Decision 3238/2022 (V. 18.) AB

on rejecting a constitutional complaint

In the subject-matter of a constitutional complaint, the panel of the Constitutional Court has adopted the following

decision:

The Constitutional Court rejects the constitutional complaint aimed at establishing a conflict with the Fundamental Law and annulling the ruling No. Pfv.II.20.234/2021/3 of the Curia as the review court.

Reasoning

I

[1] 1 The petitioner, acting with legal representation (Dr. Edit Frank, attorney-at-law), submitted a constitutional complaint pursuant to section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), requesting the Constitutional Court to state that the ruling No. Pfv.II.20.234/2021/3 of the Curia as the review court is in conflict with the Fundamental Law and to annul it, with effect also to the ruling No. 54.Pkf.635.607/2020/2 of the Budapest-Capital Regional Court and the ruling No. 2.Pk.193341/2020/2 of the Central District Court of Pest, incorporated in the minutes.

[2] 1.1 According to the facts of the case underlying the constitutional complaint, the petitioner (the respondent in the main proceedings) needs 24-hour care due to illness. On 1 or 2 September 2020 (1 September according to the ruling of the first and second instance and 2 September according to the ruling No. Pfv.II.20.234/2021/3 of the Curia and the petitioner's constitutional complaint), at the request of his family, he was admitted to the toxicology department of a medical institution in Budapest on suspicion of a drug overdose, with his own consent. According to the facts of the case established, during the admission to hospital the petitioner alternately sang, screamed, shouted, said he wanted to go home, used first names to address people, boxed into the paramedic's arm and was uncooperative during the examinations. The toxicology report did not find any intoxication requiring action, but due to the petitioner's confusion, the ambulance service transferred the petitioner to the Nyírő Gyula National Institute of Psychiatry and Addiction (the applicant in the main case) with a referral from the medical institution. The petitioner's admission to the hospital in the

emergency outpatient clinic was recorded with "reference to pharmaco-suicidal imminent event", whereas on transfer the petitioner to the respondent it was already indicated in the medical record that "suicidal thoughts, urges, intentions cannot be explored". According to the medical record, "imminent dangerous behaviour requires emergency psychiatric treatment of the patient."

[3] In its application, the applicant health care institution sought a finding that admission was justified and an order for emergency treatment for imminent danger [i.e. emergency treatment under section 199 of the Act CLIV of 1997 on Health Care (hereinafter: AHC)], supporting its application with the admission medical record. The Central District Court of Pest held a hearing on 3 September 2020, before which it appointed a guardian ad litem and a forensic psychiatric expert. Immediately prior to the hearing, the respondent's son, as proxy, appeared on the spot, although the court did not give him prior notice of the hearing, as the applicant had not informed the court in advance that the respondent had a family member with power of attorney. Despite the attendance of the proxy at the hearing, the court upheld the appointment of the guardian ad litem in order to protect the respondent's legitimate interests, given that the proxy had no legal expertise and no legal representation. According to the record, the guardian ad litem informed the proxy of the proceedings. According to the expert opinion of the forensic psychiatric expert on the spot, "the admission of the patient to the psychiatric ward was medically justified due to his imminent dangerous behaviour. From a medical point of view, there is still a need for institutionalisation due to the unchanged mental state of the respondent, in view of the unchanged form of his psychological symptoms. The immediate dangerous behaviour was manifested by confusion, disorientation, lack of critical faculties, impaired impulse control, emotional and mood instability, tension, restlessness, incoherent speech and thinking."

[4] According to the record, the respondent's proxy stated that the respondent was in a much worse condition than two days earlier and "if I were examined in this condition, I would probably be told that I should be here", while the guardian ad litem stated that "in the light of the proceedings, I myself consider that institutional treatment is necessary to protect the health of the respondent and I join the hospital in its application". In the light of all these considerations, the Central District Court of Pest, by its ruling No. 2.Pk.193341/2020/2, recorded in the minutes, found that the admission of the respondent to the institution was justified and ordered the compulsory psychiatric treatment of the respondent. According to the reasoning of the ruling, the direct endangering behaviour pursuant to section 199 (1) of the AHC existed in the present case, as stated in the expert's opinion.

[5] 1.2 The respondent lodged an appeal against the ruling of the Central District Court of Pest through his proxy, in which he objected that the direct endangering behaviour required by section 199 of the AHC did not exist in the case of the respondent.

According to the appeal, this was subsequently acknowledged by the applicant institution, because a few days later, on 7 September 2020, the respondent was dismissed from the health care institution. The appeal also claimed that the respondent was treated with a high dose of sedatives in the hospital and was therefore not in a state to provide valuable answers for the preparation of the expert opinion and during the court hearing. Later, when the respondent was no longer receiving further medication, his condition improved. The fact that the expert did not take into account in any way what medication the respondent had received rendered his opinion completely unsubstantiated. The respondent also complained that the respondent's family had not been informed by the medical institutions of the respondent's transfer to the applicant and that the respondent's proxy had only been informed of the hearing one hour before it took place.

[6] By the ruling No. 54.Pkf.635.607/2020/2, the Budapest-Capital Regional Court acting on second instance upheld the ruling of the court of first instance. According to the court of second instance, the court of first instance acted correctly in appointing a guardian ad litem to defend the respondent's interests, who was not dismissed from the proceedings precisely because the relative with the power of attorney lacked legal expertise and the guardian ad litem provided the proxy with information about the proceedings. The Budapest-Capital Regional Court pointed out that, since the court of first instance only became aware of the right of representation of the proxy at the beginning of the hearing, the court was not guilty of negligence for not having given him prior notice. On the merits of the case, the Budapest-Capital Regional Court concluded that the court of first instance had reached the factually well-founded conclusion that the behaviour which gave rise to the admission of the respondent and the order for his further treatment constituted behaviour constituting an imminent danger to his safety, which was also supported by a duly reasoned expert opinion, and the court of second instance saw no reason to question it.

[7] 1.3 The respondent filed an application for review against the ruling of the Budapest-Capital Regional Court, arguing that the respondent's behaviour posed no imminent danger either at the time of his admission to the health care institution or at the time of the order for treatment. In his application for review, the respondent also claimed that the fact that he was taking medication did not allow for a meaningful expert opinion, however, that the fact that he was taking medication was not taken into account by the expert. In addition, the respondent complained that the adequate representation of the respondent had not been granted during the procedure as a rule of guarantee. By the ruling No. Pfv.II.20.234/2021/3, the Curia upheld the final ruling. According to the Curia, the medically established factual situation complied with the conceptual elements of behaviour posing imminent danger as required in the provisions of section 199 of the AHC (ruling of the Curia, Reasoning [33]), and there

was no causal connection between the failure to notify the family members and the court's proceedings, as the failure to notify was not due to the court's default, and the court had taken the necessary measures to protect the respondent's rights, also taking into account the rapid procedural deadlines, such as not dismissing the guardian ad litem (ruling of the Curia, Reasoning [35] and [39]). According to the opinion of the Curia, the assessment of the respondent's current condition and, as a consequence, the extent and method of treatment is a medical matter, and it can be concluded from the report and the expert opinion that the current condition posed a significant threat to the life, physical integrity and health of the respondent and that the lack of treatment would have further worsened his condition (ruling of the Curia, Reasoning [38]).

[8] 2 The petitioner then filed a constitutional complaint based on section 27 of the ACC, in which he requested a declaration that the ruling No. Pfv.II.20.234/2021/3 of the Curia was contrary to the Fundamental Law and the annulment of the ruling No. 54.Pkf.635.607/2020/2 of the Budapest-Capital Regional Court and the ruling No. 2.Pk.193341/2020/2 of the Central District Court of Pest. The petitioner submits that the contested judicial decisions violate Article IV of the Fundamental Law, in light of Article 5 of the European Convention on Human Rights (ECHR) and Article 14 of the UN Convention on the Rights of Persons with Disabilities.

[9] According to the petitioner, the European Court of Human Rights (ECtHR) has previously condemned Hungary on several occasions [Gajcsi v Hungary (34503/03), 3 October 2006 ("Gajcsi case"); Plesó v Hungary (41242/08), 2 October 2012 ("Plesó case")] for an overly broad interpretation of the concept of behaviour constituting an imminent danger. In the light of the ECtHR's jurisprudence, the constitutional complaint alleges both an unjustified imposition of medical treatment [which essentially amounts to a violation of Article 5(1) ECHR] and a violation of the procedural guarantees for the review of medical treatment [which are based on Article 5(4) ECHR].

[10] According to the constitutional complaint, the petitioner obviously did not engage in any behaviour posing imminent danger as required by section 199 of the AHC, not only because he was obviously incapable of doing so due to his health condition. According to the petition, both the "suicidal attempt" and the "hetero-aggressive behaviour" relied on by the Curia were unfounded: in the case of the petitioner, drug overdose was not even established, the medical records of the petitioner did not show that he had suicidal thoughts, and the "hetero-aggressive behaviour" was so insignificant that it was not even relied on by the health care institution. According to the petition, the expert opinion of the appointed forensic psychiatric expert essentially listed the symptoms of dementia (the petitioner's illness), which is a long-lasting condition of gradual decline, rather than an acute form of behaviour posing imminent danger.

[11] The petitioner raised two arguments concerning the violation of the procedural guarantees for the review of medical treatment. First, he complained that, due to the failure of the medical institution, the petitioner's proxy had only learned of the hearing one hour before the date of the hearing, and that in that short period of time the proxy had been unable to prepare for the hearing, to seek legal advice or to contact the respondent. However, this procedural violation was considered irrelevant by the courts because the court was not aware of the fact of the power of attorney. At the same time, in the petitioner's view, what is relevant to the compliance of the proceedings is not whose omission prevented the respondent from being adequately represented, but the fact that the omission prevented the representation from being adequate. In that regard, the petitioner considers that the appointment of the guardian ad litem was a mere formality, as is evidenced by the fact that the guardian ad litem neither spoke to the applicant before the hearing nor made any meaningful statement.

[12] On the other hand, as regards the infringement of procedural guarantees, the petitioner complains that, when the respondent was admitted, "it was necessary to administer sedative injections", but that the court did not examine, despite the proxy's request, which and how many sedative injections had been administered, in the absence of which it was not possible to make a proper assessment of the respondent's condition.

II

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

"Article IV (1) Everyone has the right to liberty and security of the person.

(2) No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences."

III

[14] As provided for in section 56 (1) of the ACC, the Constitutional Court first examined the existence of the statutory conditions for the admissibility of the constitutional complaint.

[15] 1 In accordance with section 30 (1) of the ACC, the constitutional complaint under section 27 of the ACC may be submitted within sixty days from the date of delivery of the challenged decision. The Constitutional Court has found that the legal representative of the petitioner received the ruling of the Curia on 07 May 2021 and that the constitutional complaint was lodged on 24 June 2021, within the time limit.

The petitioner has exhausted his legal remedies, the petition therefore also meets the statutory requirements in this respect. The applicant's legal representative has attached his power of attorney.

[16] In his constitutional complaint, the petitioner alleges a violation of Article IV of the Fundamental Law. Article IV (1) of the Fundamental Law declares as a general principle the right to liberty, which – according to paragraph (2) – may be deprived only for a reason defined by an Act of Parliament and according to a procedure defined by an Act of Parliament {Decision 3025/2014. (II. 17.) AB, Reasoning [49] and [51]; recently: Decision 3017/2016. (II. 2.) AB, Reasoning [30]}. In his constitutional complaint, the petitioner contested both the existence of a "statutory ground" (the justification of the medical treatment in view of the petitioner's actual condition) and the violation of the requirement of "statutory procedure" (with regard to the procedural deficiencies identified in the petition). The Constitutional Court examined the constitutional complaint according to its content, in the context of Article IV (2) of the Fundamental Law, which is a provision that contains a right guaranteed by the Fundamental Law for the purposes of the examination of constitutional complaints.

[17] 2 The petition complies with the criteria for an explicit request laid down in section 52 (1b) of the ACC.

[18] 3 According to section 29 of the ACC, the constitutional complaint may be admitted if a concern of conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. These admissibility conditions are of an alternative nature, therefore the Constitutional Court examines their existence separately {Decision 3/2013. (II. 14.) AB, Reasoning [30]}

[19] After the entry into force of the Fundamental Law, the Constitutional Court has not yet examined, in connection with the justification for admission to emergency treatment or the ordering of further compulsory psychiatric treatment in an institute, what guarantee requirements arise from Article IV (2) of the Fundamental Law, in light of the requirement of a behaviour posing imminent danger under section 199 (1) of the AHC, which the Constitutional Court considered to be a question of fundamental constitutional significance. The question of whether or not the petitioner there was an infringement of the Fundamental Law which materially affected the court's decision can only be judged upon following the examination of this question of fundamental constitutional importance. The Constitutional Court therefore reviewed the merits of the constitutional complaint with the application of section 31 (6) of the Rules of Procedure, without a specific procedure of admitting the complaint.

[20] The constitutional complaint is unfounded.

[21] 1 The criteria for the restriction of the right to liberty and security of person under Article IV of the Fundamental Law are determined, on the one hand, by the provisions on the restriction of fundamental rights in general as contained in Article I (3) of the Fundamental Law and, on the other hand, by the specific rules on the conditions for the deprivation of liberty laid down in Article IV (2) of the Fundamental Law. Article IV of the Fundamental Law focuses on legality in relation to restrictions on or deprivation of personal liberty, requiring that deprivation may only be carried out for a reason and in accordance with a procedure laid down by an Act of Parliament {Decision 3142/2013. (VII.16.) AB, Reasoning [18]}. The detailed rules of these statutory requirements may necessarily differ depending on the grounds on which the restriction of the right to liberty is imposed, but the legality of any restriction for any reason under Article IV of the Fundamental Law is subject to the condition that, on the one hand, the substantive and procedural requirements laid down in the individual Acts are fully met and, on the other hand, that the rules of these Acts and the procedure for their application fully comply with the requirements stemming from the Fundamental Law. The general requirement relating to this restriction, which derives directly from the Fundamental Law, is that it may not violate the requirements of necessity and proportionality [Article I (3) of the Fundamental Law], the right to human dignity (Article II of the Fundamental Law), the prohibition of torture, inhuman or degrading treatment [Article III (1) of the Fundamental Law], and in its application as well as in the review of the legality of the restriction, the requirements of the right to a fair trial under Article XXVIII (1) of the Fundamental Law must also be fulfilled. {in this sense: Decision 23/2014 (VII.15.) AB, Reasoning [56]}. In essence, these constitutional requirements are also laid down in section 10 (4) of the AHC, according to which a patient's personal freedom may be restricted in the course of his or her treatment only in urgent need or in order to protect the life, physical integrity or health of the patient or others; restrictive measures of a torturous, cruel, inhuman, degrading or punitive nature may not be used; and finally, the restrictive measure may only last as long as the reason for the imposition persists.

[22] 2 In its Decision 36/2000 (X.27.) AB, the Constitutional Court recognised on the one hand that compulsory psychiatric treatment under the AHC falls within the scope of the right to liberty and security, and on the other hand, with reference to the ECHR, it stated in principle that "danger to oneself and to the public may be a ground for restricting personal liberty, the ordering of compulsory psychiatric treatment", with the proviso that procedural guarantees must be provided to a greater extent in order to ensure that "restrictions on liberty shall not be arbitrary, imposed only to the extent and for the duration necessary" (ABH 2000, 241, 269). The constitutionality of the regulation or practice of compulsory psychiatric treatment "can be judged by jointly taking into account the reasons for the restriction, the manner of the restriction (its

proportionality) and the introduced procedural guarantees" (ABH 2000, 241, 270). The Constitutional Court still considers the cited findings of the Decision 36/2000 (X.27.) AB to be guiding after the entry into force of the Fundamental Law, and in the light of the fourth amendment to the Fundamental Law (25 March 2013), the aspects set out in the Decision 22/2012 (V.11.) AB (Reasoning [40]) and the Decision 13/2013 (VI.7.) AB (Reasoning [27] to [34]), it also reinforces them.

[23] In that decision, the Constitutional Court (along with rejecting other elements of the petition) did not find unconstitutional the previously applicable provisions of the AHC which – although they were partially different in content from the current provision – also concerned emergency and compulsory medical treatment.

[24] 3 The Gajcsi case, decided by the ECtHR and also referred to in the petition, was not based on the imposition of compulsory psychiatric treatment, but on its prolongation. The ECtHR found a violation of Article 5 (1) ECHR in this case because the courts failed to take into consideration the alleged or potentially dangerous behaviour of the applicant, which (also) would have been a legal condition for the extension of compulsory psychiatric treatment under the provisions of the AHC in force at the time.

[25] In the Plesó case, the ECtHR also set out the general conditions under which deprivation of liberty in cases of "mental illness" could be considered lawful. Accordingly, a person's mental illness must be established by convincing evidence, i.e. a genuine mental disorder must be established before a competent body on the basis of independent medical expertise; the mental disorder must be of a type or degree which justifies compulsory institutionalisation; and continued institutionalisation must be conditional on the continued existence of the disorder (see paragraph 60 of the judgement).

[26] It was precisely in the wake of the Plesó judgement that the law-maker clarified, with effect from 1 July 2015, the concepts of dangerous behaviour and conduct constituting a direct threat to health under section 188 (b) and (c) of the AHC, which is a prerequisite for the imposition of emergency treatment or compulsory treatment.

[27] 4 According to section 196 of the AHC, psychiatric patients may be admitted to institutional treatment by voluntary treatment, emergency treatment (in the case of imminent dangerous behaviour requiring immediate institutional treatment, on the basis of the action of the doctor who detected it, which is subsequently examined and evaluated by the court), or compulsory treatment ordered by the court. The common feature of emergency and compulsory treatment is that they are not based on the psychiatric patient's consent, and therefore require increased scrutiny of whether the justification for the treatment order exists and whether the procedural rules for the treatment order are fully respected.

[28] A characteristic feature of emergency treatment under section 199 of the AHC is that the patient is first placed in a psychiatric institution without consent and only then are the judicial proceedings initiated. Pursuant to section 199 (1) of the AHC, the ordering of emergency treatment is subject to the substantive legal condition that the psychiatric patient must have engaged in behaviour which is posing imminent danger and that such conduct can be prevented only by immediate admission to a psychiatric institution. According to section 188 (c) of the AHC, "behaviour constituting an imminent danger" means that the patient, as a result of an acute mental disorder, poses an imminent and serious threat to his or her own life, physical integrity or health or that of others, and that the absence of immediate treatment would result in a further deterioration of his or her condition which can be averted only by emergency treatment. The fulfilment of these conditions (the existence of imminent dangerous behaviour and the need for immediate psychiatric hospitalisation) can only be established by a doctor and only on the basis of direct observation: the reason is that the assessment of these conditions is explicitly a matter of medical expertise. Emergency treatment is an extremely serious restriction of the right to liberty, independent of the patient's will. Consequently, the existence of an imminent and serious danger must always be recorded in the documentation on which the restriction of the right to liberty is based, grounded on the doctor's direct observation, in such a way and in such detail that the professional justification for the order can be established beyond doubt and subject to subsequent judicial review. While the patient's state of health is inherently a medical issue, the proper documentation of this state of health in accordance with the provisions of the Fundamental Law and the AHC may in any case be subject to subsequent judicial review. If these conditions are not fulfilled, or if they cannot be verified beyond reasonable doubt due to deficiencies in the documentation, emergency medical treatment in any event constitutes an restriction contrary to the Fundamental Law of personal freedom enshrined in Article IV (2) of the Fundamental Law for lack of the statutory grounds.

[29] In the context of emergency medical treatment, the court shall decide on two questions. On the one hand, it shall decide whether the emergency admission was justified, i.e. whether there was imminent danger at the time of admission and whether this could indeed only be avoided by immediate psychiatric treatment. In this matter, the court may necessarily base its assessment on the medical documentation, but, where the patient's condition so permits, the personal hearing of the patient by the court is indispensable for reasons of guarantee. The examination of the medical file, that is to say, ultimately, the assessment of the justification for the emergency admission, in view of the seriousness of the restriction on the right to liberty, is not a purely formal question, but a substantive question which requires in any event an examination of substance. Only in this way can it be ensured that the court is able to

exercise real and effective control in assessing the lawfulness of the restriction of liberty.

[30] On the other hand, in the case of emergency treatment, the court shall also decide whether further compulsory institutional treatment of the patient is justified. This necessarily implies that, by the time the court reaches its decision, the patient will not normally have engaged in imminently dangerous behaviour, precisely because emergency treatment has already begun, the primary purpose of which is specifically to eliminate the imminently dangerous behaviour. In order to make a prudent decision, it is therefore essential (because of the patient's ongoing treatment) that the court always makes its decision on the basis of the opinion of an independent forensic expert and, if possible (if the patient's condition allows) after hearing the patient. The forensic expert's examination must take into account, in addition to the patient's current condition, the fact of the patient's previous medical treatment and its impact on the patient's current condition, and the expert's opinion must state in sufficient detail, in a manner specific and concrete to the patient's condition, and in a manner that is beyond doubt and capable of being subsequently reviewed, the reasons for and the extent to which further compulsory institutional treatment is justified.

[31] The content of the court's decision on these two questions may differ: there is no substantive or procedural obstacle to the court concluding that the commencement of emergency treatment of the patient was necessary in a particular case, but that further institutional treatment is no longer justified in view of the effectiveness of the treatment.

[32] To sum up, when the court decides on the question of emergency treatment (whether emergency admission was justified or whether further compulsory institutional treatment was justified), it shall apply Article IV (2) of the Fundamental Law requiring that the restriction of personal liberty be imposed only exceptionally, for medical reasons justified beyond reasonable doubt and open to subsequent review, in the case of the existence of the imminent danger as required by the AHC and, if possible, after the patient has been heard. If these requirements are met, then (and only then) the restriction of the right to liberty with respect to emergency medical treatment can be considered constitutionally justified as being ordered "for a statutorily specified reason".

[33] 5 The Constitutional Court had to assess, by applying the above principles in relation to the present case, whether these substantive legal requirements had been met in the case of the petitioner, in the light of the arguments set out in the petition.

[34] According to the minutes No. 2.Pk.193341/2020/2 of the Central District Court of Pest, the respondent's emergency treatment was carried out on the basis of a referral from the toxicology department of a medical institution in Budapest (i.e. on the basis

of a doctor's direct observation). This also means that, although the petitioner argues that the "hetero-aggressive behaviour" which occurred during the transfer to the hospital was not mentioned as a reason for the transfer to the institution, it cannot be considered in the present case as a violation of Article IV (2) of the Fundamental Law. On the contrary, the health care institution would have infringed the requirements arising from section 199 (1) of the AHC and, as stated above, ultimately also the requirements of Article IV (2) of the Fundamental Law, if it had indicated circumstances not based on the doctor's direct observation as grounds for the emergency treatment.

[35] It can also be established beyond doubt from the minutes of the Central District Court of Pest that the physician appointed by the director of the applicant institution provided information on the reasons for the admission of the respondent, the circumstances of his admission, his current condition and the treatment administered, and that the forensic psychiatrist expert present at the hearing was accordingly in possession of information on the treatment of the petitioner when giving the expert opinion. It can also be stated that according to the forensic psychiatrist's expert opinion, the petitioner had symptoms (impulse control disorder) that fulfilled the requirements of imminent endangering behaviour under section 188 (c) of the AHC as required by section 199 (1) of the AHC. The assessment of the petitioner's current condition is a medical matter. According to the consistent case-law of the Constitutional Court, the establishment of the facts of the case, the assessment and the weighing of the evidence is a task reserved by the procedural rules to the judiciary (and not to the Constitutional Court) {see for example the Decision 3045/2022. (I.31.) AB, Reasoning [25]}. Pursuant to Article 28 of the Fundamental Law, courts are required to interpret the text of laws primarily in accordance with their purpose and the Fundamental Law. The mere fact that the court interprets a provision of the law or evaluates evidence differently from the petitioner does not in itself give grounds for the Constitutional Court to act, as long as the interpretation of the law chosen by the court is within the range of interpretation prescribed by the Fundamental Law. {for example, most recently: Decision 3022/2022. (I.13.) AB, Reasoning [28]}. In the present case, such a circumstance could not be established, taking into account the information available to the forensic psychiatric expert (including the data concerning the treatment of the petitioner, to which the minutes of the Central District Court of Pest expressly refer) and the content of the expert opinion, since the expert opinion had elements that could be linked to the content of imminent endangering behaviour under the AHC.

[36] 6 The Constitutional Court then had to assess whether the procedural requirements also laid down in the AHC, and which can be traced back to Article IV (2) of the Fundamental Law, were fully complied with. Article IV (2) of the Fundamental Law requires, in the context of deprivation of liberty, that it may only take place on the basis of a "procedure laid down in an Act". In this context, the petitioner complained in

part of inadequate representation of the petitioner (failure to notify the proxy and the consequences thereof) and in part the disregard of the petitioner's medication by the forensic expert and ultimately by the court.

[37] 6.1 As the Constitutional Court has already stated in point IV/5 of its present decision (Reasoning [33] et seq.), according to the minutes of the Central District Court of Pest, the forensic psychiatrist was in possession of information concerning the petitioner's treatment during the preparation of his expert opinion, and he prepared his opinion in light of this information, and accordingly, the violation of the requirement of "procedure laid down in an Act" cannot be established in this context on the basis of the arguments set out in the petition. The mere fact that the expert draws conclusions different from those of the petitioner on the basis of this information on the medical treatment is considered a medical question, the disputing of which, according to the consistent case-law of the Constitutional Court, cannot in itself give rise to a constitutional complaint.

[38] 6.2 Section 199 of the AHC lays down strict guarantee rules both with respect to the duration of the procedure and the formal and substantive requirements of the individual procedural acts, the violation of which, depending on the specific circumstances of the case, may even constitute a violation of Article IV (2) of the Fundamental Law. According to section 199 (2) of the AHC, the head of the psychiatric institution shall initiate court proceedings within 24 hours and according to paragraph (3) the court shall issue a decision within 72 hours of receipt of the notification. Pursuant to section 199 (6) of the AHC, the court shall hear the patient, the director of the institution or the doctor appointed by him before taking a decision, and pursuant to paragraph (6a), the court may also appoint an independent forensic psychiatrist as an expert in the proceedings. Under section 199 (8) and (9) of the AHC, the treatment may last only as long as medically justified and the necessity of the treatment shall be reviewed by the court every thirty days.

[39] Section 201 (4) of the AHC lays down a guarantee that the patient shall be adequately represented in court proceedings, where appropriate, by a legal representative. If the patient has no legal or authorised representative in the procedure, the court shall appoint a guardian ad litem whose obligations are also specifically mentioned in section 201 (5) of the AHC (obligation to visit the patient, to inform him/her about the circumstances of the institutionalisation and to inform him/her of his/her rights in relation to the procedure). The appointment of a guardian ad litem is only possible (and mandatory) if the patient has no legal or authorised representative. Accordingly, the exclusion of the patient's known legal or authorised representative from the procedure can only be justified in very exceptional circumstances and can never be justified by the short time limit of the procedure under the AHC. Both the

proper representation of the patient and respect for procedural time limits are essential elements of the guarantee for the decision on emergency treatment.

[40] In this context, the Constitutional Court also points out that the role of the guardian ad litem is not a formal one, but an explicit guarantee: the task of the guardian ad litem is not simply to certify the formal legality of the proceedings of the forensic expert, the health institution and the court (acting in a kind of "official witness" role), but also to represent the interests of the patient in substantive terms and to make all the statements, motions for taking evidence and other submissions necessary to reach an informed decision on the question of the emergency treatment of the patient and which are in the best interests of the patient. For this reason, section 201 (5) of the AHC also specifically states that the patient's advocate or guardian ad litem representing the patient shall visit the patient before the court hearing, inform him or her of the circumstances of the admission and inform him or her of his or her rights in relation to the procedure. The assessment of whether these statutory requirements are complied with (similarly to other guarantee provisions in the AHC) may also become subject to judicial review.

[41] Sections 199 and 201 of the AHC do not explicitly state who is obliged to notify the patient's proxy. In view of the exceptional nature of deprivation of liberty and the paramount importance of certain elements of the guarantee in the procedure relating thereto, where the health care institution is aware of the identity of the patient's legal representative, it is not only able, but ultimately also obliged, by virtue of the Fundamental Law, to make the contact details of the legal representative available to the court. If, as a result of that failure on the part of the healthcare institution, the patient is not adequately represented in the proceedings, the statutory requirements of the procedure relating to deprivation of personal liberty, which are protected by the Fundamental Law, are infringed, which the court must remedy in the course of its proceedings (within the short procedural time-limits provided for by the AHC), even if the court itself is not otherwise at fault in that regard. The court's failure to notify the patient's proxy leads to an infringement of fundamental rights if the court leaves without remedy the failure to notify the patient's proxy, in which case the appointment of a guardian ad litem cannot in itself be regarded as a sufficient measure to remedy the breach of rights arising from the failure to notify the proxy.

[42] In the present case, the Constitutional Court came to the conclusion that, in view of the combination of three circumstances, the petitioner was adequately represented despite the fact that the applicant did not inform the court of the identity of the patient's legal representative (which, as stated above, could have resulted in rendering the procedure being contrary to the Fundamental Law in a particular case, in specific circumstances other than the case underlying the present constitutional complaint). On the one hand, as is apparent from the minutes No. 2.Pk.193341/2020/2 of the Central

District Court of Pest, the petitioner's proxy was indeed present throughout the proceedings, despite the fact that he was not informed of the proceedings. On the other hand, the court decided to uphold the appointment of the guardian ad litem precisely in order to protect the petitioner's legitimate interests, given that the proxy lacked legal expertise. Thirdly, the minutes also record that the guardian ad litem informed the proxy about the proceedings. In the light of these considerations, the Constitutional Court concluded that the alleged deficiencies in the representation of the petitioner did not constitute a violation of Article IV (2) of the Fundamental Law with due account to the specific circumstances of the present case.

[43] 7 The Constitutional Court, therefore, rejected the constitutional complaint as set forth in the holdings of the decision.

Budapest, 03 May 2022.

Dr. Egon Dienes-Oehm head of the panel,
Justice of the Constitutional Court

Dr. Ildikó Hörcherné dr. Marosi, Justice of the Constitutional Court

Dr. Marcel Szabó rapporteur, Justice of the Constitutional Court

Dr. László Salamon, Justice of the Constitutional Court

Dr. Péter Szalay, Justice of the Constitutional Court