

## CONSTITUTIONAL COURT DECISION 20/2017. (VII. 18.) AB

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

decision:

The Constitutional Court establishes that the judgement No. 21.Pf.20.741/2015/4. of the Balassagyarmat Regional Court is in conflict with the Fundamental Law, therefore the Constitutional Court annuls it.

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

### Reasoning

#### I.

- [1] The petitioner by way of his authorised legal representative submitted a constitutional complaint with the Constitutional Court in accordance with Section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC).
- [2] The petitioner explained that on 25 October 2014 he travelled by car on the main road No. 23 from Nemti to the direction of Bátorfőnyé. He was forced to stop due to deers blocking the road. He had waited until the herd left the road and then started again. He was travelling at a speed of approximately 20 km/h when suddenly a hind jumped on his car from the right. Due to the collision, the windscreen cracked web-like and the front bumper, the right rear-view mirror, the right front fender and the right door were damaged.
- [3] As the area concerned belongs to a hunters' society (hereinafter: "hunters' society"), the petitioner sued the hunters' society at the Salgótarján District Court. In the interlocutory judgement No. 5.P.20.060/2015/23. the Salgótarján District Court ruled that the defendant was liable for damages. According to the reasoning of the judgement, in line with Section 75/A of the Act on LV of 1996 on Hunting (hereinafter: AH), the beneficiary shall compensate for the damages caused to a third party outside the scope of agriculture and forestry management, according to the rules of the Civil Code on the liability for damages caused by a huntable animal. As regulated in Section 6:563 (1) of the Civil Code, the person entitled to hunt and in whose hunting area the damage was caused shall be liable for the damage caused by

the huntable animal. The person entitled to hunt shall be exempted from liability if he proves that the damage was caused by an unavoidable circumstance beyond his control. On the basis of the quoted provisions of the Civil Code and of the AH, the court established that there was a legal basis for the liability of the defendant for damages and that its liability was objective. The court also noted that in the case concerned, the provisions of Section 3 of the Act L of 2015 on amending Act LV of 1996 on Game Conservation, Management and Hunting were not applicable. This Act amended section 75/A of the AH and supplemented it with a second paragraph, according to which when the liability for damage caused by a huntable animal collides with the liability for hazardous activities, the rules on the concurrence of hazardous operations shall be applicable. This amendment, however, is only applicable from 5 May 2015, while the damaging accident had occurred prior to that date.

- [4] The hunters' society as the defendant of the basic case appealed against the interlocutory judgement. With the judgement No. 21.Pf.20.741/2015/4., the Balassagyarmat Regional Court (hereinafter: "regional court") changed the interlocutory judgement and rejected the petitioner's claim. In its reasoning, the regional court stated that although the court of first instance had established the facts of the case correctly and it had also been right in identifying the applicable laws, its conclusion establishing the defendant's liability, on the basis of these legal provisions, for the damage to the plaintiff's car was wrong. According to the reasoning, "in the absence of retroactive effect, paragraph (2) Section 75/A of AH, in force from 5 May 2015, is not applicable to the case concerned. However, even prior to this date, the judicial practice had applied the Civil Code's rules on the concurrence of hazardous operations in the cases of collisions of cars and huntable animals on the road. Section 75/A (2) of AH, in force from 5 May 2015 incorporated this judicial practice into the Act."
- [5] The petitioner had filed his constitutional complaint on 10 February 2016, in which he initiated the establishment of a conflict with the Fundamental Law and the annulment of the judgement No. 21.Pf.20.741/2015/4. of the regional court that he had received on 11 January 2016, arguing that the challenged decision violated Article R) (2), Article T) (1) and Article XXVIII (1) of the Fundamental Law.
- [6] He argued that the court in charge had infringed his rights under Article R) (2) of the Fundamental Law by neglecting a legal regulation with full binding force and by establishing its judgement on the basis of the judicial practice.
- [7] He alleged that his rights granted in Article T) (1) of the Fundamental Law had been infringed by the court in charge, by ordering, in the challenged judgement, the application of the judicial practice as the generally binding rule of conduct. However, in the petitioner's opinion, the judicial practice was in conflict with Section 6:563 (1) of the Civil Code, stating that the person entitled to hunt and in whose hunting area the damage was caused shall be liable for the damage caused by the huntable animal.

- [8] The petitioner also alleged the infringement of Article XXVIII (1) of the Fundamental Law, according to which in the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The proceeding court founded the challenged judgement on the judicial practice despite of the fact that the content of the legal regulation in force and applicable in the case concerned was contrary to the judicial practice. Thus, according to the petitioner, his right to a fair trial was infringed.
- [9] The petitioner also requested the Constitutional Court to order the suspension of the enforcement of the regional court's judgement No. 21.Pf.20.741/2015/4. until the completion of its procedure.
- [10] At the panel session of 3 May 2016, the Constitutional Court admitted the constitutional complaint on the basis of Section 56 of the ACC, acknowledging the fundamental constitutional importance of the question whether it complies with the requirement of fair trial when the court deteriorates the enforcement of a recently adopted legal provision undoubtedly applicable to the given facts of the case by referring to the judicial practice followed before the entering into force of the relevant provision.
- [11] The petitioner referred to the violation of Article T) (1) of the Fundamental Law. In this respect, the Constitutional Court points out that this provision is not considered as a right granted in the Fundamental Law and thus it cannot form the basis of the concrete infringement of a fundamental right, therefore the petitioner is not entitled to submit a constitutional complaint based on it {c.p. Decision 3203/2015. (X. 14.) AB, Reasoning [9]}. With account to the above, the Constitutional Court rejected this part of the constitutional complaint on the basis of Section 64 d) of the Act on the Constitutional Court.

## II

- [12] The provisions of the Fundamental Law affected by the petition:

"Article R) (2) The Fundamental Law and the other laws shall be binding upon everyone."

"Article T) (1) Generally binding rules of conduct shall be laid down in the Fundamental Law and in legal acts adopted by bodies vested with legislative power by the Fundamental Law, and published in the official journal. Different rules for the promulgation of municipal government decrees and laws adopted under special legal order may be provided for by a cardinal Act."

"Article XXVIII (1) In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

### III

- [13] The constitutional complaint is well-founded according to the following.
- [14] 1. The Constitutional Court established the following with regard to the right to a fair trial granted in Article XXVIII (1) of the Fundamental Law.
- [15] In its case law, the Constitutional Court has grasped the right to a fair trial in the entirety of the procedure. In the course of reviewing the earlier relevant case-law, the Constitutional Court took into account the aspects laid down in the Decision 13/2013. (VI. 7.) AB concerning the possibility to use former decisions of the Constitutional Court. Accordingly, in the context of the concrete case, it compared the underlying provisions of the Constitution and of the Fundamental Law and it established that there is no obstacle of applying as appropriate the formerly developed relevant case-law.
- [16] The Constitutional Court established in the Decision 6/1998. (III. 11.) AB that "[...] *fair trial*" is a quality factor that may only be judged by taking into account the whole of the procedure and all of its circumstances. Therefore, a procedure may be "inequitable", "unjust" or "unfair" even despite **of** lacking certain details or complying with all the detailed rules." [ABH 1998, 95.] {last confirmed in the Decision 3102/2017. (V. 8.) AB, Reasoning [17]}
- [17] So far, in its case law, the Constitutional Court has linked in each case the assessment of the enforcement of the right to fair trial to the examination of substance: as in the present case, it has evaluated the legislative environment leading to the alleged infringement of the fundamental right, the judicial decision, the purpose of the regulation, the facts of the concrete case, then – based on assessing the above – it has drawn conclusions regarding the infringement of fundamental rights that might have been established in the given case. {c.p. Decision 3102/2017. (V. 8.) AB, Reasoning [18]}.
- [18] 2. After reviewing the relevant provisions of the law, the Constitutional Court established that the legal provisions in force before 15 March 2014 [Section 75 (3) of AH and Section 346 (3) of the Civil Code] and the ones in force after 5 May 2015 [Section 75/A (2) of AH and Section 6:539 (3) of the Civil Code] regulated practically the same way the question of the compensation of damages caused by wild animals: if causing the damage was not attributable to either of the parties, the affected persons had to bear their own damages. In the interim period between 15 March 2014 and 5 May 2015 (thus also at the time when the damage discussed in the present case has been done, on 25 October 2014), the law in force regulated the question differently and it allocated the damages to the entity entitled to hunt.
- [19] Although the regional court in charge acknowledged that Section 75/A (2) of AH in force as from 5 May 2015 was not applicable, it stated that "even prior to this date, the judicial practice had applied the Civil Code's rules on the concurrence of hazardous operations in the cases of collisions of cars and huntable wild animals on the road."

- [20] In this respect the Constitutional Court established that the argument, used by the regional court that acted in the case, stating that the legal practice which required the affected parties to bear their own damages was based upon the judicial practice before 5 May 2015 is not fully correct, as before 15 March 2014 this judicial practice had been clearly supported by the relevant provisions of the applicable laws. Nevertheless, by the time relevant in the case (25 October 2014) the statutory provisions upon which the former judicial practice had been based has already been annulled by the lawmaker and the content of the provisions of the law in force was contrary to the judicial practice.
- [21] 3. The Constitutional Court then took a stand in the question whether the clearly *contra legem* application of the law, also admitted by the court proceeding in the case, has indeed, in the case concerned, been raised to a level suited for constitutional assessment and thus whether it has impaired the petitioner's right to fair trial.
- [22] The regional court that decided in this case assessed it by neglecting the applicable provisions of the law in force [Section 75/A of AH and Section 6:563 (1) of the Civil Code] and it adjudicated the case by taking into account the judicial practice that had been based on the earlier provisions of the law [Section 75 (3) of AH and Section 346 (3) of the Civil Code].
- [23] Subordination to the law is not a limitation of judicial independence; it is much more a guarantee of it: the judge shall make his decision on the basis of the laws. If the court frees itself from the subordination to the law, it dispenses with one of the material bases of its own independence. A court that does not obey the law is actually misusing its own independence, which may, in a given case, thus result in the violation of the right to a fair trial. A judicial judgement, which neglects the law in force without any due ground is arbitrary and conceptually unfair: it is incompatible with the principle of the rule of law.
- [24] Based on the above, the Constitutional Court underlines that in accordance with Article R) (2) of the Fundamental Law, prescribing that the laws shall be binding upon everyone, the regional court should have applied in the present case Section 75/A of AH as well as Section 6:563 (1) of the Civil Code, as referred to in the former provision, or at least the regional court should have provided a reasoning to support dispensing with the application of these provisions of the law. However, instead of the above, the regional court referred to the inapplicability of another legal provision [Section 75/A (2) of AH] entering into force at a later date and for this reason being inapplicable in the concrete case due to the lack of retroactive effect.
- [25] With regard to the lack of providing a reasoning, the Constitutional Court examines, with account to the obligation of interpreting the laws as prescribed in Article 28 of the Fundamental Law, whether the the procedural laws requiring reasoning were applied by the court in accordance with the requirements under Article XXVIII (1) of the Fundamental Law. Thus the Constitutional Court, unlike ordinary courts, examines compliance with the reasoning obligation of the courts not on the basis of suitability

for review, and it refrains from taking a stand on the correctness or lawfulness of dogmatic questions related to a given branch of law or in any problem purely about interpreting the law {Decision 3003/2012. (VI. 21.) AB, Reasoning [4]}.

- [26] The constitutional requirement of the obligation of reasoning included in Article XXVIII (1) of the Fundamental Law is the absolute limitation of the court's decision-making freedom: the court must give account of the reasons of its decision according to the Acts on procedures. The infringement of the reasoning obligation means, in the constitutional sense, the application of the procedural rule in a way contrary to the Fundamental Law. Accordingly, the requirement resulting from the principle of fair trial is the application of the procedural rules in line with the Fundamental Law, which is the duty of the courts functioning in the framework of the rule of law. Taking into account the provisions of the Act on procedures as well, the constitutional requirement of fair trial sets a minimum expectation regarding judicial decisions, namely that the court should examine with due scrutiny the comments made by the litigant parties about the substantial parts of the case and that the court should give account of this assessment in its decision. {Decision 7/2013. (III. 1.) AB, Reasoning [34]}
- [27] With account to the above, the Constitutional Court established concerning the present case that the regional court failed to meet its obligation of reasoning when it did not provide, in its decision, account of one of the most important elements of the case: the reasons of not applying the statutory provisions evidently applicable to the relevant factual situation.
- [28] The Constitutional Court also establishes that the regional court acted arbitrarily when it failed to apply the legal norm clearly applicable in a question of law, contrary to Article R) (2) of the Fundamental Law.
- [29] To sum up the above, the Constitutional Court established that the regional court's *contra legem* application of the law has reached the level of constitutional injury due to the joint existence of three synergistic conditions and it violated the petitioner's right to fair trial. First, the regional court failed to provide reasoning – in a manner violating the obligation of reasoning, as an aspect of the right to a fair trial, a fundamental procedural right – about not applying the legal norms in force applicable to the given question of law. Secondly, at the same time, the regional court acted arbitrarily when it failed to take into account the legal norms clearly applicable to the question of law. Thirdly, the regional court also acted arbitrarily when it built its decision on a judicial practice developed on the basis of legal norms that had been explicitly annulled by the lawmaker in the context of the new Civil Code entering into force.
- [30] The Constitutional Court holds that the court's reasoning neglecting, without cause, the legal provisions clearly applicable to a question of law, resulted in the unfairness of the whole court procedure in the present case because the lack of reasoning was connected to two different types of judicial arbitrariness.
- [31] As according to the Constitutional Court, the challenged court judgement violated the petitioner's right to fair trial, the Constitutional Court established that the

judgement No. 21.Pf.20.741/2015/4. of the Balassagyarmat Regional Court was in conflict with the Fundamental Law and annulled it.

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

Budapest, 11 July 2017

*Dr. Tamás Sulyok*  
President of the Constitutional Court  
Judge Rapporteur

*Dr. István Balsai*  
Judge of the Constitutional Court

*Dr. Ágnes Czine*  
Judge of the Constitutional Court

*Dr. Egon Dienes-Oehm*  
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*Dr. Attila Horváth*  
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*Dr. Ildikó Hörcherné dr. Marosi*  
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*Dr. Imre Juhász*  
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*Dr. Béla Pokol*  
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*Dr. László Salamon*  
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*Dr. Mária Szívós*  
Judge of the Constitutional Court

*Dr. Varga Zs. András*  
Judge of the Constitutional Court

Dissenting opinion by Judge *Dr. Egon Dienes-Oehm*

[33] I do not agree with the decision, as it builds the establishing of the conflict with the Fundamental Law and the annulment of the judgement No. 21.Pf.20.741/2015/4. of the Balassagyarmat Regional Court on the arbitrariness of the judicial decision and on Article R) (2) of the Fundamental Law.

[34] It is undoubtedly a problem emerging more and more frequently, how the Constitutional Court should handle the incorrect (sometimes unlawful) judicial application, interpretation of the law when the only violation of fundamental rights

mentioned in the constitutional complaint is the reference to the right under Article XXVIII (1) of the Fundamental Law. Let me note in general that, in my opinion, the judicial decision may only be suitable to justify annulment under this legal title in exceptionally extreme cases, as typically illustrated in the reasoning of the Decision 3173/2015 (IX. 23.) AB. The petitions that trace back allegedly false judicial interpretations and applications of the law, as infringements of fundamental rights, exclusively to the title of unfair procedure, would force the Constitutional Court into a "supercourt" role that sometimes implies the performance of factual-court duties, which role has been typically rejected by the Constitutional Court. For that matter, with account to this practice, the Constitutional Court has not elaborated (could not elaborate) the test suitable for the assessment of the infringement discussed herein, and neither does the reasoning of this decision make an attempt to do this.

[35] Actually, the Balassagyarmat Regional Court did provide reasoning on page 3 of its decision. As a question of a point of view, this may be held to be deficient, but in no way arbitrary.

[36] Thus the statement made in the reasoning of the decision that "the regional court acted arbitrarily when it failed to apply the legal norm clearly applicable in a question of law, contrary to Article R) (2) of the Fundamental Law" is not acceptable. In this context, I also hold it important to stress that Article R) (2) is not a fundamental right.

Budapest, 11 July 2017

*Dr. Egon Dienes-Oehm*  
Judge of the Constitutional Court

Dissenting opinion by Judge *dr. Ildikó Hörcherné dr. Marosi*

[37] 1. The majority decision annulled the judgement of second instance of the Balassagyarmat Regional Court by referring to a conflict with the Fundamental Law. According to the essence of the reasoning, the judicial panel

- failed, by breaching Article XXVIII (1) of the Fundamental Law, to provide reasoning about why the court has not applied the law in force at the time of deciding the case,

- passed its judgement arbitrarily, by misusing its own independence and contrary to the provision under Article R) (2) of the Fundamental Law, which binds the court, too, by neglecting the law applicable in the lawsuit, and

- the court also acted arbitrarily because in its decision it referred to a judicial practice the underlying legal norms of which have been explicitly annulled by the legislator.

[38] 2. I do not agree with the holdings of the decision for the following reasons:

[39] The constitutional "stake" of the procedure concerned was how the Constitutional Court sees the possibly *contra legem* judicial decisions. Does the Constitutional Court intend to move to the direction of admitting and judging on the merits the

complaints against the judicial decisions held by the petitioners to be in breach of the law, declaring the breach of the law considered evident, and annulling the challenged court judgement on the basis of the violation of the right to a fair trial, even in the absence of the violation of any other fundamental right?

- [40] The question needs to be posed in this wording, as there have been numerous cases where, according to the complainant, the judge had decided wrongly, or even *contra legem*, in the case submitted to the Constitutional Court – there could have been also cases where the applicable law had been chosen incorrectly – still the Constitutional Court refused to admit the complaint {just to mention some cases: Decision 3003/2012. (VI. 21.) AB, Reasoning [4], Decision 3268/2012. (X. 4.) AB, Reasoning [28], Decision No. 3352/2012. (XI. 12.) AB, Reasoning [14]–[15], Decision 3392/2012. (XII. 30.) AB, Reasoning [6], Decision 3017/2013. (I. 28.) AB, Reasoning [3], Decision 3028/2014. (II. 17.) AB, Reasoning [12], Decision 3037/2014. (III. 13.) AB, Reasoning [30], Decision 3098/2014. (IV. 11.) AB, Reasoning [28], Decision No. 3182/2016. (X. 4.) AB, Reasoning [30]–[35]}. According to the case-law of the Constitutional Court, "the laws shall be interpreted by the courts, the Constitutional Court may only set the constitutional limits of the range of interpretation. This competence, however, may not establish a ground for the Constitutional Court to interfere with the courts' activities every time when an (allegedly) unlawful application of the law takes place that cannot be remedied by other means of legal remedy. [...] A factual or legal error of the judge does not automatically make the whole procedure unfair, as such errors may never be fully eliminated and they are part of the judicial system as we know it today." {See for the first time in Decision 3325/2012. (XI. 12.) AB, Reasoning [14] – [15], most recently in Decision 3063/2017. (III. 31.) AB, Reasoning [44]}
- [41] Thus the decision changes the practice according to which the Constitutional Court is not a "supercourt", i.e. it is not a forum of legal remedy; it shall not take a stand in a question of interpreting the law; a judicial decision, which is erroneous according to an objective standard shall not form a basis for an intervention by the Constitutional Court.
- [42] Personally, in the case concerned, I have not seen a constitutional injury of such gravity that would justify the qualification of twofold arbitrariness and the serious charge of misusing judicial independence. I was not convinced that the statutory regulations of private law on the liability for damages caused by huntable animals in force in the period between 15 March 2014 and 4 May 2015 had clearly and undoubtedly excluded the application of the rules on the concurrence of hazardous operations in the case of a car/deer collision. Moreover, for me it was not evident or undoubtedly that the proceeding judicial panel – although it may have been wrong in choosing the law to be applied – had wilfully contravened the law identified by the Constitutional Court as the law in force in the period relevant in the case. Let me note that the judgement under consideration does in fact contain – brief – arguments on the selection and the temporal status of the applicable law.

- [43] 3. In my opinion, it is also arguable that the majority decision identified Article R) (2) and Article XXVIII (1) as the legal basis of the decision. In my interpretation, Article R) (2) does not have any fundamental right element; therefore it may not be used as the basis of submitting a constitutional complaint. Additionally, it is evident for me that the judges are under the personal scope of Article R) (2), but in their case the subordination to the law is prescribed in Article 26 (1), which has multi-layer content. Indeed, the purpose of Article XXVIII (1) – as I have already explained in a concurring opinion attached to an earlier decision – is to grant that the court shall decide in the procedure appropriate for the enforcement of rights by taking into account the procedural guarantees, rather than protecting, as a fundamental right, the objectively correct result of the litigious procedure {Decision 3119/2017. (V. 30.) AB, Reasoning [34]}.
- [44] I hold that in a lawsuit, unlike the establishment of the facts of the case, determining the applicable law and the judicial interpretation of the law are questions of substantive law nature. Therefore, from the side of the Fundamental Law, these judicial functions can be interpreted as violations of Article B) (1). Accordingly, with regard to the "arbitrary" judicial decision that had lost its normative basis, the Constitutional Court should have interpreted Article B) (1). Let me note as well that the prohibition of retroactive legislation deductible from Article B) (1) would have also allowed for the deduction of a conflict with the Fundamental Law due to retroactive legislation.
- [45] This would have been a solution not unfamiliar with the case-law of the Constitutional Court. According to a former position taken – in 2015 – by the Constitutional Court, a *contra legem* judicial interpretation of the law also raises the issue of "violating the principle of the courts being subordinated to the law. It also follows from the principle, requirement of the rule of law that the interpretation of the law should not become the tool for an arbitrary and subjective decision by the judicial body. In a case to the contrary, the requirement of legal certainty as well as the expectation of having calculable and foreseeable judicial decisions would be impaired. {Decision 3026/2015. (II. 9.) AB, Reasoning [27]; Decision 3173/2015. (IX. 23.) AB, Reasoning [52]}.

Budapest, 11 July 2017

*dr. Ildikó Hörcherné dr. Marosi*  
Judge of the Constitutional Court

Dissenting opinion by Judge *Dr. László Salamon*

- [46] I do not agree with the annulment of the judgement, since – although the judicial application of the law was, in my opinion as well, arbitrary and *contra legem* – the Constitutional Court did not have the possibility, on the basis of the petition, to draw the legal consequences resulting from it.

- [47] The decision establishes the conflict with the Fundamental Law on the basis of the violation of Article XXVIII (1) of the Fundamental Law – interpreted also with account to Article R) (2) –, due to the infringement of the obligation to provide reasoning and because of arbitrary, *contra legem* application of the law – from two aspects.
- [48] 1. As I have already explained it in my dissenting opinion attached to the Decision 3173/2015. (IX. 23.) AB, I hold that the right to a fair trial as enshrined in Article XXVIII (1) of the Fundamental Law is only applicable to procedural questions; therefore if a provision of substantive law, and not a procedural one, is impaired during the judicial application of the law, no constitutionally assessable relation can be established between the infringement of the right and the provision of the Fundamental Law. The clearly arbitrary *contra legem* interpretation of the law by the court is not a procedural breach of the law: in my view, in addition to the concrete infringement, it violates the principle of the rule of law enshrined in Article B) (1) of the Fundamental Law. When the concrete infringement induces, at the same time, the violation of the petitioner's right enshrined in the Fundamental Law, it may serve as the basis of a constitutional complaint based on Section 27 of the ACC.
- [49] In the case of accepting, despite of the lack of any reference in the petition to Article B) (1) of the Fundamental Law, that the *contra legem* application of the law in the case concerned violates Article R) (2) of the Fundamental Law – about which I am not convinced, since the function of this rule is to lay down the requirement of law abiding conduct –, further problems shall arise because of the deficiency of the petition that does not indicate the infringement of any of the petitioner's rights enshrined in the Fundamental Law – with the exception of the right to a fair trial (the infringement of which is not substantiated as argued above).
- [50] 2. In my view, the petition fails to contain any argument to support the allegation that the court has not met its obligation to provide a reasoning of the judgement and thus violating the right to a fair trial. Therefore, I hold that the majority decision extends over the limits fixed by the strict rules on being bound to the petition; at the same time, the decision attributes an emphasized importance to this argumentation. Indeed, the judicial decision does contain reasoning – albeit a scant one – about why the the court had interpreted and applied in the challenged way the relevant laws. The fact that this reasoning contains a *contra legem* interpretation of the law is irrelevant concerning the performance of the obligation to provide reasoning; the existence of the reasoning and its correctness are separate questions.
- [51] Based on the above and by taking the circumstances into account, I hold that in the present case the petition should have been rejected or dismissed.

Budapest, 11 July 2017

*dr. László Salamon*  
Judge of the Constitutional Court