

Decision 13/2022 (VI. 2.) AB

on establishing a constitutional requirement arising from section 1 (2) item 3 of the Act CXCI of 2011 on the Benefits for Persons with Altered Working Ability and Amendment of Certain Acts, and annulling the judgement No. 104.K.700.268/2021/5 of the Debrecen Regional Court.

The plenary session of the Constitutional Court, in the subject of a constitutional complaint – with dissenting opinions by Justices *dr. Egon Dienes-Oehm* and *dr. László Salamon* – adopted the following

decision:

1. The Constitutional Court establishes that it is a constitutional requirement under Articles XV (2) and XIX (1) of the Fundamental Law that in course of determining the monthly average salary on the basis of the last phrase of section 1 (2) item 3 of the Act CXCI of 2011 on the Benefits for Persons with Altered Working Ability and Amendment of Certain Acts, the Act does not exclude the taking into account of a period during which the person entitled to benefits received a benefit in the scope of protection under Article XIX (1) of the Fundamental Law, which is not applicable at the same time as sickness or accident sickness benefits on the basis of the Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance and which is also in the scope of the cash benefits under the health insurance and is based on an insurance relationship providing an entitlement to receive sickness or accident sickness benefits, if the beneficiary would be entitled to both sickness or accident sickness benefits and other health insurance cash benefits on the basis of this insurance relationship.

2. The Constitutional Court rejects the constitutional complaint aimed at establishing the violation of the Fundamental Law, at annulling the term “directly” in section 1 (2) item 3 of the Act CXCI of 2011 on the Benefits for Persons with Altered Working Ability and Amendment of Certain Acts.

3. The Constitutional Court establishes that the judgement No. 104.K.700.268/2021/5 of the Debrecen Regional Court is in conflict with the Fundamental Law and therefore annuls it.

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

Reasoning

[1] 1 The petitioner, acting without a legal representative, filed a constitutional complaint pursuant to section 26 (1) and section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC). The petitioner filed a complaint pursuant to section 27 of the ACC asking for the establishment of the violation of the Fundamental Law by the judgement No. 104.K.700.268/2021/5 of the Debrecen Regional Court and the annulment of the judgement with effect also extending to the decision No. 78-2-02306/2020/7 of the Hajdú-Bihar County Government Office (hereinafter: "Government Office"), while in her complaint pursuant to section 26 (1) of the ACC, she initiated establishing the violation of the Fundamental Law, at annulling the term "directly" in the first phrase of section 1 (2) item 3 of the Act CXCI of 2011 on the Benefits for Persons with Altered Working Ability and Amendment of Certain Acts (hereinafter: AAWA).

[2] 1.1 According to the established facts of the case on which the constitutional complaint is based, the petitioner received sickness benefit from 1 May 2018 due to her pregnancy, and on 9 August 2018 she gave birth to a child (the petitioner's second child), for which she received first an infant care allowance (hereinafter: "ica") and then a child care allowance (hereinafter: "cca") until the age of two of the child. During this period, the petitioner did not receive any other benefits (including sickness benefit) and had no other income.

[3] 1.2 After the birth of her second child, the petitioner noticed that her vision had deteriorated significantly, which led her to apply for disability benefit on 19 December 2019 (i.e. during the period of receiving cca). According to the summary opinion on the result of the complex assessment dated 15 January 2020, the petitioner's degree of health is 23%, the date of onset of the established health condition is 15 November 2019, the petitioner's condition is classified as category D, rehabilitation is not recommended, and she is only employable with continuous support. The petitioner's medical condition could have qualified her for disability benefit, but her application was rejected at the time, given that she was in receipt of cca (regular cash benefit).

[4] 1.3 The petitioner's employment as a civil servant was terminated on 20 October 2020, after the expiry of the payment of the cca, after which the petitioner repeatedly applied for the award of disability benefit. By decision No 78-2-02306/2020/7 of 4 December 2020, the Government Office granted the petitioner a disability benefit of HUF 52 205 per month from 21 October 2020, on the basis of a summary opinion on the result of the complex assessment of 15 January 2020. The decision found that the petitioner had a period of insurance within the meaning of section 2(1) (a) of the AAWA,

but that, in the opinion of the Government Office, she did not have the monthly average income pursuant to section 1 (2) item 3 of the AAWA, therefore, it determined the amount of the petitioner's benefit on the basis of the basic amount pursuant to section 8/A of Government Decree 327/2011 (XII.29) on the procedural rules for the benefits of persons with altered working ability, based on section 12 (2) (c) of the AAWA, at the rate of 50% of the basic amount.

[5] 1.4 The petitioner brought an action for the judicial review of the decision of the Government Office, requesting that the decision be changed so that her disability benefit be set at HUF 156 610 per month. The petitioner did not contest the findings of the complex assessment, but took the view that the average monthly income could have been established in her case, given that she had received sickness benefit, ica and cca consecutively before the application was lodged, and that the simultaneous payment of those benefits was not possible under the law. The petitioner argues that the interpretation of the law by which the Government Office excluded her from the application of the average monthly income infringes Article XV (1) and (2), Article XIX (1) of the Fundamental Law, Article 1 of the First Additional Protocol to the European Convention on Human Rights (hereinafter: ECHR) and Article 28 of the Convention on the Rights of Persons with Disabilities (hereinafter: "CRPD Convention"). According to the petitioner, it is contrary to the Fundamental Law and the international conventions referred to above to arbitrarily discriminate, in the definition of average monthly income, within the scope of persons who are not lawfully gainfully employed, between persons in receipt of sickness or accident benefits, as compared with persons in receipt of ica and cca. According to the applicant, due to not taking into account at all, under the interpretation of the law by the Government Office, the income on which the benefit is based in the case of persons in receipt of ica and cca, in any event, only the minimum amount of invalidity benefit laid down by the law-maker may be paid, even for decades, irrespective of the amount of income received and the social security contributions previously paid by the petitioner. In her application, the petitioner requested the Constitutional Court to initiate an individual norm control procedure, which the defendant Government Office did not oppose in its defence.

[6] The Debrecen Regional Court dismissed the petitioner's action in its judgement No. 104.K.700.268/2021/5. According to the interpretation of the law by the Debrecen Regional Court, in connection with section 1 (2) item 3 of the AAWA, the petitioner alleged an infringement of the Fundamental Law manifested in a substantive omission, which the court in charge would not be entitled to initiate in the framework of the procedure under section 25 of the ACC, therefore the Regional Court did not initiate the procedure of the Constitutional Court. According to the judgement of the Debrecen Regional Court, the interpretation of section 1 (2) item 3 of the AAWA chosen by the defendant was not unlawful.

[7] 2 The petitioner then filed her constitutional complaint under section 26 (1) and section 27 of the ACC, in which she proposed the declaration of the violation of the Fundamental Law on the one hand by the judgement No. 104.K.700.268/2021/5 of the Debrecen Regional Court and the decision No. 78-2-02306/2020/7 of the Government Office and on the other hand by the text "directly" of the first phrase of section 1 (2) item 3 of the AAWA, and the annulment of the above, as follows.

[8] 2.1. The petitioner argued in her constitutional complaint under section 27 of the ACC that, in light of the approach of the Constitutional Court's Decision 2/2018 (IV.6.) AB (hereinafter: CCDec), on the basis of the Fundamental Law, section 1 (2) item 3 of the AAWA can be interpreted in a way so as to allow the taking into account also the income received in 180 calendar days before the sickness benefit preceding the ica, in particular if the payment of ica to the petitioner takes place immediately after the payment of the sickness benefit. According to the petitioner, it could not have been the law-maker's intention that, despite having paid contributions for more than 10 years, persons who first receive sickness benefit and then ica or cca and who become disabled during the period of those benefits should be entitled to a minimum amount of benefit, irrespective of the amount of their previous contributions. The petitioner submits that the interpretation of the law chosen by the Debrecen Regional Court (and the Government Office) is contrary to Article XV (1) and (2) and Article XIX (1) of the Fundamental Law and constitutes arbitrary discrimination without constitutional justification against persons in receipt of cca and ica. The petitioner argues that the persons receiving ica and cca receive the same benefits as sickness benefits, which are covered by the health insurance system, and are not legally engaged in gainful employment, and that in the case of the petitioner, sickness benefits were also paid immediately before the payment of ica (and then cca). The petitioner also claims that the interpretation of the law by the Debrecen Regional Court and the Government Office also infringes Articles XIX (1) and XIII (1) of the Fundamental Law, since the payment of the extremely low amount of disability benefit, which is completely disconnected from the level of previous income, leads to a drastic reduction in the standard of living and jeopardises livelihood with two children, while the benefits under the AAWA are based on the payment of social security contributions. For the same reasons, the petitioner submits that the interpretation of the law by the court and the competent authority also infringes Article 1 of the First Additional Protocol to the ECHR and Article 28 of the CRPD Convention.

[9] 2.2 In the event that the Constitutional Court is of the opinion that Section 1 (2) item 3 of the AAWA cannot be interpreted as mentioned in the previous paragraph, the petitioner, in her complaint under section 26 (1) of the AAC, sought a declaration that the wording "directly" in section 1 (2) point 3 of the AAWA was contrary to the Fundamental Law and the annulment of that provision, which she claimed was contrary to Article XIII (1), Article XV (1) and (2) and Article XIX (1) of the Fundamental Law, as

well as Article 1 of the First Additional Protocol to the ECHR and Article 28 of the CRPD Convention.

[10] In so far as section 1 (2) point 3 of the AAWA does not allow for the taking into account of previously earned income on which contributions are based in the case of persons entitled to benefits and receiving ica and cca, it constitutes arbitrary discrimination without constitutional justification between persons receiving ica or cca and those receiving sickness benefits are also covered by the cash sickness insurance scheme [violation of Article XV (1) and (2) and Article XIX (1)]. In addition, by not allowing the taking into account of previously earned income, the petitioner holds that the right to property under Article XIII (1) of the Fundamental Law, Article 1 of the First Additional Protocol to the ECHR and Article 28 of the CRPD Convention are also infringed. The benefit based in part on the payment of social security contributions is, according to the petitioner, entitled to protection under the Fundamental Law, in part on the basis of Article XIII (1) and in part on the basis of Article XIX (1), and section 1 (2) point 3 of the AAWA disregards that protection under the Fundamental Law.

II

[11] 1 The provisions of the Fundamental Law affected by the petition:

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

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

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

“Article XIX (1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act.”

[12] 2 The provision of the AAWA affected by the petition:

“Section 1 For the purposes of this Act: [...]”

3 *average monthly income*: 30 times the daily average of the income (hereinafter: “income”) gained in the calendar year directly preceding the day of submitting the

application (hereinafter: "reference period"), that is the basis of the health insurance cash contribution for the period before 1 July 2020, or the social security contribution for the period starting from 1 July 2020 (hereinafter: "social security contribution"); if the beneficiary does not have at least 180 calendar days of income during the reference period, 30 times the average daily income of 180 calendar days of income earned after the starting date of the reference period and before the date of submission of the application; if the beneficiary does not have 180 calendar days' income because he/she received sickness or accident sickness benefit during all or part of the period in question, the income of 180 days before the sickness or accident sickness benefit shall be taken into account, if it is more favourable to him/her."

III

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

[14] 1 In accordance with section 30 (1) of the ACC, the constitutional complaint under section 26 (1) and section 27 of the ACC may be submitted within sixty days from the date of delivery of the challenged decision. The Constitutional Court has found that the petitioner received the judgement of the Debrecen Regional Court on 22 June 2021 and that her constitutional complaint was lodged on 18 August 2021, within the time limit. The petitioner exhausted the available legal remedies. The petitioner is considered entitled and concerned, as she submitted her constitutional complaint under section 26 (1) and section 27 of the ACC in the context of her individual case. Section 1 (2) point 3 of the AAWA may be regarded as the statutory provision applied for the purposes of the examination of the constitutional complaint.

[15] 2 Pursuant to Article 24 (2) item f of the Fundamental Law, only the examination of a conflict between a provision of the law (rather than an individual judicial decision) and an international treaty may be requested, and the Constitutional Court has no competence to examine the conflict of a judicial decision with an international treaty in the proceedings under section 27 of the ACC {see for example: Ruling 3207/2021. (V.19.) AB, Reasoning [20]}.

[16] The Constitutional Court may only conduct an examination of the conflict of laws with international treaties at the initiative of the petitioners pursuant to section 32 (2) of the Act (one quarter of the Members of Parliament, the Government, the President of the Curia, the Attorney General, the Commissioner for Fundamental Rights, or the judge acting in an individual case), and the petitioner may not initiate an examination

of the conflict of laws with international treaties within the framework of a constitutional complaint pursuant to section 26 (1) of the ACC.

[17] The Constitutional Court therefore finds that the elements of the complaint under section 26 (1) and section 27 of the ACC, which allege a violation of Article 1 of the First Additional Protocol to the ECHR and Article 28 of the CRPD Convention, are not suitable for consideration on the merits.

[18] 3 The Constitutional Court may admit a constitutional complaint that meets the requirements of section 26 (1) and section 27 (1) of the ACC, if it contains an explicit request. Pursuant to section 52 (1b) item b of the ACC, an application shall be explicit if it states the essence of the violation of the right guaranteed by the Fundamental Law, and pursuant to item e, the application should contain a clear statement of reasons as to why the challenged judicial decision is contrary to the provisions of the Fundamental Law. The Constitutional Court found that neither the constitutional complaint under section 26 (1) of the ACC nor the constitutional complaint under section 27 (1) of the ACC contains any constitutionally justifiable grounds in connection with the alleged violation of Article XIII (1) of the Fundamental Law; in this context, the petitioner essentially claims a violation of the right to property only because the amount of the benefit granted to her is low. According to the consistent case-law of the Constitutional Court, the mere allegation of a violation of a provision of the Fundamental Law is not sufficient for the petition to be considered an explicit request under section 52 (1b) of the ACC. {see for example the Decision 3045/2022. (I.31.) AB, Reasoning [14]}. Therefore, constitutional complaints pursuant to section 26 (1) and section 27 of the ACC do not fulfil, in this element, the requirement of an explicit request under section 52 (1b) b and e of the ACC.

[19] 4 In her constitutional complaint pursuant to section 26 (1) and section 27 of the ACC, the petitioner referred to both Article XV (1) and (2) in conjunction with Article XIX (1) of the Fundamental Law. The Constitutional Court has previously assessed the issues relating to the provision of benefits under the AAWA in the context of Article XV (2) of the Fundamental Law in the light of Article XIX (1) of the Fundamental Law (See for example: CCDec, Reasoning [25]). In her constitutional complaint, the petitioner claimed that either the Debrecen Regional Court (within the framework of the complaint under section 27 of the ACC) or the law-maker (within the framework of the complaint under section 26 (1) of the ACC) had made a distinction between persons receiving sickness benefit and those receiving ica and cca. In view of the fact that both sickness and accident sickness benefits ("sickness") and ica and cca ("maternity") can be traced back to Article XIX (1) of the Fundamental Law, and in view of the fact that the petitioner expressly claims that she has been discriminated against in relation to the benefits paid on the grounds of her maternity, the Constitutional Court assessed

the constitutional complaint in the light of the aforementioned approach of the CCDec within the framework of Article XV (2) of the Fundamental Law.

[20] 5 According to section 29 of the ACC, the constitutional complaint may be admitted if a concern of conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. These admissibility conditions are of an alternative nature, therefore the Constitutional Court examines their existence separately. {Decision 3/2013. (II. 14.) AB, Reasoning [30]}

[21] In the Constitutional Court's view, it is necessary to examine the merits of the constitutional complaint under section 26 (1) of the ACC to determine whether the last turn of section 1 (2) point 3 of the AAWA can only be interpreted as regulating differently the applicability of the average monthly income in the case of sickness or accident sickness benefits and other benefits in the scope of the cash benefits under the health insurance pursuant to the Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (hereinafter: AHI) (ica, cca, adoption allowance), and, if so, whether that derogation is compatible with Article XIX (1) and Article XV (2) of the Fundamental Law. The admissibility of a constitutional complaint under section 27 of the ACC depends on the outcome of the examination of the constitutional complaint under section 26 (1) of the ACC in relation to the same rights guaranteed by the Fundamental Law.

[22] The Constitutional Court therefore reviewed the merits of the constitutional complaint under section 26 (1) and section 27 of the ACC with the application of section 31 (6) of the Rules of Procedure, without a specific procedure of admitting the complaint.

IV

[23] The constitutional complaint pursuant to section 26 (1) of the ACC is unfounded, while the constitutional complaint pursuant to section 27 of the ACC is well-founded.

[24] 1 The second sentence of Article XIX (1) of the Fundamental Law stipulates that every Hungarian citizen is entitled to statutory assistance in the event of the life situations listed in the Fundamental Law, including disability and invalidity. In two cases, Article XIX of the Fundamental Law provides for a right guaranteed by the Fundamental Law for the purposes of the adjudication of constitutional complaints: Article XIX (4) refers to the right to a state pension, the conditions for which are laid down by Act of Parliament, while the second sentence of Article XIX (1) provides that, in the event of certain special life situations, statutory benefits are to be introduced or maintained as a subjective right. It follows that, although Article XIX typically sets out the objectives

of the State, this Article of the Fundamental Law provides a constitutional background for the laws applicable to the situations listed. The details of the statutory conditions or the conditions of eligibility as specific detailed rules do not, however, follow from the Fundamental Law, the constitutional background only means that the abstract entitlement follows from the Fundamental Law itself {see: Decision 28/2015. (IX. 24.) AB, Reasoning [34]}. It means that, even in the case of the existence of special life-situations specified in the Fundamental Law, citizens are only entitled to the statutorily defined level of benefits, the concrete form and the amount of which may be set by the law-maker in its free discretion. {Decision 3217/2014. (IX.22.) AB, Reasoning [24]}. However, the law-maker has the freedom to regulate only within the framework of the Fundamental Law. {Decision 3230/2013. (XII. 21.) AB, Reasoning [3]}

[25] 2 Prior to the adoption of the CCDec, the Constitutional Court contacted the Ministry of Human Resources (hereinafter: "Ministry"), which emphasised the following in connection with the benefits under the AAWA and the category of average monthly income under the AAWA. The disability benefit under the AAWA is a social security benefit which must be in proportion to the insured person's income on which the contributions paid to cover the benefit are based, and the concept of average monthly income is defined in the Act precisely in order to ensure this proportionality. While, as a general rule, the amount of the benefit is determined on the basis of the income earned during the 180 calendar days immediately preceding the submission of the application, the Ministry replied that section 1 (2) item 3 of the AAWA "provides for the possibility of determining the amount of the benefit on the basis of a more favourable calculation principle for persons who have not earned at least 180 calendar days of income in the year preceding the submission of the application but who have earned at least 180 calendar days of income in the year preceding the submission of the application" (CCDec, Reasoning [18] and [20]). In reaching the present decision, the Constitutional Court has also taken into account the Ministry's previous position.

[26] 3 No obligation of the law-maker to introduce a calculation principle more favourable than the main rule for determining the amount of benefits under the AAWA can be derived from Article XIX (1) of the Fundamental Law, accordingly, neither the obligation to create the last turn of section 1 (2) item 3 of the AAWA nor the obligation to maintain this rule in force derives from the Fundamental Law. However, in the event that the law-maker decides to introduce such a calculation principle, which is more favourable than the main rule, the rules governing the application of that calculation principle must be in conformity with the Fundamental Law, in this case Article XV thereof.

[27] 4 According to the consistent case-law of the Constitutional Court, the violation of the prohibition of discrimination under Article XV (2) of the Fundamental Law can be established within a comparable scope (same group) of persons. Discrimination must

therefore exist within a homogeneous group. No discrimination shall be established when the law provides for different rules regarding a different scope of subjects {see for the first time: Decision 40/2012. (XII.20.) AB, Reasoning [28]; see most recently for example: Decision 3534/2021. (XII.22.) AB, Reasoning [16]}.

[28] Pursuant to section 5/C (1) item c of the AHI, the cash benefits of health insurance are the ica, the adoption allowance, the cca and the sickness allowance. The purpose of health insurance cash benefits is to make up for any loss of earnings resulting from an accident, illness or childbirth on the basis of previous insurance and contributions. As a specific feature of these benefits, they are provided on the basis of an insurance relationship and that only one benefit may be claimed at a time on the basis of the same insurance relationship [section 39 (1) of the AHI]. Accordingly, if the beneficiary would become entitled to more than one of the health insurance cash benefits under the AHI., he or she must choose between these benefits according to which one they wish to receive. Both sickness, maternity and disability and invalidity as grounds for the introduction of certain health insurance cash benefits are explicitly mentioned in Article XIX (1) of the Fundamental Law. This also means that persons entitled to health insurance cash benefits under the AHI on the basis of their insurance relationship are in a comparable position with regard to the regulation of these benefits in terms of their insurance period, as the same insurance period may entitle them to receive any (but only one) of these benefits.

[29] 5 The Constitutional Court then examined whether the contested legislation does indeed differentiate between those entitled to certain health insurance cash benefits depending on which benefit they have received. In so far as the legislation at issue does not in fact make a distinction within a homogeneous group, the legislation cannot conceptually be held to be contrary to Article XV (2) of the Fundamental Law.

[30] Section 1 (2) item 3 of the AAWA, when grammatically interpreted, allows only persons in receipt of sickness or accident sickness benefit to take into account their income gained in the 180 calendar days prior to the payment of the benefit. Section 1 (2) item 3 of the AAWA does not contain any provision on other health insurance cash benefits (ica, cca, adoption allowance). However, in the interpretation of the laws, grammatical interpretation of the legislation is only one possible interpretation and not the only one. It follows from Article 28 of the Fundamental Law, according to which “in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law”. However, the grammatical meaning of the norm to be interpreted is a necessary limitation of the methods of interpreting the law outside the grammatical (textual) interpretation: the interpretation of the law should not lead to a *contra legem* result compared to the text of the law.

[31] In the present case, section 1 (2) item 3 of the AAWA does not expressly state whether it is possible to take into account the income of the 180 calendar days preceding the payment of these benefits when determining the average monthly income in the case of the ica, the cca and the adoption allowance, and therefore the Constitutional Court had to assess whether, when determining the average monthly income, the obligation to take into account the income for the period prior to the payment of ica, cca and adoption allowance can be deducted from section 1 (2) item 3 of the AAWA. If this is the case, the law-maker has not in fact made any distinction within the homogeneous group.

[32] When the law-maker provided that in the case of payment of sickness and accident sickness benefits, it allows the income earned in the 180 calendar day period preceding the payment of sickness benefit (accident sickness benefit) to be taken into account when determining the amount of benefits under the AAWA, in fact it provided that the income of the insurance relationship giving rise to the payment of sickness or accident sickness benefit should be taken into account. However, by its very nature, this insurance relationship also gives the beneficiary the possibility to receive all health insurance cash benefits under section 5/C (1) item c of the AHL, with the proviso that, in accordance with section 39 (1) of the AHL, only one of these benefits may be claimed at the same time.

[33] In the case of receiving health insurance cash benefits other than sickness and accident insurance benefits (ica, cca, adoption allowance), section 1 (2) item 3 of the AAWA does not prohibit the taking into account of income earned in the period preceding the receipt of these benefits, but is merely silent on that point. However, it would also allow income earned during the same period to be taken into account if the beneficiary had opted for receiving sickness or accident benefits instead of ica, cca or adoption allowance. This is particularly true in the case of the petitioner, who has received sickness benefit, ica and cca benefits consecutively. As the Ministry pointed out in its reply to the request of the Constitutional Court prior to the adoption of the CCDec, "the disability benefit under the AAWA is a social security benefit which must be in proportion to the insured person's income on which the contributions paid to cover the benefit are based, and the concept of average monthly income is defined in the Act precisely in order to ensure this proportionality" (CCDec, Reasoning [18]) Indeed, the possibility of taking into account the same insurance relationship in determining the same benefits subject to the AAWA must be treated in the same way in all cases, regardless of which other constitutionally comparable health insurance cash benefits the beneficiary receives. That follows from a systemic and teleological interpretation of section 1 (2) item 3 of the AAWA, based on an examination of the law-maker's intent, and it follows from Article XV (2) of the Fundamental Law. That interpretation is both consistent with the law-maker's intention and the requirements

of the Fundamental Law and does not conflict with the grammatical interpretation of section 1 (2) item 3 of the AAWA.

[34] This also means that it is also possible to attribute to section 1 (2) item 3 of AAWA a meaning which allows, in the case of all benefits within the scope of the health insurance cash benefits, the taking into account of the income of the 180 calendar days preceding the payment of the benefit which formed the basis for the payment of that benefit, where the beneficiary's period of insurance would entitle him or her to receive any of these benefits with the mandatory option to choose between them as the case may be, given that individual health insurance cash benefits are based on the same insurance relationship and that only one of these benefits may be claimed at the same time. It means that section 1 (2) item 3 of the AAWA can in fact be interpreted as not distinguishing in the determination of the average monthly income between persons receiving certain cash benefits under health insurance, in terms of the eligibility of the income prior to the payment of those benefits.

[35] According to section 46 (3) of the ACC, in the procedure carried out in the course of exercising its competences, the Constitutional Court may specify constitutional requirements – that result from the regulation under the Fundamental Law and that enforce the provisions of the Fundamental Law – the reviewed law has to comply with.

[36] The amount of the benefits under the AAWA depends on the insured person's income on which the contribution paid to cover the benefits is based, which income and the insured status that goes with it entitle the insured person to certain cash benefits of the health insurance scheme in addition to the entitlement to benefits under the AAWA, with the proviso that, pursuant to section 39 (1) of the AHI, only one of these benefits may be claimed at the same time. Consequently, it is a constitutional requirement originating from Articles XV (2) and XIX (1) of the Fundamental Law that the the last turn of section 1 (2) item 3 of the AAWA does not preclude from taking into account the period during which the person entitled to benefits received a benefit in the scope of protection under Article XIX (1) of the Fundamental Law, which is not applicable at the same time as sickness or accident sickness benefits on the basis of the AHI and which is also in the scope of the cash benefits under the health insurance and is based on an insurance relationship providing an entitlement to receive sickness or accident sickness benefits, if the beneficiary would be entitled to receive both sickness or accident sickness benefits and any of the other health insurance cash benefit on the basis of this insurance relationship. In the Constitutional Court's view, this interpretation of the law adequately ensures that the application of section 1 (2) item 3 of the AAWA in all individual cases leads to a result in conformity with the Fundamental Law.

[37] 6 In view of the fact that the Constitutional Court has concluded, as stated above, that there is an interpretation of section 1 (2) item 3 of the AAWA which is in line with

Article XV (2) and Article XIX (1) of the Fundamental Law, i.e. it does not discriminate between persons in comparable situations, the Constitutional Court has rejected the constitutional complaint under Article 26 (1) of the ACC as set out in the holdings of the decision.

[38] 7 In the course of the examination of the constitutional complaint under section 27 of the ACC, the Constitutional Court found that the Debrecen Regional Court, in applying the provision of the law applied in the individual case, reached a legal interpretation which, in terms of the eligibility of the same insurance period, made a distinction between sickness or accident sickness benefits and further benefits within the scope of other health insurance cash benefits (ica, cca, adoption allowance) and, ultimately, between the recipients of these benefits, in a manner that the same period of insurance could have entitled the petitioner to any of these benefits, which fall within the scope of protection of Article XIX (1) of the Fundamental Law, and that, moreover, she had indeed received them consecutively, and that only one of the cash benefits of the health insurance scheme was available to the petitioner at the same time.

[39] Taking into account the findings made by the Constitutional Court in connection with establishing the constitutional requirement, the Constitutional Court concluded that the interpretation of the law in the judgement of the Debrecen Regional Court violates Article XIX (1) and Article XV (2) of the Fundamental Law.

[40] An interpretation of the law which, in defining the scope of application of section 1 (2) item 3 of the AAWA, distinguishes between persons entitled to certain health insurance cash benefits under the AHI despite the fact that the same period of insurance entitles the beneficiary to any of those benefits (but only one of them at any one time), is a distinction within a homogeneous group as defined above. According to the case-law of the Constitutional Court, "the Constitutional Court applies a standard to discrimination affecting fundamental constitutional rights -- the necessity/proportionality test laid down in Article I (3) of the Fundamental Law -- and a different standard when it examines the prohibition of discrimination in relation to rights other than fundamental rights" {Decision 14/2014. (V.13.) AB, Reasoning [32]; most recently: Decision 3536/2021. (XII.22.) AB, Reasoning [38]}.

[41] Taking into account that in the context of the possible interpretation of the relevant provision of the AAWA, the Ministry has specifically emphasised that "the disability benefit under the AAWA is a social security benefit which must be in proportion to the insured person's income on which the contributions paid to cover the benefit are based, and the concept of average monthly income is defined in the Act precisely in order to ensure this proportionality" (CCDec, Reasoning [18]), and in view of the constitutional requirement formulated in the framework of the complaint made under section 26 (1) of the ACC, the Constitutional Court has concluded that the necessity of the distinction manifested in the judgement of the Debrecen Regional

Court cannot be justified constitutionally, in accordance with Article I (3) of the Fundamental Law.

[42] The fact that the relevant provision of the AAWA has a possible interpretation which is in accordance with the requirements of the Fundamental Law, as stated above, also means that the judgement of the Debrecen Regional Court interpreted section 1 (2) item 3 of the AAWA in such a way that the interpretation of the law chosen by the trial court exceeded the constitutional limits of the scope of interpretation granted to the court under Article 28 of the Fundamental Law, and the judgement of the Debrecen Regional Court became one contrary to Article XV (2) of the Fundamental Law, i.e. it violated the Fundamental Law. The Constitutional Court, therefore, annulled the judgement of the Debrecen Regional Court as set forth in the holdings of the decision.

[43] 8 The publication of the decision in the Hungarian Official Gazette is based upon the second sentence of section 44 (1) of the ACC.

Budapest, 17 May 2022.

Dr. Tamás Sulyok,
President of the Constitutional Court

Dr. Ágnes Czine, Justice of the
Constitutional Court

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

Dr. Tünde Handó, Justice of the
Constitutional Court

Dr. Attila Horváth, Justice of the
Constitutional Court

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

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

Dr. Miklós Juhász, Justice of the
Constitutional Court

Dr. Zoltán Márki, Justice of the
Constitutional Court

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

Dr. László Salamon, Justice of the
Constitutional Court

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

Dr. Marcel Szabó rapporteur, Justice of
the Constitutional Court

Dr. Péter Szalay Justice of the
Constitutional Court

Dr. Mária Szívós, Justice of the
Constitutional Court