Decision 28/2022 (XI. 8.) AB

The plenary session of the Constitutional Court, in its preliminary examination of the compatibility with the Fundamental Law of an Act adopted but not yet promulgated – with the concurring reasonings by Justices *Dr. Ágnes Czine, Dr. Egon Dienes-Oehm* and *Dr. Zoltán Márki* – has adopted the following

d e c i s i o n:

The Constitutional Court establishes that section 1 of the Act adopted but not yet promulgated, amending the Act XC of 2017 on Criminal Procedure in connection with the conditionality procedure, submitted as Bill T/706 on the Parliament session of 3rd October 2022, does not violate the principle of the prosecution monopoly of the prosecution service, as laid down in Article 29 (1) of the Fundamental Law.

The Constitutional Court orders the publication of its decision in the Hungarian Official Gazette.

R e a s o n i n g

I

[1] The Parliament – exercising its powers under Article 6 (2) and Article 24 (2) (a) of the Fundamental Law, on the motion of the Government made before the final vote – has initiated a preliminary examination of the conformity with the Fundamental Law of section 1 of the Act on "amending the Act XC of 2017 on Criminal Procedure in connection with the conditionality procedure" (Bill No. T/706, hereinafter referred to as the "Act") adopted by the Parliament on the sitting day of 3 October 2022.

[2] The Parliament requested the Constitutional Court to examine the conformity of section 1 of the Act with the Fundamental Law with regard to whether a person other than the prosecution service may have the right to bring charges against a person before the court, i.e. whether prosecution correction as a new legal instrument to be introduced by the Act is in line with the principle of prosecution monopoly of the prosecution service as laid down in Article 29 (1) of the Fundamental Law.

[3] According to the reasoning attached to the Act, the aim of the Act is to introduce a completely new procedural correction instrument, hitherto unknown in criminal procedure, called "Procedure in the case of a major criminal offence related to the exercise of public authority or the management of public property".

[4] According to the petition, the new legal instrument of criminal procedure created by the Act sets out in a separate chapter, in a clear and transparent manner, the different rules that are to be applied in proceedings carried out for the major criminal offences covered by the special procedure, in derogation from the general rules on investigation, judicial remedies and bringing charges. The key actor in the proceedings

is the person who, being completely outside the proceedings but having no direct private interest with regard to the criminal offence concerned, intends to act in the public interest and who is given the right to intervene in proceedings for criminal offences which would otherwise be offences to be prosecuted under public prosecution – i.e. conducted by the investigating authority or the public prosecutor's office – by judicial means in order to obtain a successful investigation and, where appropriate, a judicial decision on the question of guilt.

[5] According to the motion, the first part of the new procedural order covers a kind of procedure for pressing charges, the aim of which in the first instance is to ensure by procedural means the judicial correction of the decision of the investigative authority or prosecution service refusing to carry out the criminal procedure, as a result of which the investigation can continue in the right direction. The other part of the regulation also ensures, within an appropriate guarantee framework, that ultimately, if the law enforcement authorities of the State are not willing to act or do not consider this to be justified, the person taking action this way is given the opportunity to bring a charge before a court in respect of a major criminal offence affecting the community, and thus to make the court take a lawful stand on the issue of criminal liability regarding a criminal offence alleged by the relevant person to have been committed.

[6] Article 29 (1) of the Fundamental Law enshrines the principle of the prosecution monopoly of the independent prosecution service. Here, the petition refers to the case-law of the Constitutional Court, according to which, on the one hand, the prosecution service is the exclusive enforcer of the State's criminal authority and, on the other hand, the independence of the prosecution service in personal and organisational terms follows from the principle of the separation of powers arising from the rule of law. According to the petition, the provisions of the Act relating to the corrective legal instrument, which allow judicial review of the decision of the public prosecutor in criminal proceedings falling within the material scope of the Act, are not contrary to the principle of the monopoly of prosecution.

[7] The petition raises the constitutional possibility of introducing prosecution correction and its relation to the monopoly of prosecution as two separate issues. According to the petition, the new regulation is closest to the procedure with substitute private prosecution from a doctrinal and procedural point of view, thus the law-maker paid special attention to the constitutionality aspects previously elaborated by the Constitutional Court in connection with the substitute private prosecution procedure. The petition recalled the relevant case-law of the Constitutional Court, according to which the legal institution of the substitute private prosecution is a form of correcting the public prosecutor's monopoly of prosecution, a means of enforcing criminal authority which, may serve to eliminate certain consequences which adversely affect the victims as a result of the exercise of the prosecutor's monopoly on public

prosecution. In the preparatory concept of the new Act on Criminal Procedure, the idea of the reintroduction of supplementary private prosecution was raised not in relation to eliminating the dangers resulting from the monopoly of prosecution, but in relation to widening the injured party's possibilities of enforcing claims and his procedural rights. In addition to these findings, the Constitutional Court has previously ruled that the law-maker was under no constitutional obligation to introduce the institution of substitute private prosecution, therefore it is within the relatively wide scope of discretion of the law-maker to decide on the cases of allowing and excluding substitute private prosecution. In the context of the above consistent case-law, the Parliament considers that there is a constitutional possibility to introduce prosecution corrections, subject to the law-maker's wide discretion as to the cases in which it provides such a procedural option.

[8] The second issue raised by the motion is the assessment of the relationship of prosecution correction to prosecution monopoly. Also according to the previous Constitutional Court case-law on substitute private prosecution, the institution of substitute private prosecution – as a procedural correction instrument – does not affect the public law validity of the public prosecutor's monopoly of prosecution, since it only allows to initiate criminal court proceedings by a person other than the prosecution service and to present the charges, if there is no criminal claim pressed by the State. In line with this, the Act only allows a person who intends to act and who does not exercise public authority to bring an indictment if the prosecution service has issued a decision to terminate the proceedings – waiving the State's claim to prosecution – which has already been declared by an investigating judge to be unfounded.

[9] Finally, the motion states that, taking into account the requirement of the rule of law, only a legal remedy mechanism against the decisions of the prosecution service, which also performs the function of an investigative authority, can be allowed that maintains and further guarantees the broad organisational independence of the prosecution system. Furthermore, the independence of the judicial organisation and its function of control over the State organisation justify the allocation of the judicial review forum within the judicial organisation.

II

[10] 1 The provisions of the Fundamental Law referred to in the petition:

"Article 29 (1) The Prosecutor General and the prosecution service shall be independent and shall contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public accuser. The prosecution service shall prosecute

criminal offences and take action against other unlawful acts and omissions, as well as contribute to the prevention of unlawful acts."

[11] 2 According to the Act:

"The following Chapter CV/A is added to the Act XC of 2017 on Criminal Procedure:

»Chapter CV/A

Procedure in the case of a major criminal offence related to the exercise of public authority or the management of public property

Section 817/A

(1) For the purposes of this Act, a major criminal offence related to the exercise of public authority or the management of public property:

(a) corruption offences (Chapter XXVII of the Criminal Code), except

(aa) certain cases of bribery classified less seriously [section 290 (1) and (6) of the Criminal Code],

(ab) the less seriously classified case of accepting a bribe [section 291 (1) of the Criminal Code];

(b) misuse of office (section 305 of the Criminal Code), unless committed by an official who is not a senior official of a law enforcement agency, the Military National Security Service, the Parliamentary Guard, a Budapest-Capital or county government office, a local government administrative body or a public body;

(c) the following offences against property committed against or causing damage to national property or property administered by public trust foundations with a public-service mission

(ca) more seriously classified cases of embezzlement [section 372 (4) to (6) of the Criminal Code],

(cb) more seriously classified cases of fraud [section 373 (4) to (6) of the Criminal Code],

(cc) more seriously classified cases of economic fraud [section 374 (4) to (6) of the Criminal Code],

(cd) more seriously classified cases of fraud committed by using an information system [section 375 (2) to (4) of the Criminal Code],

(ce) misappropriation (section 376 of the Criminal Code);

(d) from among the offences damaging the budget (Chapter XXXIX of the Criminal Code)

(da) more seriously classified cases of budget fraud [section 396 (3) to (6) of the Criminal Code],

(db) failure to comply with the supervision or control obligation related to budget fraud (section 397 of the Criminal Code);

(e) restrictive agreements in public procurement and concession procedures [section 420 of the Criminal Code];

(f) in connection with the offences set out in points (a) to (e)

(fa) participation in a criminal organisation (section 321 of the Criminal Code) and

(fb) money laundering (sections 399 and 400 of the Criminal Code).

(2) The provisions of this Act shall apply, with the exceptions provided for in this Chapter, in criminal proceedings for a major criminal offence relating to the exercise of public authority or the management of public property.

(3) In proceedings under this Chapter, the legal representation of the person who has filed the motion for revision or is entitled to represent the indictment shall be mandatory. The person who has filed the motion for revision or is entitled to represent the indictment may submit their written statement, observations and motion through their legal representative.

(4) In proceedings under this Chapter, the person filing the motion for revision may not submit a request for partial legal aid.

(5) In proceedings under this Chapter, no excuse may be filed for failure to comply with the time limit for the procedural act of the person who has filed the motion for revision or is entitled to represent the indictment.

(6) No conditional suspension may be applied by the public prosecutor

(a) in proceedings for a criminal offence as defined in paragraph (1) (a), where the offence is committed in connection with a public procurement procedure or in connection with the budget or funds managed by or on behalf of the European Union, or

(b) in proceedings for the criminal offence of restrictive agreement in public procurement and concession procedures [section 420 of the Criminal Code].

Rejection of the complaint and termination of the proceedings

Section 817/B

(1) If the prosecution service or the investigating authority rejects a report of a major criminal offence related to the exercise of public authority or the management of public property pursuant to section 381 (1) (a) to (c) or (g) or terminates the proceedings for such an offence pursuant to section 398 (1) (a) to (d) or (i) or (2) (a), a motion for revision may be filed.

(2) No motion for revision may be filed if

(a) the reported or accused person is a minor,

(b) the offender is not criminally liable or the act is not punishable because of childhood or a pathological state of mind,

(c) a covert detective, a member of a body authorised to use covert means or person secretly cooperating is suspected with due ground of having committed the criminal offence and the prosecution service has dismissed the reporting of the offence or terminated the proceedings pursuant to section 224 (1), or

(d) the prosecution service has dismissed the reporting of the offence pursuant to section 382 (1), or terminated the proceedings pursuant to section 399 (1).

Revision

Section 817/C

(1) If in the case specified in section 817/B (1) and (2) a motion for revision may be filed, the victim or the person who reported the offence may, notwithstanding section 369 (1) and (2), instead of filing a complaint, file a motion for revision within one month of the service of the decision dismissing the reporting of the offence or terminating the proceedings.

(2) The prosecution service or the investigating authority shall, within five working days from

(a) the expiry of the period specified in paragraph (1) if the victim or the person who reported the offence fails to file a motion for revision; or

(b) the date of the decision pursuant to paragraph (1) if the victim or the person who reported the offence does not take part in the proceedings or cannot file a motion for revision pursuant to paragraph (7)

shall publish its decision under section 817/B (1) or the case-file list for one month, using the pseudonymisation specified in section 3 (29) of the Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information (hereinafter referred to as "anonymised decision or anonymised case-file list").

(3) The anonymised decision or the anonymised case-file list shall be published

(a) on the central electronic information website of the prosecuting service or the investigating authority, and

(b) on the publication platform specified in a Government decree.

(4) The anonymised decision or the anonymised case-file list shall be published in a manner to make it

(a) accessible and viewable at all times via the Internet using widely available browser software; and

(b) searchable within the website at least on the basis of

(ba) the name of the issuing prosecution service or the investigating authority,

(bb) the number of the case on which the notice is based,

(bc) the date of publication of the notice, and

(bd) the name of the criminal offence which is the subject of the proceedings, or, in the case of more than one offence, all offences.

(5) During the publication, information shall be provided on the conditions for submitting a motion for revision of the decision, the rights and obligations of the person filing the motion, the time limit for filing the motion for revision and the body to which the motion for revision may be submitted.

(6) Within one month after the publication of the anonymised decision on the central electronic information website of the prosecution service or the investigating authority, any natural or non-natural person, with the exception of the suspect, the defence counsel, the victim and the person who reported the offence, may submit a motion for revision.

(7) The State and the body exercising public authority shall not be entitled to submit a motion for revision, even if it is a party to the proceedings as the person who reported the offence or a victim.

(8) With the exception of the victim and the person who reported the offence, the person submitting a motion for revision may only have access to the anonymised decision and the anonymised case-file list before submitting the motion for revision.

(9) A complaint lodged by the suspect, the defence counsel, a party interested in property or another interested party, or by the State or a body exercising public authority as the victim or the person who reported the offence shall, after the court has considered the motion for revision, be dealt with in accordance with the general rules, having regard to the outcome of the consideration of the motion for revision. In such

a case, the period from the termination of the proceedings until *ex officio* annulment of the decision to terminate the proceedings or until the court's decision is notified to the prosecution service shall not be counted in the time limit for the examination of the complaint.

(10) The filing of a motion for revision shall have suspensory effect on the provisions of the decision pursuant to section 817/B (1), with the exception of the provisions on coercive measures affecting personal liberty.

Section 817/D

(1) The motion for a revision shall be submitted to the prosecution service or the investigating authority that issued the decision. The motion for revision shall be reasoned and may be accompanied by any information, documents or statements available to the person making the motion for revision which, in the opinion of the person making the motion, may be used to prove any fact to be proved in the case.

(2) The prosecution service or the investigating authority that issued the decision shall examine the motion for revision after the expiry of the time limit for its submission and, if it considers it well-founded, shall repeal the decision and order the investigation or the continuation of the proceedings. Otherwise, within three days of the expiry of the time limit for filing a motion for revision, the motion, the documents annexed thereto and the case-file shall be submitted to the prosecution service in the case of a decision taken by the investigating authority or to the higher prosecution service in the case of a decision taken by the prosecution service.

(3) If the motion submitted pursuant to paragraph (2) is well-founded, the prosecution service, in the case of a decision taken by the investigating authority, or the higher prosecution service, in the case of a decision taken by the prosecution service, shall repeal the decision and order the investigation or the continuation of the proceedings. Otherwise, it shall send the motion, the documents and the case-file attached to it, together with any observations it may have on the motion, to the court within eight days of the date on which it was received.

Section 817/E

(1) For the consideration of the motion for revision, the investigating judge of the Investigating Judges' Group of the Central District Court of Buda shall have jurisdiction over the territory of the country.

(2) The court shall decide on the motion for revision within one month from the date of its receipt by the court.

(3) If the motion for revision has been lodged against the decision to terminate the proceedings and

(a) the volume of the case-file or of the annexed documents is significant; or

(b) a significant number of motions for revision have been filed,

the court may extend the time limit by up to two months. The court shall serve its decision to this effect on the person who made the motion for revision.

(4) Section 476 (2) shall not apply.

(5) The court shall consider all the motions for revision together.

(6) The court shall decide on the motion for revision on the basis of the case-file, except that it may not hold a session pursuant to section 467.

Section 817/F

(1) The court shall review the contested decision irrespective of the grounds of the motion for revision, for this purpose it shall fully examine the case-file and the information, documents and statements attached by the petitioner, which in the petitioner's opinion are capable of proving the facts to be proven in the case.

(2) If there is no obstacle to the considering the motion, the court shall decide by a ruling not adjudicating on the merits of the case in which it

(a) rejects the motion; or

(b) repeals the contested decision.

(3) The decision of the court repealing the decision shall not affect the provision of the decision being reviewed on the coercive measure affecting personal liberty.

(4) The court shall repeal the contested decision if

(a) the contested decision is unfounded,

(b) the prosecution service or the investigating authority applied a law incorrectly in the contested decision; or

(c) the contested decision's reasoning is contrary to the holdings of the decision,

and this had a material impact on rejecting the reporting of the offence or the termination of the proceedings.

(5) The contested decision is unfounded if

(a) the prosecution service or the investigating authority has not established the facts of the case or has established them incompletely in the decision,

(b) the facts of the case in the decision are fully or partly unexplored,

(c) the facts of the case established are contrary to the content of the case-file specified in paragraph (1), or

(d) the prosecution service or the investigating authority has wrongly inferred an additional fact from the facts of the case established in the decision.

(6) The reasoning of the court's decision shall include

(a) a brief description of the essential elements of the contested decision,

(b) a brief summary of the objections raised in the motion for revision,

(c) the existence or a reference to the absence of the statutory conditions for the motion for revision; and

(d) in the event of repealing, the presentation of the circumstances in the light of which the contested decision should be repealed and, in the event of unfoundedness, the presentation of the circumstances in the light of which the opening or continuation of the proceedings is likely to produce results; and, in the event of the rejection of the motion for revision, the presentation of the circumstances in the light of which the motion for revision should be rejected.

(7) The court shall serve

(a) the decision

(aa) to the prosecution service that issued the contested decision,

(ab) if the contested decision was taken by the investigating authority, to the prosecution service that sent the motion for revision, or

(ac) to the person regarding to whom the decision contains a provision,

(b) with the exception specified in item (c), the anonymised decision as specified in section 817/C (2) to the person who filed the motion for revision; or

(c) if the motion for revision has been filed by the victim or the person who reported the offence, the decision.

Procedure following annulment of the contested decision

Section 817/G

(1) If the court repealed

(a) the decision rejecting the reporting of the offence, the investigation shall be opened by virtue of adopting the decision, without a separate decision being taken,

(b) the decision to terminate the proceedings has been annulled, the proceedings shall continue by virtue of adopting the decision, without a separate decision being taken.

(2) The provisions of section 400 shall not apply to the continuation of the proceedings. If in the case suspecting has previously been taken place, and the statutory conditions for suspecting are fulfilled, the previous suspect shall be informed of the suspicion again. In such a case, the period of time between the termination of the proceedings and the repeated communication of the suspicion shall not be included in the time limit for the investigation under section 351.

(3) In the event of starting an investigation or the continuation of the proceedings, the prosecution service or the investigating authority shall continue the proceedings on the basis of the grounds set out in the reasoning of the court decision, and in the case of the absence of findings, with a view to eliminating the deficiencies set out therein.

(4) Where an investigation is started or proceedings are continued

(a) the prosecution service shall exercise the control powers specified in paragraph section 26 (3) also in the course of exploring the facts of the case,

(b) the decision to terminate the procedure may be taken with the prior approval of the person exercising the control powers,

(c) notwithstanding paragraph section 369 (1), the victim may not lodge a complaint against the decision terminating the proceedings, the victim who has previously lodged a motion for revision may lodge an indictment in accordance with the provisions of this Chapter,

(d) the decision to terminate the proceedings may be repealed *ex officio* or in the course of the examination of a complaint lodged by the suspect, the defence counsel, the person having an interest in the property or any other interested party against the decision to terminate the proceedings, if no indictment has been lodged.

(5) In the event of starting an investigation or the continuation of the proceedings, the person who has submitted the motion for revision shall have the right to present evidence or to make observations.

Lodging the indictment

Section 817/H

(1) If in the proceedings carried out pursuant to section 817/G, the prosecution service or the investigating authority terminates the proceedings pursuant to section 398 (1) (a) to (d) or (i) or (2) (a), an indictment may be lodged. No indictment may be lodged in the cases provided for in section 817/B (2).

(2) Where an indictment may be lodged pursuant to paragraph (1), the prosecution service or the investigating authority shall serve, together with the anonymised case-file list

(a) its decision to the victim and the person who reported the offence, who lodged a motion for revision,

(b) its anonymised decision to the person under section 817/C (6) who lodged a motion for revision.

(3) If more than one person has filed a motion for revision in the proceedings, the prosecution service or the investigative authority shall, when serving its decision terminating the proceedings, provide information on the name and the contact details available of the legal representative of the other persons filing the motion for revision.

(4) If a victim has also participated in the proceedings, the provisions on substitute private prosecution shall not apply and the victim may intervene in the proceedings under this Chapter.

(5) Where this Act refers to charges, it shall be construed to include the indictment received by the court.

Section 817/I

(1) An indictment may be filed only by the person who has previously filed a motion for revision.

(2) If the motion for revision have been submitted by more than one person, one of them shall be entitled to act as the person authorised to represent the indictment in the proceedings. In this case, the agreement of the persons who previously lodged the motion for revision shall determine which of them shall continue to act as the person authorised to represent the indictment in the proceedings. The time allowed for reaching agreement shall be fifteen days from the service of the decision pursuant to section 817/H (1). If no agreement is reached, the person authorised to represent the indictment shall be appointed by the court competent to consider the motion for revision. The motion for appointment of the person authorised to represent the indictment shall be filed with the authority issuing the decision terminating the proceedings within twenty days of service of the decision pursuant to section 817/H (1).

(3) The prosecution service or the investigating authority through the public prosecution service shall send the motions together with the case-file to the court competent to consider the motion for revision without delay after the time limit pursuant to paragraph (2). The court shall decide within eight days on the appointment of the person authorised to represent the indictment.

(4) If the person who reported the offence has filed a motion for their appointment as a person to represent the indictment, the court shall appoint the person who reported the offence.

(5) If the person who reported the offence has not filed a motion for their appointment as a person to represent the indictment, but the victim has filed a motion for their appointment as a person to represent the indictment, the court shall appoint the victim.

(6) If more than one person has filed a motion for revision pursuant to section 817/C (6), the court shall decide on the appointment of the person entitled to represent the indictment by considering the appointment of which petitioner is supported by the majority of the persons filing the motion for revision.

(7) There shall be no legal remedy against the decision of the court.

Section 817/J

(1) If the person entitled to represent the indictment is appointed by the court, the time limit for lodging the indictment shall be counted from the date of service of the court's decision.

(2) If the person entitled to represent the indictment dies during the proceedings or is unable to participate in the proceedings due to a serious and permanent illness, the other persons who have previously submitted a motion for revision shall be entitled to agree on a new person to act as the person entitled to represent the indictment or to request the court to appoint a new person as provided for in section 817/I (2) to (7).

(3) If the person entitled to represent the indictment has been appointed by the court and that person fails to lodge the indictment within the time limit, the other persons who have previously submitted a motion for revision shall be entitled to agree on one occasion within fifteen days of the time limit for lodging the indictment on another person to act as the person entitled to represent the indictment, who may lodge the indictment within fifteen days of their agreement.

Section 817/K

The person authorised to represent the indictment shall be given the opportunity to inspect the case-file, except for the files which are kept confidential. The person entitled to have access to the case-file and their legal representative may use the case-file only for the purposes of the proceedings under this Chapter. The accessed case-file may not be disclosed to the public.

Section 817/L

(1) The person entitled to represent the indictment may lodge the indictment within two months of the service of the decision pursuant to section 817/H (1).

(2) The indictment shall be lodged with the prosecution service or the investigating authority that issued the decision pursuant to section 817/H (1). Within eight days of its receipt, the prosecution service or the investigating authority shall forward the indictment together with the case-file to the court having jurisdiction and competence in the case. The jurisdiction of the court may not be established pursuant to section 21 (3).

(3) The indictment shall contain

(a) those set out in section 422 (1) (a) to (c),

(b) those set out in section 422 (2) (a), and

(c) the motions for the taking of evidence relating to the proof of certain acts or parts of acts.

(4) The indictment may be accompanied by information, documents and statements available to the person entitled to represent the indictment, which, in their opinion, are capable of proving the facts to be proved in the case.

Preliminary examination of the indictment

Section 817/M

(1) The court shall dismiss the indictment by a non-appealable ruling if

(a) the person entitled to represent the indictment has lodged the indictment after the statutory time limit,

(b) the person entitled to represent the indictment does not have a legal representative,

(c) the person who lodged the indictment is not entitled to lodge an indictment under this Act,

(d) the act charged in the indictment is not a major criminal offence related to the exercise of public authority or the management of public property,

(e) the indictment does not contain the information specified in section 817/L (3) (a) and (b), or

(f) the indictment was not lodged through a legal representative.

(2) The person entitled to represent the indictment may, within fifteen days of the service of ruling not delivered on the merits of the case and dismissing the indictment, repeatedly lodge the indictment if it was dismissed by the court pursuant to paragraph (1) (b), (e) or (f) and the ground for dismissal no longer exists.

(3) The court may not reject the indictment on the ground that it does not contain personal data listed in section 184 (2) of the person indicated in the indictment as the accused person, and these data cannot be established from the case-file either, if the identity of the accused person can be established beyond doubt even in the absence of such data.

(4) Paragraph (1) (d) shall not apply if the act which is the subject of the indictment is an offence closely connected with a major criminal offence related to the exercise of public authority or the management of public property which is the subject-matter of the indictment.

(5) No session shall be held during the preliminary examination of the indictment.

(6) If the court dismisses the indictment by a ruling not delivered on the merits of the case, it shall serve its decision on the person entitled to represent the indictment.

(7) There shall be no appeal against the dismissal of the indictment.

Examination of the well-foundedness of the indictment

Section 817/N

(1) Unless the indictment is dismissed, the court shall, within two months of the filing of the indictment, examine whether there are reasonable grounds to suspect that the person indicated as the accused person in the indictment has committed the criminal offence which is the subject-matter of the indictment.

(2) When considering the well-foundedness of the indictment, the court shall fully examine the case-file as well as the information, documents and statements attached by the person entitled to represent the indictment.

Section 817/O

(1) The court shall, by a ruling not delivered in the merits of the case, dismiss the indictment

(a) if the person indicated in the indictment as the accused cannot be suspected with due ground of having committed the criminal offence which is the subject-matter of the indictment,

(b) in part if any person indicated in the indictment as the accused cannot be suspected with due ground of having committed the criminal offence which is the subject-matter of the indictment, or if the person indicated in the indictment as the accused cannot be suspected with due ground of having committed any of the criminal offences which is the subject-matter of the indictment.

(2) If, in the course of the examination of the indictment, there is evidence that the person identified in the indictment as an accused is a beneficiary of immunity and the indictment cannot be dismissed in the case of the person concerned, the court shall initiate the decision of the body entitled to suspend immunity. If the body entitled to suspend immunity does not suspend the immunity, the court shall dismiss or partially dismiss the indictment.

(3) No session shall be held during the examination of the well-foundedness of the indictment.

(4) If the court dismisses or partially dismisses the indictment by a ruling not delivered on the merits of the case, it shall serve its decision on the person entitled to represent the indictment.

(5) If the court partially dismisses the indictment, the person entitled to represent the indictment shall, within fifteen days from the service of the decision, repeatedly lodge with the court the indictment without the parts of the indictment that were dismissed. If the person entitled to represent the indictment fails to do so, the court shall terminate the proceedings by means of a ruling on the merits of the case. The person entitled to represent the indictment shall be warned of this in the ruling not delivered on the merits of the case.

Rules of court procedure after the indictment has been admitted

Section 817/P

(1) If the indictment is not to be dismissed, the court shall

(a) send it to the accused without delay,

(b) ensure that the means of evidence are available at the hearing, or

(c) order a coercive measure.

(2) After service of the indictment on the accused, the participation of the defence counsel in the proceedings shall be mandatory.

(3) The accused and the defence counsel shall be entitled to have access to the case-file after service of the indictment.

(4) If the accused person has used a language other than Hungarian in the proceedings, the court shall arrange for the translation of the part of the indictment relating to the accused person into the language used by them in the proceedings.

Section 817/Q

(1) The person entitled to represent the indictment shall, unless otherwise provided by this Act, exercise in the court proceedings the rights of the prosecution service and perform the functions of the prosecution service, including making a motion for the imposition of coercive measures affecting the personal liberty of the accused person and a motion for the issuance of an arrest warrant. The person authorised to represent the indictment may not extend the charges.

(2) The person authorised to represent the indictment may at any time drop the charges. Providing reasons is not required for dropping charges. The court shall terminate the proceedings if the person authorised to represent the indictment has dropped the charges.

(3) With the exception of a decision taken in the course of conducting the proceeding and maintaining order, the decision shall be communicated to the person authorised to represent the indictment.

(4) No other case may be joined to a case proceeded on the basis of the indictment unless the accused person has previously been placed on probation in a case under either private or a public prosecution.

Section 817/R

(1) Except as provided for in paragraph (2), the presence of the legal representative of the person entitled to represent the indictment shall be compulsory at the hearing. If the person entitled to represent the indictment is not present at the hearing, their legal representative shall be entitled to put questions to the persons involved in the criminal proceedings and to submit a motion, without prejudice to the rights of the person entitled to represent the indictment as provided for in section 817/Q (1) and (2).

(2) If the legal representative of the person entitled to represent the indictment fails to appear at the trial and, for good cause, has not excused themselves immediately in advance, but the person entitled to represent the indictment is present, the court shall hold the trial, but the legal representative shall be fined.

The court shall warn the legal representative of this in the summons.

(3) If neither the person entitled to represent the indictment nor their legal representative appear at the hearing and have not excused themselves immediately in advance for good cause, or if both persons appear through their own fault in such a state that they are unable to fulfil their procedural obligations, and if both persons leave the procedural act without permission, the court shall terminate the proceedings by a ruling delivered on the merits of the case. The person entitled to represent the indictment shall be warned of this in the notice and the legal representative shall be warned of this in the summons.

(4) The legal representative of the person entitled to represent the indictment may not be expelled or removed from the hearing even in the case of causing repeated or serious disorder. If the legal representative of the person entitled to represent the indictment does not cease the disorderly conduct and thereby makes it impossible for the trial to continue in their presence, the legal representative shall be fined and the person entitled to represent the indictment may appoint another legal representative. If this is not immediately possible, the court shall adjourn the trial at the expense of the legal representative who is in breach of order.

(5) If the legal representation of the person entitled to represent the indictment ceases to exist in the proceedings and the person fails to provide for their legal representation until the next hearing date, the court shall terminate the proceedings by a ruling delivered on the merits of the case.

(6) If the person entitled to represent the indictment dies during the proceedings or is unable to participate in the proceedings due to serious and permanent illness, the court shall inform the other persons who have filed a motion for revision thereof. Within 15 days of the date of such notification, the other persons who have lodged a motion for revision shall be entitled to agree on a new person to act as representative of the indictment.

(7) If the person entitled to represent the indictment has been appointed by the court and this person has dropped charges or the court terminates the proceedings pursuant to section 817/O (5) or (3) and (5), the court shall also serve its decision terminating the proceedings on the other persons who have filed a motion for revision.

(8) In the case provided for in paragraph (7), the other persons who have filed a motion for revision shall be entitled to agree on one occasion, within fifteen days of service, on a new person authorised to represent the indictment, who may within fifteen days withdraw the dropping of charges or make up the default. In that case, the proceedings shall continue.

Appeal

Section 817/S

(1) No appeal may be lodged against the judgement of the court by a person entitled to represent the indictment.

(2) Where an appeal is lodged, the court shall transmit the case-file directly to the court competent to consider the appeal.

(3) The court shall also send the final decision on the merits of the case delivered in the proceedings under this Chapter to the prosecution service that has previously dealt with the case.

(4) The court of second instance shall repeal the decision of the court of first instance and terminate the proceedings in the cases specified in section 817/R (3) and (5).

Criminal costs

Section 817/T

(1) If the court has acquitted the accused or terminated the proceedings against them, the person entitled to represent the indictment shall bear the part of the criminal costs specified in section 145 (1) and section 576 (1) (b) incurred in the course of the court proceedings.

(2) If the court acquits the accused, except in the case provided for in section 566 (3), or terminates the proceedings against them on the grounds of dropping the charges, the person entitled to represent the indictment shall, within one month of the decision delivered on the merits of the case becoming final and binding, reimburse the fees and expenses of the accused person's authorised defence counsel incurred during the court proceedings, to the extent provided by law.

(3) The person entitled to represent the indictment may be ordered to pay only the criminal costs incurred in connection with the act or that part of the facts of the case and to reimburse that part of the fees and expenses specified in paragraph (2) for which the court has delivered a judgement of acquittal or terminated the proceedings, except in the case specified section 566 (3).

Different rules for extraordinary remedies

Section 817/U

(1) The person entitled to represent the indictment may not file a motion for retrial or an application for review.

(2) No legal redress for legality may be lodged against a decision not delivered on the merits of the case in proceedings under this Chapter.

(3) In proceedings under this Chapter, Chapter C, Chapter CI and Chapter CIII shall not apply. The person authorised to represent the indictment shall not be entitled to initiate carrying out special proceedings.«”

III

[12] 1 The Constitutional Court found that the motion was submitted by the Parliament – in the exercise of its powers under Article 6 (2) and Article 24 (2) (a) of the Fundamental Law – on the motion of the Government made before the final voting, i.e. it originated from an eligible party. The motion complies with the requirement of explicitness under section 52 (1b) of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC). The application contains the provision of the Fundamental Law that establishes the competence of the Constitutional Court to examine the motion [Article 24 (2) (a) of the Fundamental Law], furthermore the provision that establishes the eligibility of the Parliament as the petitioner [Article 6 (2) of the Fundamental Law]; the grounds for initiating the proceedings; the provision of the law to be examined by the Constitutional Court (section 1 of the Act); the affected provision of the Fundamental Law [Article 29 (1) of the Fundamental Law]; and an explicit request for the Constitutional Court to examine the conformity with the Fundamental Law of the provisions of the Act which have already been adopted by the Parliament but have not yet been promulgated.

[13] The explicit request formulated in the motion submitted by the Parliament was directed to the Constitutional Court to examine section 1 of the Act with regard to whether a person other than the prosecution service may have the right to bring charges against someone before the court, i.e. whether the new legal institution to be introduced by the Act is in line with the principle of the prosecution monopoly of the prosecution service as set out in Article 29 (1) of the Fundamental Law, in view of which the Constitutional Court, in its consideration of the motion, carried out the examination – in accordance with section 52 (2) of the ACC – in close conformity with the indicated constitutional request.

[14] The subject of the examination requested by the petitioner – section 1 of the Act – is a corrective legal instrument supplementing the Act XC of 2017 on Criminal Procedure (hereinafter: "Criminal Procedure Act"), entitled "Procedure in the case of a major criminal offence related to the exercise of public authority or the management of public property". The new legal instrument of criminal procedure created by the Act sets out in a separate chapter (regulated as a so-called special procedure) the different rules that are to be applied in proceedings carried out for the major criminal offences covered by the special procedure, in derogation from the general rules on investigation, bringing charges and judicial remedies. The key actor in the proceedings is the person who, being completely outside the proceedings and having no direct private interest with regard to the criminal offences concerned, intends to act in the public interest and who is given the right to intervene in proceedings initiated for

criminal offences which would otherwise be offences to be prosecuted under public prosecution – i.e. conducted by the investigating authority or the public prosecutor's office – by judicial means in order to obtain a successful investigation, to bring charges and, where appropriate, to reach a judicial decision on the question of guilt.

[15] The first part of the new procedural order covers a kind of procedure for pressing charges, the aim of which in the first instance is to ensure by procedural means the judicial correction of the decision of the investigative authority or prosecution service refusing to carry out the criminal procedure, as a result of which the investigation can continue in the right direction. However, the second part of the regulation also ensures, within an appropriate guarantee framework, that ultimately, if the law enforcement authorities of the State do not consider this to be justified, the person acting this way is given the opportunity to lodge an indictment before a court for a major offence affecting the community, and thus to have the court take a stand on the issue of criminal liability for the crime the acting person alleges to have been committed.

[16] 2 Article 29 (1) of the Fundamental Law lays down that the Prosecutor General and the prosecution service shall be independent and shall contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public accuser. The Constitutional Court therefore first had to examine the constitutional position of the prosecution service, the nature of the institution of prosecution monopoly and the requirements arising from it.

[17] In its examination of the motion, the Constitutional Court, in addition to the provisions of Article 29 (1) of the Fundamental Law, also took into account the historical traditions of prosecution monopoly of the prosecution service in Hungary, since pursuant to Article R (3) of the Fundamental Law, the Constitutional Court is constitutionally obliged to interpret the provisions of the Fundamental Law, thus including Article 29 (1), in accordance with the National Avowal and the achievements of the historical constitution of Hungary.

[18] Prosecutor's offices were established in Hungary in the 17th century, but the prosecution service's organisation in the today's modern sense was created by the Act XXXIII of 1871 on the Royal Prosecution Service.

[19] The Constitutional Court has already previously identified the Act XXXIII of 1896 on the Code of Criminal Procedure as an achievement of the historical constitution {Decision 26/2015. (VII. 21.) AB, Reasoning [50]}. According to section 2 of the Act XXXIII of 1896, "charges shall normally be represented by the royal prosecution service. In the cases provided for in section 42, the victim (section 13) may take over the representation of the charges instead of the royal prosecution service." Consequently, the Act XXXIII of 1896, which is a historic constitutional achievement, also regulated the prosecution monopoly in such a way that the prosecution service was the primary

public prosecutor and only allowed the victim to break the prosecution monopoly in exceptional cases. Already in the 19th century, the laws of Hungary consistently enforced the principle of officiality, according to which the the prosecution of crimes and the punishment of perpetrators was considered as a duty of the State through the state bodies responsible for this, not giving it up to the subjective willingness of the victims to enforce their interest. The principle of legality meant that the prosecution service was obliged to order the investigation of the criminal offences which it had to prosecute *ex officio* or which had come to its attention through private complaints, and in the case of proven criminal offences it had to bring charges and represent prosecution. The Act XXXIII of 1896 was in force until 1951, with several amendments. The principle of prosecution suffered several significant breaks in the post-1945 legislation, notably in the concept trials during the repression after the revolution of 1956. Procedural guarantees were missing from from the Act III of 1951, the first socialist code of criminal procedure, which completely repealed the code of criminal procedure of 1896, and it also formalised the role of the prosecutor.

[20] In its previous case-law, the Constitutional Court has already examined the constitutional status of the prosecution service in detail, in the course of which it has established that the prosecution service is not an independent branch of power, but a contributor of the administration of justice. As a public prosecutor, the Prosecutor General and the prosecution service have the fundamental task, under Article 29 (1) of the Fundamental Law, of being the exclusive enforcer of the State's criminal authority and – as a contributor of the administration of justice – to exercise the statutory rights in connection with the investigation, to represent the public prosecution in judicial proceedings and to supervise the legality of penal enforcement [Article 29 (2) (a) to (c) of the Fundamental Law]. In accordance with these provisions of the Fundamental Law, the Parliament adopted section 2 (1) and Chapter III Title 1 of the Act CLXIII of 2011 on the Prosecution Service. Accordingly, the most essential tasks of the prosecutor are the investigation or having the investigation carried out to establish the conditions for pressing charges; the supervision of the legality of the investigation and the exercise of other rights provided by law in connection with the investigation; the exercise of public authority within the scope of pressing charges; the representation of the prosecution in court proceedings and the exercise of the right to appeal {Decision 3072/2015. (IV. 23.) AB (hereinafter: CCDec 1), Reasoning [27] to [28]}.

[21] In CCDec1, the Constitutional Court examined in detail the relationship between the functions of the judiciary and the role of the prosecution, starting from the separation of the functions of the judiciary in criminal proceedings. The Constitutional Court found that, in accordance with the principle of the separation of functions, adjudication is the task of the court, which means deciding on the merits of the case, on the accusation, and is therefore it is subject to the highest constitutional guarantees,

such as judicial independence. The prosecution service, on the other hand, is responsible for providing public prosecution, exercising the monopoly of prosecution, and therefore the same constitutional guarantees – independence and impartiality – have different features in the case of the prosecutor (CCDec1, Reasoning [29]). Article 29 of the Fundamental Law enshrines the independence and the monopoly of the exercise of public prosecution with regard to the Prosecutor General and the prosecution service. The Fundamental Law thus formulates independence in relation to the Prosecutor General and the prosecution service as a whole, and not in relation to the individual prosecutor (CCDec1, Reasoning [53]).

[22] The Constitutional Court also stated in CCDec1 regarding the role of the prosecutor that the prosecutor does not pronounce the final decision during their involvement in the administration of justice, but their task – based on the principle of the separation of functions – is to ensure and dispose of the lawful accusation, i.e. to exercise the monopoly of prosecution. Article XXVIII (1) of the Fundamental Law requires impartiality in the proceedings of the court, but in the interests of objectivity and impartiality, the formulation of rules of disqualification is also justified in the case of the prosecutor (CCDec1, Reasoning [55]).

[23] According to the consistent case-law of the Constitutional Court, the prosecution of crime shall be performed within strict limits and conditions of substantive and procedural law, and the State shall bear the risks of having no success in the prosecution of crime [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 70]. However, the public prosecutor's monopoly of public prosecution can have some negative consequences (e.g. failure to press charges, unjustified dropping of charges) to the detriment of the interests of the injured parties. Such mistakes can be corrected and deficiencies eliminated through the system of prosecution correction instruments (e.g. substitute prosecution) established by the law-maker [Decision 14/2002 (III. 20.) AB, ABH 2002, 101, 113].

[24] According to the Fundamental Law and the consistent case-law of the Constitutional Court, the prosecution service is an independent constitutional institution deriving from the requirement of the rule of law (CCDec1, Reasoning [25] and [26]), the most important task of which – based on the principle of the separation of functions – is to ensure and dispose of the lawful accusation, i.e. to exercise the monopoly of prosecution.

[25] Generally speaking, the State can exercise its public prosecution authority – as a possibility – in various ways, through various constitutional institutions. It is the decision of the constitution-forming power based on the constitutional traditions and the constitutional culture of the State, which creates the framework of the specific institutional and organisational system through which the public prosecution authority

is exercised and which must meet the requirements of constitutionality and thereby the rule of law. The Fundamental Law of Hungary – in accordance with the tradition followed by the Constitution after the regime change [cf. Decision 14/2002 (III. 20.) AB, ABH 2002, 101, 113] – defines the Prosecutor General and the organisation of the prosecution service – as the contributor of the administration of justice – as public prosecutor and the exclusive enforcer of the State's criminal authority. This formulation therefore implies the indivisibility of the exercise of public prosecution, the consequence of which is that, under the same provision of the Fundamental Law, the State may not create any other body empowered to exercise public prosecution, including in cases where it would define the competence of a different body for specific categories of cases. As a result of that, under the Hungarian constitutional system, as the petitioner points out, the independent prosecution service also acts in the investigation of various economic crimes, including those relating to the use or management of public funds, and represents the prosecution in court. The institution of prosecution monopoly thus embodies this exclusivity, which also means that no public authority other than the prosecution service may be placed in the public position of prosecution [Decision 42/2005. (XI. 14.) AB, ABH 2005, 504, 525 to 526, reinforced recently in the Decision 3030/2020. (II. 24.) AB].

[26] 3 A motion for revision may be filed in the procedure provided for by the Act if the prosecution service or the investigating authority rejects a report of a major offence related to the exercise of public authority or the management of public property, or terminates the proceedings for such an offence. Thus, in the case of major offences relating to the exercise of public authority or the management of public property as defined by the Act, the prosecution service remains the primary actor of the State’s authority of public prosecution, and the procedure does not involve a division of the powers deriving from the right to enforce public prosecution. The procedure provided for by the Act does not replace the prosecution service's action in enforcing public prosecutions, but only supplements it or, where necessary, extends it, and as such should be interpreted within the category of the so-called prosecution correction instruments. The Constitutional Court has already pointed out earlier, with regard to the institution of the substitute private prosecution, that the possibility of introducing prosecution correction instruments does not in itself constitute an infringement of the Fundamental Law, provided that there is an appropriate regulatory and guarantee framework {Decision 3112/2013. (VI. 4.) AB, Reasoning [17]}. The Constitutional Court therefore had to to examine the nature of the procedure which the Act sought to introduce as a prosecution correction.

[27] The Constitutional Court has previously examined substitute private prosecution as a prosecution correction instrument known and used in the Hungarian legal system, acknowledged as a legal institution belonging to the system of prosecution correction

measures that can serve to eliminate certain consequences that adversely affect the victims as a result of the exercise of the prosecutor's monopoly of prosecution [Decision 14/2015 (V. 26.) AB, Reasoning [33], but see also e.g. Decision 14/2002 (III. 20.) AB, ABH 2002, 101, 113; Decision 42/2005 (XI. 14.) AB, ABH 2005, 504, 522; reinforced: Ruling 3014/2013 (I. 28.) AB, ABH 2013, 1201, 1202]. The Constitutional Court has pointed out relatively early that the public prosecutor's monopoly of public prosecution can have some negative consequences (e.g. failure to press charges, unjustified dropping of charges) to the detriment of the interests of the injured parties. Such mistakes can be corrected and deficiencies eliminated through the system of prosecution correction instruments established by the law-maker. [Decision 14/2002. (III. 20.) AB, ABH 2002, 101, 113, reinforced in: Decision 14/2015. (V. 26.) AB, Reasoning [33]].

[28] The Constitutional Court stated in its Decision 3112/2013 (VI. 4.) AB that "the legal institution of substitute private prosecution does not violate the provision of Article 29 (1) of the Fundamental Law, since in criminal proceedings it is only possible for a party other than the prosecution service to initiate criminal court proceedings and represent the charges if no criminal authority is claimed by the State. The exclusivity enshrined in Article 29 of the Fundamental Law expresses the "primacy" of the State in the enforcement of criminal authority. If the State does not intend to exercise this right, this exclusivity also ceases to exist. However, if the prosecution service intends to exercise this right, it has exclusive jurisdiction, i.e. no State body other than the prosecution service may exercise such powers" {Decision 3112/2013. (VI. 4.) AB, Reasoning [17], reinforced by the Decision 15/2016. (IX. 21.) AB}.

[29] The Constitutional Court, in its examination of the institution of the substitute private prosecution, has previously held that the law-maker was under no constitutional obligation – derived either from the right to a fair trial or from any other fundamental right – to introduce the institution of substitute private prosecution, thus "it is within the relatively wide scope of discretion of the law-maker to decide on the cases of allowing and excluding substitute private prosecution" {Decision 42/2005. (XI. 14.) AB, ABH 2005, 504, 522, Ruling 3224/2014. (IX. 22.) AB, Reasoning [15], Decision 14/2015. (V. 26.) AB, Reasoning [33], recently reinforced by: Decision 3384/2018. (XII. 14.) AB, Reasoning [37]}.

[30] As underlined by the Constitutional Court in its Decision 42/2005. (XI. 14.) AB, "substitute private prosecution is one of the forms of correcting the public prosecutor's monopoly of prosecution characterising the criminal procedure models of modern continental states. Its original purpose was to diminish the potential threats (the lack of public prosecution – due to political reasons, a professional mistake or incorrect assessment – might result in leaving the perpetrators of serious criminal offences unpunished) caused by this monopoly concerning the enforcement of criminal liability

in line with justice, and to provide a counterweight to the public prosecutor's »excessive power« – manifested in his right to refuse to press charges and to drop charges – in relation to the court, whose action depends on the charges. […] In the preparatory concept of the new Act on Criminal Procedure, the idea of the reintroduction of substitute private prosecution was raised not in relation to eliminating the dangers resulting from the monopoly of prosecution, but in relation to widening the injured party's possibilities of enforcing claims and his procedural rights. […] In point VI of the general reasoning, under the title "The social acknowledgement of criminal procedure, cooperation of citizens with the organs of the judiciary", the drafters of the Bill pointed out that substitute private prosecution could be the most important tool to correct the inactivity of the authorities and non-objective proceedings. In their opinion, substitute private prosecution can take place if the decision of the authority has been based on discretion, and the injured party has a real opportunity to enforce a court decision" (CCDec 2005, 504, 515).

[31] "The exclusivity of the power to enforce criminal authority was, however, dissolved by the law-maker itself by introducing the institution of the substitute private prosecution" {Decision 3384/2018. (XII. 14.) AB, Reasoning [36]}.

[32] On the basis of the above, it can therefore be concluded that, according to the consistent case-law of the Constitutional Court, there is a constitutional possibility to introduce a prosecution correction which is not aimed at depriving the prosecution service of its powers granted under the Fundamental Law. In the view of the Constitutional Court, the previous findings of the Constitutional Court on the institution of prosecution correction are also applicable to the procedure introduced by the Act, with the proviso that the constitutional requirement excluding the participation of any body exercising public authority must also be properly enforced in this procedure.

[33] The law-maker is not bound by any constitutional requirement that would require the exclusive use of substitute private prosecution as a prosecution correction, i.e. the law-maker may use other prosecution correction instruments to counterbalance any anomalies arising from the monopoly of prosecution. At the same time, the law-maker should pay particular attention to the introduction of such a prosecution correction instrument, so that it can be properly integrated into the doctrinal system of Hungarian criminal law and criminal procedural law.

[34] On the basis of the above, the Constitutional Court is of the opinion that if the prosecution service takes the position in the proceedings under the Act that there is no room for the enforcement of the State's criminal claim, and if in such a case the law-maker nevertheless grants other legal entities – not exercising public authority – the possibility to act before the court, the requirement of the monopoly of prosecution guaranteed in the Fundamental Law is not violated. Indeed, the action of that entity

serves the purpose referred to above by enforcing Article 38 of the Fundamental Law in order to step up the fight against specific criminal offences and the misuse of public funds.

[35] Any natural or non-natural person may submit a motion for revision in the proceedings provided for by the Act if the prosecution service or the investigating authority rejects a report of a major offence related to the exercise of public authority or the management of public property, or terminates the proceedings for such an offence. In the Constitutional Court's view, the principle of the monopoly of prosecution, as applied by the Fundamental Law, does not preclude the introduction into the framework of criminal proceedings of an additional element relating to public property which, as a last resort, predominantly ensures the direct protection of public property.

[36] At the same time, the Constitutional Court recalls the constitutional requirement formulated in relation to the institution of substitute private prosecution, according to which no organisation with a public authority function may take over from the prosecution service the public power of prosecution and representation of charges. According to the case-law of the Constitutional Court, it would be unconstitutional to use substitute private prosecution – aimed at improving the injured party's procedural status – as a tool for action by organs with public authority purporting to bypass the prosecution service, thus weakening the constitutional status of the prosecution service. The possibility of action by natural and legal persons without public authority is different: in these cases, there can be no conceptual duplication of the public authority of the prosecutor {Decision 42/2005. (XI. 14.) AB, recently reinforced by: Decision 3030/2020. (II. 24.) AB, Reasoning [32]}.

[37] The determination within the constitutional limits of the content of the prosecution correction created by the Act is a matter for the law-maker, and accordingly no organisation with a public authority function may take over the public power of prosecution and representation of charges from the prosecution service, and this requirement must also be enforced in the procedure created by the Act.

[38] With the Act, the law-maker created a special procedural opportunity, which has been so far unknown in the Hungarian legal system, for subjects of the law acting in the interest of the protection of public funds to act as enforcers of a criminal punishment claim by filing a motion for revision or an indictment and to initiate court proceedings.

[39] In view of the above, the Constitutional Court held that the procedure detailed in section1 of the Act, entitled "Procedure in the case of a major criminal offence relating to the exercise of public authority or the management of public property" should be classified into the category of prosecution corrections. It does not take away the

exclusive power of the prosecution service to enforce public prosecution, but only supplements it as a corrective instrument for the enforcement of criminal claims, and therefore does not contradict the principle of the monopoly of prosecution as enshrined in Article 29 (1) of the Fundamental Law.

IV

[40] The publication of this decision of the Constitutional Court in the Hungarian Official Gazette is based upon the second sentence of Section 44 (1) of the ACC.

Budapest, 25.10.2022.

Dr. Tamás Sulyok,
President of the Constitutional Court
rapporteur, Justice of the Constitutional Court

Dr. Ágnes Czine, Justice of the Constitutional Court

Dr. Tünde Handó, Justice of the Constitutional Court

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

Dr. Miklós Juhász, Justice of the Constitutional Court

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Béla Pokol* unable to sign

Dr. Tamás Sulyok, President of the Constitutional Court on behalf of Justice *dr. Marcel Szabó* unable to sign

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

Dr. Attila Horváth, Justice of the Constitutional Court

Dr. Imre Juhász, Justice of the Constitutional Court

Dr. Zoltán Márki, Justice of the Constitutional Court

Dr. Balázs Schanda, Justice of the Constitutional Court

Dr. Péter Szalay, Justice of the Constitutional Court

Dr. Mária Szívós, Justice of the Constitutional Court