Decision 3/2013 (II. 14.) AB

on a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court

On the basis of constitutional complaints seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of judicial decisions, with concurring reasonings by Justices dr. István Balsai and dr. Béla Pokol, Justice dr. Mihály Bihari concurring with Point 2 of the operative part of this Decision, Justice dr. Mihály Bihari dissenting from Point 1 of the operative part of this Decision and Justice dr. András Bragyova dissenting from Point 2 of the operative part of this Decision, the plenary session of the Constitutional Court passed the following

decision:

1. The Constitutional Court holds that Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court infringes the right of peaceful assembly secured in Article VIII (1) of the Fundamental Law and, therefore, the Court hereby annuls said court Order.

2. The Constitutional Court further holds that it is a constitutional requirement flowing from Article VIII (1) of the Fundamental Law that a decision of the Police for lack of competence on the notification of an event is subject to judicial review under Section 9 of Act III of 1989 on the Right of Assembly. The court shall conduct a substantive review on the legality and the merits of the decision of the police authority establishing the lack of competence.

The Constitutional Court shall publish this Decision in the Hungarian Official Gazette.

Reasoning

I

[1] 1. In its constitutional complaint received on 25 April 2012, 'Lehet Más a Politika' ('Politics Can Be Different', a Hungarian political party, hereinafter referred to as the "Petitioner"), contested Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court (hereinafter referred to as the "First Court Order").

[2] On the authority of the facts underlying this procedure, on 6 February 2012, Petitioner notified the competent police station in accordance with Section 6 of

Act III of 1989 on the Right of Assembly (hereinafter referred to as the "Right of Assembly Act") that they intended to hold an event on 15 March 2012 in Heroes' Square. In its order No. 01000/6480-2/2012. ált (hereinafter referred to as the "First Police Order") issued on the same day, Budapest Police Headquarters established its lack of jurisdiction. In line with the statement of grounds of the First Police Order, the Local Government for Budapest made the Heroes' Square available to the Mayor's Office of the Local Government for Budapest in the public ground use agreement No. FPH061/555-3/2012 of 10 January 2012. As a result of the public ground use permit, as stated by the Police, the designated area has lost its "public ground character within the meaning of Section 15 (a) of the Right of Assembly Act"; consequently, the event notified for the area in question does not fall within the scope of the Right of Assembly Act and the Police have no competence to assess the event.

[3] The complainant subsequently applied to Budapest-Capital Regional Court pursuant to Section 9 (1) of the Right of Assembly Act seeking to quash the First Police Order, given that it constituted a decision on the merits of the case which had the same effect as the prohibition of the event, and the Order restricts the right to peaceful assembly in a manner failing to manifest conformity with the Fundamental Law.

[4] Budapest-Capital Regional Court found that Budapest Police Headquarters had not assess the merits of the notification and had not ruled on the merits of banning the event. As held in the First Court Order, Budapest Police Headquarters rejected the notification of the event because it found that it had no jurisdiction over the matter. The court therefore concluded that it did not have the opportunity to adjudicate on the merits of the matter either, therefore in the order it declared its lack of competence pursuant to Section 8 (3) of the Right of Assembly Act, taking into account the provisions of Act CXL of 2004 on the General Rules of Public Administrative Proceedings and Services (hereinafter referred to as the "Public Administrative Proceedings Act"), and referred the matter as an appeal to the National Police Headquarters.

[5] The Petitioner lodged a constitutional complaint against the First Court Order with the Constitutional Court pursuant to Section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act"), in which they requested the annulment of the First Court Order. This constitutional complaint was registered by the Constitutional Court under number IV/2878/2012.

[6] 2. In line with the first complaint, registered under number IV/2878/2012, the fundamental right to peaceful assembly and redress guaranteed by the Fundamental Law was violated by the fact that Budapest-Capital Regional Court did not review the merits of the First Police Order. The Petitioner points out that in order to enforce the right to peaceful assembly, the Right of Assembly Act institutionalizes a fast, single-

instance official and judicial procedure with brief time limits. This is a guarantee that events that respond to public events in a timely manner can be held. As contended by the Petitioner, in the case of gatherings, the legal remedy is effective if the legal decision on the prior prohibition of the event and other administrative decision having the same effect can be made at a time that allows the violation to be remedied in time. Under the petition, Section 9 (1) of the Right of Assembly Act, which provides for "judicial review of a state administrative decision", must be interpreted accordingly. The word 'decision' includes administrative acts adopted on the merits and not on the merits of the case. Otherwise, the Right of Assembly Act's guarantee scheme would not apply to certain police decisions, as is the case here.

[7] As further contended by the Petitioner, the infringement of the fundamental right was caused by the unconstitutional interpretation of Section 9 (1) of the Right of Assembly Act, therefore the Petitioner primarily initiated the annulment of the First Court Order. However, if the Constitutional Court found that the court had followed the only correct interpretation of Section 9 (1) of the Right of Assembly Act and was also in accordance with the Fundamental Law, the Petitioner sought, in the alternative, the annulment of Section 9 of the Right of Assembly Act.

[8] 3. On 3 August 2012, the Constitutional Court requested the Mayor of Budapest to send the Constitutional Court a copy of the public ground use permit, on which the dispute was based. The Mayor attached to his letter received on 29 August 2012 a copy of the Public Ground Use Agreement No. FPH061/555-3/2012 dated 10 January 2012. Under this agreement, the capital's local government made a total of ten pieces of public ground in Budapest, including the entire area of Heroes' Square, available to the Mayor's Office by 15 March 2012 "for the purpose of organising the events of the national holiday commemorating the 1848 Revolution." The Mayor also informed the Constitutional Court that the Mayor's Office had resigned in its letter No. FPH015/117-6/2012 dated 28 February 2012 that the Office would use the public grounds Heroes' Square, Andrássy Road and Blaha Lujza Square during the celebrations of 15 March.

[9] 4. On 3 August 2012, the Constitutional Court also sent a letter to the Petitioner requesting the National Police Headquarters' decision on the appeal and a copy of the subsequent court decision to be sent since the submission of the constitutional complaint. In their letter received on 23 August 2012, the Petitioner sent the information that the National Police Headquarters had upheld the First Police Order establishing the lack of competence in Order No.29000/7337-3/2012. ált (hereinafter referred to as the "Second Police Order"); however, Order No.7.Kpk.45.646/2012/3 of Budapest-Capital Regional Court (hereinafter referred to as the "Second Court Order") set aside the police orders and ordered Budapest Police Headquarters to reopen the proceedings. The Petitioner sent a copy of the orders in a letter and also informed the

Constitutional Court that the Petitioner had withdrawn their notification to hold the event of 15 March 2012 due to the time elapsed with the appeal procedure.

[10] 5. On 3 September 2012, the petitioner lodged another constitutional complaint, which was registered by the Constitutional Court under number IV/3351/2012. In this, the complainant sought the annulment of the Second Court Order reviewing the Second Police Order. Under the Second Court Order, the quality of public ground in an area does not change by the fact that the use of municipally owned public ground is restricted by an agreement. Were this otherwise, in the possession of a public ground use permit, the public ground would be regarded as private ground, where the event in question could be held without notification. Given that the quality of the public ground in Heroes' Square was maintained despite the public ground use agreement, the Police should have assessed the merits of the notification. The court therefore overturned the police orders.

[11] As contended by the complainant, the Second Court Order violated their right to peaceful assembly because "the court interpreted the provisions of the Right of Assembly Act on redress in such a way that, in view of the temporal dimension, it was no longer fit for holding the event which had been unlawfully unacknowledged." The complainant considers that the right to legal remedy was also violated because instead of the three-day statutory time limit open for a substantive review of the police decision to notify a gathering, the court found the police orders to be unlawful at a time unsuitable for holding such event.

[12] As contended the complainant, the First Court Order constitutes a decision on the merits of the case and therefore fulfils the conditions set out in Article 27 of the Constitutional Court Act. If, nevertheless, the Constitutional Court should not consider the First Court Order to be a decision on the merits of the case, the appeal procedure may be conducted against the Second Court Order.

II

[13] Legislative provisions governing the handling of the complaint

[14] 1. Provisions of the Fundamental Law referred to in the constitutional complaint are as follows:

"Article VIII (1) Everyone shall have the right to peaceful assembly."

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

[15] 2. The relevant provisions of the Right of Assembly Act are as follows:

"Section 6 The organisation of an event to be held on public ground shall be notified to the police headquarters competent according to the place of the event, in Budapest to the Budapest Police Headquarters (hereinafter referred to as the "police") at least three days before the planned date of the event. The obligation to notify lies with the organiser of the event."

"Section 8 (3) The police procedure shall be governed by the general rules of public administrative proceedings."

"Section 9 (1) No appeal may be lodged against the police decision; within three days of the communication of the decision, the organiser may request a judicial review of the state administrative decision. The request must be accompanied by the police decision.

(2) The court shall decide within three days from the receipt of the request, in a non-litigious procedure, with the assistance of lay judges, and, if necessary, after hearing the parties. If the court upholds the request, it will set aside the police decision, otherwise it will reject said request. There is no appeal against the court's decision. [...]"

"Section 15 For the purposes of this Act

(a) "public ground" shall mean any area, road, street, square that can be used by everyone without restrictions; [...]"

III

[16] First of all, the Constitutional Court reviewed whether the constitutional complaints are admissible, that is, whether they meet the criteria for the admissibility of complaints set out in the Constitutional Court Act.

[17] 1. Assessing the formal conditions of admissibility, the Constitutional Court came to the following conclusions:

[18] 1.1. The Petitioner fulfilled the conditions specified in Section 51 (2) of the Constitutional Court Act, because the lawyer registered by the Budapest Bar Association filed the constitutional complaint on the Petitioner's behalf, and the Petitioner attached a regular power of attorney.

[19] 1.2. The petition also complies with the conditions set out in Section 52 (1) of the Constitutional Court Act. The constitutional complaint contains a reasoned reference to the competence of the Constitutional Court under Section 27 of the Constitutional

Court Act. The Petitioner expressly mentions the right to peaceful assembly recognised in Article VIII (1) of the Fundamental Law and the right to legal remedy provided for in Article XXVIII (7).

[20] The Constitutional Court also had to rule on the question of whether the constitutional complaint contained an explicit request, as the complainant firstly seeks the annulment of the First Court Order and, in the alternative, the annulment of the Second Court Order and Section 9 of the Right of Assembly Act.

[21] Pursuant to Section 52 (1) (f) of the Constitutional Court Act, a petition is deemed to be explicit, *inter alia*, if it clearly indicates an explicit request for the annulment of the legal regulation, the provision thereof or the judicial decision Pursuant to Section 52 (2) of the Constitutional Court Act, the assessment conducted by the Constitutional Court shall be exclusively limited to the specified constitutional request. However, this provision does not affect the competence of the Constitutional Court, *inter alia*, with regard to *ex officio* findings specified in Section 28 (1) of the Constitutional Court Act. Section 28 (1) of the Constitutional Court Act allows the Constitutional Court to transition from a complaint under Section 27 to a complaint procedure under Section 26. [Based on the textual interpretation of Section 52 (2) of the Constitutional Court Act, the Constitutional Court may conduct a norm control pursuant to Section 26 in the proceedings specified in Section 27 of the Constitutional Court Act, but it could not assess a judicial decision in proceedings instituted on the basis of Section 26. However, conforming to the interpretation of Section 52 (2) of the Constitutional Court Act, in the light of the system of the constitutional complaint, the Constitutional Court Act does not exclude the possibility that the "transition" may take place in the other direction, from Section 26 to Section 27.]

[22] The person submitting a constitutional complaint must, as a general rule, be able to decide what to initiate: the proceedings of the Constitutional Court pursuant to Section 26 (1), possibly Subsection (2) or Section 27 of the Constitutional Court Act. However, it is conceivable that in a particular case it is not possible to decide clearly whether the legal norm or its ad hoc application causes the alleged violation of the Fundamental Law. Moreover, it is conceivable that both the application of the law of the court and the constitutionality of the norm on which it is based are in doubt. It cannot therefore be completely ruled out that the Petitioner may make a primary and a secondary request in their constitutional complaint. [This is also supported by the previous case law of the Constitutional Court, which considered the merits of petitions that made primary and secondary requests (a request for a posterior norm control in a constitutional complaint or, for example, a finding of unconstitutionality by omission in a posterior norm control petition).

[23] In the present case, the Petitioner primarily contests the court's decision passed in a specific case. However, the Petitioner expresses that the question of the constitutionality of the norm also arises if the impugned legal interpretation can be considered as “living law”, that is, the norm is typically enforced with the content as interpreted by the court issuing the First Court Order.

[24] The Constitutional Court has considered that in a particular case the Constitutional Court requires a substantive examination to determine whether the alleged unconstitutionality affects the level of legislation or the application of law.

[25] 1.3. Pursuant to Section 30 (1) of the Constitutional Court Act, a constitutional complaint may be submitted in writing within sixty days from the service of the impugned decision. The Petitioner received the First Court Order on 20 March 2012, so their constitutional complaint was received by the Constitutional Court on 25 April 2012 within the sixty-day period. The Second Court Order of 13 July 2012 was served on the complainant on 20 July 2012, in which case the constitutional complaint was again lodged with the court of first instance on 23 August 2012 within the prescribed sixty-day time limit.

[26] 2. Assessing the substantive conditions of admissibility, the Constitutional Court established the following:

[27] Pursuant to Section 56 (2) of the Constitutional Court Act, the panel shall examine in its discretionary power the content-related requirements of the admissibility of a constitutional complaint, in particular the concernment pursuant to Section 27, the exhaustion of legal remedies and the conditions specified in Sections 29 to 31. Pursuant to Section 27 of the Constitutional Court Act, persons or organisations affected by judicial decisions contrary to the Fundamental Law may submit a constitutional complaint to the Constitutional Court if the decision made regarding the merits of the case or other decision terminating the judicial proceedings (a) violates their rights laid down in the Fundamental Law, and (b) the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her.

[28] 2.1. The Petitioner can be considered an entity authorised to submit a petition pursuant to Section 27 and Section 51 (1) of the Constitutional Court Act, the Petitioner is obviously involved, as they are a party to the legal dispute giving rise to the present case.

[29] 2.2. The Petitioner has exhausted the remedy available to the Petitioner. The complainant lodged their first constitutional complaint against the First Court Order in the dispute (IV/2878/2012). There is no further appeal against this court order. Following the submission of the first constitutional complaint, the complainant was

subject to judicial review against the Second Police Order. The complainant again appealed to the Constitutional Court against the final court order in the case (IV/3351/2012). There is no appeal against the Second Court Order, either.

[30] 2.3. Pursuant to Section 29 of the Constitutional Court Act, the Constitutional Court shall admit constitutional complaints if a conflict with the Fundamental Law substantively affects the judicial decision, or the case raises constitutional law issues of fundamental importance. Although these two requirements are alternative, the admissibility of the present case is supported by both considerations.

[31] On the one hand, in the present case, there has been no judicial review of whether the procedural provisions of the Right of Assembly Act constitute an impediment to the holding of a public event if a person other than the applicant has a public ground use permit for the notified site. The court, which dismissed the substantive review of the police order, did not consider the problem as a dispute related to the freedom of assembly, and this fact substantively affected the outcome of the case, the challenged court orders.

[32] On the other hand, the Constitutional Court took into account that the subject-matter of the present case was the failure to hold an event on 15 March 2012 in Heroes' Square. The decision of the Constitutional Court cannot, of course, subsequently ensure that the Petitioners can exercise their right of assembly retroactively. The decision cannot therefore have a direct effect on the specific case of the constitutional complainant {Order 3003/2012 (IV. 21.) AB, Reasoning [5] to [6]}. The constitutional review in the present case may influence the change in the complainant's situation in such a way that the Constitutional Court, if the conditions are met, may find a violation of the right of assembly, which in the present case may result in moral satisfaction for the persons affected by such violation. [Similarly, the European Court of Human Rights in its judgement in Bukta and Others v. Hungary (25691/04, 17 July 2007) subsequently found that the violation had taken place in connection with a dissolved gathering and considered it a sufficient remedy for any eventual non-pecuniary damage suffered.]

[33] In addition, the review of the constitutional problem is beyond the scope of the individual case, as the substantive decision of the Constitutional Court may formulate *ex nunc* the aspects which the entities enforcing the law in the assembly case can give due consideration to in such and similar disputes. The Constitutional Court considers the question of the fundamental constitutional significance to be answered in the course of the substantive proceedings primarily to be whether the interpretation of Section 9 (1) of the Right of Assembly Act is in conformity with the Fundamental Law, which provides for substantive judicial review only in the case of a police decision formally prohibiting assembly.

[34] On the basis of all these considerations, the plenary session of the Constitutional Court of 1 October 2012 admitted the constitutional complaints. Subsequently, the Justice delivering the opinion of the Court, pursuant to Article 32 (1) of Decision 1001/2013 (II. 27.) AB TÜ of the Constitutional Court on the Constitutional Court's Rules of Procedure (hereinafter referred to as the "Rules of Procedure), ordered that Case IV/3351/2012 be joined with Case IV/2878/2012, in view of the subject matter of the constitutional complaint and the identicality of the parties to the dispute.

IV

[35] In Part IV of the decision, the Constitutional Court assessed the complainant's allegation that the fundamental right to assembly had been violated by the fact that Budapest-Capital Regional Court had not ruled on the merits of the First Police Order. In doing so, this Court first presents the arguments of the petitioner (1), then outlines the meaning given to freedom of assembly by the Constitutional Court under the Constitution in force until 31 December 2011, assesses how the Fundamental Law ensures freedom of assembly and whether the text of the Fundamental Law has changed the previous conception of the right of assembly (2). It then sets out the relevant constitutional considerations relating to the choice of venue in the present case (3).

[36] 1. The Petitioner maintains that the fast, single-instance official and court procedure institutionalised by the Right of Assembly Act is a guarantee that events that react to public events in a timely manner can be held. In the case of assemblies, a remedy is effective if such remedy for the prior prohibition of the event and any other administrative decision having equivalent effect can be made at a time which allows the infringement to be redressed in good time. As contended by the Petitioner, Section 9 (1) of the Right of Assembly Act, which provides for "judicial review of a state administrative decision", must be interpreted accordingly. The word 'decision' includes administrative acts adopted on the merits and not on the merits of the case. Otherwise, the Right of Assembly Act's guarantee scheme would not apply to certain police decisions, as is the case here.

[37] 2. In interpreting the content of the right of assembly in the Constitution, the Constitutional Court proceeded from the following finding of Decision 22/2012 (V. 11.) AB: The Constitutional Court "can apply in the new cases the arguments connected to the questions of constitutional law judged upon in the past and contained in its decisions adopted before the Fundamental Law was put into force, provided that it is possible on the basis of the specific provisions, having the same or

similar content as that of the previous Constitution, and of the rules of interpretation of the Fundamental Law." (Reasoning [40])

[38] In Article 62 (1) of the Constitution in force until 31 December 2011, the Republic of Hungary recognised the right to peaceful assembly and ensured the free exercise thereof. The Fundamental Law, effective as of 1 January 2012, guarantees everyone the right to "peaceful assembly". Although the wording of Article VIII (1) of the Fundamental Law does not explicitly require the State to ensure the free assembly of people, this obligation follows from Article I (1) of the Fundamental Law, as the latter provision protects all fundamental rights (including the right of assembly) by making it a primary obligation of the State. The legislative and law enforcement institutions of the State are therefore obliged to ensure that those wishing to assemble can exercise their fundamental rights enshrined in Article VIII (1) of the Fundamental Law. The Constitutional Court therefore continues to be guided by the findings on freedom of assembly contained in its previous decisions.

[39] In the case law of the Constitutional Court, the right of assembly is part of the wider freedom of expression, which provides for the peaceful expression of a common opinion in public affairs. Constitutional protection therefore applies to events aimed at participating in the public debate on public matters, which help to obtain and share information of public interest with others and to express opinions jointly. [Decision 55/2001 (XI. 29.) AB, ABH 2001, 442, 449.; Decision 75/2008 (V. 29.) AB, ABH 2008, 651, 662-663.]. Whether an event concerns a public matter and therefore constitutes an assembly within the meaning of the Fundamental Law depends on the content, form and context of the opinion to be expressed.

[40] The right to peaceful assembly (together with freedom of expression and association) has closely linked essential content, which is a precondition for democratic social practice. On the basis of their right to express their collective opinion, citizens can also express their views on issues of general public interest between the dates of national and municipal elections. Such an issue related to public matters is, for example, how we relate to history, what event we consider worthy of celebration and in what way. Events held under the right of assembly are suitable for displaying historical narratives that live side by side but are partially or significantly different from each other. This is not entirely independent of the aspect of the right of assembly that has emerged in previous constitutional court practice, which sees the organisation of events primarily as a means by which citizens can criticise political processes. In this view, the right of assembly is also valuable in terms of consolidating the legitimacy of the political and social order and the representative bodies. This is because assembly also signals existing social tensions to the government and the public, and allows for the correction of public policy. [*See* Decision 4/2007 (II. 13.) AB, ABH 2007, 911, 914.]

[41] It is the individual's freedom of assembly to organise and participate in assembly. An essential element of organising a gathering (sometimes part of an expression of opinion in a particular public affair) is choosing for what purpose the event will take place where, when, and under what circumstances. Freedom of assembly also extends to the choice of the place of assembly. [Similarly, see the judgement of the Strasbourg Court in Sáska v. Hungary, paragraph 21 (58050/08, 27 November 2012).] This is because the objective one wishes to achieve with the gathering can be closely related to the chosen location. Maybe because the event is merely intended to commemorate and remind one of what happened at that location, or because the location has a symbolic meaning. In such cases, freedom of assembly includes the right to assemble at a particular place, which may be restricted in accordance with Article I (3) of the Fundamental Law.

[42] 3.1. The right of assembly protects both peaceful public events of a public nature held on public ground and in a privately owned area freely accessible to the public. This view is supported by Article21 of the International Covenant on Civil and Political Rights and Article11 of the European Convention on Human Rights and related case law, as well as by the Venice Commission's summary position on freedom of assembly. [Rassemblement Jurassien Unité v. Switzerland (8191/78, 10 October 1979); Compilation of Venice Commission Opinions concerning Freedom of Assembly, Strasbourg, 04 October 2012, CDL (2012) 014 rev 2, 2.]

[43] This can also be deduced from the general wording of Article VIII (1) of the Fundamental Law, and this position is taken by Decision 55/2001 (XI. 29.) AB when it states that the obligation of prior notification applies only to an event held on public ground and not in general, for all events. The Right of Assembly Act only gives the authority a task in connection with an event to be held on public ground. If the peaceful gathering is not held on public ground, the authority has no legal possibility to take any action under the Right of Assembly Act. (ABH 2001, 442, 454, 458.)

[44] This also follows from the provisions of the Right of Assembly Act guaranteeing the right of assembly. Pursuant to Section 2 (1) of the Right of Assembly Act, “peaceful gatherings, processions and demonstrations (hereinafter jointly referred to as “events”) may be held in the framework of the exercise of the right of assembly, at which events the participants are free to express their opinions”. In addition to election rallies, Section 3 of the Right of Assembly Act excludes from its scope religious, cultural, sports and family events, typically held on private ground. In addition, all events held in public areas and in privately owned areas that are freely accessible to the public fall within the scope of the right of assembly, but pursuant to Section 6 of the Right of Assembly Act, only the organisation of an event held in a public area must be reported to the police station competent for the place of the event. Pursuant to Section 8 (1) of the Right of Assembly Act, only in the case of the latter, the “event subject to notification”, does the

police have the possibility that if it seriously jeopardised the smooth operation of representative bodies or courts, or if transportation could not be provided on another route, they may prohibit the event from being held at the designated place or date. The obligation to notify in the case of an event to be held on public ground is justified by the need for the authorities to be able to ensure that the gathering be held.

[45] 3.2. Given that one of the purposes of public grounds has traditionally been to be one of the most obvious, publicly accessible forums for the public, events held on public ground enjoy particularly strong constitutional protection. This is manifested in the fact that if the use of the public ground chosen as the place of assembly is restricted by a measure of public authority, the restriction affecting the fundamental right must meet the requirements of necessity and proportionality. A restriction complies with the Fundamental Law if it is absolutely (that is, inevitably) necessary for the enforcement of a fundamental right or the protection of a constitutional value. In addition, the restriction must be proportionate to the aim to be achieved and must not affect the essential content of the freedom of assembly. [Article I (3) of the Fundamental Law] In considering the constitutionality of a restriction, special consideration shall be given to the fact that a prior prohibition of a gathering on public ground is the most serious restriction on freedom of assembly guaranteed by the Fundamental Law.

[46] This test of discretion is also in line with the case law of the Strasbourg Court. The European Court of Human Rights applied a proportionality test when examining, for example, in Patyi v. Hungary (35127/08, 17 January 2012), whether it complied with the right to peaceful assembly guaranteed by Article 11 of the Convention that the police had not ruled on the merits of the complainant's notification of the assembly due to the declaration of Kossuth Square as a security operation area. The U.S. Supreme Court also applies a rigorous test when it comes to restricting gatherings in public forums, which are typically characterised by communication activities. In the case of such an area, a restriction on assembly is constitutional if the restriction is narrowly tailored to a compelling state interest and is neutral as to the content or point of view. [*See*, e.g., United States v. Grace 461 U.S. 171 (1983); Snyder v. Phelps 562 US __ (2011)]

[47] The Venice Commission's Synthesis Report addressed laws that either excluded certain public ground from the list of possible assembly venues or designated only certain areas as assembly venues. The Commission considers that the right of assembly is disproportionately restricted in both cases, since the authorities can legitimately exclude certain venues from the optional assembly venues only on the basis of their actual danger to human life or health. [Compilation of Venice Commission Opinions concerning Freedom of Assembly, Strasbourg, 04 October 2012, CDL (2012) 014 rev 2, 5.2.]

[48] 3.3. For the purposes of the Right of Assembly Act, public ground shall mean any area, road, street, square that can be used by everyone without restriction [Section 15 (a) of the Right of Assembly Act]. As a general rule, therefore, any gathering may be organised in an area open to the public without restriction. In line with Constitutional court precedent, "unlimited access for everyone means that both the participants of the assembly, and everyone else who does not participate therein should have equal access to the public ground". [Decision 55/2001 (XI. 29.) AB, ABH 2001, 442, 458.] The use of public ground during the exercise of the assembly is free of charge and, in fact, the police are obliged, if necessary, to ensure the assembly. Therefore, in accordance with Section 8 (3) of the Right of Assembly Act, after the notification of an event to be held in a public place, the police shall, on the basis of the Public Administrative Proceedings Act, review, *inter alia*, whether the assembly has been notified to be held on public ground. In doing so, the police must make sure that they have the authority to investigate the notification: the notified location of the event is not private and the designated public ground is accessible to everyone.

[49] The police, if they do not have the power to investigate the notification because the event is not intended to be held in an area that is open to everyone without restriction, pursuant to Section 8 (1) and (3) and Section 15 (a) of the Right of Assembly Act, they shall take a decision rejecting the notification in accordance with the relevant provisions of the Public Administrative Proceedings Act. In other cases, the Police take note of the notification or makes a decision prohibiting the holding of the event at the given place and date due to the reason indicated in Section 8 (1) of the Right of Assembly Act. The subject matter of this legal dispute is the first case scenario where the Police make a decision rejecting the notification; therefore, the Constitutional Court has listed below what the possible reasons for the rejection may be.

[50] 3.4.1. With regard to the location, the police practice typically rejects by order a notification for holding an event, citing a lack of competence, for two reasons. The first such reason is the designation of the area as a "security operation area". If the police have declared certain areas as security operation areas, the notifications for these areas were rejected due to the lack of competence of the police on the grounds that "the designation as a security operation area entails the loss of public ground character". Prior to the autumn of 2006, it was not possible to hold an event in the area in front of the House of Terror Museum and the Great Synagogue in Dohány Street, and on 23 October 2006, the police classified the cordoned part of Kossuth Square from the Parliament as a security operation area. In these cases, Budapest Metropolitan Court upheld the police decisions rejecting the notification and finally ruled that the areas had lost their public character by being declared a security operation area; therefore, no event could be notified at such areas. Although the requests also challenged the legality of the Chief of Police's measure declaring the area to be a security operation

area, the court held that the Chief of Police's instruction at the request of the Republic Guard Regiment was not a individual act of public administration against which anyone could go to court. However, later, in the course of the Budapest Police Headquarters' assessment of the complaint against the imposition of the personal and facility insurance measure, the judgement of Budapest Metropolitan Court No. 27.K.31.354/2012/9 found that although the designation of the area in question as a "security operation area" necessary and lawful, the same could not be said for its extension on 22 November 2006. At the time of the extension, the Budapest Police Headquarters did not indicate the reasons and circumstances which made it necessary. Budapest Metropolitan Court therefore ruled that the police measure was disproportionate because it restricted citizens' freedom of movement and right of assembly without due cause. (Budapest Metropolitan Court ordered the Budapest Police Headquarters proceeding at first instance to conduct new proceedings. The decision of the Chief of Police of Budapest No. 01000-105-300/16/2011.P of 4 April 2011 had already acknowledged that the extension of provision of personnel and facilities measure applied in Kossuth Square on 22 November 2006 was disproportionate and therefore illegal.)

[51] This finding formed the basis for the judgement of the European Court of Human Rights in Patyi v. Hungary (35127/08, 17 January 2012) and Szerdahelyi v. Hungary (30385/07, 17 January 2012) in ruling that: Hungary violated the complainants' right of assembly by declaring Kossuth Square an illegal security operation area to make it impossible to hold the demonstration notified by the complainants for March 2007.

[52] 3.4.2. Another common reason for rejecting a notification without a substantive assessment is if the notification concerns an area over which another person or organisation exercises a right of disposal under a public ground use agreement. Local governments keep the police informed about permitting the use of public space. In doing so, the local governments name the area covered by the public ground use permit, the size of the area put into use, the time of use, the reason and the person of the user. This means that the competent police station has the information on who has a public ground use permit for a given area at the indicated time. However, the police only take note of this information and do not have the right or opportunity to review its legality and justification. In keeping with the current practice, therefore, if the police establish that someone else has a public ground use permit for the designated area, the police, for lack of competence, reject the notification by an order, on the ground that the notification does not belong to the Right of Assembly Act because the designated area is not accessible to everyone without restriction. This is also what transpired in the present case, which will be reviewed in detail in Part V of the Decision.

V

[53] 1. On 15 March 2012, from 9 a.m. to 8 p.m., the person submitting the notification intended to commemorate the "War of Independence of 1848–1849" in Heroes' Square. In its order of 6 February 2012, the Budapest Police Headquarters, which examined the notification, found that it had no jurisdiction because on 15 March 2012 the venue included in the notification was to be used by the Mayor's Office under a public ground use agreement. The Petitioner appealed to the court against the order rejecting the notification pursuant to Section 9 (1) of the Right of Assembly Act, because they considered that the result and the legal effect of the First Police Order was similar to the decision prohibiting the event; therefore, its legality must be decided by a court in a non-litigious procedure within 3 days of the communication of the decision.

[54] However, the First Court Order found that Budapest-Capital Regional Court had no jurisdiction to hear the case; an appeal could be lodged against the police order, and the court therefore referred the application to the National Police Headquarters in the operative part of the court order. In line with the reasoning of the order, the Police "did not decide on the merits to ban the event, it did not reject it after a substantive investigation for the two reasons listed in the Right of Assembly Act, but because it established that it had no competence to decide on the issue". The court did not, therefore, review the merits of the police order, but noted that "the Right of Assembly Act undoubtedly confers jurisdiction on the applicant to decide on the event subject to the notification, so the provision of 'lack of jurisdiction' is incorrect."

[55] 2. The Constitutional Court takes the view that a decision of the competent police headquarters assessing the notification of an event to be held on public ground and establishing a lack of competence is a "public administration decision" within the meaning of Section 9 (1) of the Right of Assembly Act, against which a judicial review under the Right of Assembly Act may be requested and which the court is obliged to review on the merits. The reasons for this are as follows.

[56] Under the first sentence of Section 9 (1) of the Right of Assembly Act, there is no appeal against a police decision; within three days of the communication of the decision, the organiser may request a judicial review of the state administrative decision. This provision of the Right of Assembly Act has not changed since its adoption. The term "state administrative decision" in Section 9 (1) has taken over the wording of Act IV of 1957 on the General Rules of Public Administration Procedure (hereinafter referred to as the "Public Administration Procedure Act of 1957") in force at the time of the adoption of the Right of Assembly Act. Pursuant to Section 72 (1) of the Public Administration Procedure Act of 1957, in the event of a breach of law, the

client could request a judicial review of the state administrative decision. The constitutional interpretation of the term "state administrative" then became "public administrative", so Public Administrative Uniformity Decision No. 3/1998 KJE already provided that the decision of the public administrative body establishing the lack of competence based on the absence of a public administrative legal relationship is considered to be a decision made on the merits of the case for the application of Section 72 (1) of the Public Administration Procedure Act of 1957. Although this Uniformity Decision has become obsolete with the repeal of the Public Administration Procedure Act of 1957 and is not applicable under Public Administrative Uniformity Decision No. 6/2010 (XI. 25) KJE, the dogmatic findings contained therein remain relevant.

[57] In the present case under review, the competent police station decided whether the subject matter of the case, the notification, fell within the scope of Section 6 of the Right of Assembly Act. Under the First Police Order, the notification does not fall within the scope of Section 6 of the Right of Assembly Act; therefore, the Budapest Police Headquarters has no competence to assess the notification. However, if the Budapest Police Headquarters had in fact acted in accordance with Section 22 (2) of the Public Administrative Proceedings Act, it would have had to submit the application and the documents in the case to the competent authority at the same time as establishing its lack of competence. It did not and could not do so because there is no public administrative body with jurisdiction over the matter. Thus, in rejecting the notification on the ground of lack of competence, the competent police station in fact found that the subject matter of the case was not a public administrative legal relationship. This means that the police station decided on the existence of a public administrative legal relationship: it rejected the substantive decision on the rights and obligations because it denied the existence of a public administrative legal relationship. However, the decision finding it lacked competence also precluded an assessment of the notifying party's fundamental right to assemble, and its case could not have reached a stage where a substantive decision could have been taken. In this case, therefore, the reference to lack of competence effectively led to a substantive rejection.

[58] For all these reasons, in the First Court Order, Budapest-Capital Regional Court should have assessed the merits of the legal basis of the police order in accordance with Section 9 (1) of the Right of Assembly Act.

[59] 3. In cases such as the present one, the court must rule on the merits concerning the issue whether the public ground use agreement for the site indicated in the police order as an obstacle to the holding of the event was lawfully concluded and whether it was justified to enter into a use agreement.

[60] 3.1. In resolving a dispute, the court must bear in mind that one of the purposes of municipal and state-owned public ground has traditionally been to precisely be publicly accessible forums for everyone. The possession of municipal property is therefore limited by the aim of enabling the public ground to fulfil its function: the area can become a forum for a jointly expressed opinion on public affairs.

[61] This is expressed in Section 54 (4) (d) of Act LXXVIII of 1997 on the Formation and Protection of the Built Environment, which states that "the purpose of public ground is to provide parade, assembly and community expression". Pursuant to Section 3 (1) of the Municipal Decree 59/1995 (X. 20.) of the General Assembly of the Capital City of Budapest on the Use and Order of Public Ground (hereinafter referred to as "Municipal Decree No. 1"), anyone may freely use public ground for its intended purpose within the limits of the law. Pursuant to Section 3 (4), the use of public ground has a different purpose than its intended use if the use prevents the proper use of the public ground by others in the manner specified in the decree. Pursuant to Section 4 (1), a consent for the use of public ground is required for the use of public ground other than for its intended purpose. However, Section 4 (4) (g) of the Municipal Decree No. 1 explicitly provides that a public ground use agreement is not required for political events.

[62] The constitutionality of the previous text of Section4(4)(g) of the Municipal Decree No. 1 has already been reviewed by the Constitutional Court, which has declared it unconstitutional that the capital's municipality has made the placement of buildings, equipment and vehicles not subject to parking subject to a public ground use permit at political events. Pursuant to the decision, the detailed rules for the exercise of the right of assembly are contained in the Right of Assembly Act, which determines the notification obligation related to the organisation of events to be held on public ground. The local government restricts the freedom of assembly in an unconstitutional manner if it supplements the system of conditions specified in the Right of Assembly Act. The decision also stated: "[W]here it is clear that the underlying purpose of regulating the use of public ground in a given way is to restrict the right of assembly and to amend the conditions of use of public ground is merely a means of restricting the right of assembly, it can also make unconstitutional rules that are not in themselves relevant to fundamental rights". [Decision 4/2007 (II. 13.) AB, ABH 2007, 911.] A few years later, the Constitutional Court annulled the normative text of Section 4 (2) (l) of the Municipal Decree No. 1, which made the placement of buildings, equipment and related fenced areas and other vehicles not subject to parking related to an event known as "other event" subject to a public ground use permit. The decision found that the right of assembly protects not only specifically political events held in public, but also other not directly political gatherings that affect public affairs. And deciding whether a particular gathering is an event falling within the scope of the Right of Assembly Act is a matter for the ordinary court. [Decision 40/2010 (IV. 15.) AB , ABH

2010, 1055.] The aspects now described were enforced by the Constitutional Court a year later, when it annulled the decretorial regulation of the local government of Mikepércs, which required a public ground use permit for political party events. [Decision 142/2011 (XII. 2.) AB , ABH 2011, 805.]. In this decision, the Constitutional Court established that the regulation of the use of public ground in local social relations not regulated by law falls within the legislative competence of the local government; however, this competence does not extend to setting forth rules restrictive and/or violative of fundamental rights in the regulation of public ground.

[63] The court hearing the assembly dispute may not ignore such constitutional considerations when passing its substantive decision. However, given that in the present case the capital's municipality did not appear as a legislator, but as a contracting party providing the use of public ground to the Budapest Mayor's Office, and the public ground use agreement was not a precondition for holding the assembly, but the existence of the agreement represented an impediment to holding the gathering, the following aspects may not be ignored either.

[64] 3.2. The use agreement concluded between the Local Government for Budapest and the Mayor's Office of the Local Government for Budapest with registration number FPH061/555-3/2012 (hereinafter referred to as the "use agreement") was established on the basis of unspecified provisions of Municipal Decree No. 1 and Municipal Decree 60/1995 (X. 20.) of the General Assembly of the Capital City of Budapest on the Use and Order of Public Ground Owned by the Capital's Municipality (hereinafter referred to as "Municipal Decree No. 2"). In the use agreement, the lessor made the following public ground available to the Budapest Mayor's Office by 15 March 2012 for the purpose of organising the national holiday commemorating the 1848 Revolution: District V, the total area of Kossuth Square; District I to V, Erzsébet Bridge, Szabadsajtó u.-Pesti lower quay; District V and VI, Bajcsy-Zs. total area of the road; District V to VIII, the whole area of the Múzeum Boulevard; District V, VI and VII, the total area of Deák Square; District XIV, the total area of Heroes' Square; District VI, the whole area of Andrássy Road; District I, the whole area of Clark Ádám Square; District V, the entire area of Alkotmány Street; and District VIII, the whole area of Blaha Lujza Square.

[65] In the particular case, the legality and justification of the use agreement were also in question. On the one hand, because pursuant to Section 5 (1) of Municipal Decree No. 2, the Public Ground Utilization Committee of the Metropolitan General Assembly decided on the use of public ground in the case giving rise to this case under review. After the decision was made, the chairman of this committee signed the use agreement on behalf of the committee, representing the Metropolitan General Assembly, as the lessor. The Office of the Metropolitan General Assembly, the Mayor's Office, is indicated as the user. This means that in the agreement, the Commission, acting on behalf of the Metropolitan General Assembly, granted a license to the Office of the

Metropolitan General Assembly, that is, to itself. On the other hand, Section 4 (4) (g) of Municipal Decree No. 1 explicitly provides that no consent for the use of public ground is required for political events. This means that not only events held on the basis of freedom of assembly, but also other political events, such as state celebrations and municipal commemorations, do not require a public ground use permit. The national celebration of the Budapest Mayor's Office in memory of the 1848 Revolution undoubtedly falls into this category. As it is clear from the wording of Municipal Decree No. 1 and Municipal Decree No. 2, which form the legal basis for the use agreement, that the mayor's office did not need a public ground use permit, there is reason to believe that there was an abuse of rights when concluding the use agreement. This is also indicated by the fact that the Mayor's Office of the Local Government for Budapest, in violation of the provisions of Municipal Decree No. 1 and Municipal Decree No. 2 formed by its own general assembly with this usage agreement, had pre-booked all Budapest locations in advance by 15 March 2012, locations which would have been suitable for holding an event with a large number of participants to commemorate the 1848 Revolution.

[66] 3.3. The fact that the notifying party designated Heroes' Square as the venue of the gathering also requires special consideration. Here the notifying party wished to hold a commemoration of the War of Independence of 1848–1849 on 15 March 2012 from 9 a.m. to 8 p.m.

[67] Some squares and streets of Budapest have a communicative function. Heroes' Square is such a special area because it is one of the emblematic venues for political expression. The rally notified here on Memorial Day of the 1848 Revolution cannot be triggered simply by designating another area. This special situation of Heroes' Square is also indicated by the fact that the General Assembly of the Capital City of Budapest regulates the use and order of the public ground of Heroes' Square in a separate decree, namely, Decree 33/2002 (VI. 21.) Főv. Kgy. of the General Assembly of the Capital City of Budapest (hereinafter referred to as "Municipal Decree No. 3"). Section 2 (1) of Municipal Decree No. 3 distinguishes between festive, protocol, tourist and everyday use of Heroes' Square. The use is considered to be festive "during the commemorations organised on the national and state holidays of the Republic of Hungary", or to be protocol "during the events determined by state authorities, central administrative bodies and the Capital's Municipality". [Section 2 (2) (a) and (b)] Section 4 (2) of Municipal Decree No. 3 requires, in the case of festive and protocol use, a permit only for the installation of a structure (e.g. a podium) strictly necessary for the organisation of the event, otherwise it refers back to the provisions of Municipal Decree No. 1 and Municipal Decree No. 2, that is, a political event to be held in the square does not require a permit to use public ground, either.

[68] 3.4. Lastly, one may not ignore the fact that, following the First Police Order in the present case, the Mayor's Office of the Local Government for Budapest cancelled without any statement of grounds by letter FPH061/555-4/2012 dated 28 February 2012, the use of District VI Andrássy Road and District VIII Blaha Lujza Square public ground on 15 March 2012. This fact is not mentioned in the First Court Order of 9 March 2012 although the order states that the court, acting under Section 331 of Act III of 1952 on the Code of Civil Procedure, obtained the case file from the Budapest Police Headquarters and on 6 March 2012 they even arrived at the court.

[69] Had the court examined the merits and taken into account this waiver, the event which the complainant intended to organise by 15 March 2012 could have been held at the venue indicated in the notification (unless there had been other legitimate reasons not to do so).

[70] On the basis of the above, the Constitutional Court found that Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court restricted the right to freedom of assembly in conflict with the Fundamental Law by failing to review the merits of the case; therefore, the order was annulled in accordance with Section 43 (1) of the Constitutional Court Act. Considering that the Constitutional Court found non-conformity with the Fundamental Law of Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court on the basis of Article VIII (1) of the Fundamental Law, it did not examine whether the court order complied with Article XXVIII (7) of the Fundamental Law.

[71] In the second constitutional complaint, the Petitioner primarily sought an assessment of the unconstitutionality by non-conformity with the Fundamental Law of the First Court Order. At the same time, the Petitioner proposed that if the Constitutional Court does not consider it a decision on the merits of the case, this Court should proceed with the complaint procedure with regard to the Second Court Order. The subject matter of the Constitutional Court proceedings was the First Court Order giving rise to the violation, the annulment of which, according to the Constitutional Court, constitutes moral satisfaction to the aggrieved parties in the present case, and the aspects described in the Constitutional Court decision serve as guidelines for future assembly disputes. Pursuant to Section 43 (4) of the Constitutional Court Act, in the event of the annulment of a judicial decision, the Constitutional Court may also annul other judicial or official decisions reviewed by the decision. The Constitutional Court did not annul the First Police Order in the present case because it had already been set aside by the Second Court Order.

[72] As the Constitutional Court upheld the primary request contained in the petition, it refrained from reviewing the unconstitutionality of the Second Court Order and Section 9 (1) of the Right of Assembly Act.

[73] The Constitutional Court ordered the publication of this decision in the Hungarian Official Gazette on the basis of the second sentence of Section 44 (1) of the Constitutional Court Act.

Budapest, 12 February 2013

Dr. Péter Paczolay sgd.,
Chief Justice of the Constitutional Court

Dr. Elemér Balogh sgd.,
Justice delivering the opinion of the Court

Dr. Mihály Bihari sgd.,
Justice

Dr. Egon Dienes-Oehm sgd.,
Justice

Justice

Dr. István Balsai sgd.,
Justice

Dr. András Bragyova sgd.,
Justice

Dr. András Holló sgd.,
Justice

Dr. László Kiss sgd.,
Justice

Dr. Barnabás Lenkovics sgd.,
Justice

Dr. Béla Pokol sgd.,
Justice

Dr. Péter Szalay sgd.,
Dr. Péter Kovács sgd.,
Justice

Dr. Miklós Lévay sgd.,
Justice

Dr. István Stumpf sgd.,
Justice

Dr. Mária Szívós sgd.,

Concurring reasoning by *dr. István Balsai*:

[74] I agree with the operative part of the majority decision and I largely accept the argument leading to it. However, on the basis of a constitutional assessment of the facts, I came to the conclusion that the impugned judicial decision deprived the complainant primarily of the right to take legal action underlying the series of requirements of fair trial under Article XXVIII (1) of the Fundamental Law, while the

complainant's freedom of assembly was violated only as a result. I base my position on the following consideration.

[75] In the main proceedings, the complainant requested a judicial review of the police authority's decision in the assembly case because the police refused to carry out the necessary assessment to notify the event on the grounds of lack of competence. The complainant initiated the proceedings before the Constitutional Court because Budapest-Capital Regional Court also found that it had no jurisdiction in reviewing the decision of the police to review it. The court's decision challenged in the constitutional complaint therefore refused to assess the merits of

the complainant's application for the exercise of the complainant's freedom of assembly, thus primarily depriving the complainant of recourse to the courts. This is also confirmed by the fact that the court's decision establishing the lack of competence did not take a position on the issue of freedom of assembly. Although Budapest-Capital Regional Court noted that the "lack of competence as established by the police" was not correct; however, it was in the absence of its own competence that the court did not rule on the merits of the complainant's freedom of assembly . [See in this regard Order 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court, p. 3.] The complainant's freedom of assembly was thus not infringed by the substantive decision of the court or by his legal position on the merits of the case, but was infringed precisely because of its absence in that the High Court refused to enforce the complainant's right to assembly in court, or at least refrained from adjudicating on the merits of the request for review of the event notification.

[76] Article XXVIII (1) of the Fundamental Law states that "[e]veryone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act." The Constitutional Court has previously stated in a number of its decisions that the right to a fair trial includes, in addition to procedural guarantees, the right to apply to a court not expressly mentioned in the text of the Fundamental Law. The right to turn to court serves as a guarantee for the enforcement of the rights guaranteed in the Fundamental Law. However, the formal provision of a judicial route alone cannot be sufficient to enforce these rights either, as the procedural guarantees provided for in the constitutional rule serve the very purpose of maintaining a substantive judicial decision that is final. That right therefore includes the requirement of effective judicial legal protection. In view of this, it can be formulated as a constitutional expectation against the legal regulation that the court may actually decide on the merits of the rights in dispute. Consequently, the constitutional right inherent in a fair trial is for the court to adjudicate on the merits of the rights and obligations brought into the proceedings. [See in this regard Decision 59/1993 (XI. 29.) AB, ABH 1993, 353, 355.;

Decision 39/1997 (VII. 1.) AB; ABH 1997, 263, 272.; Decision 59/1993 (XI. 29.) AB, ABH 1993, 355.; Decision 39/2007 (VI. 20.) AB, ABH 2007, 464, 496.; Decision 46/2007 (VI. 27.) AB, ABH 2007, 592, 605.; and most recently reaffirmed in Decision 8/2011 (II. 18.) AB, ABH 2011, 49, 80–81.]

[77] In the context of specific cases, the system of legal protection developed by the European Court of Human Rights in Strasbourg (hereinafter referred to as the "Human Rights Court") is based on similar foundations. In accordance with Article 6 (1) of the European Convention on Human Rights (hereinafter referred to as the "Convention"), everyone has the right to a fair hearing in the exercise of his or her rights. The Human Rights Court first ruled in 1975 in the case of Sidney Elmer Golder on the question of whether the judicial process of enforcing rights is part of the Convention's system of requirements for a fair trial. In that judgement, the Human Rights Court interpreted the provision of Article 6 (1) of the Convention in conjunction with the generally recognised fundamental principle of the enforceability of rights before a court and the principle of the prohibition of denial of justice in international law. In the light of the Human Rights Court's reading, the right to a fair trial also includes the right to take legal action, failing which certain specific requirements of a fair trial would not be possible to be evaluated. It is not possible to talk about the fairness of the proceedings if the court does not provide the proceedings themselves. (Golder v. The United Kingdom, 25 February 1975, 4451/70; § 22; §§ 35-36) The Court has subsequently translated this holding into practice in hundreds of judgements, most recently in Zborovsky. (Zborovsky v. Slovakia, 23 October 2012; 14325/08, § 44) In addition, the right to effective judicial legal protection is recognised by the Court of Justice of the European Union, based in Luxembourg, as a fundamental *acquis* of EU law stemming from the constitutional traditions of the Member States. [See, to that effect, Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern, C-432/05, 13 March 2007, § 37; Kiriaki Angelidaki and Others v Organismos Nomarchiakis Autodioikisis Rethymnis and Others, C-378/07, 23 April 2009, § 176; Markku Sahlstedt and Others v Commission, C-362/06 P 23 April 2009, § 43]

[78] In other contexts, the supreme judicial panel in the United States has already recognised the right to turn to court based on a similar reasoning in an earlier decision. In keeping with the arguments set out in the decision, the right to turn to court is the custodian of all other fundamental rights and also the cornerstone of a state organised by law. [Chambers v. Baltimore & Ohio Railroad Company, 207 U.S. 142 (1907)] The most colourful practice with regard to the right to take legal action has been developed by the Supreme Court of the Swiss Confederation, which distinguishes between formal and substantive impediments to the right to take legal action and considers judicial or administrative decisions as such, which deny the enforcement of an essential guarantee

provided by a specific right. (Jan Paulsson: Denial of Justice in International Law; p. 38, Cambridge University Press, 2005.)

[79] In the case reviewed by the Constitutional Court, Budapest-Capital Regional Court did not rule on the merits of the complainant's exercise of his right of assembly because the court found that it had no jurisdiction. The High Court therefore in fact ruled out recourse to the courts for the enforcement of a fundamental right and the provision of effective judicial legal protection. Therefore, the reviewed judicial decision primarily violated the complainant's right guaranteed in Article XXVIII (1) of the Fundamental Law, while the freedom of assembly was infringed upon only as a result.

[80] When admitting the constitutional complaint, the Constitutional Court assessed as a matter of fundamental constitutional importance contained in Section 29 of the Constitutional Court Act "whether the interpretation of Section 9 (1) of the Right of Assembly Act, which provides substantive judicial review in the case of only a police decision formally prohibiting assembly, is in conformity with the Fundamental Law." I agree with the majority decision, which prescribes as a constitutional requirement that a police decision regarding the notification of an event declaring a lack of competence should be subject to judicial review, and the court has a substantive duty to review the legality and substantiation of the police decision. However, I take the view that such a constitutional requirement cannot be extracted from the freedom of assembly, but from the right to turn to court inherent in the system of requirements of fair trial provided for in Article XXVIII (1) of the Fundamental Law.

[81] In the context of the case under review, I consider it important to emphasise that effective judicial legal protection is not only a fundamental right but also an essential precondition for the enforcement and protection of other civil, political, cultural, economic and social rights. That is why there is a direct link between the rule of law and effective judicial legal protection, and judicial legal protection is one of the fundamental elements of the rule of law. The effectiveness of judicial legal protection is affected by a number of detailed rules and other factors, such as the time limit for bringing an action, the limitation period, the formal rules for initiating proceedings, the conditions for access to legal aid, or the actual length and cost of proceedings. Refusal to seek recourse to the courts constitutes a complete lack of judicial legal protection. In the absence of effective judicial legal protection, other fundamental rights also become devoid of substance. In addition, the courts have a key responsibility for the substantive assessment of fundamental rights claims because they decide in disputes with the need for finality. In my view, the judicial decision under review did not, in the first place, satisfy that requirement.

Budapest, 12 February 2013

Dr. István Balsai sgd.,
Justice

Concurring reasoning and dissenting opinion by d*r. Mihály Bihari*:

[82] I do not agree with the finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Order No. 29.Kpk.45.266/2012/2 of Budapest-Capital Regional Court (First Court Order) contained in the first part of the operative part of the decision.

[83] I agree that in the second part of the operative part of the Decision the Constitutional Court established a constitutional requirement in connection with Section 9 of Act III of 1989 on the Right of Assembly (Right of Assembly Act); however, I consider it necessary to supplement the Reasoning with the following findings in Point 2.

[84] 1. Under Section 27 of the Constitutional Court Act, "In accordance with Article 24 (2) (d) of the Fundamental Law, persons or organisations affected by judicial decisions contrary to the Fundamental law may submit a constitutional complaint to the Constitutional Court if the decision made regarding the merits of the case or other decision terminating the judicial proceedings

[85] (a) violates the petitioner's rights laid down in the Fundamental Law, and

[86] (b) the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her."

[87] It follows from Section 27 of the Constitutional Court Act that a constitutional complaint may be initiated before the Constitutional Court against a final decision closing a court (individual) case. In the case adjudicated by the decision, the First Court Order cannot be considered as a decision on the merits of the case or a decision terminating the court proceedings, as another official decision (the National Police Headquarters' Order) and court order (Second Court Order) were made in the case. The case was therefore not closed by the First Court Order, therefore, regarding the case in its entirety, this interlocutory order, in which the court found it lacked its own jurisdiction and transferred the case to the National Police Headquarters, could not, in my view, have been annulled by the Constitutional Court.

[88] However, it is also an undisputed fact that, in view of the lapse of time, the petitioner's infringement could no longer be redressed after the First Court Order had been issued [since the order was made by the court on 9 March 2012, the petitioner was notified by facsimile on the same day, confirmed receipt on 19 March 2012 and

wished to hold the event on 15 March 2012] The Second Court Order in the case, upholding the petitioner's action, instructed the Budapest Police Headquarters, which was at first instance in the case, to reopen the proceedings. However, this order could only provide moral reparation to the petitioner, as the actual remedy of the violation could no longer take place, due to lapse of time, the procedure was terminated due to lack of reason.

[89] The provisions of the Second Court Order (contrary to the first in substance) provide appropriate *ex nunc* guidance to the police authorities at first instance that public ground does not lose its "public ground" character because it has been granted a public ground use agreement. Consequently, the police cannot reasonably establish their lack of competence, they must assess the notification of the event on its merits.

[90] It follows from the specific nature of the case that the violation of the petitioner's rights could no longer be effectively redressed (in view of the lapse of time); the decision of the Constitutional Court can do no more to the petitioner than the legal and moral satisfaction of the Second Court Order, even if it annuls the First Court Order. The decision of the Constitutional Court does not remedy the violation of the complainant's fundamental rights.

[91] By annulling the First Court Order, the Constitutional Court relaxes the rule of competence contained in Section 27 of the Constitutional Court Act, creating a precedent for the Constitutional Court to decide on a case-by-case basis in the future which court's decision it will review and annul concerning a case proceeded at multiple court levels. That, on the one hand, is contrary to the requirement of legal certainty and, on the other, to the purpose of the institution of the constitutional complaint. The Constitutional Court, as the explanatory memorandum submitted to Sections 26 to 31 of the Constitutional Court Act points out, "is not part of the administration of justice in the narrower sense"; consequently, the purpose of the constitutional complaint is to remedy the violations of rights, the violation of the rights guaranteed in the Fundamental Law, which persist even after, or as a result of, court or other decisions closing the case on the merits. The aim is therefore to remedy the violation of the law in ordinary court proceedings, and a constitutional complaint is an exceptional means of protecting the rights guaranteed in the Fundamental Law. On the basis of all the foregoing, I do not agree with the annulment of the First Court Order.

[92] 2. I do agree, however, that the Constitutional Court has responded to the legal problem of the right to peaceful assembly provided for in Article VIII (1) of the Fundamental Law by establishing a constitutional requirement addressed to those applying the law. The Second Court Order provides fundamentally appropriate guidance for acting police headquarters for the future handling of the legal issue, but given the violation of the fundamental right to peaceful assembly and its danger, I also

consider it necessary for the Constitutional Court to establish a constitutional requirement for those applying the law in the future.

[93] In my view, however, the Constitutional Court ought to have expressed its position in more detail, in a more specific and clearer form than the constitutional requirement contained in the operative part of the Decision, with a more detailed reasoning.

[94] The second court order rightly states that the "public ground" nature of public ground does not cease to exist when a ground use agreement is concluded or a ground use permit is issued. Therefore, if any person wishes to hold another event on such public ground and notify it to the competent police station, the competent police station cannot invoke its lack of competence in such cases, it must assess the merits of the notification.

[95] However, an event, a public ground use permit or a public ground use agreement (for multiple or continuous use) previously notified for specific public ground for a specified period of time constitutes an objective barrier to the exercise of the right of assembly of others. Only one event can be held at the same venue and at the same time; the earlier notification or public ground use agreement is an objective restriction on the right of others to assemble. The notification of events to be held on public ground or the demands for the use of public ground are subject to temporal priority: The person submitting their notification earlier is entitled to use the public ground. Although the right of assembly is restricted in these cases as well, no violation of a constitutional fundamental right can be established. After the event, the specific area will once again be available to anyone for a peaceful gathering.

[96] However, in the case of notifications, but in particular public ground use agreements, there is a risk that, at specific times and venues with symbolic significance, without the real purpose of holding the event, the public ground will be occupied as a "stockpile" and notify an event or enter into a public ground use agreement together with a number of other venues of similar symbolic significance, thereby restricting the right of others to assemble. If there was no serious intention to hold the event (or the use of public ground) and the person entitled to cancel the use of public ground according to the "temporal priority" principle cancels the event only at a time when it is no longer possible to hold another event, taking into account the necessary preparations and organizational tasks, the right of others to peaceful assembly will be violated. Public ground reservations of a "stockpiling" nature are particularly dangerous and in breach of fundamental rights if they are intended to prevent others from exercising their right of assembly or holding an event on the same public ground and at the same time. Infringement of the fundamental rights of others is particularly serious if the event is ultimately not held in any of the venues, whether or not the use of public spaces has been abandoned, and they are venues of symbolic significance

with a particularly important public communication role and the organizers of the meeting would have had an important interest in having the event held at the venue.

[97] Police headquarters do not have the jurisdiction to assess the legality and legality of public ground use agreements. However, in order to protect the right to peaceful assembly guaranteed by the Fundamental Law, it is a constitutional requirement that if another event is to be announced for the same public ground, then the police stations may request information from previous notifiers or those entitled to use the public ground under the agreement on the issue of whether or not the previously notified event will be held. If the previous notifier maintains this intention, the objective obstacle to holding the event under the new notification will remain. If the previous notifier subsequently (after the decision of the police) withdraws their notification to hold the event, the protection of the right to peaceful assembly is served by the police station notifying the subsequent notifier of this fact. This gives the notifier the opportunity to hold the event in accordance with their original intention, on the given public ground, at the given time, and to re-submit their required notification to the police station.

[98] In the course of a judicial review of a police decision, the court seised must similarly assess whether the prior notification (or public ground use agreement) was in fact intended to be an actual event, or a "stockpiling" event so that at the given venue and at the given time others may not be able to exercise their right of assembly. The court may call on the previous notifying party: Since a competing notification has been received for the particular venue and time, the notifying party should state whether they actually intend to use the public ground to hold the event. If the previous notifier declares that they withdraw from such intention, the subsequently notified event may be held.

[99] If there is a suspicion that a previous notification (public ground use agreement) has taken place in a "stockpiling" nature, with no real intention of holding the event (e.g. the same organisation has notified an event at several locations on the same date or has occurred more than once that such organisation did not hold the event it had notified), it can rightly be argued that the real purpose was to restrict the right of assembly of others. Courts have the right and opportunity to review public ground use agreements to see whether or not such agreements constitute an abuse of rights. If the court finds that the person entitled to use the public ground under the agreement presumably has no real intention to hold the event, the court may classify the agreement as violating the right of assembly of others and change the police station's decision regarding subsequently notified events. Public ground use agreements and notifications for the purpose of "stockpiling" are contrary to the purpose of the right to peaceful assembly and gravely infringe the right of others to peaceful assembly.

[100] In summary, previously announced events, public ground use agreements and permits constitute an objective obstacle to the exercise of the right of assembly of others. In order to protect the fundamental right to peaceful assembly, a constitutional requirement is that if there is a suspicion that the real purpose of the previous notification (agreement) was not to hold an event but to "stockpile" and unlawfully restrict the right of others to assemble, both the police station and the court will contact the previous notifier to have them declare whether they will maintain their notification of holding the event because another gathering has been announced for the "reserved" public ground. The right to assembly is also protected by the fact that if the previous notifier withdraws their notification after the police decision has been made, the police will notify the subsequent notifier that they have the opportunity to re-notify the event to the previously planned venue and date. If there is any doubt as to the real purpose of the earlier notification (public ground use agreement), the court seised will further assess the real purpose of the public ground use agreement; whether or not it is aimed at "stockpiling" and/or restricting the right of others to assemble. Ultimately, the court may declare that the agreement is for an illegal purpose, violates the right of assembly of others, and may change the decision of the police station accordingly.

[101] In view of the serious violation of the fundamental right to peaceful assembly, its recurrence and the complexity of the situation, it would, in my view, have been justified to explain the decision of the Constitutional Court in the above detail, that what is already becoming a practice, "stockpiling" public ground use agreements and notifications constitute an abuse of the right of assembly and a serious violation of the right of assembly of others. Therefore, ultimately, such agreements may even be declared invalid by a court.

Budapest, 12 February 2013

Dr. Mihály Bihari sgd.,
Justice

Dissenting opinion by *dr. András Baragyova*:

[102] I agree with Point 1 of the operative part of the Decision: in my opinion, Order No. 29.Kpk.45.266 / 2012/2 of Budapest-Capital Regional Court of 9 March 2012 also violates the complainant's right of assembly guaranteed in Article VIII of the Fundamental Law.

[103] However, I do not agree with the constitutional requirement in Point 2 of the operative part because it is not capable of achieving what I consider to be its correct purpose; maintaining it in the current legal situation is either impossible or does not lead to the desired result, to prevent the restriction of the right of assembly discussed here. Therefore, an omission or another stronger constitutional requirement should have been established on the basis of Section 46 of the Constitutional Court Act.

[104] 1. In line with the Decision, it is a constitutional requirement that the court assess the legality and substantiation of the decision of the police authority establishing the lack of competence. Nor can this assessment, while maintaining the constitutional requirement, lead to a substantially different result from the annulled order, so it does not remove the unconstitutional restriction of the right of assembly. This restriction was due to the reservation of public ground for municipal celebrations at the time of the notification. The police authority, which is not entitled to supervise the municipality, could not review this, but had to take note of it, as they were also bound by the decision of the public ground manager. On the basis of this, however, pursuant to Sections 6 and 8 of the Right of Assembly Act, the police authority had to refuse to acknowledge the notification, because the planned place of the gathering was already reserved for another purpose of public interest, here a municipal ceremony, at the planned time of the gathering, and for this the local government, under to Municipal Decree No. 2, granted a consent for the use of public ground.

[105] The order of Budapest-Capital Regional Court of 13 July 2012, which, however, could no longer remedy the grievance suffered by the complainant, takes a constitutionally correct position: It clearly shows that the fundamental issue is the legality of public ground use, as the right of assembly grants a fundamental right to use public ground. The constitutional position of this order, which is also shared by the Decision, is that the court would be (or, if appropriate, would have been) in a position to ensure that the meeting be held by annulling the police decision pursuant to Section 9 (2) of the Right of Assembly Act. The essence of the argument is that the public ground use agreement concluded by the local government, which was probably a consent for the use of public ground pursuant to Section 4 of Municipal Decree No. 1 or regulated in Municipal Decree No. 2, does not eliminate the public ground nature of the place of assembly. It only follows that the police, contrary to their own position taken in the matter, had the power to assess the notification. So far, I think the argument is also correct: a public ground use permit can really only allow the use of public ground. However, if there are two legitimate (or seemingly legitimate) public ground use claims, the planned commemoration and the complainant’s gathering at the same place, at the same time, the question arises which one should take precedence. The public ground in question, Heroes' Square, the use of which is specifically regulated by the municipal decree mentioned in the Decision [Municipal

Decree No. 3], remained indeed public ground, but its use was partially limited by the consent for the use of public ground, which was for a municipal commemoration. Heroes' Square would have remained public ground anyway, in the sense that it would have remained accessible to everyone, and for those wishing to attend the event, during the event. The same would have been the case if the notified gathering had been held: access for all would have been maintained for those wishing to attend and interested. If the preservation of the character of public ground means that much, then the jurisdiction of the police would have really existed in both cases pursuant to Section 1 (2), point 5, of Act XXXIV of 1994 on the Police.

[106] Nevertheless, the police could not have taken note of the notification because then there would have been two events in one place at the same time. The police do not have the power to assess the legality of the content of a public ground use permit, but they do have the power to maintain order on public ground. The latter only means verifying the legality of public ground use, e.g. in the case of public ground sales or non-notified gatherings, but not an assessment of the substantive legality of a valid consent for the use of public ground. The police thus had no choice but to prohibit the holding of the event under Section 8 (1) of the Right of Assembly Act.

[107] Therefore, a court "reviewing the legality and merits of the decision of a police authority" cannot conclude other than that the decision of the police authority was lawful and well-founded. Pursuant to Section 339 (1) of Act III of 1952 on Civil Procedure (hereinafter referred to as the "Code on Civil Procedure"), the administrative court assesses the legality of the revised administrative decision: It must establish and should have established this, even if, in the Order of 9 March, the court had acted in accordance with the constitutional requirement that the police authority had acted lawfully. In addition, pursuant to Section 339/A of the Code on Civil Procedure, the court will review the decision on the basis of the laws and facts applicable at the time of its adoption. Therefore, the court could not have taken into account (and could not have done so subsequently) the fact that, in the meantime, the Local Government for Budapest no longer had a claim for the planned venue of the assembly.

[108] It is true, however, that despite the legality of the police decision, it violates the complainant's right to assemble (and will continue to do so in the future): this is not remedied by a constitutional requirement. Not because the restriction of the right of assembly was not caused by the decision of the police authority, but by the public ground manager, that is, the Local Government for Budapest, by allowing the use of the public ground for itself. Such decision, the consent for the use of public ground, does not currently qualify as an administrative decision, so it cannot be challenged in court. If a constitutional requirement had to be established, it could have been that a permit ("consent") to use public ground restricting the right of assembly should be

considered an administrative decision for the purposes of Section 339 of the Code on Civil Procedure; therefore, its legality could be decided by a court.

[109] This view can, in my view, be supported by a number of arguments.

[110] Primarily by the fact that the maintenance and management of public ground (roads, squares, etc.) is a traditional task of public administration. In today's Hungarian law, this is itemised in Section 23 (4), points 1 and 19, of Act CLXXXIX of 2011 on Local Governments in Hungary [previously, at the time of the court decisions under review, Section 63/A (r) of Act LXV of 1990 on Local Governments]. The decision of the public administration restricting the use of public space as a consent for the use of public ground is an act of public authority: It restricts the use of public ground for certain public interest purposes, public ground that is accessible to all and can be used as intended. This is as much a public authority / public administrative act as the regulation of the use of public roads by road signs. It can therefore be argued that the consent for the use of public ground is an administrative decision. This position has already been expressed by the Constitutional Court in its Decision 41/2000 (XI. 18.) AB, in which it discussed in detail that the application for a consent for the use of public ground is dealt with in a municipal authority procedure [ABH 2000, 318].

[111] Therefore, in the operative part, the Constitutional Court should have held that that the legislature has an obligation under Article VIII of the Fundamental Law to ensure: the organiser of the event may challenge the legality of the public ground use permit (consent) based on an administrative decision preventing or restricting the holding of the notified meeting before the court deciding on the legality of the meeting. Where appropriate, in examining the legality of the consent for the use of public ground (in fact a permit), the court could have found that the reservation of several venues for a single event was unlawful. The consent for the use of public ground is an official permit because, in possession of it, the otherwise prohibited use of public ground will become lawful. The event held on the basis of the right of assembly is also subject to a permit for the use of public ground, but the permit is not issued by the manager of the public ground, but by the police in accordance with the provisions of the Right of Assembly Act. Under the Decree of the Local Government for Budapest on the Use and Order of Public Ground, “political events” [Section 4 (4) (g) of Municipal Decree No. 1] do not require consent; however, the question is whether the exercise of the right of assembly falls within the scope of such political events under the Decree. Notification under the Right of Assembly Act [Section 6 of the Act] is an authorisation procedure because the police authority can prohibit the assembly on the basis of the notification. It is true that assembly is a specially protected public ground use title; however, it is not unlimited. The provisions of the Right of Assembly Act presuppose that the assembly has been notified for public ground that is free for everyone to use; however, it is silent on what should happen if there already is a consent for the use of

public ground which is valid for the time of assembly that is normally available for public use. Thus, in the case of gatherings, there are two authorities that are allowed to authorise the use of public ground: the public ground manager and the police authority. The Act does not settle the relationship between the two, as a result of which state bodies may restrict the exercise of the right of assembly. Hence, an omission contrary to the Fundamental Law arises.

[112] 2. Nor do I agree with the part of the Reasoning for the Decision that the right of assembly includes the unconditional right to choose the venue and the date. This is generally true, but some exceptions are acceptable if they meet the conditions for restricting fundamental rights set out in Article I of the Fundamental Law. The constitutional rights of other persons, especially their freedom of movement, as well as the verifiable objectives of the State, e.g. state protocol events, holding public celebrations, may provide a basis for proportionate restrictions on the right of assembly. However, if they are in dispute, it is up to the courts to decide thereon.

[113] The use of public space, including this as Section 15 (a) of the Right of Assembly Act, "area, road, street, square that can be used by everyone without restrictions", is a precondition for the exercise of several fundamental rights, as well as for constitutionally justified public purposes, including state celebrations, or simply for city running races, concerts, bicycle races around the block, 1st May celebrations and much more. The use is decided by public administration, typically local governments. If they have to decide on competitive use, as in our case, they need to consider the importance of mutually exclusive public ground use claims. This consideration, which is a choice between those entitled to use public ground and legal titles, being an administrative decision, must be subject to judicial review. The right of assembly is a fundamental right, therefore the constitutional–Fundamental Law-based measure of its restriction is Article I (3) of the Fundamental Law and the related constitutional court practice. This does not always lead to the absolute priority of the right of assembly over all other uses of public ground, as there are also legal restrictions on fundamental rights, but it gives a strong position to the right of assembly among the possibilities of using public ground.

Budapest, 12 February 2013

Dr. András Bragyova sgd.,
Justice

Concurring reasoning by *dr. Béla Pokol*:

[114] I am in support of the operative part of the Decision, but I cannot support the explanations in point 2 of Part IV of the Reasoning, which state that the right of assembly is restricted to public affairs.

[115] Article VIII (1) of the Fundamental Law declares the right of everyone to peaceful assembly without such restriction. This includes processions held in public spaces by religious organizations in order to strengthen their own faith, together with a crowd of thousands or tens of thousands, as well as mass gatherings in public spaces organized by a sports association to strengthen the identity of a multi-thousand fan base, or even a celebratory gathering of a crowd of thousands of employees from a giant company held in a public space, and gathering opportunities could even be listed further.

[116] The Fundamental Law, and in this case also the right of assembly of Article 62 (1) of the old Constitution, does not restrict the right of assembly to public affairs. This is done only by the previous decisions of the Constitutional Court referred to by the disputed part of the Reasoning, the continuation of which cannot be supported: "In the case law of the Constitutional Court, the right of assembly is part of the wider freedom of expression, which provides for the peaceful expression of a common opinion in public affairs. Constitutional protection therefore applies to events aimed at participating in the public debate on public matters, which help to obtain and share information of public interest with others and to express opinions jointly." [Decision 55/2001 (XI. 29.) AB, ABH 2001, 442, 449.; Decision 75/2008 (V. 29.) AB, ABH 2008, 651, 662-663.].

[117] The very technique of reasoning is arguable that the various fundamental rights enshrined in the Fundamental Law are merged into a new formulation of fundamental rights by a decision of the Constitutional Court instead of linking them in certain aspects, which may be necessary in a particular case. Moreover, in the present case, previous case-law of the Constitutional Court has used this technique of reasoning to restrict the right of assembly to political assemblies in public affairs. I readily acknowledge one's line of argument that the Constitutional Court must differentiate between many gatherings with different goals, and that some goals of assembly, if reinforced by relating it to another fundamental right, may be given greater protection, but the categorical narrowing that assemblies exclude part of it from the protection of the constitution is not acceptable.

Budapest, 12 February 2013

Dr. Béla Pokol sgd.,
Justice