

Decision 3238/2015 (XII. 8.) AB

On the dismissal of a constitutional complaint

In the matter of a constitutional complaint, the Panel of the Constitutional Court has rendered the following

decision:

1. The Constitutional Court hereby dismisses the constitutional complaint seeking a finding of unconstitutionality by non-conformity with the fundamental Law and disapplication of Section 130 (1) (g) and Section 397/D (2) of Act III of 1952 on the Code of Civil Procedure, in force from 1 June 2013 to 14 March 2014, and the wording "of Section 130 (1) (g).
2. The Constitutional Court furthermore rejects the constitutional complaint seeking a finding of unconstitutionality by conflict with the Fundamental Law and annulment of order Budapest-Capital Regional Court of Appeal No 2.Pf.20.903/2013/6 of Budapest-Capital Regional Court of Appeal and order No Pkf.IV.24.622/2014/2 of the Curia.

Reasoning

I

[1] 1. The petitioner, through his legal representative, filed a constitutional complaint pursuant to Section 26 (1) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act") in connection with order No Pkf.IV.24.622/2014/2 of the Curia. In his complaint, the petitioner sought a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 130 (1) (g) of Act III of 1952 on the Code of Civil Procedure, Section 2 of Act LXIX of 2013 on the Amendment to Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as the "Amendment Act") and Section 9 (2) of the Amendment Act in the wording "of Section 130 (1) (g)". Pursuant to Section 130 (1) (g) of the Code of Civil Procedure, inserted by the contested provision of the Amendment Act, the court shall dismiss the application initiating court proceedings without issuing a summons if, *inter alia*, it is established that the action has been brought against the employee for acts infringing a right of the person and other damage falling within the scope of the employer's obligation to assume liability. Section 9(2) (correctly Section 9) of the Amendment Act introduced a new Section 397/D into the Code of Civil Procedure. Subsection (2) thereof provided that the new Section 130 (1) (g) of the Code of Civil Procedure also applies to proceedings pending at the time of the entry into force of the Amendment Act (1 June 2013).

[2] According to the facts of the case, the petitioner brought an action against Budapest-Capital Regional Court and its judge in the criminal case for infringement of personal rights (good standing of reputation) because the judge had made a statement about the petitioner's health during a hearing. By judgement of 21 February 2013, the Regional Court of Balassagyarmat proceeding at first instance dismissed the claimant's action. Budapest-Capital Regional Court of Appeal, acting on the petitioner's appeal, terminated the case against the judge in the light of the new rules introduced by the Amendment Act by order of 4 February 2014 (2.Pf.20.903/2013/6.). The petitioner appealed against the order of discontinuance of proceedings, but the Curia affirmed the order of the Regional Court of Appeal by order Pkf.IV.24.622/2014/2 of 28 May 2014.

[3] In his constitutional complaint, the petitioner alleged a violation of his fundamental rights under Article VI (1) and (2), Article II, Article XXVIII (1) and Article B (1) of the Fundamental Law. According to the petitioner, the fact that the provisions of the new point (g) in Section 130 (1) of the Code of Civil Procedure was also applicable to his case (that is, a pending case) violated the prohibition of retroactive legislation. the petitioner explained that his fundamental rights had been infringed because the right to take action against the infringer himself had been denied by Section 130 (1) (g) of the Code of Civil Procedure: The petitioner could not bring proceedings against the infringer for breach of the petitioner's personality rights (good standing of reputation and protection of personal data), but only against the infringer's employer. The contested provision of the Code of Civil Procedure prevented the petitioner from bringing legal proceedings.

[4] Following the Secretary General's request, the petitioner provided an addendum to his constitutional complaint. In the course of doing so, the petitioner also submitted a constitutional complaint pursuant to Section 27 of the Constitutional Court Act, in which he requested the annulment of the orders of the Curia and the Regional Court of Appeal. He maintained his arguments based on the prohibition of retroactive legislation and extended the grounds of his complaint in the part relating to fundamental rights by alleging a violation of the fundamental rights under Article XV and Article XXVIII (7). With regard to the fundamental rights set out in Articles VI and II, he reiterated his earlier submission that it was in conflict with the Fundamental Law that he could not take action against the person infringing his rights by means of the protection of personality, since the challenged provision of the Code of Civil Procedure precluded such action. In his view, that provision does not serve to protect any other fundamental right or constitutional value [Article I (3) of the Fundamental Law]. He considered that the person who has suffered an infringement of his rights can obtain moral satisfaction by taking action against the person who caused the infringement and not against the infringer's employer. In this way, the employee is not obliged to respect the good standing of reputation and health-related personal data of the claimant (the petitioner), since no legal action can be taken against the employee. Equality of rights was infringed because the contested legislation and orders made a distinction between the infringer and the person who suffered the infringement and between the persons who suffered the infringement on the basis of who was committing the infringement against the latter. The petitioner's right of access to the courts and his right to a remedy were infringed because the courts were not allowed to rule on his case and his appeal was dismissed.

[5] 2. The Constitutional Court assessed the constitutional complaint on the basis of its content. The provisions of the Amendment Act challenged and sought to be annulled were repealed on 2 July 2013 and were not applied in the challenged court orders. Instead, the courts have in fact applied the provisions of Section 130 (1) (g) and Section 397/D (2) of the Code of Civil Procedure [now, following a renumbering, Section 397/C (2)], which were established by the contested provisions of the Amendment Act. In accordance with the consistent practice of the Constitutional Court, the subject matter of the Constitutional Court's review is always the amended (incorporating), and not the amending, legal provision {Decision 3143/2015 (VII. 24.) AB, Reasoning [37]}; therefore, the Constitutional Court conducted its review in relation to the relevant provisions of the Code of Civil Procedure.

[6] The Constitutional Court noted that the Budapest-Capital Regional Court of Appeal issued its order of discontinuance on 4 February 2014, at which time the provisions of the Code of Civil Procedure as introduced by the Amendment Act were still in force. As of 15 March 2014, Section 85 (37) (14) of Act CCLII of 2013 on the Amendment of Certain Acts in Connection with the Entry into Force of the New Code of Civil Procedure amended Section 130 (1) (g) of the Code of Civil Procedure and Section 85 (35) (b) renumbered Section 397/D, so that the provision contained therein was transferred to Section 397/C (2). These rules, which were introduced by the entry into force of the new Code of Civil Procedure, but which have the same content as the previous ones, were already in force at the time the Curia order was issued. In the grounds of its order, the Curia quoted the wording of the provision in force from 15 March 2014, but referred to 1 May 2013 (correctly: June) as the date of entry into force of the provision, and referred to it as the date of entry into force of the rule introduced into the Code of Civil Procedure by the Amendment Act. In the light of this, the Constitutional Court reviewed the provisions in force from 1 June 2013 to 14 March 2014. The repeal of those rules did not prevent the Constitutional Court from proceeding with the case, since, in the light of Section 41 (3) of the Constitutional Court Act, they were still applicable in the specific case.

II

[7] 1. The provisions of the Fundamental Law referred to in the petition read as follows:

"Article B (1) Hungary shall be an independent democratic State governed by the rule of law."

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

[...]

(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, proportionate to the objective pursued and with full respect for the essential content of that fundamental right."

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

"Article VI (1) Everyone shall have the right to have his or her private and family life, home, communications and good standing of reputation respected.

(2) Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest."

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

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

[...]

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

[8] 2. The challenged provisions of the Code of Civil Procedure read as follows:

"Section 130 (1) The court shall dismiss the application without issuing a summons [Section 125 (1)] if it can be established that

[...]

(g) the action was brought by a person other than the one so authorised by the relevant legislation, or the action may only be brought against a person specified by the relevant legislation, or specific persons must be joined in the case, and the claimant failed to join this person (persons) to the action, in spite of being so ordered and, unless otherwise provided for by law, the action was brought against the employer for any breach of individual rights covered by the employer's obligation to assume liability, or for any other damage."

"Section 397/D (2) The provisions of Section 130 (1) (g), Section 167 (7), Section 168 (1b), Section 173 (1a), Section 185 (1b), Section 257 (2) and Section 271 (2) of this Act, as established by Act LXIX of 2013 on the Amendment of Act III of 1952 on the Code of Civil Procedure, shall also apply to cases in progress at time of the entry into force of Act LXIX of 2013 on the Amendment of Act III of 1952 on the Code of Civil Procedure."

III

[9] By a separate decision, the Constitutional Court admitted the constitutional complaint, having found that it satisfied the formal and substantive requirements of the Constitutional Court Act. The Constitutional Court held that it raises a constitutional law issue of fundamental importance whether it is contrary to the right to apply to the courts if, instead of ruling on the

merits, the court dismisses the application without issuing a summons if, in an action for the protection of personality, the claimant sues the employee who has actually caused the damage in a case falling within the scope of the employer's obligation to assume liability. It also requires a decision on the merits of the case by the court on the question whether Section 397/D (2) of the Code of Civil Procedure does not conflict with the prohibition of retroactive legislation.

IV

[10] The constitutional complaint is unfounded.

[11] 1. In order to rule on the merits of the petition relating to Section 130 (1) (g) of the Code of Civil Procedure, the Constitutional Court has reviewed the grounds for the introduction of this rule. According to the explanatory memorandum to the draft Act on the Amendment Act: "The Act, in order to ensure uniform judicial practice and clear regulation, supplements Section 130 (1) (g) of the Code of Civil Procedure and clarifies that, in actions for infringement of an individual right and other damage covered by the employer's obligation to assume liability, only the employer may be sued for the objective and subjective legal consequences of the infringement of an individual right, and that, in the event of a claim to the contrary, the application must be dismissed without issuing a summons." The rule of the Code of Civil Procedure is therefore based on reasons of substantive law. Act IV of 1959 on the Civil Code (hereinafter referred to as the "old Civil Code") did not contain an express provision as to against whom the legal consequences of an infringement of the rights of another person may be enforced if an employee, acting in the course of his employer's scope of activities, infringes the rights of another person. According to previous court practice, what are known as objective sanctions provided for in Section 84 (1) (a) to (d) of the old Civil Code could be applied to the infringing employee (also), while the subjective sanction, compensation, could be claimed against the employer (*see* BH 1997. 579).

[12] Later, judicial practice was further refined, also as a result of lawsuits brought against judges for misconduct, which sought to justify the disqualification of a particular judge from a particular proceeding. The essence of this was summarised in a case decision published as No BDT2015.3338 as follows: '[t]he exercise of the rights and the performance of the obligations of a legal person require the participation of natural persons, since a legal person, as an abstraction without physical existence, can only manifest itself through the conduct of its members, employees, officers or representatives as natural persons. This also implies that the conduct of a natural person (member, employee, officer) acting within the scope of the functions and powers of a legal person constitutes the conduct of the legal person, and the legal person is liable to third parties for any damage or violation of personality caused in the course of such conduct (BDT2012.2697). Accordingly, in the event of a violation of individual rights committed by a judge in the course of his or her judicial activity in the context of his or her due process, an action for the enforcement of objective and subjective sanctions must also be brought against the court having legal personality. Only for infringing conduct which goes beyond the scope of reasonable procedure and therefore cannot be sanctioned by the court

may the judge be sued directly (BDT2008. 1861)." The above legal position also appears in several published case decisions, namely in Case Decisions No BDT2010.2192, No BDT2010.2288 and No BDT2014.3228.

[13] Case Decision No BDT2012.2697, referring to the case decision published under number BH2001.388, emphasised that according to the applicable judicial practice, the assessment of whether the claimant has a right of action (standing) against the defendant named by him is a question of substantive law on the merits of the case, on which the court must decide by judgement. According to this judicial practice, therefore, if the claimant brought an action against an employee who had infringed a personal right in the course of the employer's activities, the court dismissed the action on the merits by judgement for lack of standing.

[14] The Code of Civil Procedure has included this issue of the merits belonging to substantive law in the scope of procedural impediments and has transformed it into a cause of action for dismissal. As a consequence, if the claimant brings an action against the employee for the enforcement of a claim arising out of a breach of an individual right falling within the scope of the employer's obligation to assume liability, the court dismisses the action without issuing a summons.

[15] Act V of 2013 on the Civil Code (hereinafter referred to as the "Civil Code") reflects the development of the law. Pursuant to Section 2:51 (3), if a person acting in a judicial capacity violates a right of personality, these sanctions shall be enforced against the court. If the court before which the action is brought is not a legal person, the claim must be brought against the court whose president exercises general employer's rights in respect of the judges of the court having no legal personality. The Civil Code lays down a similar rule in the event of a breach of personality rights by a person acting in an administrative capacity or a public prosecutor. In order to bring it in line with the Civil Code, the legislator amended Section 130 (1) (g) of the Code of Civil Procedure with the new terminology introduced by the Civil Code (in particular, personality right instead of individual right) with effect as of 15 March 2014.. Accordingly, the court shall dismiss the action without issuing a summons if the action is brought against the employee for an act or damage which infringes an individual right within the scope of the employer's obligation to assume liability, unless otherwise provided by law.

[16] Procedural laws regulate the way in which substantive laws are enforced. They do not confer more rights or deprive of rights than those conferred by substantive law, but merely set limits and restrictions on their enforceability. This is correspondingly true of the contested provision of the Code of Civil Procedure. It is not Section 130 (1) (g) of the Code of Civil Procedure itself, which constitutes an obstacle to the establishment of the personal liability of the employee (judge), but the substantive law itself, as interpreted in the judicial practice of the courts. It follows from this that the aggrieved party does not have a substantive right or a claim against the employee before a court if the employee, acting within the scope of his employer's obligation to assume liability (carrying out activities), infringes the individual (or, pursuant to the Code of Civil Procedure, the personality) rights of another. In this sense, the claimant does not have any rights that can be asserted before a court, in connection with which he needs protection against the defendant employee. Under the previous legal regime, the claimant's action had to be dismissed by judgement in this case, whereas under the

Amendment Act, the court dismisses the action by order. Section 130 (1) (g) of the Code of Civil Procedure provides for the dismissal of an action against an employee only in the case (subject to the condition) that the action concerns an act infringing an individual right within the scope of the employer's obligation to assume liability. The rule of procedural law is therefore not intended to shape substantive entitlements, but merely to draw the consequences of the absence of substantive entitlement by a decision not on the merits.

[17] 2. After this, the Constitutional Court reviewed the conformity of Section 130 (1) (g) of the Code of Civil Procedure with the Fundamental Law in relation to the fundamental rights invoked by the petitioner.

[18] 2.1 In relation to Article II, the petitioner submitted that the contested provision may also violate human dignity, since the statement of the judge in criminal proceedings that violates his good standing of reputation and personal data is also contrary to human dignity. The right to human dignity is infringed by the fact that action against the judge is precluded, that no redress can be sought from him and that legal protection is limited to the employer. In support of his complaint, the petitioner relies on essentially identical arguments in relation to Article VI (1) and (2), including the right to respect for private life, the good standing of reputation and the right to the protection of personal data.

[19] First of all, the Constitutional Court notes that the petitioner's right to respect for his human dignity, privacy and good standing of reputation, as well as his right to the protection of his personal data, may be the subject of legal proceedings and thus of legal protection against the employer. He is therefore not deprived of the means to pursue his civil claims arising from his breach of rights before the courts. Moreover, it is clear from the preceding paragraph of the grounds that the fundamental right alleged by the petitioner is not affected by the provisions of the Code of Civil Procedure, but by the substantive provisions and their content as developed by the courts. The contested provision of the Code of Civil Procedure (dismissal of the application) applies where the employee infringes an individual right in the context of the employer's obligation to assume responsibility. This condition, namely what falls within the scope of the employer's liability, must be assessed according to the rules of substantive law. In the light of the arguments put forward in the complaint, the rules of civil law and their interpretation by the courts could give rise to constitutional concerns, since they do not confer substantive rights directly against the employee in the same cases as those of the petitioner. It is the substantive law, not the procedural rule, that prevents the aggrieved party from claiming satisfaction from the employee. For this reason, it cannot be established that Section 130 (1) (g) of the Code of Civil Procedure is contrary to Article II and Article VI (1) and (2).

[20] 2.2 The petitioner also saw a violation of the equality of rights enshrined in Article XV (1). In the first place, the petitioner found that Section 130 (1) (g) of the Code of Civil Procedure distinguishes between the infringer and the person who suffers the infringement "by excluding the action for the protection of personality against the specific infringer, the civil liability". The Constitutional Court found that the distinction between the infringer and the person suffering the infringement could not be interpreted on the basis of the grounds put forward by the

petitioner, and that in the circumstances indicated the infringer and the person suffering the infringement were not in a comparable situation.

[21] According to the petitioner, equality of rights was also violated between the persons who suffer a violation of rights depending on who commits the violation of rights against them. The legislation makes an unjustified distinction between those whose rights are infringed by a judge acting in his case and those whose rights are infringed by another individual: In the former case it does not allow action to be taken against the infringer, but in the latter it does. The Constitutional Court found that, on the basis of the reasoning put forward, it was again the substantive rules that would be subject to genuine review of constitutionality, and not the challenged provision of the Code of Civil Procedure. Moreover, the distinction according to the infringing "judge or other private individual" as claimed by the petitioner does not follow from the Code of Civil Procedure rule either. The legal distinction is based on the question whether an employee (who is not necessarily a judge, but may also be another private individual) infringes someone's individual rights by acting within the scope of the employer's obligation to assume liability. In addition, a judge may also be sued in his or her individual capacity if, while acting in his or her case, he or she has committed an infringement that goes beyond the bounds of reasonable procedure (*see above* BDT2015.3338).

[22] Therefore, on the basis of the arguments put forward, it could not be established that Section 130 (1) (g) of the Code of Civil Procedure infringed Article XV (1) of the Fundamental Law.

[23] 2.3 The petitioner also invoked a violation of his fundamental right under Article XXVIII (1). In support of this claim, he submitted that the contested provision of the Code of Civil Procedure deprived him of the possibility to enforce his rights in court.

[24] Under Article XXVIII (1) of the Fundamental Law, everyone has the right to have his rights and obligations in any charge against him or in any proceedings adjudicated upon by an independent and impartial tribunal established by law, in a fair and public hearing within a reasonable time.

[25] In line with the practice of the Constitutional Court, Article XXVIII (1) "implies, on the one hand, the right of access to the courts in general, and on the other hand, it requires procedural guarantees. The right of access to the courts imposes on the State the obligation to provide a judicial channel for the adjudication of civil and labour rights and obligations (disputes). The right of access to the courts does not constitute an unlimited subjective right to bring proceedings, subject to Article I (3) of the Fundamental Law. However, again on the basis of Article I (3) of the Fundamental Law, the restriction may not affect the essential content of the fundamental right, and may only be imposed to the extent strictly necessary for the protection of another fundamental right or constitutional value and in proportion to the objective pursued." {Decision 36/2014 (XII. 18.) AB, Reasoning [66]}

[26] In several previous decisions, the Constitutional Court has also come to the conclusion, after considering the aspects described in Decision 13/2013 (VI. 17.) AB {Reasoning [32] to [34]}, that in expanding the content of the right to a fair trial under Article XXVIII (1) of the Fundamental Law, the Constitutional Court may use the principles, arguments and

constitutional context developed in its previous decisions based on Article 57 (1) of the Constitution {see Decision 26/2015 (VII. 21.) AB, Reasoning [45] to [51]}. The Constitutional Court has therefore also taken into account its previous decisions in the present case.

[27] In its Decision 2218/B/1991 AB, the Constitutional Court, in accordance with Section 130 (1) (b) and (h) of the Code of Civil Procedure , stated that "the Constitution does not preclude statutory provisions limiting the right of action, but their constitutionality requires that the limitation is unavoidably necessary and proportionate to the objective pursued. The right to bring an action is the right of a person to apply to the courts for redress for the violation of his or her substantive right. The right of action guaranteed by the Constitution is limited by Section 130 (1) (a) to (j) of the Code of Civil Procedure (what are known as action prerequisites'). If the right of action is lacking, the court shall dismiss the application without issuing a summons." (ABH 1993, 580, 582-583.)

[28] Decision 59/1993 (XI. 29.) AB, which found that the former point (i) of Section 130 (1) (according to which the court dismissed the statement of claim even if it could be established that the claim of the claimant was manifestly unfounded or aimed at impossible service) was unconstitutional and annulled, also dealt with the constitutional aspects of the preconditions of the lawsuit. The Constitutional Court explained that "[t]he fundamental right of access to the courts is not limited to the right to make submissions, but confers on persons the position of a party to judicial proceedings. Persons are the subjects, the formers and not the objects, the sufferers of judicial proceedings. They have a constitutionally guaranteed right to have their rights and obligations brought into the proceedings considered by the court (and not only to have an opinion given on the pleadings containing them), and also to have the opportunity to make statements on the facts and legal issues on which the court decision is based.

In the cases provided for in Section 130 (1) of the Code of Civil Procedure, with the exception of point (i), it is a question of the absence of the right to bring an action before a specific court in a specific case, either because there was no such right, or because it does not exist or has already been lost, or the absence of some other necessary and specifically defined precondition. The application of point (i), on the other hand, presupposes that the party has a right of action and that the other preconditions necessary for the possibility of being heard under the general rules are not lacking, but the application is dismissed.

Thus, while in the other cases the court decides on the specific procedural and substantive prerequisites for the enforcement of the action, on the theoretical possibility of its enforceability, in the case of point (i) it takes a position on the merits of the action itself and refuses to enforce it." (ABH 1993, 353, 355-356).

[29] It follows from the above that the right of access to the courts is not violated by the formulation of an impediment to litigation on the basis of which the court decides on the specific procedural and substantive prerequisites for the performance of the action, and on the theoretical possibility of enforceability. The contested provision falls within that category. As the Constitutional Court has already explained in its summary above, the question of the substantive law of the infringement of individual rights committed by the employee is covered by the employer's obligation to assume liability. And if a claim falls within this scope, the

claimant has no standing against the employee, which would (or would previously) lead to the dismissal of the action in the absence of the impediment to litigation. Since, according to the substantive provisions and the interpretation of the judicial practice on which they are based, an action brought against an employee in this context cannot be well founded in principle, the legislature, by formulating this ground as a bar to proceedings, merely prevents the litigation from proceeding in a manner which would certainly result in the dismissal of the action. If the framework of the employer's obligation to assume liability, which is a condition for dismissal of the action, is altered or even abolished, the scope of the contested provision is also altered and, in certain circumstances, may even be rendered nugatory or inapplicable.

[30] The Constitutional Court has observed that the assessment of whether an infringement of individual rights committed by an employee falls within the scope of the employer's obligation to assume liability may, as a question of substantive law, also require the clarification of the facts and the taking of evidence. For that reason, the existence or otherwise of that condition cannot be established immediately after the action has been brought and the application cannot be dismissed without issuing a summons. Instead, the action must be dismissed if the court concludes in the course of the proceedings that the employer should be held liable for the infringement committed by the employee. The Constitutional Court therefore emphasises that, in applying the contested version of Section 130 (1) (g) of the Code of Civil Procedure, the application of the writ of summons may be dismissed or the proceedings terminated only if the judge comes to the well-founded conclusion, and explains the reasons for that conclusion in the grounds of the decision, that the infringement of an individual right by the employee falls within the employer's obligation to assume liability. Otherwise, the prejudiced parties would be deprived of an effective means of pursuing their claims before the courts on the basis of their actual prejudice. However, the dismissal of the application initiating court proceedings does not result in a matter judged, the claimant can bring a new action.

[31] In the light of the above, the Constitutional Court did not find a violation of the Fundamental Law in the context of the right to a fair trial.

[32] 2.4 The petitioner also considered the contested provision to be contrary to the right to legal remedy, because as a result of the contested provision his appeal against the judgement remained unadjudicated on the merits. "The right to legal remedy guaranteed by Article XXVIII (7) of the Fundamental Law gives everyone the right to appeal against any judicial, administrative or other administrative decision which adversely affects his rights or legitimate interests.

In line with the established case law of the Constitutional Court, the right to legal remedy generally requires that all decisions which substantially affect the right or legitimate interest (situation) of the person concerned may be reviewed by another body or by a higher forum of the same body. The effectiveness of the legal protection afforded by the right of appeal requires that it be effective and capable of remedying the harm caused by the decision. The effectiveness of the right of appeal may be influenced by a number of factors, including the extent of the possibility of review, the time-limit for the exercise of the right of appeal, or the rules governing the service of the decision complained of and the effective possibility of its being made known {Decision 22/2013 (VII. 19.) AB, Reasoning [26]}. In its Decision 2/2013 (I.

23.) AB, the Constitutional Court also pointed out that the exercise of the right to legal remedy has two elements: on the one hand, whether the use of the system of legal remedies is not hindered by legal provisions, and on the other hand, the scope of the legal remedy, that is, its full scope or its limited scope (Reasoning [35] and [37])." {Decision 22/2014 (VII. 15.) AB, Reasoning [81]}

[33] In the present case, the Constitutional Court concluded that the petitioner's appeal against the judgement was undoubtedly not reviewed on the merits, and instead the court dismissed the case. However, in so dismissing the action, the Regional Court of Appeal, and subsequently the Curia, acting on the petitioner's appeal, also ruled on the question whether the action brought by the petitioner against the judge was unfounded because of the employer's obligation to assume responsibility.

[34] In all cases where the court of appeal, acting on an appeal against a judgement of the first instance, terminates the proceedings because of an impediment to litigation, it decides that the action should not have been heard on the merits for some reason. It follows logically that the appeal on the merits against the judgement must also be dismissed, since the court of first instance, by dismissing the action, also sets aside the judgement of the court of first instance. The appeal on the merits is therefore not heard in the event of termination of the proceedings for whatever reason.

[35] The trial court could not have applied the rule at first instance because the rule did not exist at the time of the first instance judgement. The court of second instance was also obliged to terminate the pending proceedings on the basis of the new provision, because of its immediate effect. The petitioner had the possibility to appeal against this termination, and he exercised his right of appeal, and the order of the Curia was made on that basis.

[36] On the basis of the above, the petitioner's right to appeal was not infringed. The violation complained of by the petitioner relates to the right of access to the courts, in relation to which, however, the Constitutional Court also found no violation of the Fundamental Law.

[37] 2.5 The petitioner also challenged the previously in force Section 397/D (2) of the Code of Civil Procedure, because it ordered the application of Section 130 (1) (g) of the Code of Civil Procedure in the pending cases as well. It found that the legislator had thereby infringed the prohibition of retroactive legislation.

"According to the settled case law of the Constitutional Court, one of the most important elements of the rule of law is legal certainty, which requires, *inter alia*, that legal persons have the effective possibility to adapt their conduct to the requirements of the law, and that, to this end, legislation does not impose obligations for the period prior to its promulgation, nor does it declare conduct unlawful with retroactive effect. [First in Decision 34/1991 (VI. 15.) AB, ABH 1991, 170, 172]" {Decision 34/2014 (XI/14) AB, Reasoning [71]}

[38] As a rule, the prohibition of retroactive legislation in procedural rules is not violated if the new rule is to be applied in proceedings already pending. The decisive factor for the prohibition of retroactivity is the date of the procedural act performed. This is also expressed in Act CXXX of 2010 on Legislation (hereinafter referred to as the "Act on Legislation"), to which the

Constitutional Court also referred in its Decision 3151/2013 (VII. 24.) AB. Accordingly, "[the] Act on Legislation states in this regard that a statute may not impose an obligation, make an obligation more onerous, withdraw or restrict a right or declare conduct unlawful for a period prior to its entry into force. [...] Section 15 (1) (b) of the Act on Legislation provides that, unless otherwise provided by law, a statutory provision shall apply to procedural acts commenced after its entry into force. Consequently, the Act on Legislation allows for the application of the provisions of the amendment to pending cases in the case of procedural acts, unless otherwise provided by law." {Reasoning [17]}

[39] The petitioner alleged a violation of the prohibition of retroactive legislation because the challenged provision deprived him of the right to bring an action against the infringer in order to protect his personality rights in a case arising from an infringement prior to the adoption of the legislation and already pending at the time of its adoption.

[40] In the Constitutional Court's view, the rules of the Code of Civil Procedure have not changed the substantive legal question of what falls within the scope of the employer's obligation to assume liability. In the application of the challenged rule of the Code of Civil Procedure, a decision to dismiss the application without issuing a summons can be taken by applying substantive law in the same manner as a decision to dismiss an action was previously taken. The legislature did not therefore interfere in the substantive legal relationship that had previously arisen by amending the Code of Civil Procedure, and the prohibition on retroactive legislation cannot be reviewed in the context of the challenged rule of the Code of Civil Procedure in relation to the time of the infringement. That date could only be relevant in relation to the substantive provision.

[41] Taking into account the above-mentioned aspects, from the point of view of the retroactive effect of a procedural rule, it is not the whole procedure, but the beginning of the given procedural act that is decisive, that is, the prohibition of retroactivity must be reviewed in relation to this. As regards the termination of proceedings as a procedural act, no retroactive legislation can be established.

[42] 3. The Constitutional Court found that the constitutional complaint seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of the judicial orders did not meet the requirements of the Constitutional Court Act relating to petitions. Pursuant to Section 52 (1b) (e) of the Constitutional Court Act, a request is explicit if it clearly states the reasons why the challenged judicial decision is contrary to the indicated provision of the Fundamental Law. The petitioner complained that the courts should have assessed whether the legislation applied infringed the Fundamental Law or not. The petitioner thus essentially challenged the court orders on the basis that the legal provisions applied were contrary to the Fundamental Law, but did not provide any reasoning beyond the contrary nature of the provisions of the Code of Civil Procedure. In the light of this, the Constitutional Court rejected the constitutional complaint against the orders on the basis of Section 64 (d) of the Constitutional Court Act.

Budapest, 1 December 2015

Dr. Péter Szalay, sgd., Presiding Justice of the Panel, Justice of the Constitutional Court

Dr. Egon Dienes-Oehm, sgd., Justice-Rapporteur, Justice of the Constitutional Court

Dr. Barnabás Lenkovics, sgd., Justice of the Constitutional Court

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Dr. László László Salamon, sgd., Justice of the Constitutional Court