Decision 3021/2017 (II. 17.) AB

On the dismissal of a constitutional complaint

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

decision:

1. The Constitutional Court hereby dismisses the constitutional complaint seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 13 and Section 66 (7) to (8) of Act XXXIII of 1992 on the Legal Status of Public Sector Employees with regard to Article VIII (2) and (5) and Article XV (1) to (2) of the Fundamental Law and, as for the remainder, the Court hereby rejects the complaint.

2. The Constitutional Court further dismisses the constitutional complaint, with regard to Article XIII (1) and Article XXVIII (1) of the Fundamental Law, seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of the judgement of the Curia as the reviewing court in case Mfv.II.10.460/2015/10 and the judgement of the Regional Court of Szeged in case 2.Mf.20.194/2015/6 and, as for the remainder, rejects the complaint.

Reasoning

I

[1] 1. The petitioner filed a constitutional complaint with the Constitutional Court pursuant to Sections 26 (1), 27 and 28 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act").

[2] In its petition, the petitioner primarily sought a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of the judgements of the Curia as the reviewing court (Mfv.II.10.460/2015/10) and the Regional Court of Szeged (2.Mf.20.194/2015/6), in so far as they dismissed the petitioner’s statement of claims and, secondarily, that of Section 13 and Section 66 (7) and (8) of Act XXXIII of 1992 on the Legal Status of Public Sector Employees (hereinafter referred to as the “Public Sector Employees Act”).

[3] In its view, the judgements and the contested provisions infringe, as set out below, Article I (1), Article VIII (2) and (5), Article XIII (1), Article XV (1) to (2), Article XVII (1) to (2), Article XXVIII (1), Article B (1), Article 28 subject to Article C (1) and Article R of the Fundamental Law.

[4] 2. According to the facts on which the constitutional complaint is based, the petitioner was employed in the public service of the defendant in the court proceedings. The remuneration of the petitioner was determined in such a manner that it included the guaranteed remuneration according to his classification, the remuneration based on the employer's decision and a remuneration supplement. The petitioner was dismissed on 1 January 2014 under the provisions of the Public Sector Employees Act. On

1 January 2014, the petitioner was reclassified to another grade pursuant to Section 65 of the Public Sector Employees Act and his remuneration was determined accordingly. A collective agreement was (and still is) in force at the employer, point 15 of which allowed for the possibility of a supplement to the remuneration, subject to certain conditions, at the employer's discretion.

[5] The legal dispute between the parties arose in part precisely because the petitioner's employer supplemented the petitioner's guaranteed remuneration to the guaranteed minimum wage by reducing the remuneration component based on the employer's decision instead of increasing it in accordance with the collective agreement. In his statement of claims, the petitioner also complained that, between 1 January 2013 and 31 December 2013, his guaranteed remuneration did not reach the guaranteed minimum wage. Accordingly, the defendant was ordered to pay the amount corresponding to the difference between the guaranteed minimum wage and the guaranteed remuneration multiplied by the amount for a specified month, the amount of the part of the remuneration not paid, calculated for a specified period on the basis of the employer's decision, and default interest.

[6] The Szeged Administrative and Labour Court upheld the petitioner's statement of claims and ordered the defendant to pay a fixed amount of remuneration differential and default interest.

[7] The Regional Court of Szeged, acting on the appeal of the defendant, by its judgement No 2.11f.20.194/2015/6, partially amended the judgement of the court of first instance by reducing the amount of the defendant's condemnation, and upheld the judgement of the court of first instance in other respects.

[8] The defendant filed a request for review against the final judgement, while the petitioner filed a cross-appeal for review.

[9] The Curia upheld in force the provision of the judgement of the Regional Court of Szeged No 2.Mf.20.194/2015/6, by which the court of second instance, partially reversing the judgement of the court of first instance, reduced the amount of the defendant's condemnation for the year 2013. Beyond that, the final judgement was set aside, and the judgement of the Szeged Administrative and Labour Court No 5.M.442/2014/6. was altered and the petitioner's action for 2014 was dismissed. In addition to the above, it also annulled a provision of the collective agreement in force at the defendant, holding it to be contrary to Sections 2 (2), 13 and 66 (7) to (8) of the Labour Code.

[10] 3. The petitioner then applied to the Constitutional Court against the decision of the court of second instance and the decision of the Curia and Sections 13 and 66 (7) to (8) of the Public Sector Employees Act, seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment thereof because the above judgements and legislative provisions violate several provisions of the Fundamental Law, as follows.

[11] 3.1 In the context of the alleged infringement of the Fundamental Law by the contested judicial decision, the petitioner submitted that the Curia had already violated Article C (1) of the Fundamental Law and, through this, Article 28 of the Fundamental Law by accepting the request for review.

[12] In its view, in view of Section 358 (2) of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as the "Code of Civil Procedure"), review is excluded in the present case; in this respect, the Code of Civil Procedure contains specific provisions. Pursuant to Article 358 (2) of the Code of Civil Procedure, no review is possible if the value disputed in the request for review does not exceed five times the minimum monthly wage (minimum wage) established for full-time work. According to the petitioner, the value contested in the request for review in the present case was HUF 135,200 and, since this amount was less than five times the minimum wage, there was no need for a review. According to him, in view of the exceptions determined in Section 358 (3) of the Code of Civil Procedure, the review

should not be based on the fact that the amount of the tax was higher than five times the amount of the tax for the period of five years, the merits of the request for review could have been considered if the Curia had deemed the dispute between the parties to be a change in the legal relationship. However, in the opinion of the petitioner, the provisions of Section 358 (3) of the Code of Civil Procedure were not applicable. A change in the legal relationship must be set out in writing and accepted by the parties, pursuant to both Section 58 of Act I of 2012 on the Labour Code (hereinafter referred to as the "Labour Code") and Section 21 (1) of the Public Sector Employees Act. However, in the present case, the petitioner's appointment was not amended, but the Curia considered the cause of action to be a change in the legal relationship, and then referred in its decision to the fact that the deduction of the remuneration component based on the employer's decision could not be considered to be a change in the appointment.

[13] In this respect, the Curia, in view of Opinion 1/2014 (II. 10.) KMK on certain amended rules governing the submission of requests for review in labour disputes (hereinafter referred to as the "KMK Opinion"), accepted the request for review and the cross-appeal for review. According to the petitioner, the KMK Opinion and the decision of the Curia adopted on the basis of it are already legislation, which is contrary to the principle of separation of powers and, accordingly, to the provisions of the Fundamental Law.

[14] 3.2 According to the petitioner, the judgement of the Curia also violates and restricts the right of trade unions to freely form and operate, that is, Article VIII (5) of the Fundamental Law, by declaring clause 15.1 of the collective agreement in force at the defendant employer null and void. In his view, he is directly concerned as a trade union member.

[15] According to the petitioner, both the decision of the Curia and the challenged legal provisions violate the provisions of Article XVII(2) of the Fundamental Law, because the legal provisions applied by the Curia constitute unjustified restrictions on the content of the collective agreement, when they only allow the determination of a higher remuneration in connection with the rating of "excellent" or "suitable" as a result of the performance evaluation or at the time of the establishment of the legal relationship, thus ignoring the agreement between the employer and the trade union, representing the interests of the employees, on the possibility of a higher remuneration.

[16] 3.3 The petitioner also considers that Article XIII of the Fundamental Law is violated by the part of the decision of the Curia and the court of appeal in the part on dismissal of the action. According to him, the employer had fixed the remuneration to which the petitioner was entitled and, as part of that remuneration, the entitlement to a part of the remuneration based on the employer's decision, but the latter was later unilaterally included in the remuneration by the employer and then deducted, thus infringing his right to property. Finally, the petitioner submitted that the court of first instance was right to find that the part of the remuneration based on the employer's decision could not be included in the concept of the guaranteed minimum wage. According to him, the employer, contrary to its legal obligation, did not supplement the petitioner's guaranteed remuneration to the guaranteed minimum wage or, when the supplement was made, did so by reducing the remuneration part of the remuneration provided for by the collective agreement.

[17] 3.4 According to the petitioner, the unity and coherence of the legal system is violated in the case of Section 13 and Section 66 (7) of the Public Sector Employees Act, as pursuant to Section 2 (4) (b) of Act CXXX of 2010 on Legislation (hereinafter referred to as the "Act on Legislation"), in drafting legislation it must be ensured that the legislation fits into the unity of the legal system. In its view, the contested provisions do not comply with that requirement and thus infringe Article R of the Fundamental Law.

[18] 3.5 Finally, the petitioner also considers that the prohibition of discrimination as enshrined in Article XV of the Fundamental Law is contrary to the provisions of the Section 13 of the Public Sector Employees Act, because it lays down stricter rules for public sector employees than for employees as regards the content of collective agreements. In support of this, it refers to Decision 20/2014 (VII. 3.) AB, Decision 8/2015 (IV. 17.) AB and Decision 10/2015 (V. 4.) AB. In the petitioner's view, Article I of the Fundamental Law is also infringed through the violation of the prohibition of discrimination.

[19] 4. The Secretary General of the Constitutional Court invited the petitioner to submit a supplementary petition, in which he informed the petitioner that the petition does not contain sufficient reasons from a constitutional point of view as to why and to what extent the challenged legal provisions and judicial decisions violate the articles of the Fundamental Law. He also drew the petitioner's attention to the fact that some of the provisions of the Fundamental Law which he had referred to, including Articles 28, C and R, could not be regarded as a right guaranteed by the Fundamental Law on which a constitutional complaint could be based.

[20] 5. Following his request to rectify the deficiencies, the petitioner supplemented his petition: on the one hand, he submitted that he considered the contested decisions to be contrary to Article VIII (5), Article XIII (1), Article XV (1) and (2), Article XVII(2), Article II and Article XXVIII (1) of the Fundamental Law, while, in his view, the contested provisions of the Public Sector Employees Act infringed Article VIII(5), Article XV(1) to (2) and Article XVII(2) of the Fundamental Law.

[21] 5.1 The petitioner justified the violation of his right to a fair trial under Article XXVIII (1) of the Fundamental Law with the following grounds. In his view, the right to a fair trial includes the requirement of effective judicial protection, which is dependent on what the court may review in accordance with the procedural rules. In his view, his right to a fair trial had been infringed by the fact that the Curia, disregarding the provisions of the Civil Code, had granted the defendant's request for review by relying on the KMK Opinion, which was a matter of law. In this respect, the petitioner reiterated the arguments put forward in its original petition in the context of the infringement of Articles C and 28 of the Fundamental Law.

[22] In the context of the violation of his right to a fair trial, he further argued that in his view the negative decision would not follow from the reasoning of the challenged legislation and court decisions, and neither the Curia nor the court that issued the final decision had fulfilled its obligation to state reasons and had not considered the petitioner's arguments with sufficient thoroughness.

[23] 5.2 The petitioner, in the context of the alleged violation of Article VIII (2) and (5) of the Fundamental Law, repeated in part and supplemented in part the statements made in his previous petition, similarly to those made in connection with Article XXVIII (1). In addition to what was stated in his original petition, he explained that, in his view, the right of association includes the right to join a trade union; the petitioner has the right to participate as a member in the activities of the trade union and the trade union has the right to conclude a collective agreement. By holding that the clause in the collective agreement was invalid, the Curia therefore infringed the right of association.

[24] 5.3 According to the petitioner, both the decision of the Curia and the challenged provisions of the Public Sector Employees Act violate Article XVII (1) and (2) of the Fundamental Law. Section 13 and Section 66(7) to (8) of the Public Sector Employees Act restrict the right of trade unions to conclude collective agreements and to determine the content of the agreement, and disregard the agreement between the employer and the trade union on the possibility of higher remuneration, that is, in the present case an increase in the remuneration component based on the employer's decision.

[25] 5.4 The petitioner maintained what was stated earlier in connection with Article XV of the Fundamental Law, supplementing his petition with the claim that Article II of the Fundamental Law is also violated due to the discriminatory provision of the Public Sector Employees Act. In support of his petition, he cited several decisions of the Constitutional Court.

[26] 5.5 Finally, the petitioner maintained the arguments set out in his original petition in relation to Article XIII of the Fundamental Law and the provisions of Section 13 and Section 66(7) of the Public Sector Employees Act in connection with Article R of the Fundamental Law.

II

[27] The legal provisions concerned by the constitutional complaint read as follows:

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

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

"Article C (1) The functioning of the Hungarian State shall be based on the principle of the division of powers."

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

(2) Hungary shall recognise the fundamental individual and collective rights of man.

(3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

(4) Fundamental rights and obligations which, by their nature, do not only apply to man shall be guaranteed also for legal entities established by an Act."

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

"Article VIII (2) Everyone shall have the right to establish and join organisations.

(5) Trade unions and other interest representation organisations may be formed and may operate freely on the basis of the right of association."

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

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

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

"Article XVII (1) Employees and employers shall cooperate with each other with a view to ensuring jobs and the sustainability of the national economy, and to other community objectives.

(2) Employees, employers and their organisations shall have the right, as provided for by an Act, to negotiate with each other and conclude collective agreements, and to take collective action to defend their interests, including the right of workers to discontinue work."

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

"Article 28 In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good."

[29] 2. The challenged provisions of the Public Sector Employees Act read as follows:

"Section 13 Subsections (1) and (2) of Article 277 of the Labour Code shall apply with regard to the legal relationship of public sector employees, with the exception that a collective agreement may derogate from the provisions of this Act or the regulations issued on the basis of the authorisation of this Act, if such derogation is authorised by these legal provisions."

"Section 66 (7) A remuneration higher than the remuneration determined by applying Subsections (1) to (5) and Section 79/E (guaranteed remuneration) may be determined if the public sector employee has been qualified as highly capable or capable.

(8) By way of derogation from Subsection (7), a remuneration higher than the guaranteed remuneration may be fixed at the time of the establishment of the public sector employee's employment, provided that, except in the case of fixed-term public sector employees with a term not exceeding one year, the public sector employee shall be classified after one year. If the public sector employee is then classified as unfit or unsuitable, his remuneration shall be reduced to the guaranteed rate for his grade by virtue of this Act."

III

[30] 1. The Constitutional Court first of all considered whether the constitutional complaint complied with the criteria for admissibility of complaints set out in the Constitutional Court Act.

[31] In accordance with Section 56 (1) of the Constitutional Court Act, the Constitutional Court shall decide on the admission of a constitutional complaint by a panel acting in accordance with the rules of procedure. Pursuant to Subsection (2), the panel shall, in its discretion, consider the substantive conditions for the admissibility of a constitutional complaint provided for by law, including the relevance pursuant to Sections 26 and 27, the violation of the rights guaranteed by the Fundamental Law, and the conditions pursuant to Sections 29 31. Subsection (3) provides that in the event of refusal of admission, the Council shall issue an order stating the reasons for the refusal, together with an abbreviated statement of reasons.

[32] Pursuant to Section 29 of the Constitutional Court Act, the Constitutional Court accepts constitutional complaints in the case of an infringement of the Fundamental Law or a constitutional law issue of fundamental importance that has a substantial impact on the judicial decision. Section 31 (6) of the Rules of Procedure allows the Justice-Rapporteur to submit to the panel a draft decision on the merits of the complaint instead of a decision on the admission of the complaint.

[33] 1.1 The Constitutional Court found that the constitutional complaint received within the time limit partially meets the formal requirements for admissibility as follows.

[34] Pursuant to Section 52 (1) of the Constitutional Court Act, the petition must contain an explicit request, and Section 52 (1b) of the Act specifies when the request can be considered definite. Accordingly, the petitioner has indicated the grounds for the Constitutional Court's competence [Section

52 (1b) (a) of the Constitutional Court Act]; the provisions of the Fundamental Law that are alleged to be infringed [Section 52 (1b) (d) of the Constitutional Court Act]; the essence of the infringement of the right guaranteed by the Fundamental Law [Section 52 (1b) (b) of the Constitutional Court Act]; the judicial decisions or legal provisions that are alleged to be contrary to the Fundamental Law [Section 52 (1b) (c) of the Constitutional Court Act]; gave reasons why and to what extent the challenged judicial decisions and legislation violate the provisions of the Fundamental Law [Article 52 (1b) (e) of the Constitutional Court Act]; and submitted an express request for a declaration that the court judgement is contrary to the Fundamental Law and for its annulment [Article 52 (1b) (f) of the Constitutional Court Act].

[35] 1.2 In determining the conditions for admissibility, the Constitutional Court found that some of the rights allegedly violated in the petition do not qualify as fundamental rights guaranteed and protected by the Fundamental Law. This includes Article C (1), Article R and Article 28 of the Fundamental Law, among the provisions of the Fundamental Law identified by the petitioner. With regard to these provisions, the constitutional complaint does not meet the legal requirements {*see*: AB Order 3237/2013 (XII. 21.) AB, Reasoning [19]; Order 3059/2016 (III. 22.) AB, Reasoning [11], etc.}.

[36] The Constitutional Court also found that the petition does not meet the conditions for an explicit request with regard to Article II of the Fundamental Law, as it does not contain any valuable reasoning as to why and to what extent the decision of the Curia violates the human dignity of the petitioner. In view of this, the constitutional complaint is based on the above provisions of the Fundamental Law and is not subject to the provisions of the Constitutional Court Act. The Constitutional Court dismissed the complaint on the basis of Section 64 (d) of the Constitutional Court Act.

[37] 2. After reviewing the formal requirements for admissibility, the Constitutional Court considered the substantive requirements under Section 26 (1), 27 and 29 of the Constitutional Court Act.

[38] The Constitutional Court found that the petitioner had exhausted the legal remedies available to him, and no further remedy was available to him. The Constitutional Court also found that the petitioner was a party to the case on which the Constitutional Court proceedings were based, as a claimant, and therefore, with regard to both the request under Article 26 (1) and Article 27 of the Constitutional Court Act, with the exception explained below, he can be considered as a party concerned.

[39] 3. Pursuant to Article 29 of the Constitutional Court Act, the Constitutional Court admits constitutional complaints in the case of an infringement of the Fundamental Law or a constitutional law issue of fundamental importance that has a substantial impact on the judicial decision. These two conditions are of an alternative nature; therefore, the existence of one of them in itself justifies the Constitutional Court's procedure on the merits {for example: Decision 3/2013 (II. 14.) AB, Reasoning [30]; and Decision 34/2013 (XI. 22.) AB, Reasoning [18]}.

[40] In the view of the Constitutional Court, the concerns raised by the petitioner justify the existence of the condition under Article 29 of the Constitutional Court Act; therefore, the Constitutional Court considered the merits of the petition pursuant to Section 31 (6) of the Rules of Procedure instead of deciding on the admission of the complaint.

IV

[41] The constitutional complaint is unfounded.

[42] 1. On the basis of the petition, the Constitutional Court first considered whether the Curia had complied with its obligation to state reasons, which forms part of the right to a fair trial.

[43] The petitioner complains in his petition in connection with Article XXVIII (1) of the Fundamental Law that the Curia accepted the request for review of the opposing party despite the rule of the Civil Procedure Code, which excludes review, considered the merits of the request with reference to point III of the KMK Opinion, and did not give a reasoned justification for this, according to the petitioner.

[44] The Constitutional Court has consistently held that it is for the general court to determine the law applicable to a case. "It is for the judge to decide on the basis of which law and which specific provisions of law, and by applying them, to rule on the action brought (the charge brought)." {Decision 3192/2014 (VII.15.) AB, Reasoning [15]} In accordance with the principle of *iura novit curia*, the application of the law to the specific facts and its interpretation falls within the competence of the general court {for example: Decision 3120/2012 (VII. 20.) AB, Reasoning [21]}.

[45] The Constitutional Court in its Decision 7/2013 (1.III.) AB, summarising its previous practice, dealt in detail with the content of the right to a fair trial (Reasoning [24] to [34]). In this decision, it explained that, "subject to the provisions of the Procedural Act, the constitutional requirement of a fair trial imposes a minimum requirement on judicial decisions that the court must consider the observations of the parties to the proceedings on the merits of the case in sufficient depth and report on its assessment in its decision." (Reasoning [34]).

[46] Decision 30/2014 (IX. 30.) AB stated that "[the] courts' obligation to state reasons does not imply an obligation to rebut each and every observation raised by the parties, in particular not to present a system of arguments of a depth satisfying the subjective expectations of the petitioner. It is, moreover, for the courts to interpret the law ultimately and with binding force" (Reasoning [89]).

[47] In the contested decision, the Curia accepted the request for review with reference to point III of the KMK Opinion and considered it on the merits.

[48] In the present case, the Constitutional Court considered that the Curia had provided arguments in support of its decision, and the reference to point III of the KMK Opinion, even without its specific description, was sufficient justification for the admission of the request for review.

[49] In view of this, the Constitutional Court dismissed the constitutional complaint in so far as it alleged infringement of the right to a reasoned decision, which is part of the right to a fair trial.

[50] 2. In his constitutional complaint, the petitioner also alleged a violation of Article VIII (2) and (5) and, in conjunction therewith, Article XVII (2) of the Fundamental Law: In his view, the declaration that the collective agreement provision was null and void restricted his right to freely form and operate as a trade union; furthermore, since he, as a trade union member, had the right to participate in the activities of the trade union, including the conclusion of the collective bargaining agreement, the contested decision of the Curia affected his right of association and thus violated the provisions of the Fundamental Law. The petitioner also submitted that Section 66 (7) to (8) of the Public Sector Employees Act unjustifiably restricts the right to conclude collective agreements, in so far as it allows the free determination of the content of the agreement, "when it only allows the possibility of determining a higher remuneration in connection with the performance appraisal and in fact disregards the agreement between the employer and the trade union representing the interests of the employees on the possibility of a higher remuneration".

[51] 2.1 The Constitutional Court points out the following. Under Article VIII (2) of the Constitution, everyone has the right to form and join organisations; while Article VIII (5) provides that trade unions and other interest-representing organisations may freely form and operate on the basis of the right of association.

[52] In the present case, the Curia declared the collective agreement provision null and void on the ground that it violated the prohibition set out in Section 2 (2) of the Public Sector Employees Act. In the grounds of its judgement, the Court held that the Public Sector Employees Act Under Section 13 of the Labour Code, Section 277 (1) to (2) of the Labour Code applies to the relationship of public sector employees, with the exception that a collective agreement may derogate from the provisions of the Labour Code or of regulations issued pursuant to the Labour Code if such derogation is authorised by those provisions. In the case in point, such a derogation [that is, a derogation from the provisions of Section 66 (7) to (8) of the Public Sector Employees Act] was not present.

[53] According to the Constitutional Court, the judgement of the Curia cannot be linked to the right of association: the establishment of a trade union, the right to join a trade union, the free activity of a trade union, and as part of this, the conclusion of collective agreements are not affected by the judgement, and therefore are not restricted by it. Freedom of association and the freedom to form a trade union do not mean that the activities of a trade union, including the conclusion and content of collective agreements, are not subject to the law, and ultimately to the Fundamental Law.

[54] Article XVII (2) of the Fundamental Law itself, also invoked by the petitioner, provides that, as defined by law, employees, employers and their organisations have the right to negotiate and conclude collective agreements and to take collective action in defence of their interests, which includes the right to strike.

[55] Therefore, according to the Constitutional Court, the petitioner is not barred from joining a trade union (from joining the trade union) or from participating in its activities; the judgement of the Curia and the right of association cannot be brought into a constitutionally assessable connection with each other on the basis of the petitioner's reasons. The lack of a substantive constitutional link results in the dismissal of the petition in accordance with the established practice of the Constitutional Court {*see* for example: Decision 3176/2013 (X. 9.) AB, Reasoning [24]}, and accordingly the Constitutional Court dismissed the constitutional complaint in this part.

[56] 2.2 The petitioner also considers the provisions of the Public Sector Employees Act to be contrary to the right of association and Article XVII of the Fundamental Law. In this context, the Constitutional Court deems it necessary to emphasise that it will judge the petitions on their merits. The petitioner considered the provisions of the Public Sector Employees Act to be unconstitutional by being contrary to the Fundamental Law on the ground that they impose unjustified restrictions on the content of collective agreements.

[57] In accordance with Section 66 (7) and (8), Public Sector Employees Act a remuneration higher than the guaranteed remuneration may be determined only after qualification in accordance with the law, in case of qualification as a suitable or excellent candidate, or exceptionally without qualification, at the time of the establishment of the legal relationship, in the latter case, however, only for a period of one year.

[58] In this context, the Constitutional Court points out the following: according to the content of the reasoning in connection with Article VIII (2) and (5) and Article XVII (2) of the Fundamental Law, the petitioner essentially complains that the judgement of the Curia restricts the right to participate in the conclusion of collective agreements as a trade union member and the freedom of the trade union to conclude agreements. However, the right to conclude a collective agreement, which is an element of the trade union's right to freedom of action, cannot be regarded as a fundamental individual right but is by its very nature a collective right: It is not conferred on the petitioner (as a public sector employee) as a matter of right in his own right, in that it can be exercised only by one or more trade unions. The infringement of fundamental law alleged by the petitioner therefore relates to the rights associated with the trade union's activity of representation, and the petitioner cannot therefore rely on a breach of those

rights, since, if it were accepted, the Constitutional Court would be going beyond the scope of the procedure, and of the specific review of the rules, initiated on the basis of the constitutional complaint.

[59] The contested provisions are expressly intended to ensure that the higher remuneration can only be determined after the appropriate qualification of public sector employees. The qualification is both a limit and a guarantee for the subjects of the public sector employee's employment. Accordingly, the provisions governing the system ensure the predictability of the promotion system. The annulment of a collective agreement concluded in circumvention of those provisions and which is contrary to them is therefore not contrary to the Fundamental Law.

[60] In addition, the Constitutional Court refers to the above-mentioned: the reasoning presented by the petitioner and the provisions of the Fundamental Law cannot be brought into a constitutionally assessable relationship; therefore, the Constitutional Court dismissed the petition in this respect as well.

[61] 3. According to the petitioner, the judgement of the Curia and the part of the judgement of the court of appeal dismissing the petitioner's request, by including the remuneration component based on the employer's decision in the remuneration, thus reducing and then deducting it, also violates Article XIII (1) of the Fundamental Law.

[62] The Constitutional Court's practice is consistent in the respect that the right to property enshrined in Article XIII of the Fundamental Law protects property already acquired and, in exceptional cases, future entitlements to property {Decision 3115/2013 (VI. 4.) AB, Reasoning [34]}. In the case of future entitlements, the fundamental right to property may be infringed only in the case of expectations based on law (public expectations) {*see* Decision 23/2013 (IX. 25) AB, Reasoning [74]}.

[63] In the case at hand, there is no violation of the right to property: the provision of the collective agreement on the increase of the remuneration component based on the employer's decision was contrary to the rule of the Public Sector Employees Act. The fact is that a collective agreement, apart from being of a statutory nature (for example, a collective agreement in force with a given employer also affects those who did not take part in its conclusion), is also of a private law nature, and is therefore subject to freedom of contract, that is, the parties to the contract decide whether to conclude it and, if so, what the content of the contract should be. It follows that freedom of contract is not unlimited in the case of collective agreements either; in the present case, Section 2 (2) of the Public Sector Employees Act itself states that collective agreements may not be contrary to the law; any provision which contravenes this prohibition is null and void. This is supplemented by Art. 13 of the Public Sector Employees Act, pursuant to which, with regard to the employment relationship of public sector employees, Section 277 (1) and (2) of the Labour Code, concerning the content of collective agreements, shall apply, with the exception that a collective agreement may derogate from the provisions of the Public Sector Employees Act of regulations issued on the basis of the authorisation of the Public Sector Employees Act if such derogation is authorised by these legal provisions. In the case at hand, there was no provision allowing such a derogation, and, moreover, the provisions of the Public Sector Employees Act. Accordingly, the Curia could not find anything other than the nullity of the provision in question.

[64] In view of the above, the Constitutional Court held that the constitutional protection of property does not extend to the part of the remuneration based on a collective agreement provision contrary to the law, and therefore dismissed the constitutional complaint in this respect as well.

[65] 4. Finally, the petitioner also considers Article XV (1) and (2) of the Fundamental Law to be contrary to the provisions of Section 13 of the the Public Sector Employees Act, because it lays down stricter rules for public sector employees than for employees as regards the content of collective agreements.

[66] 4.1 The Constitutional Court first of all reviewed its practice in relation to equality before the law and the prohibition of discrimination. In its Decision 20/2014 (VII. 3.) AB, the Constitutional Court stated that "[in its] Decision 42/2012 (XII. 20.) AB, the Constitutional Court held that the provisions of the Fundamental Law and the provisions of the Constitution in force before 1 January 2012 maintain unchanged the requirement of equality [...], or, as the Constitutional Court has often called it, equality of rights, and the prohibition of discrimination. Therefore, the Constitutional Court has considered its previous practice on the general rule of equality, as set out in [...] Decision 22/2012 (V. 11.) [...] to be [...] authoritative" (Reasoning [27]). {Decision 20/2014 (VII. 3.) AB, Reasoning [245]}.

[67] According to the practice of the Constitutional Court, the unconstitutionality of a distinction can be established if the legislation distinguishes between comparable legal entities from the point of view of the legislation without a constitutional justification {for example: Decision 20/2014 (VII. 3.) AB, Reasoning [244]; Decision 9/2016 (IV. 6.) AB, Reasoning [22]}.

[68] 4.2 In view of the above, the Constitutional Court considered whether the regulation contained in Section 13 of the Public Sector Employees Act, by allowing derogation from the rules of the Labour Code on collective agreements on the basis of the express authorisation of the Public Sector Employees Act and the provisions of the legislation issued on the basis of the same, discriminates against public employees, including the petitioner.. Whether or not there is discrimination depends on whether the alleged discrimination affects the same group.

[69] The rules governing the legal relationship of public sector employees are contained in the Public Sector Employees Act, which is a subsidiary legislation of the Labour Code. Section 2 (3) of the Public Sector Employees Act states that the rules of the Labour Code shall apply to the relationship of public sector employees with the derogations contained in the Public Sector Employees Act. Accordingly, the rules of labour law shall prevail in cases where there is no justification for distinguishing between the employment relationship and the public service relationship; in comparison, the specific issues of the public service relationship are regulated by the Public Sector Employees Act. The Public Employees Act applies to the public service status of employees of state and local government budgetary bodies and of local governments providing public services within their remit (typically in the education, health, social services, etc.). The specific nature of public and municipal employment requires different rules.

[70] In several decisions, the Constitutional Court has considered the relationship between employment relationships. In its Decision 44/B/1993 AB, it stated that "[i]n 1992, the National Assembly passed three Acts, almost simultaneously, to regulate the legal relations in relation to work. The resulting laws resulted in a significant differentiation in the legal regulation of employment relations compared with the old, uniform Labour Code, in the light of changes in society. This differentiation is based on the fact that the degree of contractual freedom in the private sector has increased in the world of work. A distinction has been made between the legal regulation of employment in the economy and in the public and municipal spheres. On the other hand, there is a further difference in the legal regime according to whether or not the employee is a member of an organisation exercising public authority in the performance of his work. One reason for the difference in legal regulation is that the position of the employer is quite different in the competitive economic sphere and in the budgetary sphere, where the legal status of both the employer and the public sector employee and public employee (that is, employer and employee) is determined primarily by dependence on the budget. Differences also arise from differences in the nature and medium of the work activities carried out in each legal relationship." (ABH 1994, 574, 574-575.)

[71] The Constitutional Court pointed out in its Decision 198/B/1998 AB that "[t]he above-mentioned diversity of work-related relationships and the obviously different nature of the work activities performed in each legal relationship also justify the differentiation of legal regulation. [...] According to the consistent practice of the Constitutional Court [e.g. in its Decision 4/1993 (II. 12.) AB), unconstitutional

discrimination 'can only be raised between comparable persons entitled or obliged to work' (ABH 1993, 65). Civil servants, public sector employees and employees subject to the Labour Code can be classified in distinct groups for which different labour law regulations are constitutionally justified." (ABH 1999, 668, 669.)

[72] Taking all this into account, the Constitutional Court found that employees and public sector employees do not constitute a homogeneous group and therefore cannot be compared. The legislative distinction between heterogeneous groups does not raise a violation of Article XV (1) and (2) of the Fundamental Law; therefore, the Constitutional Court dismissed the constitutional complaint also in this respect.

Budapest, 7 February 2017

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Dr. Béla Pokol, sgd., Justice of the Constitutional Court

Dr. István Stumpf, sgd., Justice of the Constitutional Court

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