CONSTITUTIONAL COURT

Decision 45/2012. (XII. 29.) on the unconstitutionality and annulment of certain provisions of the Transitional Provisions of the Fundamental Law of Hungary

On the basis of the ex post examination of the conflict of legal regulations with the Fundamental Law, the plenary session of the Constitutional Court – with concurring reasonings by *dr. András Holló* and *dr. István Stumpf* Judges of the Constitutional Court, and with dissenting opinions by *dr. István Balsai, dr. Egon Dienes-Oehm, dr. Barnabás Lenkovics, dr. Péter Szalay* and *dr. Mária Szívós* Judges of the Constitutional Court – has adopted the following

decision:

The Constitutional Court establishes that the part on the transition from communist dictatorship to democracy (preamble), Articles 1−4, Article 11 paras (3) and (4), Articles 12, 13, 18, 21, 22, and Article 23 para. (1) and paras (3)−(5), Article 27, Article 28 para. (3), Article 29, Article 31 para. (2) and Article 32 of the transitional provisions of the Fundamental Law of Hungary (31 December 2011) are contrary to the Fundamental Law of Hungary, therefore annuls it with a retroactive force as to the date of their promulgation, from 31 December 2011, and from 9 November 2012 with regard to Article 23 paras (3)−(5).

The Constitutional Court publishes this decision in the Hungarian Official Gazette.

Reasoning

I

1. The Commissioner for Fundamental Rights (hereinafter: "petitioner") filed a petition to the Constitutional Court on the basis of Section 24 para. (2) of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), primarily asking for the review of the whole of the "transitional provisions of the Fundamental Law of Hungary (31 December 2011)" (hereinafter: TPFL) with regard to being contrary to the Fundamental Law, and asked for the annulment of it. The petitioner holds that TPFL is contrary to Article B) para. (1) (the principle of the rule of law and the requirement of legal certainty) and Article S) of the Fundamental Law.

Secondarily, the petitioner initiated the annulment of certain provisions of TPFL, as, in his opinion, they are contrary to the provisions of the Fundamental Law quoted in the petition.

The petitioner holds that Section 31 para. (2) of TPFL is contrary to Article B) para. (1) (the principle of the rule of law and the requirement of legal certainty) as well as Article R) para. (1), Article T) para. (3) of the Fundamental Law and item 3 of the Closing Provisions of the Fundamental Law.

The petitioner also holds that the part on the transition from communist dictatorship to democracy, the "preamble" of TPFL as well as Articles 1−4, Article 11 paras (3) and (4), Articles 21 and 22, Article 27, Article 28 para. (3), Article 29, Article 30 and Article 32 of TPFL are contrary to item 3 and Article B para. (1) of the Closing Provisions of the Fundamental Law, the principles of the rule of law and the requirement of legal certainty. According to the petitioner, the above provisions of TPFL do

not comply with the condition of "transitoriness", therefore they are in conflict with the respective provisions of the Fundamental Law.

In the opinion of the petitioner, the Constitutional Court is competent to review the TPFL in the framework of abstract Posterior Norm Control, as TPFL cannot be regarded to be part of the Fundamental Law, despite of its "self-definition" found in Article 31 para. (2) of TPFL. The petitioner supported his position with the following arguments:

a) The provision found in Section 31 para. (2) of TPFL and in the last sentence of the "preamble", where the TPFL defines itself to be on the level of the Fundamental Law ("self definition") is not sufficient in itself to answer the question whether the TPFL is part of the Fundamental Law or not. Answering this question requires the examination of the constitutional law environment of the adoption of TPFL.

b) The TPFL was adopted on the basis of the authorization granted in point 3 of the Closing Provisions of the Fundamental Law, which is – as interpreted correctly – a provision referring merely to a procedural rule requiring a two-thirds majority voting, and not one referring to a procedure of acting in the competence, and with the power, of establishing the Fundamental Law.

c) The provision transferring the TFPL into the Fundamental Law cannot, in principle, be placed as such "within the transitional provisions" referred to in Article 31 para. (2) of TPFL, i.e. in the TPFL itself. It could only be placed in the Fundamental Law. (There could be two ways of making the TPFL part of the Fundamental Law: on one hand, if the Fundamental Law itself stated it, also specifying how the TPFL incorporated into an independent document could be part of the Fundamental Law; on the other hand, if the TPFL was adopted in a procedure aimed at the amendment of the Fundamental Law.) The empowering provision has to be found in the legal regulation giving the authorization, even if the latter is the Fundamental Law itself. According to Article R) para. (1) of the Fundamental Law, the Fundamental Law is the foundation of the legal system of Hungary, and the last sentence at the end of the Fundamental Law after the Closing Provisions refers to the "first unified Fundamental Law of Hungary", establishing the primacy of the Fundamental Law in the legal system and reinforcing that no document other than the text of the Fundamental Law can be considered as part of it.

d) The legal basis of adopting the TPFL is different than the legal basis of adopting the Fundamental Law. According to point 2 of the Closing Provisions of the Fundamental Law, the legal basis of adopting the Fundamental Law is the Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: "Constitution"). It was the legal basis upon which the Parliament adopted the Fundamental Law, by reference to the capacity of the Parliament to adopt a new constitution with a two-thirds majority of the votes, as an authority empowered to establish the Fundamental Law. In contrast with the above, the legal basis of adopting the TPFL is point 3 of the Closing Provisions of the new Fundamental Law.

e) The fundamental function of TPFL is also contrary to considering it as part of the Fundamental Law. In line with the name of it, the TPFL's function is to secure a transition under the rule of law between the provisions and the public law institutions of the Constitution and the Fundamental Law.

The petitioner holds that neither can the TPFL be regarded as an amendment of the Fundamental Law, despite of the fact that it was promulgated in volume 166 of the Hungarian Official Gazette of 2011 under the title of "I. The Constitution and its amendments".

TPFL does not comply with the formal requirements raised in the respect of the regulations amending the Fundamental Law. The TPFL has been adopted not on the basis of Article S) of the Fundamental Law, but under the authorization found in item 3 of the Closing Provisions. According to Article S) para. (4) of the Fundamental Law, the legal regulations amending the Fundamental Law have a (formal) appellation different than that of the legal regulations adopted by the legislative power. The petitioner underlined that in a State under the rule of law, it is an essential interest and a requirement that the Fundamental Law could only be amended in compliance with the formal regulations contained therein. The petitioner also holds that, in accordance with the predominant opinion found in the legal

literature, the "so called constitution-amending power" can only be exercised in compliance with the provisions of the constitution – in this case the Fundamental Law – and within the formal and substantial limits contained therein.

The petitioner argued – supposing but not allowing – that if the TPFL still was considered as an amendment of the Fundamental Law, then the whole TPFL would be null and void under public law. Neither the structure nor the method of adoption of TPFL complies with the conditions specified in Article S) of the Constitution and it does not fit into the normative text of the Fundamental Law. The petitioner – referring to Decision 61/2011. (VII. 13.) AB of the Constitutional Court – pointed out that the Constitutional Court's scope of competence can exceptionally extend to the review of the constitution's provisions with regard to their invalidity under public law, as the legal regulations adopted in a manner contrary to the law or the constitution are deemed to be invalid under public law, therefore they are null and void.

As a summary, the petitioner explained that as the TPFL has not become the part of the Fundamental Law on the basis of the self-definition (under "own right"), or as the amendment of the Fundamental Law; it is a special Act connected to the adoption of the Fundamental Law, adopted in the framework, and under the authorization of the Fundamental Law. Consequently the TPFL has to remain within the limits of the authorization contained in the Fundamental Law, and it may not contradict the Fundamental Law. In the opinion of the petitioner, it follows from the above arguments that the Constitutional Court's scope of competence can be established both to the whole of TPFL and to the individual provisions of it.

According to the petitioner, the position of TPFL in the system of the sources of law is insecure, and this – in itself – can be regarded as a violation of the principle of the rule of law granted in Article B) para. (1) of the Fundamental Law and the resulting requirement of legal certainty. To support this view, he claimed that the legal status of TPFL can only be defined in a speculative way, on the basis of a complex argumentation of constitutional law. In the case of accepting the constitutionality of the "self-definition" of TPFL, legal regulations of lower hierarchical level could also be adopted under the authorization given in TPFL, with a contents contradicting the Fundamental Law, but they could not be reviewed by the Constitutional Court due to the self-definition of TPFL, putting itself on the level of the Fundamental Law in the hierarchy of the sources of law. If the "self-definition" of TPFL is not acceptable constitutionally, then TPFL makes a false appearance of being on the same level as the Fundamental Law in the hierarchy of the sources of law.

The petitioner closed his petition by requesting the Constitutional Court to annul the whole of TPFL on the one hand because of the insecure position of TPFL in the system of the sources of law – considered by the petitioner to violate Article B) para. (1) of the Fundamental Law – and on the other hand due to the violation of the guarantee requirements found in Article S) of the Fundamental Law.

The petitioner also filed a secondary request – for the case if the Constitutional Court did not find it possible to annul the whole of TPFL on the basis of the argumentation found in the petition – aimed at the annulment of Section 31 para. (2) of TPFL, as the provision in question extends beyond the authorization contained in the Fundamental Law, by stating that TPFL is part of the Fundamental Law. In the petitioner's opinion, Section 31 para. (2) violates Article B) para. (1), Article R) para. (1), and Article T) para. (3) of the Fundamental Law, and item 2 of the Closing Provisions. The petitioner holds that in this case, too, the conflict with the Fundamental Law is based on the fact that a legislative provision putting the TPFL on the level of the Fundamental Law could only be placed in the authorizing legal regulation – the Fundamental Law.

The petitioner also asked for the annulment of the part of TPFL on the transition from communist dictatorship to democracy, as well as Articles 1-4, Article 11 paras (3) and (4), Articles 21 and 22, Article 27, Article 28 para. (3), Article 29, Article 30 and Article 32 of TPFL. He claimed that the challenged provisions of TFPL do not comply with the authorizing regulation contained in item 3 of the Closing Provisions of the Fundamental Law, and they exceed the limits of the authorization provided in

the Fundamental Law. The relevant provision of the Fundamental Law provided an authorization for the adoption of a specific legal regulation connected to the Fundamental Law, incorporating transitional provisions. In the opinion of the petitioner, the quality of "transitoriness" has to be interpreted in the narrow sense; any regulation exceeding it either substantially or temporarily does not comply with it. Transitional provisions are those provisions that contain elements connected to the questions regulated in the Fundamental Law, providing for transitional derogations, exceptions or concrete activities to be performed once. Adopting such provisions is justified by the transition from the old regulation to the new one; in the case of significant amendments, the adoption of such provisions serve the purpose of legal certainty. According to the petitioner, the first part of TPFL (the "preamble" of TPFL and Sections 1-4 of it) as a whole exceeds beyond the scope of implementing the provisions of the Fundamental Law, on the one hand from substantial aspects, and on the other hand because of using transitoriness in a "historical" context, which differs from the context of the authorization. In the petitioner's opinion, the second part of TPFL does not fully comply with the requirement of transitoriness either, since some of its sections contain provisions that cannot be held transitional provisions. With regard to Section 11 paras (3) and (4) of TPFL, the petitioner claimed that this provision cannot be connected to the taking force of the Fundamental Law (the transition from the Constitution's provisions to the Fundamental Law's provisions), and the period of the transitoriness is also insecure. The petitioner holds that the Sections 21 and 22, Section 27, Section 28 para. (3), Section 29 paras (1) and (2), Section 30 and Section 32 of TPFL are also lacking transitoriness. [Concerning Section 29 para. (1) of TPFL, the petitioner claimed that although it contains a temporal limitation, it is not connected to the Fundamental Law taking force. In connection with Section 30 of TPFL, the petitioner also recalls that it is not related to implementing the Fundamental Law.]

2. After the submission of the petition, on 19 June 2012 the "first amendment of the Fundamental Law of Hungary" (hereinafter: AFL1) was put into force. Article 1 para. (1) of AFL1 added a new item 5 to the Closing Provisions of the Fundamental Law, providing that the TPFL referred to in item 3 of the Closing Provisions of the Fundamental Law forms part of the Fundamental Law. This amendment changed the legal environment that had been in existence at the time of submitting the petition, as now not only Section 31 para. (2) of TPFL, but also the new item 5 of the closing Provisions of the Fundamental Law states that TPFL forms part of the Fundamental Law. Taking this amendment into account, the Constitutional Court issued a ruling calling the petitioner for making a statement about maintaining his petition, and asking him if he would like to amend it.

3. The petitioner, acting in the capacity contained in Article 24 para. (2) item *e)* of the Fundamental Law, replied in due time to the ruling of the Constitutional Court calling for making a statement, and he modified and amended his basic petition. Taking into account the changes in the legal environment, he withdrew the petition aimed at establishing – with regard to the whole of TPFL – the incompatibility with the Fundamental Law and the annulment of it in totality. He also withdrew the motion aimed at the annulment of Section 30 of TPFL as AFL1 annulled this provision.

The petitioner maintained his motion aimed at the annulment of Section 31 para. (2) of TPFL, reiterating that, in his opinion, it violates Article B) para. (1), Article R) para. (1), and Article T) para. (3) of the Fundamental Law, as well as items 3 and 5 of the Closing Provisions.

The petitioner also maintained the motion aimed at the annulment of the following provisions of TPFL: the part on the transition from communist dictatorship to democracy, as well as Articles 1-4, Article 11 paras (3) and (4), Articles 21 and 22, Article 27, Article 28 para. (3), Article 29 and Article 32. The petitioner continued to claim that the above provisions of TPFL are contrary to item 3 of the Closing Provisions of the Fundamental Law and Article B) para. (1) of the Fundamental Law.

The petitioner continued to hold that – by reference to his basic petition – the challenged provisions of TPFL are contrary to the Fundamental Law for the following reasons:

a) TPFL violates the principle of the rule of law, it may cause interpretation problems and it may jeopardise the unity and the operability of the legal system;

b) TPFL contains – contrary to its appellation – several provisions that are not of transitional nature;

c) the insecure legal status and the position of TPFL in the legal system are problematic in the respect of the rule of law, including legal certainty;

d) it is problematic that TPFL – exceeding the authorization granted in the Fundamental Law – defines itself as part of the Fundamental Law, attempting to prevent the reviewing the substance of its provisions in comparison with the guaranteeing provisions contained in the Fundamental Law,

e) there can be a serious threat in adopting Acts on the basis of the authorization given by TPFL, if such Acts were in conflict with the Fundamental Law itself and with its rules guaranteeing fundamental rights.

According to the petitioner, the changes in the legal environment resulting from AFL1 do not result in making TPFL one of the fundaments of the legal system of Hungary, the same way as the Fundamental Law. As claimed by the petitioner, AFL1 does not exclude the competence of the Constitutional Court for the review of TPFL regarding its conflict with the Fundamental Law, as it does not change the TPFL's position in the hierarchy of the sources of law, concerning the enforcement of the requirement of transitoriness. In the petitioner's opinion, one may conclude on the basis of the joint interpretation of items 2, 3 and 5 of the Closing Provisions of the Fundamental Law that it should only contain – in conformity with the Fundamental Law – provisions of substantially transitory nature that are related to putting the Fundamental law into force. The petitioner also claimed that TPFL is not a closed unit – neither in it, nor together with the Fundamental Law – and TPFL lacks the capacity of substantial unity. With reference to the Constitutional Court's Decision 32/2012 (VII. 17.) AB, the petitioner explained that, in his opinion, in the relevant decision the Constitutional Court established that there is a hierarchical relation between the Fundamental Law and TPFL, and it follows from the reasoning of the decision that the legal norms adopted on the basis of an authorization by TPFL are contrary to the Fundamental Law if they contradict the Fundamental Law. The petitioner holds that item 5 of the Closing Provisions of the Fundamental Law shouldn't be interpreted in itself, but together with Article R); in the course of determining the position of TPFL in the respect of constitutional law and the theory of the sources of law, no interpretation could be accepted that would break the coherence of the Fundamental Law – as the constitution. As stressed by the petitioner, neither can item 5 of the Closing Provisions of the Fundamental Law be used as a basis for interpreting the provision stating that TPFL is part of the Fundamental Law, in a manner emptying out the enforcement of other provisions of the Fundamental Law. One cannot accept any interpretation claiming that TPFL is *lex specialis* in the respect of the Fundamental Law, or allowing TPFL to make exceptions from the provisions of the Fundamental Law

The petitioner holds that item 3 of the Closing Provisions of the Fundamental Law can only be used as a basis for the adoption of norms that serve the purpose of putting the Fundamental law into force and the transition between the old and the new constitutions. Only norms complying with the above conditions can become parts of the Fundamental Law on the basis of item 5 of the Closing Provisions of the Fundamental Law.

The petitioner also underlined that TPFL cannot be held to be part of the Fundamental Law, because this way the legislator could afterwards make constitutional – by way of amending TPFL – any legal regulation annulled earlier by the Constitutional Court because of being contrary to the Fundamental Law. However, such a process would offend the principle of the division of powers, emptying out the institution of constitutional judiciary. [In this context, the petitioner referred to the Decision 61/2011. (VII. 13.) AB, stating that "the narrowing down of the scope of competence of the Constitutional Court beyond a certain point would result in tumbling down the system of the division of powers based on the principle of mutual checks and balances, in favour of either the constitution-setting power, or even in favour of the legislature or the governing-executive power."]

II.

1. The relevant provisions of the Fundamental Law:

"Article B)

(1) Hungary shall be an independent, democratic State under the rule of law."

"Article R)

(1) The Fundamental Law shall be the foundation of the legal system of Hungary.

(2) The Fundamental Law and the rules of law shall be binding on everyone.

(3) The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, with the Avowal of National Faith contained therein, and with the achievements of our historical constitution."

"Article S)

(1) The President of the Republic, the Government, any parliamentary committee or any Member of Parliament may submit a proposal for the adoption of a new Fundamental Law or for any amendment of the Fundamental Law.

(2) For the adoption of a new Fundamental Law or any amendment thereof the votes of two-thirds of all Members of Parliament shall be required.

(3) The Speaker of Parliament shall sign the Fundamental Law or an amendment thereof and send it to the President of the Republic. The President of the Republic shall sign the Fundamental Law or the amendment thereof within five days of receipt and shall order its publication in the Official Gazette.

(4) The designation of the amendment of the Fundamental Law in its publication shall include the title, the serial number of the amendment and the date of publication."

"Article T)

(1) A generally binding rule of conduct shall be laid down in a statute adopted by an organ specified in the Fundamental Law as being competent to make law and which is published in the Official Gazette. A cardinal Act may determine different rules for the publication of local government decrees and for rules of law adopted during any special legal order.

(2) A statute shall mean Acts of Parliament, government decrees, decrees of the Prime Minister, decrees of Ministers, decrees of the Governor of the National Bank of Hungary, decrees of the head of an autonomous regulatory organ and local government decrees. In addition, decrees of the National Defence Council adopted during a state of national crisis and decrees of the President of the Republic adopted during a state of emergency shall also be qualified as statutes.

(3) No statute shall be contrary to the Fundamental Law.

(4) Cardinal Act shall mean an Act, the adoption or amendment of which requires the votes of two-thirds of the Members of Parliament present."

"The Constitutional Court

"Article 24

(1) The Constitutional Court shall be the principal organ for the protection of the Fundamental Law.

(2) The Constitutional Court (…)

e) review, at the initiative of the Government, of one fourth of all Members of Parliament or of the Commissioner for Fundamental Rights, the conformity of statutes with the Fundamental Law; (…)

(3) The Constitutional Court

a) shall annul any statute or any provision thereof which is contrary to the Fundamental Law within its competence pursuant to points b), c) and e) of paragraph (2);"

"CLOSING PROVISIONS

2. The Parliament shall adopt this Fundamental Law according to point a) of paragraph (3) of Article 19 and paragraph (3) of Article 24 of the Act XX of 1949.

3. The transitional provisions related to this Fundamental Act shall be adopted separately by the Parliament according to the procedure referred to in point 2 above. (…)

5. The transitional provisions related to this Fundamental Law adopted according to point 3 (31 December 2011) form part of the Fundamental Law.

We, Members of Parliament elected on 25 April 2010, being aware of our responsibility before God and man, and availing ourselves of our power to adopt a constitution, have hereby determined the first unified Fundamental Law of Hungary as above."

2.1. The text of TPFL at the time of submitting the petition:

"The transitional provisions of the Fundamental Law of Hungary
(31 December 2011)
THE TRANSITION FROM COMMUNIST DICTATORSHIP TO DEMOCRACY

We, the Members of Parliament – being aware that no solid foundations can be laid for the safe functioning of the constitutional order without revealing the past and drawing the conclusions therefrom; on the one hand naming and denouncing the crimes committed under the rule of the communists against people, certain groups of people and the whole of society, holding the perpetrators legally responsible where possible, and emphasizing the responsibility of the leaders of the communist regime; on the other hand giving satisfaction to those who suffered such crimes; making a clear distinction between democracy and dictatorship, right and wrong, good and evil –, in the interest of enforcing the first Fundamental Law of Hungary, adopted according to the requirements of the rule of law, hereby proclaim the following:

1. The form of government based on the rule of law, established in accordance with the will of the nation through the first free elections held in 1990, and the previous communist dictatorship are incompatible. Hungary's current rule of law cannot be built on the crimes of the communist regime.

2. The Hungarian Socialist Workers' Party and its legal predecessors (the state-party) are responsible for

a) thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II;

b) establishing an exclusive exercise of power and a legal order built on unlawfulness;

c) putting an end to the economy based on the freedom of property, indebting the country and dramatically deteriorating its competitiveness;

d) subordinating Hungary's economy, national defence, diplomacy and human resources to foreign interests;

e) systematically devastating the traditional values of European civilisation and undermining national identity;

f) depriving citizens or certain groups of citizens of their fundamental human rights or seriously restricting such rights, in particular

- murdering people, delivering them to a foreign power, unlawfully imprisoning them, deporting them to forced labour camps, torturing them, and subjecting them to inhuman treatment;

- arbitrarily depriving citizens of their assets and restricting their rights to property;

- totally depriving citizens of their liberties and subjecting those who expressed their political views and will to coercion by the State;

- discriminating against people on the grounds of origin, world view or political opinion, and obstructing their professional advancement and success based on knowledge, diligence and talent;

- intervening in an abusive way in general and cultural education, scientific life and culture for political and ideological purposes;

- setting up and operating a secret police to unlawfully observe and influence the private lives of people;

g) suppressing with bloodshed the Revolution and War of Independence, which broke out on 23 October 1956, in cooperation with the Soviet occupiers, for the ensuing reign of terror and retaliation, and for the forced escape of two hundred thousand Hungarian people from their native country;

h) for the fact that during the given period of its history Hungary lost its standing among the nations of Europe and the world;

i) for all ordinary crimes committed for political motives and left unprosecuted by the justice system for political motives.

3. The Hungarian Socialist Workers' Party, its legal predecessors and the other political organisations established to serve them in the spirit of communist ideology were criminal organisations, and their leaders shall have responsibility without statute of limitations for maintaining and directing an oppressive regime, for the breaches of law committed and for the betrayal of the nation.

4. The Hungarian Socialist Party, having gained legal recognition during the democratic transition, shares all responsibility which lies with the state-party, as the legal successor of the Hungarian Socialist Workers' Party, heir to the unlawfully accumulated assets and beneficiary of the illegitimate advantages obtained under the dictatorship or during the transition, and by reason of the personal continuity which linked the old and the new party and is still characteristic of the party's leadership.

5. At the time it was not possible to prosecute the crimes committed under the communist dictatorship and aiming at the building and maintenance of the regime, and, in the absence of a constitutional turning point which could have interrupted legal continuity, no possibility to prosecute these crimes opened up even after the first free elections. The leaders of the dictatorship were not held legally or even morally responsible. The coming into force of the Fundamental Law opens the possibility to enforce justice.

6. Recognition and moral satisfaction is due to every Hungarian citizen who resisted the communist dictatorship and had his or her human dignity and rights violated, or was unjustly persecuted by those who served the dictatorship, unless he or she participated in such breaches of law.

7. While breaches of law were inherent in the system of communist dictatorship, the acts were committed by individuals. The memory of crimes must be preserved for people living at present and for future generations, and the criminals must be named.

In the performance of their activities Parliament and other state organs of Hungary shall consider the above provisions of the Fundamental Law as a starting point.

Article 1

(1) The pensions or other benefits provided by the State on the basis of a legal regulation to leaders of the communist dictatorship defined by an Act may be reduced to the extent specified in an Act.

(2) Revenues from the reduction of pensions or other benefits under paragraph (1) shall be used to mitigate the injuries caused by the communist dictatorship and to keep alive the memory of the victims as defined by an Act.

Article 2

(1) No statute of limitations shall apply to those serious crimes defined in an Act which were committed against Hungary or persons under the communist dictatorship in the name or interest of, or in agreement with, the party-state and which were left unprosecuted for political reasons by ignoring the Act on criminal law in force at the time of perpetration.

(2) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period defined by the Act on criminal law in force at the time of perpetration, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred by 1 May 1990 under the Act on criminal law in force at the time of perpetration.

(3) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period between the date of perpetration and 1 May 1990, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred between 2 May 1990 and 31 December 2011 under the Act on criminal law in force at the time of perpetration and that the perpetrator was not prosecuted for the crime.

Article 3

(1) In order for the State to preserve the memory of the communist dictatorship, a National Memorial Committee shall operate.

(2) The National Memorial Committee shall reveal the workings of power of the communist dictatorship and the role of persons and organisations that held communist power, and shall publish the results of its activities in a comprehensive report and further documents.

Article 4

It is a matter of public interest to realistically reveal the operation of the communist dictatorship and ensure society's sense of justice; the holders of power under the communist dictatorship shall qualify as public figures. In the interest of the enforcement of this public interest, the holders of power under the communist dictatorship shall be obliged to tolerate all statements of fact about their roles and acts related to the operation of the dictatorship, with the exception of deliberate statements that are untrue in essence, and their personal data related to such roles and acts may be disclosed to the public.

TRANSITIONAL PROVISIONS RELATED TO THE COMING INTO FORCE OF THE FUNDAMENTAL LAW

Article 5

The coming into force of the Fundamental Law shall not affect the effect of legislation, normative decisions or orders, or other legal instruments of state administration, concrete decisions or commitments of international law which were adopted, issued, made or undertaken before the Fundamental Law came into force.

Article 6

The legal successor of the organ which performed the tasks and exercised the competences under Act XX of 1949 on the Constitution of the Republic of Hungary shall be the organ which performs the tasks and exercises the competences under the Fundamental Law.

Article 7

The designation 'Republic of Hungary' may be used in reference to Hungary after the Fundamental Law comes into force by virtue of the legislative provisions in force on 31 December 2011 until the changeover to the designation set out in the Fundamental Law may be implemented according to the principles of responsible financial management.

Article 8

The coming into force of the Fundamental Law shall not affect the mandate of Parliament, Government and local representative bodies, or of the persons appointed or elected before the coming into force of the Fundamental Law, with the exceptions laid down in Articles 9 to 18.

Article 9

The following articles of the Fundamental Law shall also apply to the mandates of the following persons:

a) Articles 3 and 4 to Parliament and Members of Parliament in office,

b) Articles 12 and 13 to the President of the Republic in office,

c) Articles 20 and 21 to the Government in office and Members of Government in office,

d) Article 27(3) to court secretaries in office,

e) Article 33(2) to presidents of county representative bodies in office, and

f) Article 35(3) to (6) to local representative bodies and mayors in office.

Article 10

The time limit laid down in Article 4 para. (3) item f) of the Fundamental Law shall start to run when the Fundamental Law comes into force.

Article 11

(1) The legal successor of the Supreme Court, the National Council of Justice and its President shall be the Curia for the administration of justice, and the President of the National Office for the Judiciary for the administration of courts with the exception defined by the relevant cardinal Act.

(2) The mandates of the President of the Supreme Court and the President and members of the National Council of Justice shall be terminated when the Fundamental Law comes into force.

(3) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII para. (1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the President of the National Office for the Judiciary may designate a court other than the court of general competence but with the same jurisdiction to adjudicate any case.

(4) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII para. (1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the Supreme Prosecutor, as the head and director of the prosecution service which operates as a contributor to the administration of justice under Article 29 of the Fundamental Law, may instruct that charges be brought before a court other than the court of general competence but with the same jurisdiction. This provision shall not affect the right of the President of the National Office for the Judiciary guaranteed by paragraph (3), or the right of certain prosecution services to bring charges before any court which operates within their area of competence.

Article 11

(1) If the judge reached prior to 1 January, 2012 the general old age retirement age limit specified in Article 26 para. (2) of the Fundamental Law, their judicial service relationship shall be terminated as from 30 June 2012. If the judge shall reach between 1 January, 2012 and 31 December 2012 the general old age retirement age limit specified in Article 26 para. (2) of the Fundamental Law, their judicial service relationship shall be terminated as from 31 December 2012.

(2) If persons engaged in the administration of justice in non-litigious procedures who have been appointed by the concrete public-law decision of a Member of the Government may conduct proceedings in certain types of litigation under an Act by virtue of Article 25 para. (6) of the

Fundamental Law, the provision of Article 26 para. (2) of the Fundamental Law on the determination of the highest age shall also apply to such persons with effect from 1 January 2014.

Article 13

If the prosecutor reached prior to 1 January, 2012 the general old age retirement age limit specified in Article 29 para. (3) of the Fundamental Law, their judicial service relationship shall be terminated as from 30 June 2012. If the prosecutor shall reach between 1 January, 2012 and 31 December 2012 the general old age retirement age limit specified in Article 29 para. (3) of the Fundamental Law, their judicial service relationship shall be terminated as from 31 December 2012.

Article 14

(1) The lowest age requirement defined by Article 26(2) of the Fundamental Law shall be applicable to judges appointed on the basis of a call for applications announced after the coming into force of the Fundamental Law, with the exception laid down in paragraph (2).

(2) If the appointment takes place without the announcement of a call for applications under an Act, the lowest age requirement shall be applicable to judges appointed after the coming into force of the Fundamental Law.

Article 14

The designation of the office of the Parliamentary Commissioner for Citizens' Rights shall be 'Commissioner for Fundamental Rights' as of the coming into force of the Fundamental Law. The legal successor of the Parliamentary Commissioner for Citizens' Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations shall be the Commissioner for Fundamental Rights. The Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary as of the coming into force of the Fundamental Law; the Parliamentary Commissioner for Future Generations in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations as of the coming into force of the Fundamental Law; their mandates shall be terminated when the mandate of the Commissioner for Fundamental Rights is terminated.

Article 16

The mandate of the Commissioner for Data Protection in office shall be terminated when the Fundamental Law comes into force.

Article 17

For the purposes and as of the coming into force of the Fundamental Law, the designation of the office of the President of the County Assembly shall be 'President of the County Representative Body'. The county representative body laid down in the Fundamental Law shall be the legal successor of the county assembly.

Article 18

The member of the Budget Council in office appointed by the President of the Republic shall become the President of the Budget Council as of the coming into force of the Fundamental Law.

Article 19

(1) The provisions of the Fundamental Law shall also be applicable to cases in progress, with the exceptions laid down in paragraphs (2) to (5).

(2) Article 6 of the Fundamental Law shall be applicable from the first sitting of Parliament started after the coming into force of the Fundamental Law.

(3) As of the coming into force of the Fundamental Law, proceedings based on petitions submitted to the Constitutional Court before the coming into force of the Fundamental Law by petitioners who no longer have the right to make petitions under the Fundamental Law shall be terminated, and if the proceedings belong to the competence of another organ, the petition shall be transferred to that other organ. Petitioners may re-submit their petitions according to the requirements laid down in the relevant cardinal Act.

(4) Articles 38 para. (4) and 39 para. (1) of the Fundamental Law shall be applicable to contracts and subsidy entitlements existing on 1 January 2012, and to proceedings in progress aimed at the conclusion of contracts or the provision of subsidies if provided for by an Act and as laid down in an Act.

(5) Until 31 December 2012, the third sentence of Section 70/E para. (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to any benefits which qualify as retirement allowance under the rules in force on 31 December 2011, concerning any change in their conditions, nature or amounts, their conversion to other benefits or their termination.

Article 20

Sections 26 para. (6), 28/D, 28/E and 31 para. (2) to (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall also be applicable after the coming into force of the Fundamental Law to cases in progress at time of the coming into force of the Fundamental Law.

Article 21

(1) In the cardinal Act which sets detailed rules for the churches, Parliament shall identify the recognised churches and shall determine the criteria for recognition of additional recognised churches. A cardinal Act may stipulate that in order to be recognised as a church the following shall be taken into consideration: operation for a certain length of time, a certain number of members, historical traditions and social support.

(2) In the cardinal Act which sets detailed rules for the rights of nationalities living in Hungary, Parliament shall identify the recognised nationalities and shall determine the criteria for the recognition of additional nationalities. A cardinal Act may stipulate that in order to be recognised as a nationality the following criteria shall be met: native status of a certain length of time and an initiative by a certain number of persons who declare to belong to the nationality in question.

Article 22

(1) For the purposes of Article 24 para. (2) item c) of the Fundamental Law, a constitutional complaint shall mean

a) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied in a court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law, and

b) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied or enforced directly in a concrete case without a court decision which has violated any of his or her rights guaranteed by the Fundamental Law.

(2) For the purposes of Article 24 para. (2) item *d)* of the Fundamental Law, a constitutional complaint shall be a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a court decision on the merits of the case or another decision terminating court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law.

Article 23

(1) The first general elections of local representatives and mayors after the coming into force of the Fundamental Law shall take place in October 2014. The general elections of local representatives and mayors shall take place on the same day as the elections of the Members of the European Parliament, with the exception of the first general elections after the coming into force of the Fundamental Law; the interval between two consecutive general elections of local representatives and mayors may differ from the period laid down in Article 35 para. (2) of the Fundamental Law to the extent required by the date of the elections of the Members of the European Parliament.

(2) The participation, under Article 2 para. (2) of the Fundamental Law in Parliament's work by the nationalities living in Hungary shall first be ensured in the work of the Parliament formed after the first general elections of Members of Parliament after the coming into force of the Fundamental Law.

Article 24

The coming into force of the Fundamental Law shall not affect any decision of Parliament or of the Government made before the coming into force of the Fundamental Law on the domestic or foreign use of the Hungarian Defence Forces, the use of foreign armed forces in Hungary or departing from Hungary, and on the stationing abroad of the Hungarian Defence Forces or the stationing of foreign armed forces in Hungary, under Act XX of 1949 on the Constitution of the Republic of Hungary.

Article 25

a) A declared state of national crisis shall be subject to the provisions of the Fundamental Law on the state of national crisis,

b) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of emergency, if it was declared due to armed actions aimed at overturning the constitutional order or at the acquisition of exclusive power, or to grave acts of violence committed with arms or objects suitable to be used as arms, capable of endangering life and property on a massive scale.

c) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of danger, if it was declared due to any natural disaster or industrial accident endangering life or property.

d) A declared state of preventive defence shall be subject to the provisions of the Fundamental Law on the state of preventive defence.

e) A situation defined by Section 19/E of Act XX of 1949 on the Constitution of the Republic of Hungary shall be subject to the provisions of the Fundamental Law on the state of unexpected attack.

f) A state of danger shall be subject to the provisions of the Fundamental Law on the state of danger.

Article 26

(1) A person who has been banned from participation in public affairs by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage while such ban is in force.

(2) A person who has been put under guardianship which restricts or excludes his or her disposing capacity by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage until such guardianship is terminated or until a court establishes the existence of his or her suffrage.

Article 27

Article 37 para. (4) of the Fundamental Law shall be applicable to Acts of Parliament published in the period when state debt exceeded half of the Gross Domestic Product even when the state debt no longer exceeds half of the Gross Domestic Product.

Article 28

(1) Article 12 para.(2) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to the transfer of any local government property to the State or another local government until 31 December 2013.

(2) Article 44/B(4) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until 31 December 2012. After 31 December 2011, an Act of Parliament or a Government decree by authorisation of an Act of Parliament may invest notaries with tasks and competences of public administration.

(3) The metropolitan or county government office may apply to a court to establish a local government's failure to comply with its law-making obligation based on an Act. Should the local government fail to comply with its law-making obligation by the date fixed by the court in its decision establishing failure, the court shall order – upon the initiative of the metropolitan or county government office – that the local government decree necessary to remedy the failure be adopted by the head of the metropolitan or county government office on behalf of the local government.

(4) Article 22 para. (1) and paras (3) to (5) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until the coming into force of the cardinal Act referred to by Article 5 para. (8) of the Fundamental Law. The cardinal Act referred to by Article 5 para. (8) and Article 7 para. (3) of the Fundamental Law shall be adopted by Parliament until 30 June 2012.

(5) Until 31 December 2012, a cardinal Act may stipulate a qualified majority for the adoption of certain decisions of Parliament.

Article 29

(1) As long as the state debt exceeds half of the Gross Domestic Product, whenever the State incurs a payment obligation deriving from a decision of the Constitutional Court, the Court of Justice of the European Union or any other court or an organ which applies the law, and the amount previously earmarked by the Act on the Central Budget for performing such obligation is insufficient and the missing amount cannot even be supplied out of another amount earmarked by the Act on the Central Budget for other purposes without violating the requirement of balanced budget management, a special contribution to covering common needs shall be established, exclusively and expressly related to the performance of such obligation in terms of scope and designation.

(2) Legislation may not establish new grounds for compensation ensuring pecuniary or other asset contributions to persons unlawfully deprived of their lives or freedom for political reasons or to persons who sustained undue property damage by the State, before 2 May 1990.

Article 30

(1) The cardinal Act defined by Article 41 or Article 42 of the Fundamental Law may provide that the tasks and competences of the organ supervising the financial intermediary system and the National Bank of Hungary may be performed and exercised by a new organisation as general legal successor, whose president shall be appointed by the President of the Republic under Article 41 para. (2) of the Fundamental Law.

(2) In the case specified by paragraph (1), the Vice Presidents of the new organisation shall be the Governor of the National Bank of Hungary in office at the time when the Act on the new organisation comes into force, regarding monetary policy and the tasks of the central bank, and the President of the

Hungarian Financial Supervisory Authority in office at the time when the Act on the new organisation comes into force, regarding the tasks of supervision of the financial intermediary system. The mandates of the Vice Presidents shall exist until their terminated presidential mandate would have existed. On termination of the mandates of the Vice Presidents, the President of the Republic shall appoint new Vice Presidents under Article 41 para. (2) of the Fundamental Law.

CLOSING PROVISIONS

Article 31

(1) The Transitional Provisions of the Fundamental Law of Hungary (hereinafter referred to as "Transitional Provisions") shall come into force on 1 January 2012.

(2) The Parliament shall adopt the Transitional Provisions under Article 19 para. (3) item *a)* and Article 24 para. (3) of Act XX of 1949 on the Constitution of the Republic of Hungary, in accordance with point 3 of the Closing Provisions of the Fundamental Law of Hungary. The Transitional Provisions shall form part of the Fundamental Law.

(3) The following legal regulations shall lose force:

a) Act XX of 1949 on the Constitution of the Republic of Hungary,

b) Act I of 1972 on the amendment of the Act XX of 1949, and the consolidated text of the Constitution of the People's Republic of Hungary,

c) Act XXXI of 1989 on the amendment of the Constitution,

a) Act XVI of 1990 on the amendment of the Constitution of the Republic of Hungary,

a) Act XL of 1990 on the amendment of the Constitution of the Republic of Hungary,

f) Act XL of 1990 on the amendment of the Constitution of the Republic of Hungary,

g) the Amendment of the Constitution of 25 May 2010,

h) the Amendment of the Constitution of 5 July 2010,

i) the Amendments of the Constitution of 6 July 2010,

g) the Amendments of the Constitution of 11 August 2010,

k) Act CXIII of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

l) Act CXIX of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

m) Act CLXIII of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

n) Act LXI of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary, necessary for the adoption of certain transitional provisions connected to the Fundamental Lasw,

l) Act CXLVI of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary, and

p) Act CLIX of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary.

Article 32

The 25th day of April shall be the Day of the Fundamental Law in commemoration of the publication of the Fundamental Law."

2.2. The text of TPFL at the time of judging upon the petition:

"The transitory provisions of the Fundamental Law of Hungary

(2011. (31 December 2011)

THE TRANSITION FROM COMMUNIST DICTATORSHIP TO DEMOCRACY

We, the Members of Parliament – being aware that no solid foundations can be laid for the safe functioning of the constitutional order without revealing the past and drawing the conclusions therefrom; on the one hand naming and denouncing the crimes committed under the rule of the communists against people, certain groups of people and the whole of society, holding the perpetrators legally responsible where possible, and emphasizing the responsibility of the leaders of the communist regime; on the other hand giving satisfaction to those who suffered such crimes; making a clear distinction between democracy and dictatorship, right and wrong, good and evil –, in the interest of enforcing the first Fundamental Law of Hungary, adopted according to the requirements of the rule of law, hereby proclaim the following:

1. The form of government based on the rule of law, established in accordance with the will of the nation through the first free elections held in 1990, and the previous communist dictatorship are incompatible. Hungary's current rule of law cannot be built on the crimes of the communist regime.

2. The Hungarian Socialist Workers' Party and its legal predecessors (the state-party) are responsible for

a) thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II;

b) establishing an exclusive exercise of power and a legal order built on unlawfulness;

c) putting an end to the economy based on the freedom of property, indebting the country and dramatically deteriorating its competitiveness;

d) subordinating Hungary's economy, national defence, diplomacy and human resources to foreign interests;

e) systematically devastating the traditional values of European civilisation and undermining national identity;

f) depriving citizens or certain groups of citizens of their fundamental human rights or seriously restricting such rights, in particular

- murdering people, delivering them to a foreign power, unlawfully imprisoning them, deporting them to forced labour camps, torturing them, and subjecting them to inhuman treatment;

- arbitrarily depriving citizens of their assets and restricting their rights to property;

- totally depriving citizens of their liberties and subjecting those who expressed their political views and will to coercion by the State;

- discriminating against people on the grounds of origin, world view or political opinion, and obstructing their professional advancement and success based on knowledge, diligence and talent;

- intervening in an abusive way in general and cultural education, scientific life and culture for political and ideological purposes;

- setting up and operating a secret police to unlawfully observe and influence the private lives of people;

g) suppressing with bloodshed the Revolution and War of Independence, which broke out on 23 October 1956, in cooperation with the Soviet occupiers, for the ensuing reign of terror and retaliation, and for the forced escape of two hundred thousand Hungarian people from their native country;

h) for the fact that during the given period of its history Hungary lost its standing among the nations of Europe and the world;

i) for all ordinary crimes committed for political motives and left unprosecuted by the justice system for political motives.

3. The Hungarian Socialist Workers' Party, its legal predecessors and the other political organisations established to serve them in the spirit of communist ideology were criminal organisations, and their leaders shall have responsibility without statute of limitations for maintaining

and directing an oppressive regime, for the breaches of law committed and for the betrayal of the nation.

4. The Hungarian Socialist Party, having gained legal recognition during the democratic transition, shares all responsibility which lies with the state-party, as the legal successor of the Hungarian Socialist Workers' Party, heir to the unlawfully accumulated assets and beneficiary of the illegitimate advantages obtained under the dictatorship or during the transition, and by reason of the personal continuity which linked the old and the new party and is still characteristic of the party's leadership.

5. At the time it was not possible to prosecute the crimes committed under the communist dictatorship and aiming at the building and maintenance of the regime, and, in the absence of a constitutional turning point which could have interrupted legal continuity, no possibility to prosecute these crimes opened up even after the first free elections. The leaders of the dictatorship were not held legally or even morally responsible. The coming into force of the Fundamental Law opens the possibility to enforce justice.

6. Recognition and moral satisfaction is due to every Hungarian citizen who resisted the communist dictatorship and had his or her human dignity and rights violated, or was unjustly persecuted by those who served the dictatorship, unless he or she participated in such breaches of law.

7. While breaches of law were inherent in the system of communist dictatorship, the acts were committed by individuals. The memory of crimes must be preserved for people living at present and for future generations, and the criminals must be named.

In the performance of their activities Parliament and other state organs of Hungary shall consider the above provisions of the Fundamental Law as a starting point.

Article 1

(1) The pensions or other benefits provided by the State on the basis of a legal regulation to leaders of the communist dictatorship defined by an Act may be reduced to the extent specified in an Act.

(2) Revenues from the reduction of pensions or other benefits under paragraph (1) shall be used to mitigate the injuries caused by the communist dictatorship and to keep alive the memory of the victims as defined by an Act.

Article 2

(1) No statute of limitations shall apply to those serious crimes defined in an Act which were committed against Hungary or persons under the communist dictatorship in the name or interest of, or in agreement with, the party-state and which were left unprosecuted for political reasons by ignoring the Act on criminal law in force at the time of perpetration.

(2) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period defined by the Act on criminal law in force at the time of perpetration, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred by 1 May 1990 under the Act on criminal law in force at the time of perpetration.

(3) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period between the date of perpetration and 1 May 1990, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred between 2 May 1990 and 31 December 2011 under the Act on criminal law in force at the time of perpetration and that the perpetrator was not prosecuted for the crime.

Article 3

(1) In order for the State to preserve the memory of the communist dictatorship, a National Memorial Committee shall operate.

(2) The National Memorial Committee shall reveal the workings of power of the communist dictatorship and the role of persons and organisations that held communist power, and shall publish the results of its activities in a comprehensive report and further documents.

Article 4

It is a matter of public interest to realistically reveal the operation of the communist dictatorship and ensure society's sense of justice; the holders of power under the communist dictatorship shall qualify as public figures. In the interest of the enforcement of this public interest, the holders of power under the communist dictatorship shall be obliged to tolerate all statements of fact about their roles and acts related to the operation of the dictatorship, with the exception of deliberate statements that are untrue in essence, and their personal data related to such roles and acts may be disclosed to the public.

TRANSITIONAL PROVISIONS RELATED TO THE COMING INTO FORCE OF THE FUNDAMENTAL LAW

Article 5

The coming into force of the Fundamental Law shall not affect the effect of legislation, normative decisions or orders, or other legal instruments of state administration, concrete decisions or commitments of international law which were adopted, issued, made or undertaken before the Fundamental Law came into force.

Article 6

The legal successor of the organ which performed the tasks and exercised the competences under Act XX of 1949 on the Constitution of the Republic of Hungary shall be the organ which performs the tasks and exercises the competences under the Fundamental Law.

Article 7

The designation 'Republic of Hungary' may be used in reference to Hungary after the Fundamental Law comes into force by virtue of the legislative provisions in force on 31 December 2011 until the changeover to the designation set out in the Fundamental Law may be implemented according to the principles of responsible financial management.

Article 8

The coming into force of the Fundamental Law shall not affect the mandate of Parliament, Government and local representative bodies, or of the persons appointed or elected before the coming into force of the Fundamental Law, with the exceptions laid down in Articles 9 to 18.

Article 9

The following articles of the Fundamental Law shall also apply to the mandates of the following persons:

a) Articles 3 and 4 to Parliament and Members of Parliament in office,

b) Articles 12 and 13 to the President of the Republic in office,

c) Articles 20 and 21 to the Government in office and Members of Government in office,

d) Article 27(3) to court secretaries in office,

e) Article 33(2) to presidents of county representative bodies in office, and

f) Article 35(3) to (6) to local representative bodies and mayors in office.

Article 10

The time limit laid down in Article 4 para. (3) item f) of the Fundamental Law shall start to run when the Fundamental Law comes into force.

Article 11

(1) The legal successor of the Supreme Court, the National Council of Justice and its President shall be the Curia for the administration of justice, and the President of the National Office for the Judiciary for the administration of courts with the exception defined by the relevant cardinal Act.

(2) The mandates of the President of the Supreme Court and the President and members of the National Council of Justice shall be terminated when the Fundamental Law comes into force.

(3) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII para. (1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the President of the National Office for the Judiciary may designate a court other than the court of general competence but with the same jurisdiction to adjudicate any case.

(4) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII para. (1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the Supreme Prosecutor, as the head and director of the prosecution service which operates as a contributor to the administration of justice under Article 29 of the Fundamental Law, may instruct that charges be brought before a court other than the court of general competence but with the same jurisdiction. This provision shall not affect the right of the President of the National Office for the Judiciary guaranteed by paragraph (3), or the right of certain prosecution services to bring charges before any court which operates within their area of competence.

Article 12

(1) If the judge reached prior to 1 January, 2012 the general old age retirement age limit specified in Article 26 para. (2) of the Fundamental Law, their judicial service relationship shall be terminated as from 30 June 2012. If the judge shall reach between 1 January, 2012 and 31 December 2012 the general old age retirement age limit specified in Article 26 para. (2) of the Fundamental Law, their judicial service relationship shall be terminated as from 31 December 2012.

(2) If persons engaged in the administration of justice in non-litigious procedures who have been appointed by the concrete public-law decision of a Member of the Government may conduct proceedings in certain types of litigation under an Act by virtue of Article 25 para. (6) of the Fundamental Law, the provision of Article 26 para. (2) of the Fundamental Law on the determination of the highest age shall also apply to such persons with effect from 1 January 2014.

Article 13

If the prosecutor reached prior to 1 January, 2012 the general old age retirement age limit specified in Article 29 para. (3) of the Fundamental Law, their judicial service relationship shall be terminated as from 30 June 2012. If the prosecutor shall reach between 1 January, 2012 and 31 December 2012 the general old age retirement age limit specified in Article 29 para. (3) of the Fundamental Law, their judicial service relationship shall be terminated as from 31 December 2012.

Article 14

(1) The lowest age requirement defined by Article 26(2) of the Fundamental Law shall be applicable to judges appointed on the basis of a call for applications announced after the coming into force of the Fundamental Law, with the exception laid down in paragraph (2).

(2) If the appointment takes place without the announcement of a call for applications under an Act, the lowest age requirement shall be applicable to judges appointed after the coming into force of the Fundamental Law.

Article 15

The designation of the office of the Parliamentary Commissioner for Citizens' Rights shall be 'Commissioner for Fundamental Rights' as of the coming into force of the Fundamental Law. The legal successor of the Parliamentary Commissioner for Citizens' Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations shall be the Commissioner for Fundamental Rights. The Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary as of the coming into force of the Fundamental Law; the Parliamentary Commissioner for Future Generations in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations as of the coming into force of the Fundamental Law; their mandates shall be terminated when the mandate of the Commissioner for Fundamental Rights is terminated.

Article 16

The mandate of the Commissioner for Data Protection in office shall be terminated when the Fundamental Law comes into force.

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For the purposes and as of the coming into force of the Fundamental Law, the designation of the office of the President of the County Assembly shall be 'President of the County Representative Body'. The county representative body laid down in the Fundamental Law shall be the legal successor of the county assembly.

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The member of the Budget Council in office appointed by the President of the Republic shall become the President of the Budget Council as of the coming into force of the Fundamental Law.

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(1) The provisions of the Fundamental Law shall also be applicable to cases in progress, with the exceptions laid down in paragraphs (2) to (5).

(2) Article 6 of the Fundamental Law shall be applicable from the first sitting of Parliament started after the coming into force of the Fundamental Law.

(3) As of the coming into force of the Fundamental Law, proceedings based on petitions submitted to the Constitutional Court before the coming into force of the Fundamental Law by petitioners who no

longer have the right to make petitions under the Fundamental Law shall be terminated, and if the proceedings belong to the competence of another organ, the petition shall be transferred to that other organ. Petitioners may re-submit their petitions according to the requirements laid down in the relevant cardinal Act.

(4) Articles 38 para. (4) and 39 para. (1) of the Fundamental Law shall be applicable to contracts and subsidy entitlements existing on 1 January 2012, and to proceedings in progress aimed at the conclusion of contracts or the provision of subsidies if provided for by an Act and as laid down in an Act.

(5) Until 31 December 2012, the third sentence of Section 70/E para. (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to any benefits which qualify as retirement allowance under the rules in force on 31 December 2011, concerning any change in their conditions, nature or amounts, their conversion to other benefits or their termination.

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Sections 26 para. (6), 28/D, 28/E and 31 para. (2) to (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall also be applicable after the coming into force of the Fundamental Law to cases in progress at time of the coming into force of the Fundamental Law.

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Article 22

(1) For the purposes of Article 24 para. (2) item c) of the Fundamental Law, a constitutional complaint shall mean

a) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied in a court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law, and

b) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied or enforced directly in a concrete case without a court decision which has violated any of his or her rights guaranteed by the Fundamental Law.

(2) For the purposes of Article 24 para. (2) item *d)* of the Fundamental Law, a constitutional complaint shall be a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a court decision on the merits of the case or another decision terminating court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law.

Article 23

(1) The first general elections of local representatives and mayors after the coming into force of the Fundamental Law shall take place in October 2014. The general elections of local representatives and

mayors shall take place on the same day as the elections of the Members of the European Parliament, with the exception of the first general elections after the coming into force of the Fundamental Law; the interval between two consecutive general elections of local representatives and mayors may differ from the period laid down in Article 35 para. (2) of the Fundamental Law to the extent required by the date of the elections of the Members of the European Parliament.

(2) The participation, under Article 2 para. (2) of the Fundamental Law in Parliament's work by the nationalities living in Hungary shall first be ensured in the work of the Parliament formed after the first general elections of Members of Parliament after the coming into force of the Fundamental Law.

(3) In the interest of enforcing the rights contained in Article XXIII of the Fundamental Law, all electors specified in Article XXIII paras (1)-(3) and para (7) shall be registered in the registry of names, the right to vote can be exercised after registration. The registration can be requested

a) personally or in electronic way allowing the identification of the applicant, by an elector having a Hungarian domicile,

b) in mail or in electronic way allowing the identification of the applicant, by an elector not having a Hungarian domicile.

(4) Registration can be requested until the day preceding the fifteenth day before the elections or the referendum.

(5) Before the general election of Members of Parliament – with the exception of elections held due to the declaration of the Parliament's dissolution or the Parliament having been dissolved – the register of names shall be prepared again according to paragraphs (3) and (4).

Article 24

The coming into force of the Fundamental Law shall not affect any decision of Parliament or of the Government made before the coming into force of the Fundamental Law on the domestic or foreign use of the Hungarian Defence Forces, the use of foreign armed forces in Hungary or departing from Hungary, and on the stationing abroad of the Hungarian Defence Forces or the stationing of foreign armed forces in Hungary, under Act XX of 1949 on the Constitution of the Republic of Hungary.

Article 25

a) A declared state of national crisis shall be subject to the provisions of the Fundamental Law on the state of national crisis,

a) A declared state of national crisis shall be subject to the provisions of the Fundamental Law on the state of national crisis.

b) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of emergency, if it was declared due to armed actions aimed at overturning the constitutional order or at the acquisition of exclusive power, or to grave acts of violence committed with arms or objects suitable to be used as arms, capable of endangering life and property on a massive scale.

c) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of danger, if it was declared due to any natural disaster or industrial accident endangering life or property.

d) A declared state of preventive defence shall be subject to the provisions of the Fundamental Law on the state of preventive defence.

e) A situation defined by Section 19/E of Act XX of 1949 on the Constitution of the Republic of Hungary shall be subject to the provisions of the Fundamental Law on the state of unexpected attack.

f) A state of danger shall be subject to the provisions of the Fundamental Law on the state of danger.

Article 26

(1) A person who has been banned from participation in public affairs by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage while such ban is in force.

(2) A person who has been put under guardianship which restricts or excludes his or her disposing capacity by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage until such guardianship is terminated or until a court establishes the existence of his or her suffrage.

Article 27

Article 37 para. (4) of the Fundamental Law shall be applicable to Acts of Parliament published in the period when state debt exceeded half of the Gross Domestic Product even when the state debt no longer exceeds half of the Gross Domestic Product.

Article 28

(1) Article 12 para.(2) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to the transfer of any local government property to the State or another local government until 31 December 2013.

(2) Article 44/B para.(4) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until 31 December 2012. After 31 December 2011, an Act of Parliament or a Government decree by authorisation of an Act of Parliament may invest notaries with tasks and competences of public administration.

(3) The metropolitan or county government office may apply to a court to establish a local government's failure to comply with its law-making obligation based on an Act. Should the local government fail to comply with its law-making obligation by the date fixed by the court in its decision establishing failure, the court shall order – upon the initiative of the metropolitan or county government office – that the local government decree necessary to remedy the failure be adopted by the head of the metropolitan or county government office on behalf of the local government.

(4) Article 22 para. (1) and paras (3) to (5) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until the coming into force of the cardinal Act referred to by Article 5 para. (8) of the Fundamental Law. The cardinal Act referred to by Article 5 para. (8) and Article 7 para. (3) of the Fundamental Law shall be adopted by Parliament until 30 June 2012.

(5) Until 31 December 2012, a cardinal Act may stipulate a qualified majority for the adoption of certain decisions of Parliament.

Article 29

(1) As long as the state debt exceeds half of the Gross Domestic Product, whenever the State incurs a payment obligation deriving from a decision of the Constitutional Court, the Court of Justice of the European Union or any other court or an organ which applies the law, and the amount previously earmarked by the Act on the Central Budget for performing such obligation is insufficient and the missing amount cannot even be supplied out of another amount earmarked by the Act on the Central Budget for other purposes without violating the requirement of balanced budget management, a special contribution to covering common needs shall be established, exclusively and expressly related to the performance of such obligation in terms of scope and designation.

(2) Legislation may not establish new grounds for compensation ensuring pecuniary or other asset contributions to persons unlawfully deprived of their lives or freedom for political reasons or to persons who sustained undue property damage by the State, before 2 May 1990.

Article 30

CLOSING PROVISIONS

Article 31

(1) The Transitional Provisions of the Fundamental Law of Hungary (hereinafter referred to as "Transitional Provisions") shall come into force on 1 January 2012.

(2) The Parliament shall adopt the Transitional Provisions under Article 19 para. (3) item *a)* and Article 24 para. (3) of Act XX of 1949 on the Constitution of the Republic of Hungary, in accordance with point 3 of the Closing Provisions of the Fundamental Law of Hungary. The Transitional Provisions shall form part of the Fundamental Law.

(3) The following legal regulations shall lose force:

a) Act XX of 1949 on the Constitution of the Republic of Hungary,

b) Act I of 1972 on the amendment of the Act XX of 1949, and the consolidated text of the Constitution of the People's Republic of Hungary,

c) Act XXXI of 1989 on the amendment of the Constitution,

a) Act XVI of 1990 on the amendment of the Constitution of the Republic of Hungary,

a) Act XL of 1990 on the amendment of the Constitution of the Republic of Hungary,

f) Act XL of 1990 on the amendment of the Constitution of the Republic of Hungary,

g) the Amendment of the Constitution of 25 May 2010,

h) the Amendment of the Constitution of 5 July 2010,

i) the Amendments of the Constitution of 6 July 2010,

g) the Amendments of the Constitution of 11 August 2010,

k) Act CXIII of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

l) Act CXIX of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

m) Act CLXIII of 2010 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary,

n) Act LXI of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary, necessary for the adoption of certain transitional provisions connected to the Fundamental Lasw,

l) Act CXLVI of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary, and

p) Act CLIX of 2011 on the amendment of the Act XX of 1949 on the Constitution of the Republic of Hungary.

32. Article 31

The 25th day of April shall be the Day of the Fundamental Law in commemoration of the publication of the Fundamental Law."

3. The relevant provisions of the ACC:

The Parliament of Hungary, with a view to protecting democratic State governed by the rule of law, constitutional order and the rights guaranteed in the Fundamental Law and to safeguard the inner coherence of the legal system, and enforcing the principle of the division of powers – implementing the Fundamental Law, pursuant to Article 24 para. (5) thereof – has adopted the following Act on the regulation of the competence, organisation and operation of the Constitutional Court as the principal organ for the protection of the Fundamental Law:

„2. The Legal Status of the Constitutional Court

Section 2 The Constitutional Court shall be the principal organ for the protection of the Fundamental Law."

„7. Ex Post Review of Conformity with the Fundamental Law (Posterior Norm Control)

Section 24 (1) The Constitutional Court shall, in accordance with Article 24 para. (2) item e) of the Fundamental Law, review the conformity of legal regulations with the Fundamental Law.

(2) The Constitutional Court shall review the conformity of legal regulations with the Fundamental Law on the petition of the Commissioner for Fundamental Rights containing an explicit request if, in the opinion of the Commissioner for Fundamental Rights, the legal regulation is contrary to the Fundamental Law.

"Section 41 (1) If the Constitutional Court, within the framework of proceedings specified in Sections 24 to 26 declares that any legal regulation in force or any provision thereof is contrary to the Fundamental Law, it shall annul the legal regulation or provision in whole or in part.

Section 45 (1) The annulled legal regulation or provision thereof shall cease to have effect on the day after the publication of the Constitutional Court's decision on annulment in the Hungarian Official Gazette and shall not be applicable from that day; a legal regulation which has been promulgated, but has not yet entered into force shall not enter into force. (…)

(4) The Constitutional Court may depart from paragraphs (1) to (3) when deciding on the repeal of a legal regulation contrary to the Fundamental Law or on the inapplicability of the annulled legal regulation in general, or in concrete cases, if this is justified by the protection of the Fundamental Law, by the interest of legal certainty or by a particularly important interest of the entity initiating the proceedings.

"Section 52 (3) The Constitutional Court may examine and annul other provisions of the legal regulation specified in the petition if the contents of these provisions are closely related to each other and if failure to examine and annul the given provisions would entail infringement of legal certainty."

III

The petition is well-founded.

1. The Constitutional Court first examined the existence of the formal conditions specified in ACC that can form the basis of the petitioner's right to file a petition. The Constitutional Court established that the Commissioner for Fundamental Rights requested the constitutional review of the whole of TPFL and of certain provisions thereof, in the framework of abstract posterior norm control on the basis of Article 24 para. (2) item *e)* of the Fundamental Law and under Section 24 para. (2) of ACC. This fact can be established beyond doubt – on the basis of both the identification of the scope of competence, the contents of the petition and the well defined request found in the petition – and the petition's contents cannot be interpreted as being aimed at the interpretation of the Fundamental Law. The Constitutional Court established that the petition asking for an abstract posterior norm control was filed by a person entitled to submit it and it complied with the formal requirements contained in ACC.

2. Then the Constitutional Court examined whether it has a scope of competence to review TPFL. Taking into account that the Constitution [Article 32/A para. (1)], the Fundamental Law [Article 24

paras (1) and (3)] and the preamble of the Act XXXII of 1989 on the Constitutional Court (hereinafter: "old ACC") as well as the preamble of ACC essentially provided the same definition in the respect of the Constitutional Court's constitutional duty, the Constitutional Court holds that its standing practice on reviewing the Constitution and the amendments of the Constitution has to be continued to follow. The established practice of the Constitutional Court can be summarised as follows:

2.1. It has been the constant practice of the Constitutional Court ever since its very first decisions on the possibility of reviewing the Constitution [rulings 293/B/1994. AB and 23/1994 (IV. 29) AB] that it has no competence to review and annul the provisions of the Constitution.

According to the argumentation of the Constitutional Court: "According to Article 32/A paras (1)-(2) of the Constitution and to Section 1 para. (1) items *b)* and *c)* of the Act XXXII of 1989 on the Constitutional Court, the competence of the Constitutional Court covers the constitutional review of – and the examination of an alleged violation of an international treaty by – legal regulations contained in Acts of Parliament or in the sources of law of lower hierarchical level and other legal tools of State administration.

The Constitutional Court can't annul (…) any provision of the Constitution. If a provision had been adopted by the two-thirds majority vote of the members of Parliament as the regulation of the Constitution, then it has become part of the Constitution and it is therefore theoretically impossible to establish its unconstitutionality." (ruling 293/B/1994. AB, ABH 1994, 862.)

According to the ruling 23/1994. (IV. 29.) AB, the Constitutional Court also established that it may not review any provision of the Constitution.

As stated by the Constitutional Court in the ruling 1338/E/1996. AB, "the Constitutional Court has no competence to establish an unconstitutional omission of legislative duty for the purpose of proposing the legislator to amend the Constitution in force". (ABH 1999, 901)

In the ruling 290/B/2002. AB, the Constitutional Court established the lack of its competence regarding the cases when the petitioner asks for the examination of an alleged conflict between two provisions of the Constitution: "as it is theoretically impossible to examine the constitutionality of the Constitution, the Constitutional Court is not competent to resolve any real or alleged conflict between the provisions of the Constitution." (ABH 2008, 1863, 1868)

"Regarding the problem of the constitutional review of the provisions putting into force Acts amending the Constitution, and of other provisions of such Acts, the Constitutional Court established in its Decision 1260/B/1997. AB, (with an attached dissenting opinion and a concurring reasoning) adopted on the review of certain provisions of Act XCVIII of 1997 on the amendment of the Constitution of the Republic of Hungary: *"Due to the close connection between the provision putting the amendment of the Constitution into force with immediate effect and the provisions that become the normative text of the Constitution as a result of such amendment, the Constitutional Court can't examine the constitutionality of the provision putting the amendment of the Constitution into force, as it would result in the Constitutional Court exceeding its constitutional scope of competence institutionalized for safeguarding the Constitution, and taking over the scope of the authority of establishing the Constitution, thus it would not only interpret the provisions of the Constitution but necessarily qualify them as well. (...) In certain cases, in principle, the Constitutional Court may have a competence regarding specific provisions of the Act putting into force an amendment of the Constitution, on the condition that the potential annulment of the provision of putting the amendment into force would not result in any change to the Constitution."* [ABH 816, 819]

2.2. The Decision 61/2011. (VII. 13.) AB developed the former practice by allowing, under specific conditions, the review of the Constitution and its amendments. The Constitutional Court established that it has a scope of competence to review the alleged invalidity under public law of the amendment of the Constitution. "In the opinion of the Constitutional Court, the scope of competence of the Constitutional Court cannot be excluded with regard to reviewing the Constitution's provisions concerning their invalidity under public law, as any legal regulation adopted in a manner contrary to an

Act of Parliament or to the Constitution is deemed to suffer from invalidity under public law, which makes it null and void, i.e. it has to be regarded as if it has not been adopted at all." (ABH 2011, 290, 317)

According to the above practice of the Constitutional Court, the review of the Constitution is not excluded if the question is the validity under public law of any provision of the Constitution or of any Act amending the Constitution.

In the course of deducting/establishing a scope of competence for the constitutional review of TPFL, the Constitutional Court had to take into account not only its established practice – as listed above – but also the new situation regarding the amendment of the constitution. The Constitution, which was in force until 31 December 2011, had been amended ten times in total, in the year 2011, most of the time on the basis of motions by individual members of the Parliament. Article 46 para. (3) of the Constitution was amended, and paragraph (2) was added to the new Article 70/I of the Constitution on the motion of the minister of justice and public administration, making it possible to levy a tax of extra level with retroactive effect in the tax year on the income provided from the State's resources in a manner contrary to good morals. Another amendment of the Constitution filed by the minister contained amendments connected to the Prosecutor General and to the new Act on legislation, and it also inserted a new chapter into the Constitution on the Hungarian Financial Supervisory Authority.

However, at the same time, petitions by individual members of the Parliament induced serious amendments of the Constitution such as narrowing down the scope of competence of the Constitutional Court, the possibility to levy extra taxes with retroactive force of five years, decreasing the number of the members of the Parliament, putting the National Media and Infocommunications Authority. In some instances, the subject of the provisions incorporated in the Constitution falls outside the scope of subjects that should be regulated in the Constitution (e.g. the obligation to pay tax on severance payments, levied *ex post facto*). In a short period of time, numerous provisions that fell outside the regulatory scope of the Constitution have been incorporated into the Constitution, and the frequent amendments have made it difficult to follow and identify the Constitution's normative text in force. The amendments referred to above resulted in developing a new practice of constitutional amendments that fundamentally differs from the traditions of public law and the established practice, and it jeopardised the stability and the endurance of the Constitution as well as the principles and the requirements of a constitutional State under the rule of law.

By adopting the first unified Fundamental Law, the constituent power laid down the aim of making the text of the Fundamental Law a stable and lasting Fundamental Law with a unified system and contents. By the adoption of the Fundamental Law, the constituent power clearly defined the regulatory subjects, the contents and the structure of the Fundamental Law, demanding that it should be a single and unified long lasting legal document placed at the top of the hierarchy of the sources of law, functioning as the fundament of the legal system. This aim of the constituent power was broken by TPFL, by attempting to make several non-transitional provisions part of the Fundamental Law in addition to the real transitional rules, without actually incorporating them into the text of the Fundamental Law. A new situation emerged as the amendments of the Fundamental Law (constitution) have not been incorporated into the text of the Fundamental Law. Until 31 December 2011 the amendments of the Constitution – both the permanent and the transitional ones – were all incorporated into the Constitution, they formed part of the Constitution's text permanently for a determined period of time. [For example Section 10 of the Act LXI of 2002 introduced a new Article 79 into the Constitution with the following text: "A peremptory national referendum shall be held concerning the accession of the Republic of Hungary to the European Union under the conditions laid down in the accession treaty. The date of the referendum is 12 April 2003. The question to be put on referendum shall read as follows: Do you agree that the Republic of Hungary should become a member of the European Union?" Section 11 para. (3) of the Act itself that amended the Constitution regulated when Article 79 shall lose force: "Article 79 of the Constitution as specified in Section 10 of this Act, and Section 10 of

this Act shall lose force on the day of taking effect of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union."] It happened for the first time at the adoption of AFL1 then of AFL2 that the provisions destined to amend the Constitution (Fundamental Law) were not incorporated – in the case of AFL1 partially and in the case of AFL2 wholly – into the Fundamental Law.

Despite of the transitoriness of the regulations contained in TPFL, it has been amended several times after it had taken force. Last time TPFL was amended by AFL2, and in the course of the amendment a new procedural rule (electoral registration) – closely connected to the substance of the right to vote as a fundamental political right – was introduced into the regulation of TPFL. TPFL and its amendments broke up the unity of the Fundamental Law, and along the Fundamental Law a "small Fundamental Law" was created. Alien elements that fall outside the regulatory scope of the Fundamental Law were also introduced into TPFL. TPFL has became an Act substituting the Fundamental Law: instead of amending the Fundamental Law that would require a procedure under Article S) of the Fundamental Law and the compliance with the requirement of incorporation, it has become sufficient to amend the TPFL at any time to make a regulation covering any regulatory subject become "part" of the Fundamental Law, without incorporation. The Constitutional Court is competent to perform a formal review of such a "distracting Act" taking away the Constitutional Court's competence, "substituting the Fundamental Law", breaking up the unity and the structure of the Fundamental Law, and opening up its regulatory field and substance.

3. As held by the petitioner, the Constitutional Court competence is based on the formal aspect that TPFL is not part of the Fundamental Law, and neither can it be regarded as a modification or an amendment of the Fundamental Law. On the basis of the petition, the Constitutional Court had to examine the position of TPFL as a source of law, the status of TPFL in the hierarchy of the sources of law, whether TPFL is part of the Fundamental Law or not, and whether it can be regarded as an Act modifying or amending the Fundamental Law. It is within the Constitutional Court's scope of competence to examine these questions, as in the competence of abstract posterior norm control the Constitutional Court has to examine the statutory provisions challenged in the petition with regard to whether it is competent to review their constitutionality. The existence or the lack of the Constitutional Court's competence can be established on the basis of the position of TPFL as a source of law. Therefore the Constitutional Court examined the position of TPFL in the hierarchy of the sources of law and the mutual relation between the Fundamental Law and TPFL.

3.1. The Parliament adopted TPFL – according to Section 31 para. (2) of it – under Article 19 para. (3) item *a)* and Article 24 para. (3) of the Constitution, with due account to point 3 of the Closing Provisions of the Fundamental Law. According to the last sentence of Section 31 para. (2) of TPFL, TPFL shall form part of the Fundamental Law.

The General Reasoning of TPFL defines TPFL and its objective as follows: *"It contains the Transitional Provisions of the Fundamental Law of Hungary, adopted by the Parliament – on the basis of item 3 of the Closing Provisions of the Fundamental Law – as an authority establishing the constitution. The transitional provisions shall be part of the Fundamental Law and they consist of two main parts, the part on the transition from communist dictatorship to democracy on the one hand, and on the other hand a part of legal-technical nature containing traditional transitional provisions connected to the taking force of the Fundamental Law. ...[TPFL] shall contain the settlement under the rule of law of certain questions connected to the transition from communist dictatorship to democracy that remained unresolved in the past, and the aim of such provisions is not taking retaliatory revenge on the possessors of power in the communist dictatorship, but the true exploration of the communist past and securing the society's sense of justice.*

In addition to this part, interpreting in the broad sense the transitional provisions connected to the Fundamental Law, the Proposal [TPFL] contains transitory provisions of legal-technical nature necessarily connected to taking force by the Fundamental Law, accurately defining – for the purpose of

preventing debates on interpreting the law – how the Fundamental Law shall affect the mandate of bodies and persons elected prior to its taking force, the legal regulations in force, the tools of regulating organisations under public law, and the pending cases."

TPFL had been adopted by the Parliament on 30 December 2011, the Speaker of the House and the President of the Republic had signed the regulation the same day, and finally it was promulgated on 31 December 2011 in the Hungarian Official Gazette's volume 116 of 2011. It was promulgated in the Hungarian Official Gazette under the title "Constitution and its amendments". Similarly to the Fundamental Law, this legal regulation only has a title [Transitional Provisions of the Fundamental Law of Hungary (31 December 2011)] with the connected date of promulgation. TPFL entered into force on 1 January 2012.

3.2. In the course of determining the character of TPFL as a source of law, the Constitutional Court first examined how the TPFL could be defined as a material source of law. Item 3 of the Closing Provisions of the Fundamental Law identifies the Parliament as the TPFL's material source of law, – by way of a reference backwards to item 2 – specifying the procedure through which the Parliament adopted TPFL. Article 19 para. (3) item *a)* of the Constitution, in Chapter II of the Constitution provided under the title "The Parliament", among the scope of duties of the Parliament that the Parliament shall adopt the Constitution of the Republic of Hungary. Article 24 para. (3) of the Constitution – in the same chapter and under the same title – ruled that a majority of two-thirds of the votes of the Members of Parliament is required to amend the Constitution and to adopt certain decisions specified in the Constitution. The Constitution made no difference between the legislative and the constituent powers; it referred both the legislation and the adoption of the Constitution into the Parliament's scope of competence, but it differentiated the procedures of adopting the Acts of Parliament, and adopting or amending the Constitution. In the course of adopting and amending the Constitution the Parliament acted as the constituent power and it passed the decision with the two-thirds majority votes of the members of the Parliament. In the petitioner's opinion, TPFL was adopted by the Parliament – under the "correct interpretation" of items 2 and 3 of the Closing Provisions of the Fundamental Law – not as the constituent power, even though the decision was passed with the two-thirds majority of the votes of the members of the Parliament. However, the reasoning (reflecting the intentions of the legislator) attached to TPFL clearly states that TPFL was created and adopted by the Parliament as the constituent power.

According to the Constitutional Court, it is beyond doubt that on the basis of item 3 of the Closing Provisions of the Fundamental Law, the TPFL'S material source of law is the Parliament. Item 3 of the Closing Provisions of the Fundamental Law refers back to the procedure under point 2. The procedure in point 2 specifies the process of adopting the Constitution, again by way of a reference rule contained herein. The rules of the Constitution referred to – Article 19 para. (3) item *a)* and Article 24 para. (3) – pertain to the adoption of the Constitution and its amendments. In these questions the Parliament could only act as a constituent power. Consequently the Constitutional Court established that the TPFL's material source of law is the Parliament as the constituent power.

3.3. Then the Constitutional Court examined whether TPFL can be defined as a formal source of law, and if it can be, what kind of a formal source of law it is.

Article T) of the Fundamental Law specifies the scope of legal regulations within the legal system of Hungary. According to Article T) para. (2), "a legal regulation shall mean Acts of Parliament, government decrees, decrees of the Prime Minister, decrees of Ministers, decrees of the Governor of the National Bank of Hungary, decrees of the head of an autonomous regulatory organ and local government decrees. In addition, decrees of the National Defence Council adopted during a state of national crisis and decrees of the President of the Republic adopted during a state of emergency shall also be qualified as legal regulation."

As stated in Article T) para. (3), no statute shall be contrary to the Fundamental Law. In line with the preamble of the Fundamental Law, the Fundamental Law shall be the basis of the legal order.

According to Article R) para. (1), the Fundamental Law shall be the foundation of the legal system of Hungary. Under Article R) para. (2), the Fundamental Law and the legal regulations shall be binding on everyone. According to the postamble of the Fundamental Law, the members of the Parliament elected on 15 April 2010 – using their constituent power – adopted the first unified Fundamental Law of Hungary. It follows from the quoted provisions of the Fundamental Law that the unified Fundamental Law is the basis of the legal order and the legal system, it is placed atop of the hierarchy of the sources of law, no other legal regulation can contradict it, and its provisions are binding on everyone. Item 3 of the Closing Provisions of the Fundamental Law empowered the Parliament to adopt – in the procedure under item 2 – the transitional provisions connected to the Fundamental Law, by specifying that it shall adopt these provisions separately. The title of TPFL does not contain the term "Act", and its preamble does not refer to adopting it under item 3 of the Closing Provisions of the Fundamental Law. At the same time Section 31 para. (2) of TPFL specifies that the whole of TPFL shall form part of the Fundamental Law. In the course of defining TPFL as a formal source of law, the Constitutional Court took due account of the fact that prior to the taking force of AFL1 it was only Section 31 para. (2) of TPFL establishing that TPFL was part of the Fundamental Law. After AFL1 has taken effect, the Fundamental Law itself states the same in item 5 of the Closing Provisions. This way, the "self definition" found in Section 31 para. (2) of TPFL has been supplemented by the independent item 5 of the Closing provisions of the Fundamental Law, creating mutual cross-references between the Fundamental Law and TPFL.

The "self-definition" of TPFL and item 5 of the Closing Provisions of the Fundamental Law resulted in a particular relation between the Fundamental Law and TPFL, and it was the legislator's intention to allow the non-transitional rules of TPFL to form part of the Fundamental Law, granting them a constitutional rank. Accordingly the new rules introduced into TPFL by way of amending TPFL would automatically form part of the Fundamental Law without being actually integrated into the normative text of the Fundamental Law. Section 31 para. (2) of TPFL ("self definition") and item 5 of the Closing provisions of the Fundamental Law introduced by AFL1, means "opening a gateway" on the normative text of the Fundamental Law. By way of the constant modification and amendment of TPFL, it can be turned into a "slide Act" or "competence-distracting Act" (a legal regulation distracting the Constitutional Court's competence), through which new provisions can be adopted again and again on the level of the Fundamental Law without incorporating them into the Fundamental Law. The "self-definition" of TPFL and item 5 of the Closing Provisions of the Fundamental Law is a double declaration that, at the same time, distracts from the Constitutional Court's competence of posterior norm control the new provisions introduced to TPFL – by way of amending it.

3.3.1. In defining TPFL as a formal source of law, the Constitutional Court had to take a stand in the question of whether TPFL can be regarded as part of the Fundamental Law, and if it can be, on what basis.

3.3.1.1. The Constitutional Court first examined whether the "self-definition" contained in Section 31 para. (2) of the Fundamental Law can be regarded – prior to AFL1 taking force – as a provision making TPFL part of the Fundamental Law.

The Constitutional Court holds that TPFL can't state about itself to form part of the Fundamental Law, as it was adopted on the basis of the authorization contained in item 3 of the Closing Provisions of the Fundamental Law. Consequently, such an appellation could only have been contained in the rule granting the authorization (in the case under review, in the Fundamental Law), at the time of providing the authorization, and not in the legal regulation adopted on the basis of the authorization. In the case of accepting the "self-definition" given in TPFL, the Constitutional Court would collide with the Fundamental Law's provision defining the Fundamental Law as a single and unified document [Article R) para. (1) of the preamblde, postamble].

3.3.1.2. The Constitutional Court then examined whether TPFL can be regarded to form part of the Fundamental Law on the basis of Section 31 para. (2) of TPFL and item 5 of the Closing Provisions of the Fundamental Law, as a result of taking effect of AFL1.

In the opinion of the Constitutional Court, the fact that after AFL1 has taken force not only TPFL but also the Fundamental Law states that TPFL is part of the Fundamental Law, does not change in itself the fact that TPFL is a legal regulation of "mixed subject", and as such it has provisions that – regarding their subject and substance, and taking into account their temporal force – extend beyond the authorization contained in item 3 of the Closing Provisions of the Fundamental Law. Although the adoption of AFL1 by the Parliament complied with the formal and material requirements related to the amendment of the Fundamental Law as contained in Article S) of the Fundamental Law, but it declared *ex post facto* that TPFL was part of the Fundamental Law. The provisions of TPFL remained outside (not incorporated into) the Fundamental Law. The situation has not been changed in the respect of the fact that TPFL as a separate legal regulation breaks up the unity of the Fundamental Law (the existence/quality of a single and unified legal document). Consequently, TPFL can't be regarded as part of the Fundamental Law, its position as a formal source of law is ambiguous, and it is in conflict with the unified legal document character of the Fundamental Law.

3.3.2. The Constitutional Court also examined – provided that TPFL is not part of the Fundamental Law – whether TPFL can be regarded as an amendment of the Fundamental Law.

The Constitutional Court holds that neither on formal ground, nor on the basis of its contents could TPFL be regarded as an amendment of the Fundamental Law, as, although it was adopted with the two-thirds majority of the members of Parliament, its adoption was not implemented according to the rules on the amendment of the Fundamental Law. [The Parliament adopted TPFL not on the basis of Article S) of the Fundamental Law, but under item 2 of the Closing Provisions.] In addition, the formal appellation of TPFL does not comply with the provisions of the Fundamental Law on the designation of the amendment of the Fundamental Law [Article S) para. (4) of the Fundamental Law]. Item 3 of the Closing Provisions of the Fundamental Law has not provided any authorization for the amendment of the Fundamental Law; it contained an empowerment to adopt a legal regulation connected to the Fundamental Law but structurally separated from it, containing nothing else but transitional provisions related to the Fundamental Law. By way of a reference back to item 2 of the Closing Provisions, this legal regulation had to be adopted with a two-thirds majority of the members of Parliament. As held by the Constitutional Court, TPFL stepped beyond this authorization, both materially and in time, as it is a legal regulation of "mixed subject" that contains also non-transitional provisions. The latter provisions were adopted in a manner extending beyond the authorization contained in the Fundamental Law, and they have not been incorporated into the Fundamental Law, therefore they can't be regarded as amendments to the Fundamental Law. The transitory provisions remaining within the limits of the authorization are not amendments of the Fundamental Law either, as they are "transitional" provisions – in line with the authorization –, not incorporated into the Fundamental Law; they serve the purpose of implementing the Fundamental Law and secure the transition from the Constitution into the Fundamental Law, and not the modification or the amendment of the Fundamental Law. Taking all the above into account, the Constitutional Court established that TPFL can't be regarded as the modification or the amendment of the Constitution.

3.4. Summarising the position taken by the Constitutional Court: TPFL cannot be defined unambiguously as a formal source of law. Neither independently (based on its "self-definition"), nor on the basis of the definition of item 5 of the Closing Provision of the Fundamental Law could it be regarded as part of the Fundamental Law. TPFL is not a modification or an amendment of the Fundamental Law.

TPFL is a legal regulation adopted according to the procedure under item 2 of the Closing Provisions by the two-thirds majority of the votes of the members of Parliament, passed on the basis of the authorization granted in item 3 of the Closing Provisions of the Fundamental Law, but extending

beyond this authorization both in terms of its contents (having a “mixed subject”) and in time (regulating non-transitional provisions). TPFL is a legal regulation distinct from the Fundamental Law, adopted “separately” and incorporated into an independent document, not incorporated into the text of the Fundamental Law.

Summing up the characteristics of TPFL, one may establish that TPFL cannot be placed within the legal regulations listed by the Fundamental Law, its status in the hierarchy of the sources of law cannot be determined unambiguously. According to Article T) of the Fundamental Law, and in the resulting effective system of the sources of law, there is no such category as "constitutional Act", this type of formal source of law does not exist. TPFL breaks up the singleness and the unity of the Fundamental Law, as it is a separately adopted legal regulation presented in an independent document, not incorporated into the Fundamental Law, but according to its ”self-definition” [Article 31 para. (2) of TPFL] and the definition given in the Fundamental Law [item 5 of the Closing Provisions of the Fundamental Law], it aims to be enforced as a formal source of law on the level of the Fundamental Law.

Item 5 of the Closing Provisions of the Fundamental Law only states that TPFL is part of the Fundamental Law, but it does not specify on what ground and in what way does TPFL become part of it. The contents of the Acts amending the constitution have to be incorporated into the constitution, therefore they are removed from the legal system together with the incorporation, or subsequently by way of “self-annulment” or through deregulation. TPFL could be amended at any time, but it is unclear what the relation is between the legal regulation amending the TPFL and the other legal regulations; the position of the amending legal regulation in the system of the sources of law is questionable.

The Constitutional Court holds that on the basis of the above arguments, TPFL has no place in the system of the sources of law; it stands on the "nobody's land of public law". On the other hand, TPFL is contrary to the Fundamental Law in many aspects, primary with regard to the postamble thereof that declares the principle of the unity of the Fundamental Law. In contrast with that, TPFL is a separate legal regulation, not incorporated into the Fundamental Law. The lack of incorporation breaks up the unity of the Fundamental Law.

In addition, some provisions of TPFL are also contrary to item 3 of the Closing Provisions of the Fundamental Law, as it is an authorizing provision narrowing down, both in substance and in time, the subjective regulatory scope of TPFL. The authorization only allows the adoption of transitional rules connected to the Fundamental Law replacing the Constitution. The authorization does not refer to an amendment under Article S) of the Fundamental Law; it is about adopting connecting – and not modifying (amending) – rules that are of transitional – and not of permanent – character. The authorization does not allow TPFL to make (non-transitional) provisions beyond the subject of the authorization to become part of the Fundamental Law.

In a constitutional State under the rule of law, the constituent power is required to express its will in the constitution (Fundamental Law), and present it in the text of the constitution. The amendments of the constitution incorporated into the text of the constitution also represent the will of the power creating the constitution. The will of the power creating the constitution can’t be manifested in a legal regulation of mixed subject, having an uncertain place in the hierarchy of the sources of law.

4. The Constitutional Court points out as a requirement in a State under the rule of law that one should be able to determine beyond doubt at any time the extent and the contents of the Fundamental Law in force. This requirement in a State under the rule of law must be respected by the constituent power as well. “Constitutionality / constitution-likeness” must be clearly identifiable for the legislation, for other organs forming the law as well as for the authorities applying the law (courts, prosecutors, public administration, authorities etc.). It should be beyond any debate what the Fundamental Law in force is, or whether a specific legal regulation/provision is part of the Fundamental Law or not. For the Constitutional Court, the Fundamental Law is a standard; therefore it is necessary to define with absolute accuracy what the content of this standard is, what can be found within this standard.

Nevertheless, based on the above reasons, doubts may arise concerning whether the rule of law requirement of "constitutional unambiguity", deductible from the Fundamental Law, has been complied with in the course of adopting TPFL. In the postamble of the Fundamental Law – as the closing of the normative text – the constituent power defines the Fundamental Law as the "first unified" constitution. The fact that the postamble defines the Fundamental Law as "unified", also means an order (obligation) of incorporation, i.e. any new provision shall only become part of the Fundamental Law by way of incorporating it into the text of the Fundamental Law. As the obligation of incorporation is rooted in the Fundamental Law itself, it is a strict obligation, binding the constituent power as well. As long as the provisions of the Fundamental Law define the Fundamental Law as a unified legal document, all constitutional modifications and amendments have to be incorporated into the Fundamental Law in order to preserve the unity of it.

A serious constitutional legal uncertainty can result from a situation where the contents or the extent of the Fundamental Law in force is uncertain or if it can be determined in more than one way.

The lack of "constitutional unambiguity" is enhanced by the fact that the subsequent amendments of TPFL may also cause further debates, and it can be challenged whether they have became parts of the Fundamental Law or not. This way, further provisions that fall outside the regulatory scope of the Fundamental Law could also be inserted into the Fundamental Law through the amendment of TPFL. If TPFL is modified, then – as TPFL is part of the Fundamental Law – the modification would affect not only TPFL, but the Fundamental Law as well. It's impossible to determine beyond doubt where can the limits of the Fundamental Law's regulatory subject be drawn. Due to the uncertainty regarding the contents of the Fundamental Law, it is also doubtful what should be the standard – the contents of the Fundamental Law – applicable by the Constitutional Court – as the supreme body designated by the Fundamental Law for safeguarding the Fundamental Law – in the course of reviewing an alleged conflict between a legal regulation and the Fundamental Law.

5. The Constitution, the Fundamental Law, the old ACC and ACC all provide a very similar definition on the constitutional purpose and function of the Constitutional Court. Compared to the earlier regulations, the Fundamental Law gives a more clean-cut definition about the constitutional duty of the Constitutional Court: *"The Constitutional Court shall be the principal organ for the protection of the Fundamental Law*." [Article 24 para. (1) of the Fundamental Law] The preamble of ACC adopted as a cardinal Act on the basis of Article 24 para. (5) of the Fundamental Law gives a more detailed account of the duties of the Constitutional Court establishing that "*the Parliament of Hungary, with a view to protecting democratic State governed by the rule of law, constitutional order and the rights guaranteed in the Fundamental Law and to safeguard the inner coherence of the legal system, and enforcing the principle of the division of powers (...) has adopted (...) the regulation of the competence, organisation and operation of the Constitutional Court as the principal organ for the protection of the Fundamental Law*".

The Constitutional Court interprets all of its competences regulated in Article 24 para. (2) of the Fundamental Law – including the abstract posterior norm control regulated in Article 24 para. (2) item *e)* of the Fundamental Law – in line with its legal status granted in the Fundamental Law and with the purpose of the specific competence. According to Article R) para. (3) of the Fundamental Law, the provisions of the Fundamental Law shall be interpreted in accordance with their purposes, with the Avowal of National Faith contained therein, and with the achievements of our historical constitution.

In the course of judging upon the possibility of allowing the review of TPFL in the framework of an abstract posterior norm control, the Constitutional Court took into account the Constitutional Court's legal position as specified in the Fundamental Law, its obligation to protect the Fundamental Law, and the purpose of the given competence as granted in the Fundamental Law. If follows not only from the obligation of the Constitutional Court to protect the Fundamental Law, but also from the aim and the constitutional purpose of the competence-rule that the Constitutional Court must prevent the functioning in the legal system of any legal regulation which is contrary to the Fundamental Law. It is

the Constitutional Court's duty, deductible from the Fundamental Law, to protect the Fundamental Law, the democratic State under the rule of law and – as part of it – to preserve the internal unity of the legal system. The Fundamental Law obliges the Constitutional Court to examine all those laws that break up the internal unity of the legal system, in particular the ones that violate the unity of the Fundamental Law itself. Accordingly it is not only a right but a constitutional obligation of the Constitutional Court to protect the Fundamental Law against any legislative decision that would hinder or deteriorate the enforcement of the provisions contained in the Fundamental Law, making its legal contents, scope and its position in the hierarchy of the sources of law, as well as the contents of the Fundamental Law as a constitutional standard uncertain. The Constitutional Court's obligation to protect the Fundamental Law includes the duty of protecting it as a single and unified document with the normative contents and structure as adopted by the constituent power: as a single and unified legal document, making it unquestionable and stable for everyone.

At the time of adopting the Fundamental Law including the rules of amending it and the postamble declaring the unity of the Fundamental Law, the constituent power deferred intentionally from its former practice – deteriorating constitutional legality – of amending the Constitution (formerly) in force several times after a very short debate on the initiative of individual members of Parliament (ten times in 13 months). [See detailed analysis in the Decision 61/2011. (VII. 13.) AB, ABH 2011, 290] This is the reason why the Constitutional Court attributes key importance to the protection of the unity of the Fundamental Law (the will of the constituent expressed in it).

6. To sum up the above the Constitutional Court establishes: it is a constitutional requirement that the Fundamental Law can only be modified or amended on the basis of Article S) of the Fundamental Law. The provisions modifying or amending the normative text of the Fundamental Law have to be built into the normative text of the Fundamental ("order of incorporation").

The constituent power adopted the Fundamental Law in a single legal document having a specific content and structure. The procedure of amending the Fundamental Law is regulated (and has originally been regulated) by the Fundamental Law. The "order of incorporation" clearly follows not only from the Constitutional Court's former practice regarding the amendment of the Constitution, but also from the relevant provisions of the Fundamental Law. The order of incorporation serves the purpose of making the normative text of the Fundamental Law unambiguous, including the requirement that the normative text in force should be clearly (unquestionably) definable at all times.

The order of incorporation as a constitutional requirement can be deducted from Article B) para. (1) of the Fundamental Law, the principle of the rule of law, Article S) of the Fundamental Law and the postamble of the Fundamental Law. Nevertheless, the constituent power may only incorporate into the Fundamental Law subjects of constitutional importance that fall into the subjective regulatory scope of the Fundamental Law. The provisions that become part of the Fundamental Law through the modifications and the amendments of the Fundamental Law must be incorporated in a coherent way into the structural order of the Fundamental Law. Consequently, the amendments of the Fundamental Law may not result in any insoluble conflict within the Fundamental Law. The coherence of contents and structure is a requirement of the rule of law stemming from Article B) para. (1) of the Fundamental Law, to be guaranteed by the constituent power.

The Constitutional Court also found that there is no reason to deter from its established practice [see in particular Decision 61/2011. (VII. 13.) AB] regarding the question of having or not a competence to review the Fundamental Law, as well as its provisions and amendments, from a formal point of view, on the basis of invalidity under public law.

Consequently, the Constitutional Court possesses, beyond doubt, the competence to proceed – on the basis of the motion by an entitled petitioner, in the scope of abstract posterior norm control – with reviewing TPFL in whole and in parts, on formal grounds with regard to its validity/invalidity under public law – irrespectively to the fact whether TPFL is or isn't part of the Fundamental Law. Thus the Constitutional Court insists on its established practice, with regard to this case as well, of examining

the Parliament's decision-making process concerning its validity under public law – i.e. from the point of view whether the Parliament had fully complied with the procedural rules (contained earlier in the Constitution and now regulated in the Fundamental Law) –, irrespectively of whether it has acted as the constituent or the legislative power.

IV

After establishing its competence, the Constitutional Court examined the contents of the petition.

In the petition-supplement filed after the taking force of AFL1, the petitioner withdrew his petition based on the public law invalidity of the whole TPFL. However, he maintained his petition in the respect of the alleged violation of the Fundamental Law by the relevant part of TPFL on the transition from communist dictatorship to democracy (preamble), as well as Articles 1−4, Article 11 paras (3) and (4), Articles 21 and 22, Article 27, Article 28 para. (3), Article 29, Article 31 para. (2) and Article 32 of TPFL. In his opinion, the contradiction between these provisions and the Fundamental Law is based on the fact that, according to their contents, they are not transitional provisions, thus they extend beyond the authorization contained in item 3 of the Closing Provisions of the Fundamental Law, which makes them invalid under public law.

1. The Constitutional Court first examined whether, on the basis of its standing practice, extending beyond the authorization for legislation can be a ground for establishing the unconstitutionality (contradiction with the Fundamental Law) of a legal regulation.

1.1. The Constitutional Court's standing practice about invalidity under public law was based on the assumption that the legislative process has its own rules that require unconditional enforcement, and the by-passing of which may have an effect on the adopted norm itself (the validity of such norm). Legal certainty, deductible from the rule of law declared in Article 2 para. (1) of the Constitution, requires the calculability of the functioning of specific legal institutions. It is for these reasons that procedural guarantees are fundamental for legal certainty. Only by following the formal rules of procedure may a valid legal regulation be created, only by complying with the procedural norms do legal institutions operate in a constitutional manner. [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 65]

In the Decision 29/1997 (IV. 29.) AB the Constitutional Court established that "a legislative procedure suffering from such formal deficiency shall – on the basis of an appropriate petition –, in the future, form the ground for the annulment of the Act with retroactive force to the day of its promulgation." (ABH 1997, 122) In this decision the Constitutional Court ruled not to establish the formal unconstitutionality – contrary to Article 2 para. (1) of the Constitution – of the legislative procedure yet, instead, it specified a constitutional requirement for the legislation. At the same time, the Constitutional Court called the legislator's attention to the fact that the provisions found in the constitutional requirement are binding, and any Act adopted in the future without due account to these will be annulled by the Constitutional Court with retroactive force – on the basis of formal unconstitutionality. The Constitutional Court established that in this case the ground of the annulment will be the invalidity under public law, which is a type of formal unconstitutionality of a norm. (ABH 1997, 122, 128)

The practice of the Constitutional Court has always emphasized the provision found in Article 2 para. (1) of the Constitution stating that "the Republic of Hungary is an independent democratic State under the rule of law." The Constitutional Court has been consequent in representing the view that the violation of the decision-making procedural rules, as part of the rule of law, may result in the public law invalidity of a decision. The Constitutional Court examined case by case, on the basis of the concrete legal regulation, by weighing carefully all circumstances, whether the severity of the violation of the procedural rules under review was so grave so as to justify the establishment of invalidity under public law.

In the Decision 52/1997 (X.14) AB, the Constitutional Court stated that "a procedural violation of the Constitution (…) may lead to the nullification of the law, even in the absence of an unconstitutionality of its content." (ABH 1997, 331, 332)

The Constitutional Court, in the Decision 7/2004. (III. 24.) AB, re-examined the question whether the procedures performed by the drafting party in the course of preparing the Act were part of the legislative process on the merits, and whether the consultations missed or not appropriately performed in this phase could justify the public law invalidity of the adopted Act. The Constitutional Court established that a deficiency of preparing a draft Act can lead to the invalidity under public law of an Act if, at the same time, it causes the unconstitutionality of one of the legislative procedure's rules. (ABH 2004, 98, 105-107)

In the Decision 63/2003. (XII. 15.) AB, the Constitutional Court established for the first time – on the basis of a legislative procedure that had not taken into due account the veto of the President of the Republic having a suspending force – the invalidity under public law of a whole Act (Act XLIII of 2003 on healthcare service providers and the organisation of public healthcare services). In the case under review, the Constitutional Court established a so grave procedural error in the legislative process that justified the establishment of the invalidity under public law of the Act and the annulment of the whole act. (ABH 2003, 676, 683−690)

The Constitutional Court also established invalidity under public law in the case when it was found out subsequently that a specific provision of an Act adopted and promulgated by the Parliament had not been in fact voted for by the Parliament. It was established in the Decision 155/2008. (XII. 17.) AB. In the reasoning of the decision the Constitutional Court underlined that in the concerned case the signing of a legislative text not adopted by the Parliament and sending it to the President of the Republic was a violation of – among others – Article 25 para. (3) of the Constitution. (ABH 2008, 1240, 1259)

1.2. The Constitutional Court has examined on several occasions the constitutionality of legislation under authorization, with regard to the enforcement of the requirement of the rule of law contained in Article 2 para. (1) of the Constitution. Decision 2/2002. (I. 25.) AB defined the link between the Constitution and the regulation in the old Act on legislation as follows: "the Constitutional Court pointed out in the interpretation of Article 7 para. (2) of the Constitution that although according to Article 7 para. (2) of the Constitution, legislative procedures are regulated by an Act of Parliament, for the adoption of which a majority of two-thirds of the votes of the members of Parliament present is required; this provision in itself has not turned the norms of the Act on legislation into constitutional regulations (Decision 496/B/1990. AB, ABH 1991, 493, 496). Thus the violation of the rules of the Act on legislation is not regarded as unconstitutionality in itself, only if a constitutional principle or provision is being injured as well [Decision 32/1991. (VI. 6.) AB, ABH 1991, 146, 159; Decision 34/1991. (VI. 15.) AB, ABH 1991, 170, 172]. However, at the same time, in the interest of the protection of legal certainty rooted in the rule of law regulated in Article 2 para. (1) of the Constitution, and on the basis of other constitutional provisions (see e.g. the Constitution's rules on the protection of the hierarchy of the sources of law), the Constitutional Court grants constitutional protection for certain principles of legislation (also contained in the Act on legislation)." (ABH 2002, 41, 56)

As explained by the Constitutional Court in the Decision 15/2008. (II. 28.) AB, the statutory provision found in Section 15 para. (1) of the old Act on legislation establishes an "expectation of constitutional importance" when it requires that the authorization given by a legal regulation of higher level to another legislator shall specify the authorized actor, as well as the subject and the limits of the authorization. A regulation not complying with the constitutional requirements of delegated legislation and lacking authorization is contrary to the rule of law contained Article 2 para. (1) of the Constitution and the requirement of legal certainty deductible from it. (ABH 2008, 1324, 1331)

Thus, according to the established practice of the Constitutional Court, exceeding the limits of the authorization for legislation results in unconstitutionality [Decision 19/1993. (III. 27.) AB, ABH 1993, 431, 433; Decision 551/B/1993. AB, ABH 1995, 840, 841-842; Decision 467/B/2005. AB, ABH 2007,

2526]. The formal unconstitutionality at the same time qualifies as the violation of the requirements of the rule of law [Decision 27/1997. (IV. 29.) AB, ABH 1997, 122, 127-128; Decision 70/2002. (XII. 17.) AB, ABH 2002, 409, 414]. "A legal regulation based on authorization is considered constitutional when it does not exceed (...) the limits specified by the Constitution and the statutory limit set by the authorizing legal regulation. (Decision 551/B/1993 AB, ABH 1995, 840, 841−842)"

2. In the present case the Constitutional Court had to examine on the basis of the petition the compliance with the procedural rules pertaining to the adoption of TPFL. In the course of this examination it had to review – among others – whether the Parliament complied with the authorization contained in item 3 of the Closing Provisions of the Fundamental Law when it adopted TPFL. The Constitutional Court had to pass a decision in the present case in a constitutional question that has not occurred before in its practice. It had to establish invalidity under public law in the context of the authorizing provisions of the Fundamental Law, and it had to determine the legal consequences of constitutional law resulting from stepping beyond the authorizing provisions.

In the established practice of the Constitutional Court, on the basis of Article 2 para. (1) of the Constitution, it mainly examined the procedural rules of adopting Acts of Parliament – exceptionally: the adoption of Acts amending the Constitution – with regard to their validity/invalidity under public law, and it passed decisions by weighing on a case by case basis, taking into account all aspects of the regulation under review. The source of law (Constitution, Act of Parliament, Standing Orders) containing the injured procedural rule was an important aspect of the weighing, just as the gravity of the violation of the rule, and the way it affected the adopted legal regulation (e.g. influencing the validity of it). Authorized (delegated or derivative) legislation was primarily reviewed by the Constitutional Court in cases where, on the basis of an Act of Parliament, an implementing legal regulation of lower level had to be adopted, or the local government had to/could adopt a decree within the limits of a statutory authorization. Surpassing the limits of the authorization was considered unconstitutional by the Constitutional Court due to the violation of the hierarchy of the sources of law and the requirements of the rule of law. There are several decisions establishing that exceeding the authorization is a violation of the rule of law requirement connected to legislation under authorization.

With regard to TPFL the Constitutional Court is examining a peculiar invalidity under public law, as the authorizing provisions are special ones as well; the Fundamental Law empowers the Parliament acting as the constituent power to adopt specific – transitional – provisions separately.

As the Constitutional Court established in its Decision 22/2012. (VI. 11.) AB, it 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. [Official Gazette 2012/57, 9737, 9739−9740.] In line with the above, in the course of the examination, the Constitutional Court took due account of the constitutional principles and requirements elaborated in its established practice – detailed above – about the constitutional review of the invalidity under public law and legislation under authorization, with regard to the fact that the rule of law contained in Article 2 para. (1) of the Constitution can be found in Article B) para. (1) of the Fundamental Law with the same normative content.

3. The Constitutional Court first examined the contents of the Fundamental Law's provisions (procedural rules) contained in items 2 and 3 of the Closing Provisions, in the respect whether they can be regarded as mandatory rules of authorization on the basis, and within the limits, of which the Parliament was obliged the adopt TPFL. Items 2 and 3 of the Closing Provisions of the Fundamental Law are special provisions of authorization that bound the Parliament as legislator both in the respect of the procedure as well as the contents and the temporality of the legal regulation resulting from the authorization. Item 3 of the Closing Provisions of the Fundamental Law granted an expressed authorization only for the separate adoption of transitional provisions connected to the Fundamental Law. According to the reasoning attached to the Fundamental Law: "The Proposal also provides that the transitional provisions, also to be adopted by the constituent power, shall be adopted later in the

form of a separate document forming part of the Fundamental Law but separated physically." It is clear therefore that the constituent power's intention was to regulate only the transitional provisions in the document to be created separately; it was the unambiguous will of the constituent power not to "burden" the text of the Fundamental Law with the transitional provisions. At the same time, these provisions were to be adopted by the Parliament according to the rules pertaining to the creation and the adoption of the Constitution (and its amendments), as item 3 of the Closing Provisions refers back to item 2 regulating that the Fundamental Law shall be adopted on the basis of Article 19 para. (3) item *a)* and Article 24 para. (3) of the Constitution. The Parliament acting as the constituent power could have also decided not to regulate the subject and the temporality of the provisions to be adopted separately from the text of the Fundamental Law. However, by stating in item 3 of the Closing Provisions that it empowers the Parliament to adopt separately the transitional provisions, it delimited the subjective scope and the temporal force of such provisions. The subject of the separate provisions can only be a transitional provision connected to the Fundamental Law and its taking into force, and in time it can only refer to the transition from the Constitution to the Fundamental Law or to a period of time closely connected to it [Section 28 para. (1) of TPFL is a typical example of such provisions]. Those provisions of TPFL that do not comply with the restriction contained in Article 3 of the Closing Provisions of the Fundamental Law (i.e. they are not transitional ones, either from the aspect of their subject or from a temporal point of view) are contrary to this provision of the Fundamental Law, extending beyond the limits of the authorization contained there. According to the guiding practice of the Constitutional Court, such provisions are invalid under public law. With regard to TPFL the authorizing rule was the Fundamental Law itself. The authorized actor was the Parliament, and the subject of the authorization was the adoption of transitional rules. Item 3 of the Closing Provisions of the Fundamental Law refers to the procedural framework within which TPFL is to be adopted. Consequently, in the course of adopting TPFL, the Parliament, by adopting not only transitional provisions, stepped beyond the limits of the authorization both with regard to the contents of the regulation and concerning its temporal frame. As the authorization does not empower the Parliament to adopt in TPFL also non-transitional provisions, TPFL is in part – regarding the non-transitional provisions extending beyond the limits of the authorization – invalid under public law. A legal regulation or provision, which is invalid under public law, is null and void; it must be considered as one not even adopted, and on the basis of Article 24 para. (3) item *a)*, such legal regulations or provisions must be annulled by the Constitutional Court.

The "self-definition" of TPFL does not change the fact of extending over the limits of the authorization; TPFL cannot state about any non-transitional provision (extending beyond the limits of the authorization) that they are part of the Fundamental Law, as – because of passing over the limits of the authorization – they are null and void under public law. The transitional provisions – due to their transitional character – do not actually become parts of the Fundamental Law, as the authorization given to their separate adoption has the very aim of preventing the inclusion in the Fundamental Law (for the purpose of protecting its unity) of one-time provisions effectuated instantly upon the transition from the Constitution to the Fundamental Law (e.g. legal succession), or losing their force within a short period of time after the Fundamental Law has taken force (e.g. the continued application of specific provisions of the Constitution). Provisions extending beyond the authorization are invalid under public law, and the legal consequence of invalidity is being null and void. Of course, null and void rules can't form part of the Fundamental Law.

Item 5 of the Closing Provisions of the Fundamental Law, incorporated into the Fundamental Law by way of AFL1, does not change the fact that the TPFL's provisions extending over the limits of the authorization are null and void, and it also leaves unaffected that most of the transitional provisions have already been effectuated.

The whole of TPFL has not become part of the Fundamental Law, as the Parliament did not have an authorization to adopt non-transitional provisions (these are null and void) in the framework of the

separate provisions adopted on the basis of item 3 of the Closing Provisions, while, on the one hand, the transitional provisions had not been originally incorporated into the Fundamental Law, and, on the other hand, most of them have already been implemented or they are not in force any more.

AFL1 states that TPFL is part of the Fundamental Law, but it fails to incorporate the normative material of TPFL into the Fundamental Law (as it would be contrary to the original will of the constituent power). Therefore TPFL has remained a legal regulation separate from the Fundamental Law even after the taking force of AFL1.

4. TPFL is, in its present form, a kind of "open gateway", "slide Act" or an "Act distracting the Constitutional Court's competence". It means that, according to the intentions of the legislator, through TPFL, a protection of Fundamental Law level would be enjoyed by newer and newer provisions that are actually not part of the "single and unified" Fundamental Law (and therefore the revision of their content by the Constitutional Court would be excluded). The "open gateway" character of TPFL has been plainly reinforced by the second amendment of the Fundamental Law of Hungary (9 November 2012) (hereinafter: AFL2), as it had introduced into TPFL a provision of clearly not transitional nature – taking into account its force and its effects –; it is a provision on the basis of which a cardinal Act was also adopted. The Parliament sees TPFL as a legal regulation that can be extended and amended without limits in a way whereby its amendments can all become part of the Fundamental Law even without actual incorporation – due to the "double definition" of TPFL and AFL1. The continuous amendment of TPFL results in a constitutional legal uncertainty. The contents of the Fundamental Law would be extended on a continuous basis with provisions related to alien subjects that should not be placed in the Fundamental Law (this is why the Parliament does not incorporate them into the Fundamental Law), and such provisions would not actually be incorporated in the Fundamental Law, but they would enjoy the same protection as the provisions of a single and unified Fundamental Law. As a result, – taking also into account that certain provisions of TPFL are repeated by legal regulations of lower level – the actual contents of the Fundamental Law becomes disputable. Such a legislative practice would continue to narrow down the Constitutional Court's scope of competence, and there would be more regulatory subjects removed from the Constitutional Court's competence because it can not review the contents of the provisions incorporated in the Fundamental Law. In a constitutional legal system, in the framework of a democratic State under the rule of law, it would be impossible to have a Fundamental Law – serving as the standard for the Constitutional Court – the contents of which is constantly questionable, just as to have newer and newer regulatory subjects – that should not be placed on the level of the Fundamental Law – dragged into the Fundamental Law, preventing the Constitutional Court in performing effectively its duty of protecting the Fundamental Law by implementing the formal and substantial review of the legal regulations. This way the addressees of the legal regulations might remain without any protection by the Constitutional Court, even in the respect of their fundamental constitutional rights, and this legislative practice could be continued to follow without any limit in time and with unforeseeable contents.

5. There is a contradiction between item 5 of the Closing Provisions of the Fundamental Law, inserted subsequently by AFL1, and items 2 and 3 of the Closing Provisions, presenting the original intentions of the constituent power. The authorization granted to the Parliament at the time of adopting the Fundamental Law commissioned the Parliament with the duty of adopting separate transitional provisions. Item 5 of the Closing Provisions containing the posterior declaration on the whole of TPFL being part of the Fundamental Law was inserted into the Fundamental Law through the amendment of the Fundamental Law. The separate legal regulation, containing only transitional provisions, cannot, in fact, be part of the Fundamental Law (as it would be contrary to the aims and the intentions of the constituent power), and with respect to the non-transitional provisions, the lack of the authorization cannot be substituted posteriorly. A legal regulation, which is partially invalid under public law, cannot be declared posteriorly to form part of the Fundamental Law. A legal regulation adopted on the basis of an authorization cannot declare itself to be part of the authorizing regulation. It was the original

intention of the constituent power not to make the transitional regulations part of the Fundamental Law, since it is unnecessary to burden the Fundamental Law with such rules. Originally, the Parliament did not have an authorization by the Fundamental Law to adopt non-transitional regulations within TPFL. It is not possible to correct posteriorly a legal regulation that extends beyond the limits of the original authorization by the Fundamental Law – the regulation concerned being invalid under public law for this reason –, and the lack of the authorization cannot be subsequently substituted.

6. As pointed out by the Constitutional Court, invalidity under public law is a new problem in the present case. Item 3 of the Closing Provisions – as an authorizing rule – and the closely connected item 2 have not raised questions of invalidity under public law. However, the fact that TPFL has not been adopted in line with these constitutional provisions caused a serious problem of public law. As a result of it, there is now more than "a single" legal regulation in the legal system enjoying protection of Fundamental Law-level, the unity of the Fundamental Law has been broken, the actual contents of the Fundamental Law has become questionable, and a serious legal uncertainty emerged with regard to the position of TPFL in the hierarchy of the sources of law. The Fundamental Law can only be modified or amended on the basis of Article S), in line with the procedure specified therein. The constituent power may also adopt transitional regulations, and it is not necessary to incorporate such regulations into the Fundamental Law. However, the Fundamental Law itself, in several provisions and both in direct and indirect ways, contains [e.g. preamble of the Fundamental Law, Article R) para. (1) and the postamble of the Fundamental Law] an order of incorporation with regard to the amendments of the Fundamental Law. Whether the Fundamental Law consists of one or more documents, is more than a merely legal-technical question. The Fundamental Law contains an order of incorporation regarding the modifications and the amendments of the Fundamental Law (i.e. the provisions that are not transitional ones); they have to be incorporated into the text of the Fundamental Law, i.e. they actually have to become a part of it.

The order of incorporation can be changed by the constituent power, but only by way of amending the Fundamental Law. It would be possible to introduce in the legal system an Act of "fundamental law level" or any other new source of law, but such steps require regulating in the Fundamental Law, specifying also the position of the new source of law in the hierarchy of the sources of law.

7. In the present case, the Constitutional Court attributed special importance to the requirement of constitutional legality that is also applicable when the Parliament is acting in its legislative competence, as the constituent power, on the basis of an authorization granted in the Fundamental Law.

It would be irreconcilable with the idea of a democratic State under the rule of law if the contents of the Fundamental Law were becoming constantly disputable, thus making the contents of the Fundamental Law, as the Constitutional Court's standard, uncertain. The public law validity as well as the constitutional legality and legitimacy of the Fundamental Law has to be unquestionable, both with regard to the totality of it and in the respect of its elements, including all subsequent modifications and amendments. The unquestionable legality of the Fundamental Law is essential for making the legality of the whole legal system unquestionable. The requirement of constitutional legality is being violated when the contents of the Fundamental Law can be subject to constant debate.

If we held that TPFL was part of the Fundamental Law, then TPFL's invalidity under public law would question the constitutional legality of the whole legal system The appropriate manner, the extent and the constitutionality of modifying or amending the Fundamental Law are the basis of the constitutional legality of the legal system.

Constitutional legality has not only procedural, formal and public law validity requirements, but also substantial ones. The constitutional criteria of a democratic State under the rule of law are at the same time constitutional values, principles and fundamental democratic freedoms enshrined in international treaties and accepted and acknowledged by communities of democratic States under the rule of law, as well as the *ius cogens*, which is partly the same as the foregoing. As appropriate, the Constitutional

Court may even examine the free enforcement and the constitutionalization of the substantial requirements, guarantees and values of democratic States under the rule of law.

In democratic States under the rule of law, constitutions have constant substantial and procedural standards and requirements. The substantial and procedural constitutional requirements shall not be set lower in the era of the Fundamental Law than they were at the time of the Constitution (Act). The requirements of a constitutional State under the rule of law continue to be constantly enforced requirements in the present and they are programs for the future. The constitutional State under the rule of law is a system of constant values, principles and guarantees. The level of the values, principles and guarantees once adopted in a constitutional State under the rule of law may not be lessened, and they shall be required to be enforced just as severely as before.

It is one of the constant requirements of a constitutional State under the rule of law to adopt legal regulations according to the procedural order regulated in the Fundamental Law. For example, the Parliament cannot raise – not even with a two-thirds majority of the votes – Acts adopted as non-cardinal Acts to the rank of cardinal Acts. With regard to compliance with the procedural rules, it is of primary importance to examine whether the contents and the temporality of a legal regulation comply with the authorization it is based upon. An authorization contained in the Fundamental Law for the adoption of transitional provisions would obviously not cover the regulation of non-transitional subjects. The non-transitional provisions adopted by way of extending over the authorization shall not, and cannot, subsequently be qualified as parts of the Fundamental Law – not even by way of amending the Fundamental Law with the required majority (in AFL1).

The Fundamental Law can only be adopted, modified or amended, and cardinal Acts can only be adopted according to the rules connected to strict obligations, requirements, the contents, the subject and the scope of the authorization (as required by the constituent power). Compliance with such rules is the fundamental condition of validity under public law, also in the case of an authorization for legislation provided by the constituent power, and in the case of an authorization provided by the legislation for the adoption of a decree.

8. As a summary of the present decision, the Constitutional Court emphasizes the following constitutional requirements. The examination of TPFL's invalidity under public law is part of the Constitutional Court's function of constitutional protection, but it also follows from the Decision 61/2011. (VII. 13.) AB. Extending over the legislative authorization contained in the Fundamental Law causes partial invalidity under public law, justifying the annulment of such provisions. The requirement of incorporating the non-transitional provisions into the Fundamental Law follows from the "single and unified" nature of the Fundamental Law. The Fundamental Law can only be modified or amended on the basis of Article S). The modifications and amendments have to be incorporated into the normative text of the Fundamental Law, and the legal regulations amending the Fundamental Law have to specify accurately in which part of the Fundamental Law they will be inserted.

The Fundamental Law cannot be amended through an "open gateway" or "slide" legal regulation. Such legal regulations can't be used for the purpose of making provisions – not suitable for being inserted into the Fundamental Law – parts of the Fundamental Law without incorporation, distracting the Constitutional Court's right to have these regulations reviewed, merely on the ground of declaring that a new provision is part of the Fundamental Law.

8.1. Full compliance with the formal (procedural) rules, specified in the Fundamental Law as a prerequisite for validity under public law, is binding on the Parliament as well, acting in the capacity of the constituent power. The Parliament is bound by the legislative authorization granted by the constituent power in the Fundamental Law. {See Decision 25/1999 (VII. 7.) AB: "the constitution can only be amended in accordance with the procedural order specified in the Constitution [Article 24 para. (3) of the Constitution ABH 1999, 251}]"

On the basis of Article 24 para. (1) of the Fundamental Law, the Constitutional Court is entitled, and on the basis of an appropriate petition is obliged, to examine, in the competence of posterior norm

control, the compliance of the Parliament with the limits of the legislative authorization contained in the Fundamental Law. Expanding over the limits of the legislative authorization contained in the Fundamental Law by the Parliament shall result in invalidity under public law.

This constitutional requirement is deductible from Article B) para. (1) of the Fundamental Law (the rule of law) and from item 3 of the Closing Provisions (authorization for the adoption of transitional provisions). The constituent power may grant an authorization in the Fundamental Law for the Parliament to enact legislation. For example, Article T) para. (4) is an authorizing regulation empowering the Parliament to enact cardinal Acts. The legislative authorization granted by the constituent power in the Fundamental Law is binding upon the Parliament: it has to enact the Act specified in the authorization, with the contents and the extent as specified by the constituent power in the Fundamental Law. The constitutional legality is considered to be violated if the Parliament fails to adopt the Act specified in the authorization (omission violating the Fundamental Law), as well as if it extends beyond the authorization granted in the Fundamental Law by adopting the Act without obeying the procedural rules specified in the Fundamental Law (invalidity under public law).

8.2. It is a constitutional requirement that the legislative authorization granted by the constituent power in the Fundamental Law should be unambiguous (clearly defining the entitled party of the empowerment as well as its subject and limits). When the Parliament adopts an Act on the basis of an authorization granted in the Fundamental Law, it can only enact one that can be placed unambiguously in the system of the sources of law specified in the Fundamental Law, and which complies with the requirements of the hierarchy of the sources of law.

This constitutional requirement is deductible from Article B) para. (1) of the Fundamental Law (the rule of law) and from its Article T). The system of the sources of law is determined in the Fundamental Law; there can be no source of law other that that. The legal regulations placed "outside" the Fundamental Law, not positioned in the system of the sources of law are invalid under public law. The constituent power may not cause legal uncertainty of fundamental law level by not defining accurately in the Fundamental Law the authorization for legislation (the contents of the authorizing rule). Similarly, the constituent power may not cause legal uncertainty of Fundamental Law level by adopting, on the basis of the authorization, a legal regulation that cannot be placed in the effective system of the sources of law, or one that violates the hierarchy of the sources of law.

V

Based on the arguments detailed in the foregoing, the TPFL's provisions that are not of transitional nature are invalid under public law; therefore the Constitutional Court annuls them. The Constitutional Court examined, in addition to the TPFL's provisions specified in the petition, all other provisions in force of TPFL with regard to their character of transitoriness. It follows on the one hand from the Constitutional Court's functions of protecting the Fundamental Law and of protecting the internal coherence of the legal system, and on the other hand Section 52 para. (3) grants a right to the Constitutional Court to "examine and annul other provisions of the legal regulation specified in the petition if the contents of these provisions are closely related to each other and if failure to examine and annul the given provisions would entail infringement of legal certainty." Obviously, the requirement of legal certainty would be injured in the case of having a legal regulation with elements that are valid under public law and ones that are invalid under public law, if certain invalid elements of it would not be annulled merely because of the absence of any petition aimed at their annulment. In view of the above, the Constitutional Court extended the scope of the examination to each provision of TPFL in force at the time of the constitutional review, including Section 23 paras (3)−(5) on the advance electoral registration, inserted in TPFL by AFL2.

In the course of examining the transitoriness of the provisions, the Constitutional Court also took into account the will of the creator of TPFL – as manifested in the reasoning of TPFL. In the Parliament's view, the following provisions are considered to be transitional, the ones that:

a) are connected to the entry into force of the Fundamental Law,

b) can be traditionally regarded as transitional,

c) are of legal-technical character,

d) serve the purpose of avoiding debates on interpreting the law.

According to the reasoning, the transitional provisions also serve the purpose of avoiding debates about the scope of the mandate – after the taking force of the Fundamental Law – of the persons and bodies elected/appointed before the entry into force of the Fundamental Law; what will happen with the Acts of Parliament and the normative decisions and orders as well as with pending cases commenced in the past. In the respect of Sections 1−4 of TPFL, the reasoning itself speaks about transitoriness "in the broad sense", mellowing the concept and the scope of transitoriness.

The Constitutional Court, in addition to taking into account the will of the constituent actor, shared the position of the petitioner about the need to interpret the quality of "transitoriness" in the narrow sense. Any regulation extending beyond this interpretation of transitoriness, either in terms of contents or timeframe shall not be regarded as transitional. Transitional provisions are the ones that are connected substantially to questions already regulated in the Fundamental Law, that contain provisional derogations, exceptions or concrete tasks to be implemented once, or their adoption is justified because of the transition from the old regulation to the new one, and in the case of significant amendments, their adoption serves the purpose of legal certainty. Based on the above criteria, the Constitutional Court established that the provisions of TPFL listed in the holdings of the decision extend beyond the limits of the authorization contained in item 3 of the Closing Provisions of the Fundamental Law. Accordingly, these are the provisions of TPFL that are contrary to Article B) para. (1) of the Fundamental Law and therefore they are invalid under public law. Consequently the Constitutional Court annulled the part on the transition from communist dictatorship to democracy (preamble), Articles 1−4, Article 11 paras (3) and (4), Articles 12, 13, 18, 21, 22, and Article 23 para. (1) and paras (3)−(5), Article 27, Article 28 para. (3), Article 29, Article 31 para. (2) and Article 32 of TPFL.

The Constitutional Court – in line with its standing practice – assessed, also in the present case, the gravity of the violation of the procedural rules in the course of establishing the legal consequences of invalidity under public law. In this process, the Constitutional Court paid due attention to the fact that the legislation aimed at adopting and amending the Fundamental Law is a legislative activity of the highest level, the procedural rules of which are defined in the Fundamental Law itself. Therefore it is a constitutional requirement of paramount importance that when the Parliament acts as the constituent power, it must comply with all the procedural rules specified by the Fundamental Law. The constituent power attributed a particular importance to comply with the rules of the legislative process as defined in the Fundamental Law. As indicated in Article 6 para. (9) of the Fundamental Law, concerning the process of the legislative procedure: compliance with the procedural requirements found in the Fundamental Law is a must in the course of adopting Acts of Parliament. The repeated veto of illegality by the President of the Republic serves the purpose of preventing Acts of Parliament from becoming part of the legal system, if those Acts have been adopted by the violation of the procedural requirements contained in the Fundamental Law. Compliance with the provisions, pertaining to the legislative process, contained in the Fundamental Law is considered by the constituent power a requirement to be enforced unconditionally, even in the case of Acts of Parliament that are subject to a restricted scope of review by the Constitutional Court, in accordance with the Fundamental Law. According to the last sentence of Article 37 para. (4) of the Fundamental Law, the Constitutional Court shall have the right to annul without restriction Acts of Parliament specified in this paragraph, if the procedural requirements laid down in the Fundamental Law for the making and publication of such Acts have not been observed. In the case of the Acts of Parliament listed in Article 37 para. (4) of the

Fundamental Law, the constituent actor released the ban on the Constitutional Court's competence – applicable to its competences contained in Article 24 para. (2) items *b)–e)* of the Fundamental Law – with regard to the case when, in the course of enacting the above Acts, the legislator fails to comply with the procedural requirements contained in the Fundamental Law, with respect to the adoption and the promulgation of such Acts. The constituent power also made it clear in Article 37 para. (4) of the Fundamental Law that the Constitutional Court shall have the right to annul, without restriction, the legal regulations adopted with the violation of the procedural requirements of legislation – on the adoption and the promulgation of the Acts of Parliament – contained in the Fundamental Law. The provisions of the Fundamental Law, and the compliance with the procedural requirements contained therein, pertaining to the adoption of the legal regulations, are binding upon all legislative bodies, including the Parliament. The violation of these requirements found in the Fundamental Law may result in the unrestricted annulment of the Act not only in the case of the Acts specified in Article 37 para. (4), but with respect to any Act adopted by the Parliament. Full compliance with the procedural requirements is an obligation of the Parliament by virtue of the Fundamental Law, even if it intends to amend – as the constituent power – the Fundamental Law, and also in the course of intending to adopt transitional provisions connected to the Fundamental Law, but enacted in a separate Act. The violation of the procedural requirements may have the same constitutional consequence in both cases: the Act can be annulled by the Constitutional Court due to invalidity under public law.

In the case concerned, the Parliament, acting as the constituent power, violated a procedural rule containing an authorization aimed at legislation specified in the Fundamental Law. Extending beyond the scope of the legislative authorization contained in the Fundamental Law resulted in a serious legal uncertainty in the system of the sources of law specified in the Fundamental Law; it broke up the unity of the Fundamental Law, which is the basis of the legal order and the legal system, and it made the Fundamental Law's scope and contents disputable. With regard to all the above, the Constitutional Court had to annul the provisions specified in the holdings of the decision.

Subsequent to the decision of the Constitutional Court, it is the duty and the responsibility of the constituent actor to clarify the situation after the annulment. The Parliament must create an unambiguous and clear legal situation.

The Parliament must review the regulatory subjects of the annulled non-transitional provisions, and it has to decide about which ones need repeated regulation, on what level of the sources of law. It is also the duty of the Parliament to select the provisions – to be regulated repeatedly – that need to be placed in the Fundamental Law, and the ones that require regulation in an Act of Parliament. The regulatory subjects that require repeated regulation within the Fundamental Law can only be enacted in the procedure specified in Section S) of the Fundamental Law, and they have to be incorporated into the normative text of the Fundamental Law. The Parliament shall also examine which Acts of Parliament include the same contents as that of the annulled provisions of TPFL. The Parliament must decide about keeping or not the above mentioned statutory provisions on the level of Act of Parliament in the system of the sources of law.

TPFL was partly annulled for a formal reason. Some of the annulled provisions have already been performed; they do not require repeated regulation. Some of the remaining provisions can be found in other Acts (with the same normative contents). The Parliament has to pass a decision about which provisions have already been performed, whether it intends or not to regulate in the future the annulled provisions, and if it intends to do so, in what way and on what level in the hierarchy of the sources of law. In the course of making this decision, it may opt to maintain the existing statutory regulation (on the level of an Act of Parliament), or to insert – on the basis of Article S) of the Fundamental Law – certain provisions into the Fundamental Law, this way eliminating parallel regulations, or – in the absence of any parallel regulation – lifting the regulation up to the level of the Fundamental Law, in a formally and substantially appropriate way.

With regard to the fact that the cause of the annulment is invalidity under public law, the force of the annulment is *ex tunc*, on the basis of Section 45 para. (4) of ACC, with a retroactive force to the day of its promulgation on 31 December 2011. As Section 23 paras (3)−(5) were inserted into TPFL by AFL2, these regulations are annulled by the Constitutional Court with effect from the day of the promulgation of AFL2, 9 November 2012. In the course of determining the temporal force of the annulment, the Constitutional Court took into account the subjective weight of invalidity under public law, as a violation of the Fundamental Law, as well as the enforcement of its obligation of protecting the Fundamental Law and the enforcement of legal certainty.

In line with its constant practice, as the Constitutional Court established that all provisions of TPFL challenged by the petitioner were contrary to the Fundamental Law due to the violation of Article B) para. (1) of the Fundamental Law, and it annulled them, the Constitutional Court has not examined further elements of the petition.

The Constitutional Court has not annulled the transitional provisions that comply with the authorization contained in item 3 of the Closing Provisions of the Fundamental Law; some of them have already been performed and as such they are "not in force" any more, while others shall remain in force until the date specified in TPFL.

At the same time, the Constitutional Court hereby draws the attention to the fact that any further/other amendment of TPFL inserting further provisions into TPFL shall be invalid under public law, and as such it shall be null and void; the Constitutional Court shall annul such amendments on the basis of an appropriate petition.

The publication of this Decision in the Official Gazette (*Magyar Közlöny*) is based on Section 44 para. (1) of the ACC.

Budapest, 28 December 2012.

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Judge of the Constitutional Court

Dr. István Balsai
Judge of the Constitutional Court

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Dr. István Stumpf
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Dr. Péter Szalay
Judge of the Constitutional Court

Dr. Mária Szívós
Judge of the Constitutional Court

[Concurring reasoning by *Dr. András Holló* and *Dr. István Stumpf* Judges of the Constitutional Court, and dissenting opinions by *Dr. István Balsai, Dr. Egon Dienes-Oehm*, *Dr. Barnabás Lenkovics*, *Dr. Péter Szalay* and *Dr. Mária Szívós* Judges of the Constitutional Court have been attached to the decision]