be deducted from the tax after

the final report of the Quaestor Fund, and the final report will be adopted after the termination of the activities of the Quaestor Fund. As the Quaestor Fund can borrow for a maximum of ten years (or issue bonds with a maximum term of ten years) to ensure its operation, its operation can last for more than ten years, during which time an advance payment can be ordered every year [Section 4 (4) and (5) and (8), Section 6 (e) and Section 13 of the Claims Settlement Act]. The law also 4) prescribes the repayment obligation [Section 4 (5) of the Claims Settlement Act], but refers the decision on this to the discretionary decision-making power of the fund's board of directors, and the Claims Settlement Act mentions the possibility of a tax deduction as a final solution, but this separate legislation has not yet been enacted. (It should also be mentioned in this context that the Act is about the perspective of "deduction from tax", but corporate tax, for example, is a profit tax; thus, the deduction is only possible if the tax base is positive.) Finally, 5) the Claims Settlement Act does not charge any consideration (e.g. interest) for the use of the amounts made available to the Quaestor Fund.

[114] It can be concluded from the regulations that the State decided in equity to compensate the clients of a certain group of companies by creating the Claims Settlement Act; thus, the settlement of claims is an *ex gratia* solution, but it intends to shift the burden of this indirectly, temporarily but clearly to the Investor Protection Fund members. The restriction on property suffered by the Investor Protection Fund members in this way takes place free of any consideration in return, and its extent and duration are completely unpredictable. Finally, although the repayment of the advance is ordered by Claims Settlement Act, it does not contain any guarantees. The restriction of ownership is disproportionately severe due to all these legal provisions and their shortcomings.

[115] The importance of the objective pursued (redress for victims by claims settlement and indirectly contributing to the stability of the financial sector, restoring client confidence in the sound operation of the sector) is not proportionate to the weight of property restrictions suffered by the Investor Protection Fund members. Due to the disproportionate nature of the restriction of fundamental rights, the Constitutional Court annulled the relevant provisions of the Claims Settlement Act, namely, Section 4 (5) to (9), Section 6 (d) and Section 13 of the Act.

[116] 4. Subsequently, the Constitutional Court makes the following findings in connection with the alleged violation of Section 4 of the Claims Settlement Act on the prohibition of discrimination.

[117] Section 4 (1) to (4) and (10) of the Claims Settlement Act contain rules relating to the assets and funds of the Quaestor Fund and the recovery of claims, which, based on the petitioner's line of argument to this effect, cannot be directly linked to the

prohibition of discrimination. In view of this, the Constitutional Court dismissed this part of the constitutional complaints. With regard to Section 4 (5) to (9) of the Claims Settlement Act, the Constitutional Court carried out the constitutional review from the point of view of the right to property and annulled the provisions by finding that these rules were contrary to the Fundamental Law. In view of this, the violation of the prohibition of discrimination has not been reviewed by the Constitutional Court in relation to these provisions.

[118] 5. The Investor Protection Fund petitioners also alleged that certain provisions of the Claims Settlement Act [Section 1, Section 4, Section 10 (6) and (7) and Section 11 (1) to (3) of the Act] also infringe the right to enterprise, as the operation of the enterprise is made difficult due to a special advance payment insurance obligation. It is not clear from the legislation, as contended by the petitioners, what other fundamental right the purpose of the restriction of the right to an undertaking is to enforce, nor whether the restriction is proportionate.

[119] In this context, the Constitutional Court has held that, on the basis of the petitioners' arguments, Section 4 (1) to (4) and (10), Section 10 (6) and (7) as well as Section 11 (1) to (3) of the Claims Settlement Act cannot be related to the freedom of enterprise. In view of this, the Constitutional Court dismissed the petitions in this regard.

[120] Section 1 and the other provisions of Section 4 of the Claims Settlement Act have already been found contrary to the Fundamental Law by the Constitutional Court in terms of violation of the prohibition of discrimination, sufficient preparation time and the right to property; therefore, the Court did not re-examine this provision in terms of the right to enterprise.

[121] 6. Pursuant to the first sentence of Section 44 (1) of the Constitutional Court Act, this Decision shall be published in the Hungarian Official Gazette.

Budapest, 17 November 2015

Dr. Barnabás Lenkovics, sgd.,
Chief Justice of the Constitutional Court, Justice delivering the opinion of the Court

Dr. István Balsai, sgd.,
Justice

Dr. Egon Dienes-Oehm, sgd.,
Justice

Dr. Ágnes Czine, sgd.,
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Dr. Imre Juhász, sgd.,
Justice

Dr. László Kiss, sgd.,
Justice

Dr. Miklós Lévay, sgd.,
Justice

Dr. Béla Pokol, sgd.,
Justice

Dr. László Salamon, sgd.,
Justice

Dr. Barnabás Lenkovics, sgd.,
Chief Justice of the Constitutional Court
on behalf of

dr. István Stumpf
Justice, prevented from signing

Dr. Tamás Sulyok, sgd.,
Justice

Dr. Péter Szalay, sgd.,
Justice

Dr. Mária Szívós, sgd.,
Justice

Dr. András Varga Zs., sgd.,
Justice