

2/2021 (I. 7.) AB decision

establishing the constitutional requirement arising from the fundamental right to the use of languages enshrined in Article XXIX (1) of the Fundamental Law in the application of section 113 (3) of the Act CXXX of 2016 on Civil Procedure

The Constitutional Court, sitting in plenary session, in the subject of a judicial initiative aimed at establishing the conflict with the Fundamental Law of a law, with the dissenting opinion of *Dr. Ágnes Czine*, Justice of the Constitutional Court, adopted the following

d e c i s i o n:

1. The Constitutional Court, acting ex officio, found that in the application of section 113 (3) of the Act CXXX of 2016 on Civil Procedure, it is a constitutional requirement arising from the fundamental right to use one's own language in civil proceedings, laid down in Article XXIX (1) of the Fundamental Law that all parties who must appear in person before the court and who are members of a nationality recognized in the Act on the Rights of Nationalities in Hungary shall be entitled under the same conditions to use the nationality language orally.

2. The Constitutional Court rejects the judicial initiatives aimed at establishing that section 113 (2) and (3) of the Act CXXX of 2016 on Civil Procedure is in conflict with the Fundamental Law and at its annulment.

3. The Constitutional Court rejects the judicial initiatives aimed at establishing that section 20 (3) of the Act CL of 2016 on General Administrative Procedure is in conflict with the Fundamental Law and at its annulment.

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

R e a s o n i n g

[1] 1 The judge of the Székesfehérvár Administrative and Labour Court suspended the hearing of the proceedings pending before it with its rulings No. 2.K.27.173/2018/14. and 2.K.27.174/2018/16 of 18 April 2019, and pursuant to section 25 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), has applied to the Constitutional Court with judicial initiatives requesting the establishment of a conflict with the Fundamental Law and the annulment of section 113 (2) and (3) of the Act CXXX of 2016 on the Civil Procedure (hereinafter: ACP) as well as section 20 (3) of the Act CL of 2016 on the General Administrative Procedure (hereinafter: GAP), as well as to exclude the application of these legal provisions in cases pending before the court (hereinafter: judicial initiative). In his view, the contested provisions are contrary to the right to the use of languages enshrined in Article XXIX (1) of the Fundamental Law, Article XXIX (3) of the Fundamental Law and the prohibition of discrimination under Article XV (2) of the Fundamental Law.

[2] The judge who initiated the proceedings challenged the same legal provisions in his motions for individual norm control, therefore the Constitutional Court applied the provisions of the section 58 (2) of the ACC and ordered the consolidation of the cases pending before it for the purpose of a joint examination and judgement.

[3] 2 In the cases in respect of which the judicial initiative was made, the applicants brought an action against the decisions of the defendant dated 22 August 2018 under the case numbers FE/06/00407-19/2018 and FE/06/00053-4/2018. In their application, the applicants complained, in summary, that during the administrative procedure the defendant did not grant them the right to use their mother tongue, despite the fact that they are of Ukrainian and Ruthenian nationality and thus belong to the nationalities living in Hungary.

[4] In their statement of claim, according to their content, the applicants requested the translation into Russian, Ukrainian or Ruthenian language the court- and other documents. The applicants have provided detailed reasoning for this request.

[5] 3 In the opinion of the petitioning judge, in the lawsuits pending before him, he must apply legal provisions which violate the fundamental right of nationalities living in Hungary to use their language as enshrined in Article XXIX (1) of the Fundamental Law, are contrary to Article XXIX (3) of the Fundamental Law and infringe the prohibition of discrimination under Article XV (2) of the Fundamental Law.

[6] The petitioning judge, supplementing his rulings, extended his motions to the future amendments of section 113 (3) of the ACP, which was known at that time as a draft law. According to his argument, the amendment, which entered into force with the same wording as written in the draft law, resulted in the same unconstitutional situation as that set out in his petition filed with respect to section 113 (2) of the ACP. In these supplementary rulings, he made a motion regarding the text of section 113 (2) of the ACP that should remain in force following the proposed decision of the Constitutional Court.

[7] 3.1. In the petitioner's view, the court should apply provisions of the law in the relevant proceedings – in particular, section 113 (2) of the ACP and the second sentence of section 20 (3) of GAP – which, in the opinion of the petitioning judge, are contrary to the provisions of the Fundamental Law.

[8] In the opinion of the petitioning judge, section 113 (2) of the ACP and the second sentence of section 20 (3) of GAP are contrary to the Fundamental Law for the following reasons.

[9] According to Article XXIX (1) of the Fundamental Law, nationalities living in Hungary have the right to use their mother tongue. The right to use one's mother tongue is enshrined in the part FREEDOM AND RESPONSIBILITY of the Fundamental Law, consequently it is a fundamental right. According to Article XV (2) of the Fundamental Law, Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

[10] From a comparison of these provisions of the Fundamental Law, it follows, according to the initiating judge, that Hungary must guarantee equal rights to all its national minorities in the use of their mother tongue, without any discrimination between them, and this is the case even if, pursuant to Article XXIX (3) of the Fundamental Law, the detailed rules governing the rights of national minorities living in Hungary are laid down by a cardinal Act. Indeed, the latter provision of the Fundamental Law does not provide any exemption from the prohibition of discrimination under Article XV (2) of the Fundamental Law.

[11] According to the petitioner, in the case of section 113 (2) of the ACP, however, the right of nationalities to use their mother tongue without discrimination is not enforced – contrary to the Fundamental Law – for the following reasons.

[12] According to section 113 (2) of the ACP, pleadings addressed to the court must be submitted in Hungarian language, unless otherwise provided by an Act of Parliament, a binding legal act of the European Union or an international convention. The court will send the pleadings and its decision in Hungarian language.

[13] Pursuant to section 36 (1) (a) of Act I of 2017 on the Code of Administrative Procedure (hereinafter: CAP), the aforementioned provision of the ACP shall apply to the use of languages in administrative proceedings, just as section 113 (1) and (3) of the ACP.

[14] Administrative proceedings are therefore conducted in Hungarian language with respect to written pleadings and judgements as a general rule, with the exception that pleadings may be submitted in a language other than Hungarian and that pleadings and judgements may be sent by the court in a language other than Hungarian if this is permitted by an Act of Parliament, a binding act of the European Union or an international convention. However, according to the judge who initiated the procedure, this exception does not apply equally to the nationalities living in Hungary for the following reasons.

[15] According to Annex 1 of the Act CLXXIX of 2011 on the Rights of Nationalities (hereinafter: Act on Nationalities), in Hungary, the Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian minorities qualify as nationalities. Pursuant to section 5 (1) of the Act on Nationalities, the State shall guarantee the conditions for the use of the language of persons belonging to a nationality – in the cases specified in a specific Act of Parliament – while according to paragraph (2) the use of the mother tongue in civil and criminal proceedings and in administrative proceedings is ensured by the relevant Act of Parliament on procedural law.

[16] According to the petitioner, it would follow from Article XV (2) and Article XXIX (1) of the Fundamental Law that all nationalities listed in Annex 1 of the Act on Nationalities., including the Ukrainian and the Ruthenian nationalities, should be entitled to the right to use their mother tongue under the same conditions in the application of the CAP and the ACP, including the option of the exception under section 113 (2) of the ACP.

[17] In the opinion of the referring judge, however, this is not the case, since, with respect to the provisions of the European Charter of Regional or Minority Languages (the “Language

Charter”), concluded on 5 November 1992 in Strasbourg, promulgated by the Act XL of 1999, the Government of the Republic of Hungary, when depositing the instrument of ratification of the Language Charter undertook obligations – but not all the obligations which could in principle be assumed in that area – in relation only to the Croatian, German, Romanian, Serbian, Slovak, Slovene, Romani and Boyash languages in the field of civil justice.

[18] According to the initiating judge, it follows from the above that the Government of the Republic of Hungary has not undertaken any obligations with regard to the Ukrainian and Ruthenian languages in the field of civil justice, and therefore the Language Charter does not grant the exception under section 113 (2) and (3) of the ACP with regard to these languages and consequently for the Ukrainian and Ruthenian nationalities. With regard to the Ukrainian and Ruthenian languages, the European Union does not have any binding act that would grant the exception according to section 113 (2) and (3) of the ACP. Nor is there any such provision in the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter referred to as the ECHR) and its Additional Protocol, promulgated by the Act XXXI of 1993. Neither does the International Covenant on Civil and Political Rights, nor the Treaty between the Republic of Hungary and Ukraine (hereinafter referred to as “the Parties”) on the Foundations of Good Neighbourliness and Cooperation signed in Kiev on 6 December 1991 (hereinafter referred to as the “Basic Treaty”) and the Declaration attached thereto, promulgated by the Act XLV of 1995, contain such provisions. With regard to the latter, the petitioner stressed that Article XIX of this Convention only provides for cooperation between the Parties in the field of mutual legal assistance in civil, criminal and family law matters, while according to point 3 of the Declaration to this Convention, the Parties undertake to take into account the legitimate interests of national minorities and to take the necessary political, legal and administrative measures to promote the creation of conditions favourable to the preservation and development of their ethnic, cultural, linguistic and religious identity.

[19] According to point 9 of the Declaration, although the parties shall take the necessary legislative, administrative and other measures to ensure that national minorities may freely exercise their right to use their mother tongue in personal and social life, both in the written and spoken language, including the use of their nationality first names and surnames, but this is only a commitment to take specific measures in the future and not the measure itself, which would ensure the possibility of applying in administrative litigations the exception under section 113 (2) and (3) of the ACP.

[20] Summarising all of the above, the petitioning judge's position is that it follows from Article XV (2) and Article XXIX (1) and (3) of the Fundamental Law that Hungary must grant all minorities listed in Annex 1 of the Act on Nationalities the same rights in the use of their mother tongues in civil and administrative proceedings. However, based on the above, this is not realised, as the Language Charter provides for the exception under section 113 (2) and (3) of the ACP for the Croatian, German, Romanian, Serbian, Slovak, Slovenian, Roma nationalities, but it does not grant this possibility for other nationalities, such as the Bulgarian, Greek, Polish, Armenian, Ruthenian and Ukrainian nationalities, nor do the other international conventions listed above provide for this option. The essence of the violation of fundamental rights, based on the foregoing, is therefore – in summary – that section 113 (2) and (3) of the ACP make the right to use a mother tongue other than Hungarian language in written pleadings and decisions

and in declarations subject to a condition, however, it imposes a condition which is not met equally by all nationalities in Hungary, as the Language Charter provides compliance for some nationalities but not for others, in particular the Ukrainian and Ruthenian nationalities subject to the present proceedings.

[21] In the opinion of the petitioning judge, if Hungary imposes conditions on the use of the mother tongue of national minorities in civil and administrative proceedings, then, on the basis of the aforementioned provisions of the Fundamental Law, it may only impose conditions which all nationalities can meet, since only in this way is the implementation of Article XV (2) of the Fundamental Law, i.e. the absence of any discrimination between them, ensured. Thus, according to section 113 (2) of the ACP, the plaintiffs who declare themselves to belong to the Ukrainian or Ruthenian nationality, although they belong to a nationality according to Annex 1 of the Act on Nationalities would have to submit their pleadings in Hungarian and not in their mother tongue – unlike those belonging to other nationalities according to the Language Charter –, and the court would also send them the pleadings and its decisions in the Hungarian language. This, based on the above, would constitute discrimination contrary to Article XV (2) of the Fundamental Law.

[22] In view of the above, the petitioning judge requested, on the basis of section 131 (1) of the ACP applicable under section 34 (b) of the CAP and section 25 (1) of the ACC, the Constitutional Court to declare that section 113 (2) and (3) of the ACP are contrary to the Fundamental Law and to preclude the application of those provisions in the proceedings in question.

[23] 3.2. The petitioning judge also sought a declaration of conflict with the Fundamental Law by section 20 (3) of the GAP with reference to Article XV (2) and Article XXIX (1) and (3) of the Fundamental Law. In the petitioner's view, it follows from these provisions that if a person subject to the Act on Nationalities may use his or her nationality language at the authority, the authority must send its decision on the application, in particular its order and decision, to the nationality client in the nationality language used by the client, without a separate request to that effect.

[24] However, section 20 (3) of the GAP does not provide for this, since in the case of an application submitted in a national minority language it requires a separate new application for the translation of the official decision into the national minority language. According to the petitioner, this, in turn, violates the right to use the mother tongue under Article XXIX (1) of the Fundamental Law, since if the first sentence of section 20 (3) of the GAP already guarantees the use of the nationality language, then the restriction of this right under the second sentence of Section 20 (3) of the GAP is unnecessary and disproportionate.

[25] In the opinion of the petitioning judge, therefore, if Hungary guarantees in section 20 (3) of the GAP the right to use the nationality language on the basis of Article XXIX (1) of the Fundamental Law and section 5 (2) of the Act on Nationalities, then it must guarantee this throughout the entire procedure, but at least it may not impose a restriction – which is contrary to Article XXIX (1) of the Fundamental Law, unnecessary and disproportionate – that the authority would translate the decision taken in Hungarian on the application submitted in the nationality language into that nationality language only at the request of the client.

[26] In the petitioner's view, the wording of the first sentence of section 20 (3) of the GAP, according to which a natural person subject to the Act on Nationalities may use his or her nationality language at the authority, should mean – with due regard to Article XXIX (1) of the Fundamental Law – not only that such a person may use his or her nationality language orally and in writing before the authority, but also that the authority communicates with him or her in that nationality language, since if this were not the case, the right to use one's mother tongue guaranteed by Article XXIX (1) of the Fundamental Law would only be enforced to an unnecessarily and disproportionately limited extent.

[27] In view of the foregoing, the judge who brought the motions requested, on the basis of section 25 (1) of the ACC, the Constitutional Court to declare that the second sentence of section 20 (3) of the GAP is contrary to the Fundamental Law and to exclude the application of this provision of law in the lawsuits pending before the judge.

[28] In view of initiating the proceedings of the Constitutional Court, the court suspended the proceedings on the basis of section 126 (1) (b) of the ACP applicable under section 34 (b) of the CAP and section 25 (1) of the ACC.

[29] 3.3. The petitioning judge invoked the violation of the right to use the mother tongue under Article XXIX (1) of the Fundamental Law, in the context of section 113 (2) and (3) of the ACP and the second sentence of section 20 (3) of the GAP. The Constitutional Court has therefore found that, in relation to Article XXIX (1) of the Fundamental Law, the judicial initiative concerns the first turn of the second sentence of that paragraph.

[30] 3.4. In the course of its proceedings, in line with section 57 (1) and (2) of the ACC, the Constitutional Court obtained the opinions of the General Deputy Prime Minister, the Minister of Foreign Affairs and Foreign Trade and the Minister of Justice.

II.

[31] 1. The provisions of the Fundamental Law referred to in the motions:

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

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

“Article XXIX (1) National minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national minority shall have the right to freely express and preserve his or her identity. National minorities living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues.

[...]

(3) The detailed rules relating to the rights of national minorities living in Hungary, the national

minorities, the requirements for recognition as a national minority, and the rules for the election of the self-governments of national minorities at local and national level shall be laid down in a cardinal Act. A cardinal Act may provide that recognition as a national minority shall be subject to a certain length of time of presence and to the initiative of a certain number of persons declaring to be members of the national minority concerned.”

[32] 2. The provisions of the ACP challenged in the petitions:

[33] 2.1. “Section 113 (2) Unless otherwise provided by an Act of Parliament, a binding act of the European Union or an international convention, submissions addressed to the courts shall be submitted in Hungarian language and the court shall also send its decision in Hungarian.”

[34] 2.2. The text of Section 113 (3) of the ACP in force until 9 July 2019:

“(3) In court proceedings, everyone shall have the right to use orally his or her mother tongue or, in the context of an international convention, his or her regional or nationality language.”

[35] 2.3. The text of section 113 (3) of the ACP in force from 10 July 2019:

“(3) In court proceedings, everyone shall have the right to use orally his or her mother tongue or, in the context of an international convention, his or her mother tongue, regional or nationality language. In court proceedings, members of all nationalities living in Hungary and recognised in the Act on the Rights of Nationalities shall have the right to use their nationality language in accordance with the provisions of the international convention on the use of regional or minority languages.”

[36] 3. The provision of the GAP challenged in the petitions:

“Section 20 (3) A person acting on behalf of a nationality organisation, as well as a natural person subject to the Act on the Rights of Nationalities, may use his or her nationality language at the authority. At the request of the client, the authority shall translate the Hungarian language decision on the application submitted in the nationality language into the language used in the application.”

[37] 4. The relevant paragraph of the Act III of 1952 on the Code of Civil Procedure (hereinafter: “former ACP”) in force as from 1 January 2012:

“Section 6 (2) In court proceedings, everyone shall have the right to use his or her mother tongue, regional or nationality language within the scope specified in an international convention.”

III

[38] The judicial initiative is unfounded.

[39] 1. First of all, the Constitutional Court examined whether the petitions comply with the criteria set forth by the law. Pursuant to section 25 of the ACC, on the basis of Article 24 (2) (b) of the Fundamental Law, a judge may – in addition to suspending court proceedings – initiate

with the Constitutional Court to declare a law or the provision of a law to be contrary to the Fundamental Law or to exclude the application of a law being contrary to the Fundamental Law, if in the course of the adjudication of an individual case pending before the judge, he or she has to apply a law which he or she finds to be contrary to the Fundamental Law or about which the Constitutional Court has already declared to be contrary to the Fundamental Law. The Constitutional Court found that the petitions partly fulfilled the conditions set out in section 25 and sections 51 to 52 of the ACC – with respect to the fundamental right to use languages enshrined in Article XXIX (1) of the Fundamental Law and Article XV (2) of the Fundamental Law {cf. Ruling 3058/2015. (III. 31.) AB, Reasoning [8] to [24], Decision 2/2016. (II. 8.) AB, Reasoning [26] to [28], Decision 3046/2016. (III. 22.) AB, Reasoning [8] to [13]}.

[40] With regard to the other references to the Fundamental Law, the petitions do not present any constitutional grounds, therefore, without examining the further conditions, the Constitutional Court found that the petitions do not comply with the provisions of section 52 (1b) of the ACC.

[41] According to the judicial initiative, in view of the plaintiff's claim, the contested legislation is applicable in the proceedings, the proceedings have been stayed and the motions contain – in the above scope – a definitive request, i.e. the petitions are suitable – in the part stated above – for being adjudicated on the merits.

[42] 2. The Constitutional Court examined the changes in the regulation of the use of the mother tongue as an institution of procedural law in Hungary.

[43] The demand for linguistic homogenisation in the pluralistic linguistic legal model that typically existed in historical Hungary and its affiliated parts appeared only in the 19th century, and even then it was far behind the practice of the states belonging to the assimilationist model, both in its means and its effects. In the Central European region, the language issue was regulated in the 19th century in a way that respected linguistic diversity and (also) took into account the needs of language users. This approach only appeared in the language-use legislation in Western European countries in the second half of the 20th century.

[44] The original text of the former ACP from 1952, on the other hand, did not reflect this earlier approach at all and only provided for an interpreter for persons who did not speak Hungarian. The amendments that came into force in 1973 already considered it important to take into account the difference between knowledge of the Hungarian language and belonging to another nationality (mother tongue), and also applied the relevant regulations to written submissions.

[45] After World War II, the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights promulgated in Hungary by Decree-Law No. 8 of 1976, the ECHR and other international conventions had an impact on Hungarian legislation. The content of the principle of the use of mother tongue has been significantly expanded with the entry into force of the Language Charter, a convention of major historical importance.

[46] The rights of national minorities are regulated by the Fundamental Law in a way similar to the approach found in the previous Constitution, with the difference that the previous

legislation was about the rights of national and ethnic minorities, while the current Fundamental Law regulates nationalities.

[47] Article XXIX (1) of the Fundamental Law lays down that the nationalities living in Hungary are constituent parts of the State. It also declares the right of nationalities to use their mother tongue. This fundamental right, enshrined in the Fundamental Law, together with the related rules, is enshrined in the first three paragraphs of section 113 of the ACP, as a fundamental principle of the use of the mother tongue, which in civil procedural doctrine is essentially characteristic of the administration of justice in general. According to this, the language of court proceedings is Hungarian, but the constitutional and legislative authorities (and, as an international legal entity, the Hungarian State) have endeavoured to ensure that, in accordance with international legal obligations, no one should be disadvantaged in civil proceedings because of the lack of language skills or other disadvantages (e.g. deaf-blindness) [Section 113 (1) of ACP].

[48] Hungary is therefore also obliged to protect nationalities on the basis of its obligations under international treaties. Such international treaties include the Copenhagen Document mentioned in the preamble of the Act on Nationalities, the ECHR, as well as the Language Charter and the Framework Convention for the Protection of National Minorities of the Council of Europe, signed in Strasbourg on 1 February 1995 (promulgated by the Act XXXIV of 1999, hereinafter referred to as the Framework Convention).

[49] The Constitutional Court states that Article 6 (3) (a) and (e) of the ECHR and Article 14 (3) (f) of the International Covenant on Civil and Political Rights, which concern the use of languages in the administration of justice, apply to criminal proceedings and not to civil and administrative proceedings.

[50] In summary, it can be concluded that on the basis of these international conventions, the Hungarian State has not undertaken any obligations with regard to the Ukrainian and Ruthenian languages in the field of civil justice, and therefore the Language Charter does not grant the exception under section 113 (2) of the ACP with regard to these languages and consequently for the Ukrainian and Ruthenian nationalities.

[51] With regard to the Ukrainian and Ruthenian languages, the European Union does not have any binding act that would replace section 113 (2) of the ACP, but there is no such provision in the ECHR and its Additional Protocol, nor in the International Covenant on Civil and Political Rights.

[52] Article XIX of the Basic Treaty establishes cooperation between the Parties in the field of mutual legal assistance in civil, criminal and family law matters. According to point 3 of the Declaration to this Convention, the Parties undertake to take into account the legitimate interests of national minorities and to take the necessary political, legal and administrative measures to promote the creation of conditions favourable to the preservation and development of their ethnic, cultural, linguistic and religious identity.

[53] According to point 9 of the Declaration, the Parties shall take the necessary legislative, administrative and other measures to ensure that national minorities may freely exercise their

right to use their mother tongue in personal and social life, both in written and spoken language, including the use of their national first names and surnames.

[54] According to the Language Charter: the term regional or minority languages refers to the languages traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and are different from the official language(s) of that State. However, it does not include either dialects of the official language(s) of the State or the languages of migrants; [Article 1 (a) of the Language Charter].

[55] The "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in the Charter [Article 1 (b) of the Language Charter].

[56] "Non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof [Article 1(c) of the Language Charter].

[57] Under the Language Charter, there are two levels of protection for languages, and the lower level of protection must be accepted by all signatories. According to this, the Language Charter states that: "in respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles: [...] (d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life" [Article 7 (1) of the Language Charter].

[58] The acceding states had to determine which language or languages they considered to be covered by the Language Charter. Hungary – one of the first countries to join and ratify the Language Charter – has designated Croatian, German, Romanian, Serbian, Slovak and Slovene, as well as the languages of Boyash and Romani. In addition – as the signatories could undertake to provide a higher level of protection for these languages – Hungary committed itself to allow, in accordance with Article 9 of the Language Charter, in civil and administrative proceedings, where a litigant has to appear in person before a court, to use his or her regional or minority language without incurring extra costs and/or to allow the submission of documents and evidence in regional or minority languages, if necessary with the help of interpreters and translations.

[59] According to the reasoning of the Act on Nationalities this Act provides definitions both of a nationality community and an individual belonging to a nationality. The Act makes it clear that the rights and obligations of nationalities apply to individuals and communities belonging to a nationality when they express their identity in the manner specified by an Act of Parliament or an implementing legislation.

[60] Pursuant to section 1 (2) of the Act on Nationalities, a person who is domiciled in Hungary and who considers himself or herself to belong to a nationality and declares his or her affiliation

with that nationality in the cases and in the manner specified in this Act shall be considered to belong to that nationality with respect to nationality rights and obligations.

[61] The nationalities pursuant to section 1 (1) of the Act on Nationalities are listed in Annex 1 to the Act on Nationalities.

[62] The definition of nationality language can be found in the Act on Nationalities. The Act on Nationalities thus not only lists the nationalities, but also includes the languages of the nationalities.

[63] Pursuant to section 22 (1) of the Act on Nationalities, the languages used by nationalities are Bulgarian, Greek, Croatian, Polish, German, Armenian, Romani/Gypsy (Romani and Boyash), Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian languages, and in the case of the Roma and Armenian nationalities, the Hungarian language as well.

[64] Section 5 (2) of the Act on Nationalities provides that in civil and criminal proceedings, as well as in administrative proceedings, the use of the mother tongue is guaranteed by the relevant Acts of Parliament of procedural law.

[65] In examining the scope of the rules of the ACP on the right to use languages, the Constitutional Court states that they must also be applied in proceedings other than civil proceedings.

[66] In certain civil non-contentious proceedings which fall within the competence of the civil court, the notary public, the bailiff, etc., on the basis of a specific provision relating to the specific non-contentious proceedings or on the basis of the functional scope of the ACP – according to which the ACP is to be applied as a background law also in proceedings which do not refer to the specific provision of the ACP – the rules of the ACP on the right to language-use are applicable.

[67] The challenged section 113 (2) and (3) of the ACP, which concern language-use are also applicable on the basis of section 36 (1) (a) of the CAP in administrative contentious and administrative non-contentious proceedings.

[68] Examining the current rules of the ACP, it is a fact that the law-maker, on the basis of the Fundamental Law and its commitments under international law, provides for separate rules on oral and written communication. Submissions to the court must be made in Hungarian language, and the court will send submissions and its decision in Hungarian, unless otherwise provided by an Act of Parliament, a binding legal act of the European Union or an international convention. [Section 113 (2) of the ACP]. The same solution was followed by the ACP in the case of the necessity of translation, as it allowed the use of simple translation in the absence of the three exceptions mentioned above. An authentic translation is only required if there is doubt as to the correctness or completeness of the translated text (section 62 of the ACP).

[69] The ACP contains specific provision for oral language-use. According to the original provisions of the ACP, in court proceedings, everyone shall have the right to use orally his or her mother tongue or, in the context of an international convention, his or her regional or

nationality language [Section 113 (3) of the ACP]. Section 150 of the Act LXVI of 2019 on the Foundation of the 2020 Central Budget of Hungary amended section 113 (3) of the ACP as follows: "(3) In court proceedings, everyone shall have the right to use orally his or her mother tongue or, in the context of an international convention, his or her mother tongue, regional or nationality language. In court proceedings, members of all nationalities living in Hungary and recognised in the Act on the Rights of Nationalities shall have the right to use their nationality language in accordance with the provisions of the international convention on the use of regional or minority languages." The amendment took effect on 10 July, 2019. According to the reasoning of the amendment: "Amending the rules of the ACP on the use of languages aims to implement the provision of Article XXIX (1) of the Fundamental Law on the use of languages by nationalities. The amendment of section 113 (3) of the ACP ensures for every member of a nationality living in Hungary and recognised in the Act on the Rights of Nationalities to use his or her nationality language in accordance with the provisions of the international convention on the use of regional or minority languages."

[70] The court shall appoint an interpreter or a translator if it is necessary in order to enforce the rights of language-use or otherwise needed pursuant to the provisions of the ACP relating to language-use. As a general rule, the provisions of the ACP applicable to seconded experts shall apply to interpreters and translators [Section 61 (1) to (2) of the ACP]. Unless otherwise provided by Act of Parliament, a legally binding act of the European Union or an international treaty, the costs of the seconded interpreter's services which are not related to the taking of evidence shall be advanced by the party whose person necessitated the use of the interpreter in the proceedings [Section 79 (2) of the ACP]. For example, the Language Charter contains such a different provision for regional or minority language users under the accession documents, who are exempted from the advance payment obligation.

[71] Under the general rules, however, the costs of the use of a translator in relation to pleadings which are not related to the taking of evidence are advanced by the party, e.g. the plaintiff in relation to the statement of claim [Section 79 (3) of the ACP].

[72] Section 20 of the GAP lays down the most important provisions concerning language-use.

[73] "Section 20 [Official language of the procedure]

(1) The official language of the administrative procedure shall be Hungarian. This does not prevent the consular officer and the minister responsible for foreign policy from using another language in their proceedings.

(2) The bodies of the municipal-, regional- and national-level nationality self-governments may determine in a resolution the official language – in addition to the Hungarian language – of the official proceedings falling within their competence.

(3) A person acting on behalf of a nationality organisation, as well as a natural person subject to the Act on the Rights of Nationalities, may use his or her nationality language at the authority. At the request of the client, the authority shall translate the Hungarian language decision on the application submitted in the nationality language into the language used in the application.

(4) In the event of a discrepancy between the Hungarian and the foreign language texts of the decision of the authority, the Hungarian text shall be considered authentic.

(5) Different rules on the use of languages may be laid down by law for the issue of official cards, official certificates and the manner of registration in the official register.”

[74] The minor inconsistency in the legislation identified in respect of the Act CXL of 2004 on the General Rules of Administrative Procedure and Services and the Act on Nationalities can also be found in the GAP. Section 20 (3) of the GAP – similarly to section 9 (3) of the Act on the General Rules of Administrative Procedure and Services – refers to “nationality language”, whereas section 22 (1) of the Act on Nationalities defines the Bulgarian, Greek, Croatian, Polish, German, Armenian, Romani/Gypsy (Romani and Boyash), Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian languages – and in the case of the Roma and Armenian nationalities, also the Hungarian language – as “languages used by nationalities”. This difference, however, does not result in a difference in content: these languages can be used as nationality languages in official procedures.

[75] A nationality language user may use his or her nationality language both orally and in writing. However, the authority is not obliged to automatically translate the decision closing the case on the application. According to section 20 (3) of the GAP, this needs to be requested specifically: at the request of the client, the authority shall translate the Hungarian language decision on the application submitted in the nationality language into the language used in the application.

[76] With respect to the right of foreigners to use their language, section 21 of the GAP stipulates the following:

“(1) If the authority initiates ex officio proceedings involving an immediate procedural step in the case of a natural person client who is not a Hungarian citizen and does not speak the Hungarian language during the period of his/her stay in Hungary, or if the natural person client applies to the Hungarian authority for immediate legal protection, the authority shall ensure that the client is not disadvantaged by his/her lack of Hungarian language skills.

(2) Also in cases not falling within the scope of paragraph (1), a client who does not speak the Hungarian language may request the authority to decide on his/her request in his/her mother tongue or in an intermediary language, subject to the advance payment and bearing of the translation and interpretation costs.”

[77] Pursuant to section 127 (2) of the GAP, the proceeding authority shall bear the costs of translation and interpretation incurred pursuant to section 21 (1) of the Act.

[78] 3. The Constitutional Court has examined the content of the fundamental right to the use of languages under Article XXIX (1) of the Fundamental Law.

[79] 3.1. According to Article H (1) of the Fundamental Law, the official language in Hungary is Hungarian. The provisions of Article XXIX of the Fundamental Law concerning the fundamental rights of nationalities are also a continuation of historical traditions and comply with

international commitments. According to paragraph (1): “National minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national minority shall have the right to freely express and preserve his or her identity. National minorities living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues.”

[80] With regard to section 113 (2) and (3) of the ACP and the second sentence of section 20 (3) of the GAP, the petitioning judge referred to a violation of the right to use the mother tongue pursuant to Article XXIX (1) of the Fundamental Law.

[81] The Constitutional Court has therefore found that the judicial initiative concerns the first turn of the second sentence of Article XXIX (1) of the Fundamental Law. The Constitutional Court has found that the Fundamental Law contains the term “national minorities living in Hungary”. The Fundamental Law categorically states that the national minorities living in Hungary have the right to use their mother tongue.

[82] According to Article H (1) of the Fundamental Law: “In Hungary the official language shall be Hungarian.” The sectoral procedural laws described above stipulate that the language of the proceedings is Hungarian, while at the same time the right to use the mother tongue is stipulated in the relevant procedural code.

[83] However, there is a difference between the specific procedural laws as to who has to advance and who has to bear the costs incurred by the right of nationalities living in Hungary to use their mother tongue. In accordance with the international obligations undertaken by Hungary, the Criminal Procedure Act, the Code of Administrative Offences and the GAP provide for the use of the nationality language for members of the nationality, both orally and in writing, free of charge. Section 113 (3) of the ACP similarly provides to the extent that, on the basis of its interpretation in conjunction with other applicable provisions of the law, all parties who are required to appear in person before the court and who are members of a nationality living in Hungary and recognised in the Act on the Rights of Nationalities are entitled to the right to use their nationality language orally in civil proceedings, in administrative proceedings and in non-contentious proceedings, exempt from the payment of the related costs (interpreter's fee).

[84] The Constitutional Court points out that in accordance with the current wording of section 113 (3) of the ACP, section 113 (2) of the ACP should be interpreted – in order to ensure the fundamental right to language-use as enshrined in Article XXIX (1) of the Fundamental Law – in such a way that all members of nationalities recognised in the Act on Nationalities are also subject to paragraph (2). This, according to section 113 (2) of the ACP, read in conjunction with other applicable provisions of law, means that a member of a nationality recognised in the Act on Nationalities who is living in Hungary is entitled to submit documents and evidence in his or her nationality language to the court, if necessary with the assistance of interpreters and translations.

[85] With regard to section 113 (2) of the ACP, it should be pointed out that Hungary has not made any commitment concerning Language Charter on the written use of languages by

members of nationalities in civil proceedings, administrative proceedings and non-contentious proceedings that would ensure free of charge written communication for persons belonging to minorities listed in the Language Charter. However, for members of nationalities, for example, the rules on cost reductions are also applicable in this case.

[86] Thus, regarding section 113 (2) of the ACP, on the bearing of costs, the petitioning judge wrongly pointed to an alleged distinction he believed to exist, as a supposedly different regulation. The use of the language of a member of a nationality within the meaning of the Act on Nationalities is permitted by the Acts on procedural law, both orally and in writing. The Constitutional Court has found that no infringement of the right to use the mother tongue can be established in respect of the provisions referred to by the petitioner.

[87] 3.2. The Constitutional Court further examined the obligations of persons belonging to a nationality (members of the nationality) under the cited provisions of the ACP and the GAP, challenged by the petitioner, that they must make a declaration or submit a petition, and that the courts or administrative bodies would grant them special benefits that ensure the use of the nationality language only on this ground, with reference to this – i.e. after making such a request.

[88] The Constitutional Court held that the violation of the right to use one's mother tongue guaranteed by Article XXIX (1) of the Fundamental Law, as alleged by the judge initiating the proceedings, could not be verified in this respect either.

[89] The Constitutional Court primarily held that the provisions of section 11 of the Act on Nationalities must be applied in this respect as well:

“Section 11 (1) Declaring affiliation with a national minority shall be the individual's exclusive and inalienable right.

(2) No one shall be obliged to make a declaration on his affiliation with a national minority; however, an Act or the law for the implementation of that Act may make the exercise of certain national minority rights conditional on the individual's declaration.

(3) The right to a national minority identity and the declaration of affiliation with a national minority shall not exclude the recognition of double or multiple affiliations, except as set forth in this Act.”

[90] The Constitutional Court states that in order to guarantee the right to use the mother tongue as a fundamental right guaranteed by Article XXIX (1) of the Fundamental Law, the State has an objective obligation to protect institutions under Article 25 of the Fundamental Law. In the course of exercising his or her constitutional rights and performing the constitutional obligations, the individual shall be bound to cooperate not only with the members of the community, but also with the State obliged to grant protection for the institutions.

[91] Individual natural persons know the active and passive levels of their own (Hungarian) language-use. The courts, authorities and administrative bodies can only find out about the mother tongue of natural persons and their level of various oral and written language skills

(e.g. active or passive language skills, general language skills, certain technical languages skills, etc.) on the basis of a declaration by the party to the proceedings.

[92] Decisions made on the basis of the ACP and the GAP may be used by the member of the nationality in other proceedings or even in his or her legal relationships with the members of the same nationality. These and other similar circumstances are not known *ex officio* to the court or administrative body proceeding in the case, thus it cannot consider them. For this reason, the declaration of the natural person is required in respect of language-use, interpretation and translation needs other than the language of the proceedings, i.e. Hungarian. It is in the interest and ultimately part of the duty of cooperation of all parties and clients to keep the costs of the proceedings under control.

[93] According to Article O) of the Fundamental Law: "Everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities." The formula of the man's image first emerged in the Decision 3110/2013. (VI. 4.) AB in the case law of the Constitutional Court. As pointed out by the Constitutional Court in the relevant decision, "the Fundamental Law defines relation between the individual and the community by focusing on the individual being tied to the community, without, however, affecting his or her individual value. This follows from in particular from Article O) and Article II of the Fundamental Law." {Reasoning [49]}, reiterated in the Decision 32/2013. (XI. 22.) AB, Reasoning [88]} With respect to the formula of the man's image, in the Decision 3132/2013. (VII. 2.) AB, the Constitutional Court examined whether laying down the patients' obligation of cooperation was incompatible with the Fundamental Law. As emphasized in the above decision of the Constitutional Court, "the man's image in the Fundamental Law is not that of an isolated individual, but of a responsible personality living in the society. This follows from in particular from Article O) of the Fundamental Law." (Reasoning [95]) As interpreted by the Constitutional Court, the following consequences shall be drawn from the above. Individuals live in the community, thus, also in the course of exercising his or her constitutional rights, the individual is responsible not only for himself or herself, but also for the other members of the community; the exercising of constitutional rights should be in balance with his or her responsibility, taken as the member of the community, also for the community. Performing the obligation of cooperation is indispensable for maintaining this balance. {see Decision 19/2019. (VI. 18.) AB (hereinafter: CCDec 1), Reasoning [61]}.

[94] In line with Article O) of the Fundamental Law, the person responsible both for himself or herself and for the members of the community shall be obliged to contribute to the performance of the State's duty, and he or she should actively cooperate in performing it effectively. In other words, the individual has to cooperate with the State in performing the State's duty. {See: CCDec 1, Reasoning [61]}.

[95] The effective and objective protection of the institutions, as the constitutional obligation of the State, cannot be implemented without the cooperation of the affected individuals (See: CCDec 1, Reasoning [62]). The Constitutional Court is not competent to assess from a constitutional point of view the reasonableness or the efficiency of the construction and the operation of the institutional system. Nevertheless, it has to assess, in the framework of the obligation of cooperation, whether the State has performed its objective obligation of protecting the institutions, and whether it has provided for the conditions of the

constitutionally expected cooperation. The challenged provisions of the ACP and the GAP comply with the international obligation that Hungary has optionally undertaken, and ensure the right of nationalities to use their mother tongue.

[96] The Constitutional Court held that the right to use one's mother tongue guaranteed by Article XXIX (1) of the Fundamental Law is not infringed – as alleged by the judge initiating the proceedings – by the regulations under the quoted provisions of the ACP and the GAP, and that no infringement of this right can be established with regard to the provisions cited by the petitioner.

[97] 4. The Constitutional Court also examined the element of the petitions asking the Constitutional Court to declare that section 113 (2) and (3) of the ACP as well as the second sentence of section 20 (3) of the GAP infringe the prohibition of discrimination under Article XV (2) of the Fundamental Law.

[98] 4.1. The essence of the violation of fundamental rights is, according to the judge who initiated the proceedings, – in summary – that section 113 (2) and (3) of the ACP make the right to use a mother tongue other than Hungarian language in written pleadings and decisions and in declarations subject to a condition, however, they impose a condition which is not met equally by all nationalities listed in the Act on Nationalities, as the Language Charter provides compliance for some nationalities but not for others, in particular the Ukrainian and Ruthenian nationalities subject to the present proceedings.

[99] The petitioner also sought the declaration of a conflict with the Fundamental Law by the second sentence of section 20 (3) of the GAP with reference to Article XV (2) of the Fundamental Law. In the petitioner's view, it follows from these provisions that if a person subject to the Act on Nationalities may use his or her nationality language at the authority, the authority must send its decision on the application, in particular its order and decision, to the nationality client in the nationality language used by the client, without a separate request to that effect.

[100] From a comparison of the provisions of the Fundamental Law, it follows, according to the initiating judge, that Hungary must guarantee equal rights to all its established nationalities in the use of their mother tongue, without any discrimination between them, and this is the case even if, pursuant to Article XXIX (3) of the Fundamental Law, the detailed rules governing the rights of national minorities living in Hungary are laid down by a cardinal Act. Indeed, the latter provision of the Fundamental Law does not provide any exemption from the prohibition of discrimination under Article XV (2) of the Fundamental Law.

[101] 4.2. The Constitutional Court records that it upholds its previous decisions in relation to Article XV (2) of the Fundamental Law.

[102] As stated in Article II of the Fundamental Law: "Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception." According to the first sentence of Article XV (1): "Everyone shall be equal before the law." Article XV (2) declares the following: "Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without

discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”

[103] The Constitutional Court has ruled in its previous decisions: “The National Avowal of the Fundamental Law – which, in the light of Article R (3) of the Fundamental Law, provides a guidance for the interpretation of the provisions of the Fundamental Law – enumerates in the first place among the vows that are binding for Hungarian constitutionalism: “We hold that human existence is based on human dignity.” Article II of the Fundamental Law – in contrast to the previous Constitution – explicitly declares the right to human dignity inviolable {In this context: Decision 11/2014. (IV. 4.) AB, Reasoning [29]}. The prohibition of discrimination resulting in the violation of human dignity has always been – and still is – closely linked to the interpretation of the right to human dignity. This follows directly from the fact that all human beings are equal by virtue of their existence, and that making any distinction linked to human quality is absolutely prohibited. Dignity can only be meaningful if it is equally and unconditionally granted to all. Article XV (1) of the Fundamental Law states the general equality of rights, while Article XV (2) – similarly to Article 70/A (1) of the former Constitution – prohibits discrimination with regard to fundamental rights. In the year of the entry into force of the Fundamental Law, the Constitutional Court interpreted Article XV, confirming its – inseparable – link to human dignity. Decision 42/2012 (XII. 20.) AB (hereinafter: CCDec2) has elaborated in detail the provisions of Article XV, examining the differences formulated by the legislation in comparison with the previous Constitution.

[104] According to paragraph [22] of the reasoning of CCDec2: “Article XV of the Fundamental Law contains both the general rule of equality [paragraph (1)] as well as the equality of fundamental rights and the prohibition of discrimination [paragraph (2)].” {furthermore: Decision 32/2015. (XI. 19.) AB, Reasoning [78] to [79]; Decision 30/2017. (XI. 14.) AB, Reasoning [50] to [52]}. The case law of the Constitutional Court interprets Article XV (1) of the Fundamental Law – as in the foregoing, but now on the basis of specific provisions – in connection with and inseparable from the right to human dignity. According to paragraphs [23] to [24] of the reasoning of CCDec2: “The essential content of equality before the law remains – in line with the previous case law of the Constitutional Court – the equal dignity of human beings. The human dignity clause of the Fundamental Law precludes any different interpretation of equality before the law, while at the same time it continues to define its content.” {cf. Decision 3157/2018. (V. 16.) AB (hereinafter: CCDec3), Reasoning [31]}

[105] The Constitutional Court also stated that “the general rule of equality [...] can be based on Article XV (1) of the Fundamental Law. This is a dogmatic simplification, while [...] the necessary link between equal dignity [...] and substantive equality before the law remains unchanged, because the ultimate basis of equality is equal dignity.” (CCDec2., Reasoning [25]) Paragraph [23] of the reasoning of the Decision 3206/2014 (VII.21.) AB made the relationship between the right to human dignity (Article II of the Fundamental Law) and general equality of rights even clearer: “the general rule of equality enshrined in Article XV (1) of the Fundamental Law [...] which ensures equal treatment in respect of all rules of the legal order because the ultimate source of equality is equal human dignity. Thus the equal rights clause imposes a constitutional command on those exercising public power to treat all persons as having equal dignity and to weigh their considerations with equal standards and fairness. It follows from this that a given regulation is considered to be incompatible with the constitutional standard of

Article XV (1) of the Fundamental Law if it ultimately violates the right to human dignity. In other words, the principle of equal rights does not prohibit any differentiations, it only prohibits discriminations that violate human dignity. {Furthermore: Decision 23/2016. (XII. 12.) AB, Reasoning [98] to [99]; Decision 13/2017. (VI. 19.) AB, Reasoning [55] to [58]; Decision 30/2017. (XI. 14.) AB, Reasoning [50]} The Constitutional Court's case law therefore considers the right to human dignity to be the source of the general equality of rights." {See in summary: CCDec 3, Reasoning [31] to [32]}.

[106] The Constitutional Court has summarised (and confirmed) in paragraph [28] of the reasoning of CCDec2 the aspects to be taken into account in the case of discrimination that may offend human dignity. Accordingly, "a different regulation for a given homogeneous group within the same regulatory concept is contrary to the prohibition of discrimination, unless the difference has a reasonable constitutional justification of sufficient weight, i.e. it is not arbitrary [...]. Pursuant to the consistent case law of the Constitutional Court, however, [...], no discrimination shall be established when the law provides for different rules concerning the scope of subjects having different characteristics as an unconstitutional discrimination is only possible with regard to a comparable scope of persons who belong to the same group {Reinforced by e.g.: Decision 7/2015. (III. 19.) AB, Reasoning [56]; Decision 32/2015. (XI. 19.) AB, Reasoning [80]; Decision 30/2017. (XI. 14.) AB, Reasoning [50]; CCDec3, Reasoning [35]}.

[107] The Constitutional Court found that both the ACP and the GAP – their provisions contested by the petitioner – grant additional rights to the members of nationalities, compared to the rights granted to natural persons with Hungarian mother tongue or not belonging to a nationality.

[108] The petitioning judge referred to the prohibition of discrimination with regard to certain groups of nationalities. According to the essence of this allegation, by codifying section 113 (2) and (3), the law-maker failed – in violation of the right guaranteed by Article XV (2) of the Fundamental Law – to bring all members of minorities under the same personal scope of the regulation to which they would all belong due to their legal status.

[109] With regard to the nationalities listed in the Act on Nationalities, – according to the above – section 113 (2) and (3) of the ACP and Section 20 (3) of the GAP do not make any distinction.

[110] The Constitutional Court examined the reference made by the petitioner judge with respect to the differentiation of the costs of translating pleadings into Hungarian language and of translating court decisions into the nationality language on the basis of section 113 (2) of the ACP, alleged by the petitioner to constitute a violation of the prohibition of discrimination contrary to the Fundamental Law.

[111] The Constitutional Court points out that in paragraph [28] of the reasoning of the Decision 3192/2016 (X. 4.) AB, it has already stated that neither Article B (1) (rule of law) nor Article XXIV (1) (fair administration) of the Fundamental Law implies that the parties in administrative and judicial proceedings are guaranteed the fundamental right to use their mother tongue free of charge in all cases.

[112] Section 113 (2) of the ACP specifies three exceptions: an Act of Parliament, a binding act of the European Union or an international convention may provide that submissions addressed to the courts shall be submitted in a language other than Hungarian, and the court shall send the pleadings and its decision in a language other than Hungarian. Continuing the investigation in this context, it can be concluded that by taking into account the provisions under section 113 (3) of the ACP, with respect to the nationalities covered by the scope of the Act on Nationalities – including members of the Ruthenian and the Ukrainian nationalities –, the Language Charter is the currently valid international document applicable in the case of civil proceedings, and thus to the ACP, which lays down the most important procedural rules in civil proceedings.

[113] Based on section 113 (2) of the ACP, the same rules shall apply to members of the nationalities recognised in Hungary. In the ACP, the rules on the use of languages other than Hungarian have been developed in accordance with Hungary's international obligations, the Fundamental Law of Hungary and the Act on Nationalities.

[114] Thus, with the amended provision of section 113 (3) of the ACP – presented above –, the legislator guarantees the same level of language-use to the members of all nationalities listed in the Act on Nationalities, as parties of a litigation, as to the nationalities specified in the Language Charter. As a regulatory principle, the ACP does not provide for a specific rule on the bearing of costs in the context of language-use, however, in section 102 (6) the ACP lays down that “the State shall bear the costs pursuant to a law, a binding legal act of the European Union or an international treaty, as well as the costs and fees not reimbursed by virtue of partial legal aid or according to paragraphs (1) to (5)”.

[115] According to the cited section 102 (6) of the ACP, the provisions of the Language Charter are therefore applicable to the use of a regional or minority language, as to whether there are any costs that remain the duty of the State, i.e. that the State has to bear.

[116] In view of the above, when section 113 (3) of the ACP provides that members of all nationalities living in Hungary and recognised in the Act on the Rights of Nationalities shall have the right to use their nationality language in accordance with the provisions of the international convention on the use of regional or minority languages, it also means that the international convention, i.e. the Language Charter, applies to the costs of granting the language-use, as the Language Charter regulates this as well. Thus, if a party who is a member of a nationality recognised by the Act on the Rights of Nationalities and who has to appear in person before the court wishes to use his or her national language in person, he or she may do so without incurring any extra costs, i.e. the cost of providing an interpreter remains to be borne by the State.

[117] A member of a nationality recognised in the Act on Nationalities is also entitled to submit documents and evidence in his or her nationality language in civil proceedings, but this is no longer provided free of charge, as is the case with regional or minority languages, since Hungary has not made such a commitment with regard to the Language Charter.

[118] The cost of translating all documents – whether in regional, minority or nationality languages – would represent a significant additional budgetary burden for the State, while the

Language Charter itself does not require States that join the Language Charter to make all forms of language-use exempt from cost.

[119] The Constitutional Court holds that, insofar as the provisions of the Fundamental Law are not infringed, it is the responsibility of the law-maker to determine the scope of the State's obligation to bear the costs of certain elements of the litigation, also with regard to the budgetary framework.

[120] With regard to the second sentence of section 20 (3) of the GAP, the Constitutional Court held that clients who declare themselves to be members of the nationalities listed in the Act on Nationalities constitute a homogeneous group. With regard to this homogeneous group, section 20 (3) of the GAP contains the same provision, i.e. it lays down the same rights and obligations.

[121] Taking into account the provisions of the ACP, the Constitutional Court found those parties who declare themselves to be members of any of the nationalities listed in the Act on Nationalities constitute a homogeneous group. The same rules apply with regard to section 113 (2) and (3) of the ACP, i.e. they have the same rights and are subject to the same obligations.

[122] Taking all this into account, the Constitutional Court concluded that the submissions of the petitioning judge did not prove that the law-maker had determined the personal scope of the legislation in violation of Article XV (2) (ultimately the equal dignity arising from Article II of the Fundamental Law), and therefore the Constitutional Court rejected the petitioning judge's application in this respect as well.

[123] The Constitutional Court emphasises that the rights of nationalities, including the right to use their mother tongue in the administration of justice, enjoy constitutional protection. The specific judicial initiative, however, did not deduct the violation of a fundamental right, in the light of the provisions of the Fundamental Law and the obligations undertaken in international treaties.

[124] 5. With regard to the other elements of the judicial initiative, the Constitutional Court, in the light of its standing case law, draws attention to the following. "The Constitutional Court has examined several times the regulation of the judicial initiative for individual norm control, and in its decisions it has stated that the judicial initiative can only be aimed at establishing the unconstitutionality of a law and annulling it, and that a judge may not propose in a pending case the declaration of the existence of an omission contrary to the Fundamental Law" {Decision 3135/2013. (VII. 2.) AB, Reasoning [19].

[125] In the light of the foregoing, it should be concluded that, in the case of the elements of the initiative which set out a task or provide guidance to the law-maker, the petitioning judge has in fact brought an application for a declaration of an infringement of the fundamental law by omission, to which he is not entitled. Thus, the Constitutional Court did not examine the merits of these elements of the petition.

[126] The judicial initiative at issue in the present case does not affect the system of statutory

criteria of belonging to a nationality, and therefore the Constitutional Court did not take a position on this issue either.

[127] 6. As the Constitutional Court has not annulled the challenged provisions of the ACP and the GAP, it did not have to decide about ordering a prohibition of application.

IV

[128] According to section 46 (3) of the ACC, in the procedure carried out in the course of exercising its competences, the Constitutional Court may specify constitutional requirements – that result from the Fundamental Law and that enforce the provisions of the Fundamental Law – the reviewed law has to comply with. In the present case, the Constitutional Court held that – on the basis of its competence laid down in section 46 (3) of the ACC – by formulating a constitutional requirement and at the same time saving the law in force, it has the possibility to remedy an arbitrary interpretation, deductible from the wording of section 113 (3) of the ACP, – leading to a result contrary to the fundamental right to use one’s own language as enshrined in Article XXIX (1) of the Fundamental Law. This arbitrary interpretation attempts to find differences between the regulations applicable to the oral communication in civil proceedings by the members of certain nationalities.

The Constitutional Court, acting *ex officio*, found that in the application of section 113 (3) of the ACP, it is a constitutional requirement arising from the fundamental right to use one’s own language in civil proceedings, laid down in Article XXIX (1) of the Fundamental Law that all parties who must appear in person before the court and who are members of a nationality recognized in the Act on the Rights of Nationalities in Hungary shall be entitled under the same conditions to use the nationality language orally.

[130] The Constitutional Court stresses that the Language Charter lays down rules not only with regard to the provision of language-use, but also with regard to the bearing of the costs related to the provision of language-use.

[131] The ACP does not provide for a specific rule on the bearing of costs in the context of language-use, however, in section 102 (6) the ACP lays down that “the State shall bear the costs pursuant to a law, a binding legal act of the European Union or an international treaty, as well as the costs and fees not reimbursed by virtue of partial legal aid or according to paragraphs (1) to (5)”.

[132] According to the cited section 102 (6) of the ACP, the provisions of the Language Charter are therefore applicable to the use of a regional or minority language, as to whether there are any costs that remain the duty of the State, i.e. that the State has to bear.

[133] Under the Language Charter, Hungary ensures that a party appearing in person in civil and administrative court proceedings may use his or her regional or minority language without incurring extra costs [Articles 9.1 (b) (ii) and 9.1 (c) (ii)].

[134] The Constitutional Court holds that, in view of the above, as section 113 (3) of the ACP provides that members of all nationalities living in Hungary and recognised in the Act on the

Rights of Nationalities shall have the right to use their nationality language in accordance with the provisions of the international convention on the use of regional or minority languages, it also means that the international convention, i.e. the Charter, applies to the costs of granting the language-use, as the Language Charter regulates this as well. Thus, if a party is a member of a nationality recognized in the Act on the Rights of Nationalities living in Hungary and wishes to use his or her nationality language orally during his or her personal appearance, he or she may do so without incurring any additional costs to him or her.

[135] Section 113 (3) of the ACP has a determining role to the extent that, on the basis of its interpretation in conjunction with other applicable provisions of the law, all parties who are required to appear in person before the court and who are members of a nationality living in Hungary and recognised in the Act on the Rights of Nationalities are entitled to the right to use their nationality language orally in civil proceedings, in administrative proceedings and in non-contentious proceedings, exempt from the payment of the related costs (interpreter's fee).

[136] The constitutional requirement facilitates the judicial interpretation of section 113 (3) of the ACP contested in the petition, in line with the fundamental right to the use of language enshrined in Article XXIX (1) of the Fundamental Law.

[137] The pre-amendment statutory text of section 113 (3) and the section 6 (2) of the old ACP are identical with regard to their content as explained above. The result (the implemented aim) of the amendment of the relevant section of the ACP – according to its reasoning – is “to guarantee for every member of a nationality living in Hungary and recognised in the Act on the Rights of Nationalities to use his or her nationality language in accordance with the provisions of the international convention on the use of regional or minority languages”. This result can only be achieved if section 6 (2) of the old ACP applicable in pending cases under section 630 (6) of the ACP also has to be interpreted in accordance with the constitutional requirement applicable to the ACP in force.

[138] In view of all this, the Constitutional Court found that the requirement of a close connection of the content, as specified in the Fundamental Law, is fulfilled, therefore, section 6 (2) of the old ACP must also be interpreted with the content specified in the constitutional requirement {see similarly: Decision 25/2020. (XII. 2.) AB, Reasoning [68]}.

V.

[139] 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.

Dr. Tamás Sulyok,
President of the Constitutional Court

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

Dr. Tamás Sulyok,
President of the Constitutional Court
on behalf of
Justice *dr. Egon Dienes-Oehm*
unable to sign

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

Dr. Tamás Sulyok,
President of the Constitutional Court
on behalf of
Justice *dr. Ildikó Hörcherné dr. Marosi*
unable to sign

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

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

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

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

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

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

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

Dissenting opinion by Justice *Dr. Ágnes Czine*

[140] I disagree with rejecting the petition.

[141] Article XXIX (1) of the Fundamental Law declares that “the nationalities living in Hungary have the right to use their mother tongue”.

[142] Section 5 (1) of the Act on Nationalities also makes it clear that “the State shall guarantee the conditions for the use of the language of persons belonging to a nationality – in the cases specified in a specific Act of Parliament”. As laid down in section 5 (2) of the Act on Nationalities, “in civil and criminal proceedings, as well as in administrative proceedings, the use of the mother tongue is guaranteed by the relevant Acts of Parliament of procedural law”. According to the legislative reasoning for the proposed wording of these provisions, the Act on Nationalities “regulates language rights of particular importance in their rightful place: among the fundamental rights”.

[143] However, on the basis of the provisions of section 113 of the ACP challenged in the petition, it can be concluded that the law-maker intended to ensure the use of languages by nationalities in accordance with Hungary's obligations undertaken in international conventions. In the reasoning to the proposed wording of section 113 of the ACP, the law-maker has expressly stated that "it is clearly laid down that in the absence of the relevant provision of an Act of Parliament, a norm of EU law or an international convention, parties must submit their pleadings to the court in Hungarian language, just as the court, as a general rule, shall send its decisions to the parties in Hungarian".

[144] However, Hungary has not made such an international commitment with regard to the nationalities concerned in the present case, and therefore I believe that the interpretation of the law contained in the constitutional requirement cannot be derived from the normative text of section 113 (3) of the ACP.

[145] At the same time, in my opinion, the petitioning judge correctly referred to the fact that it follows from Article XV (2) and Article XXIX (1) of the Fundamental Law that Hungary must grant all nationalities listed in Annex 1 of the Act on Nationalities the same rights in the use of their mother tongues in civil and administrative proceedings. However, this is not realised, as the Language Charter provides for the exception under section 113 (2) of the ACP for the Croatian, German, Romanian, Serbian, Slovak, Slovenian, Roma nationalities, but it does not grant this possibility for other nationalities, such as the Bulgarian, Greek, Polish, Armenian, Ruthenian and Ukrainian nationalities.

[146] In my view, the conflict with the Fundamental Law regarding section 113 (3) of the ACP is caused by the wording used in the second sentence of that provision, according to which a recognised nationality may use its nationality language "in accordance with the provisions of an international convention on the use of regional or minority languages". By annulling this provision, the second sentence of section 113 (3) of the ACP would have guaranteed, in accordance with Article XXIX (1) of the Fundamental Law, that in court proceedings all members of nationalities living in Hungary and recognised in the Act on the Rights of Nationalities have the right to use their nationality language.

[147] In my view, annulment would have ensured that discrimination between nationalities with regard to linguistic rights would have been eliminated. In my opinion, it follows from Article XXIX (1) of the Fundamental Law and section 5 of the Act in Nationalities that the law-maker must ensure the use of the nationality language in court proceedings without any discrimination.

Budapest, 15 December 2020.

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