Decision 3053/2022 (II. 11.) AB

On the dismissal of constitutional complaints

In the matter of constitutional complaint, with the concurring reasoning by Justice *dr. László Salamon*, the Panel of the Constitutional Court rendered the following

decision:

The Constitutional Court hereby dismisses the constitutional complaints seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 19 (4) of Act C of 2020 on the Health Service Relationship as well as the normative text in Section 19 (4) of the same Act reading "(a) if the person concerned has completed less than 20 years of qualifying service, 1 month; (b) if the person concerned has completed at least 20 years of qualifying service but less than 30 years, 2 months; or (c) if the person concerned has completed at least 30 years of qualifying service, 3 months, […] in the amount of the remuneration in force at the time of termination of the legal relationship".

Reasoning

I

[1] 1. One of the petitioners (hereinafter referred to as the "First Petitioner") lodged a constitutional complaint with the Constitutional Court pursuant to Section 26 (2) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act"), seeking a finding of unconstitutionality in contravention of the Fundamental Law and annulment of Section 19 (4) of Act C of 2020 on the Health Service Relationship (hereinafter referred to as the "Health Service Act"), as, in the petitioner's view, said provision is contrary to Article II, Article XII (1), Article XIII (1) and Article XV (1) of the Fundamental Law.

[2] Another petitioner (hereinafter referred to as the "Second Petitioner") sought a finding that the wording of Section 19 (4) (a) to (c) of the Health Service Act was in violation of the Fundamental Law and requested the annulment of the normative text referred to above on the grounds that such provisions of the Act were in violation of Article XIII (1) and Article XV (1) and (2) of the Fundamental Law.

[3] 2. By enacting the Health Service Act, the legislator provided for comprehensive regulation of the legal status of health care workers employed by a State or municipal health care provider. In this context, it introduced the legal institution of what is known as the "health service relationship", establishing rules on the creation of a new relationship, conflicts of interest, working hours and leave, qualification, remuneration, recognition of service, benefits other

than remuneration, employment other than under a contract of employment, that is, secondment, termination of the relationship, severance pay and registration of persons in a health service relationship. Pursuant to the rules of the Act, which have been placed among its transitional provisions, the legal status of persons employed by a health service provider, including public sector employees working in the health care institution, was converted into a health service relationship on 1 January 2021 [Section 19 (2) of the Health Service Act], and the health service employment contract was to be concluded with the employer until 31 December 2020 [Section 19 (3) of the Health Service Act]. In accordance with the applicable provision of the Act, if the health service employment contract has not been concluded by that date, the public sector employment of the person concerned shall be terminated as of 1 January 2021. In that case, under the rule complained of by the petitioners, the persons concerned, in other words, those who have not accepted the new legal status and have not signed the employment contract, subject to the length of service taken into account, in accordance with the provisions of Act XXXIII of 1992 (hereinafter referred to as the "Public Sector Employees Act"), they were entitled to severance pay (1, 2 or 3 months' salary) at a substantially reduced rate [Section 19 (4) of the Health Service Act]. A few days after the entry into force of the Health Service Act on 18 November 2020, the Government, using its special statutory authorisation granted under special legal order, the state of danger, extended the original date for the conversion of the public sector employee status into a health service status, as set by the Act, by two months to 1 March 2021, thus extending the time limit for the persons concerned to make a declaration of acceptance or rejection of the new status.

[4] 2.1 The First Petitioner described in his constitutional complaint that he had worked as a specialist anaesthetist in an in-patient care institution. His employment contract was terminated after 17 years as a public sector employee in the health care institution which employed him. According to the document issued by the employer stating that his employment as a public sector employee had been terminated by operation of law, he was entitled, in respect of the 17 years of public sector employment taken into account, to severance pay at the rate laid down by the Health Service Act, namely the equivalent of 1 month's remuneration. In his submission, the First Petitioner submits that, if he had received his severance pay under the rules of the Public Sector Employees Act, he would have been entitled to severance pay equal to 6 months' absence pay on the basis of his eligible years of service between 16 and 20 years. In his view, the rule he complains of "withdraws or reduces that entitlement in a drastic and discriminatory manner simply because the petitioner did not wish to enter the health care system".

[5] In the First Petitioner's view, the legislation which he considered to be prejudicial to the free choice of occupation "raises a specific issue of constitutional law, namely, the issue of what legislative means can be used to regulate the possibility of not leaving a particular occupation or workplace". In his view, the sole purpose of the contested provision is to "deter" health care workers, including the petitioner, from leaving the health care system, by significantly reducing the severance pay to which they would otherwise be entitled. In his opinion, the reduction in severance pay "imposed as a penalty" unnecessarily and disproportionately restricts his right to the free choice of employment and occupation. He is of the view that the negative and punitive measure, which could also be qualified as extortion and abuse of legislative power,

could have been replaced by "a number of positive measures, of which the Health Service Act itself contains a number of such provisions, suffice it to think of the long overdue wage adjustment for health care workers". In this context, the First Petitioner refers to the fact that an employee can "normally" only be deprived of severance pay if the legal relationship is terminated for reasons for which he is at fault, which implies, in his view, that in the present case the legislator considers the intention of the health workers concerned to "change career direction" after a long period of health service to be a decision for which they are at fault.

[6] The First Petitioner submits that the legislation challenged by him is contrary to the provision on the protection of the right to property in Article XIII of the Fundamental Law because he had a genuine future entitlement to severance pay under the rules of the Public Sector Employees Act. That future entitlement was granted by the State to those in its public service, and the severance pay due to him under the Public Sector Employees Act therefore constitutes an entitlement under public law, "and the expectation of receiving the severance pay amounts to a future entitlement under public law". The petitioner accepts as a public interest objective that as many health care workers as possible should "enter the new health care regime", but considers that "the multiple reduction of the severance pay under the general rules constitutes a disproportionate restriction", a degree of dispossession that cannot be justified by the public objective pursued.

[7] The First Petitioner considers that the contested legislation is contrary to the prohibition of discrimination under Article XV of the Fundamental Law, on the ground that, within the homogeneous group of health care workers, those who do not wish to opt for the new scheme face a serious legal disadvantage because of a radical reduction in their severance pay, whereas those who decide to opt for the new form of employment receive severance pay at the same level as before, and that no reasonable justification exists for such distinction. The petitioner also refers to the earlier decision of the Constitutional Court that no one has the right to receive a specific form of *ex gratia* benefit and that the legislator therefore has extensive discretion in this area, both as to the scope of the beneficiaries and the level of the benefit, and other conditions, but there is a limit to discrimination in this case as well, and that is the principle of positive discrimination, that is, absolute compliance with treating persons as individuals of equal dignity and not infringing the fundamental rights enshrined in the Fundamental Law. The only requirement in this context is that the unequal treatment must have a reasonable justification, that is, it must not be arbitrary [Decision 16/1991 (IV. 20.) AB, ABH 1991, 58, 62]. The First Petitioner argues that the lack of any reasonable justification for the legislation challenged by him is borne out by the fact that the legislator has not appended any formal justification thereto. The legislation is also, in the opinion of the First Petitioner, extremely humiliating, since it imposes extremely severe and wholly arbitrary restrictions on rights which have been acquired, in some cases, through decades of honest work.

[8] 2.2 The Second Petitioner was employed as a physiotherapy assistant for 22 years in the in-patient care institution which employed her. Since she did not wish to continue her work within the limits of her medical service, she did not sign the contract of employment offered to her. Her employer subsequently declared that her employment as a public sector employee had been terminated by operation of law and, applying the rule of the Health Service Act challenged

by the petitioner, awarded her 2 months' severance pay, amounting to approximately HUF 460,000. In her submission, the petitioner submits that, if she had received her severance pay in accordance with the rules of the Public Sector Employees Act, she would have been entitled to an amount corresponding to 8 months' absence pay, namely approximately HUF 3,700,000.

[9] In support of her argument that the legislation she contests is contrary to Article XIII (1) of the Fundamental Law, the Second Petitioner states that the provision not only significantly reduced the severance pay she was entitled to in comparison to what she would have received under the Public Sector Employees Act, but also deprived her of the period of exemption from work duty and the absence pay due for that period. Having outlined the relevant case-law of the European Court of Human Rights (hereinafter referred to as the "Human Rights Court" or the "ECtHR") and that of the Constitutional Court, the petitioner states that her claim to "the severance pay provided for in the Public Sector Employees Act is undoubtedly protected by property rights, since it is a benefit which has been in force for decades and is based on perfectly clear statutory provisions, and she therefore has a legal, indisputable and clear title to it as a public sector employee. However, the legislation challenged by the petitioner constitutes a substantial and unforeseeable interference with legal relations existing prior to its entry into force, "that is to say, it constitutes retroactive legislation and is therefore not lawful". In her view, there is neither an inevitable cause nor a justification for the restriction on property rights, the deprivation of property rights of pecuniary value or their radical reduction, as is not even mentioned in the explanatory memorandum to the Health Service Act, nor can it be said to be proportionate, since the legislature had at its disposal a means of achieving the objective of a less restrictive limitation, such as financial or other incentives. In her opinion, in assessing proportionality, account should also be taken of the fact that the legislature has, from one moment to the next, withdrawn or significantly reduced property rights which she could have expected on the basis of the legislation, and that there has been no general public consultation on the legislation.

[10] The Second Petitioner submits that on the basis of the relevant case law of the Constitutional Court and that of the ECtHR, which she has also described, it can be established that the contested provision is in conflict with the provisions on the general rule of equality enshrined in Article XV (1) of the Fundamental Law and to the prohibition of discrimination as laid down in Article XV (2) of the Fundamental Law because the impugned provision clearly places public sector employees who have not signed a contract for the establishment of a health service relationship at a disadvantage compared to other subjects of law in a comparable situation and the difference in treatment has no constitutionally justifiable objective, but even assuming an acceptable objective, it is a disproportionate restriction of rights. In support of her claim that the legislation is unfavourable to her, the petitioner compares the differences between the severance pay she is entitled to under the Public Sector Employees Act and the Health Service Act. In her view, that legislator itself recognises the equivalence of the situations for the purposes of the homogeneous group by describing the benefit payable to persons who do not sign a new contract of employment in respect of termination of employment as severance pay, that is to say, by treating the failure to sign the contract as a situation giving rise to severance pay, and thus by not treating the refusal to sign

the contract as if the termination of employment had been purely on the part of the employee, "since there would then be no question of severance pay".

[11] In addition, both the Public Sector Employees Act and Act I of 2012 on the Labour Code (hereinafter referred to as the "Labour Code") also contain provisions for cases where a change in the original legal relationship necessarily results in a change in the employer's person, but the employee does not accept this. In these cases, under both laws, the employee who does not consent to further employment must be paid the full severance pay provided for in her original employment relationship, with the difference that, in the case of a public sector employee, however, only if she does not consent to a change in her appointment or transfer for good cause [Section 25/A and Section 37 (9) of the Public Sector Employees Act and Section 63 and Section 77 of the Labour Code]. The petitioner also refers to three Acts of Parliament regulating changes in the legal relationship (Act CXCIX of 2011 on Public Service Officials, Act XLII of 2015 on the Status in Service of Professional Staff in Law Enforcement Agencies and Act CXXV of 2018 on Government Administration), where employees were also required to contribute to the transformation of their legal status and, if they did not do so, their original legal status was terminated by dismissal by their employer, with compensation for severance (severance pay). In the view of the Second Petitioner, the persons covered by these rules are all in a comparable situation to those who refused to sign a health service contract, "since in each case the persons concerned were compelled to decide whether they wished to maintain their employment relationship with the employer in question, despite a decisive change in the nature of the relationship". In the petitioner's view, persons who continue to carry out their duties under any public sector employment relationship within the meaning of the Public Sector Employees Act or who have accepted to enter the health service and have signed an employment contract or subsequently become a health service employee are in a comparable situation, both in terms of the nature of their duties and responsibilities and in terms of the characteristics of the employer. In all three cases, the rules applicable to their severance pay are more favourable than those applicable to the petitioner, which means that discrimination contrary to the Fundamental Law can be established in these cases. In her submission, the Second Petitioner also observes that the contested provision does not meet the test of reasonableness based on an objective assessment, even if the legislative objective was to maintain the viability of the health service, since the distinction is made in the interests of the State alone, with total disregard for the employees' interests, by significantly reducing the future entitlement of the right to severance pay under the legislation which has existed for decades and by completely withdrawing the remuneration due for the period of exemption from work duty. Lastly, the petitioner puts forward the arguments in support of the partial annulment of the contested provision, which she seeks.

[12] 3. At the request of the Constitutional Court, the Minister of Justice informed the Constitutional Court of her position on the case pursuant to Section 57 (2) of the Constitutional Court Act and Section 36 (3) of the Rules of Procedure.

[13] 4. The Constitutional Court consolidated constitutional complaint No IV/1018/2021 seeking the annulment of Section 19 (4) (a) to (c) of the Health Service Act with the present case for the purpose of a joint review and adjudication in accordance with the provisions of

Section 58 (2) of the Constitutional Court Act and Section 34 (1) of the Rules of Procedure of the Constitutional Court.

II

[14] 1. The provisions of the Fundamental Law allegedly violated and invoked in the petitions read as follows:

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

“Article XII (1) Everyone shall have the right to choose his or her work, and employment freely and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.”

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

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

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

[15] 2. The provision of the Health Service Act challenged by the petitioners reads as follows:

“Section 19 (4) If the employment contract for the health service is not concluded within the time limit referred to in Subsection (3), the employment of the person concerned as a public sector employee shall be terminated as of 1 January 2021. In this event, the following shall apply:

(a) if the person concerned has completed less than 20 years of qualifying service, 1 month;

(b) if the person concerned has completed at least 20 years of qualifying service but less than 30 years, 2 months; or

(c) if the person concerned has completed at least 30 years of qualifying service, 3 months

of severance pay shall be paid to the person concerned in the amount of the remuneration in force at the time of termination of the legal relationship”.

III

[16] 1. The Constitutional Court was required, under Section 56 of the Constitution Court Act, to determine, first of all, whether the constitutional complaint fulfilled the statutory conditions for admissibility

[17] 1.1 Pursuant to Section 30 (1) of the Constitutional Court Act, a constitutional complaint may be lodged in writing within one hundred and eighty days of the entry into force of the legislation alleged to be contrary to the Fundamental Law in the case specified in Section 26 (2). Section 19 of the Health Service Act contested by the petitioners entered into force on 18 November 2020. The constitutional complaint filed by the First Petitioner (hereinafter referred to as the "First Petition") was received by the Constitutional Court on 26 April 2021, while the constitutional complaint filed by the Second Petitioner (hereinafter referred to as the "Second Petition") was received by the Constitutional Court on 4 May 2021; therefore, both petitioners have complied with the requirement of filing a petition within the time limit pursuant to Section 30 (1) of the Constitutional Court Act.

[18] 1.2 As a result of the examination of the compliance of the motions with the requirements of being explicit as listed in Section 52 (1b) of the Constitutional Act, the Constitutional Court has found that the criteria set out therein are partially met by the First Petition and fully met by the Second Petition. The petitions contain: (a) the provision of the Fundamental Law or of an Act that establishes the competence of the Constitutional Court to adjudicate the petition, and establishes that the entity has the right to submit petitions [Section 26 (2) of the Constitutional Court Act]; (b) the reasons for initiating the proceedings (the legal provision considered to be contrary to the Fundamental Law has resulted in a change for the petitioners, as health care workers, which they consider to be detrimental to the rules previously applicable to them in relation to their severance pay); (c) the legal provision to be examined by the Constitutional Court [Section 19 of the Health Service Act in the case of the Second Petition and Subsection (4) of the same norm in the case of the First Petition]; (d) the provision of the Fundamental Law alleged to be infringed [Article II, Article XII (1), Article XIII (1) and Article XV (1) of the Fundamental Law in the case of the First Petition and Article XIII (1) and Article XV (1) and (2) of the Fundamental Law in the case of the Second Petition]; (e) adequate reasoning that specifies why the contested legal regulation is contrary to the specified provisions of the Fundamental Law indicated in the petitions, except for the First Petition, in the part which refers to Article II of the Fundamental Law; and (f) an express request that the Constitutional Court should find the contested legislative provision to be contrary to the Fundamental Law and annul said provision.

[19] In addition to the above, the Constitutional Court also found that the First Petition only partially complies with the obligation to state reasons under Section 52 (1b) (e) of the Constitutional Court Act, since it does not contain any substantive reasoning in this respect beyond the mere allegation of a violation of Article II of the Fundamental Law and the reference between the provisions of the Fundamental Law alleged to be violated. In this respect, the Constitutional Court emphasises, also in the present case, that "[in the absence of a statement of reasons] the request does not satisfy the requirement of being explicit in accordance with the provisions of the Section 52 (1b) of the Constitutional Court Act, nor is it possible to adjudicate on the matter." {Decision 34/2014 (XI. 14.) AB, Reasoning [212]}. Therefore, the

Constitutional Court had no competence to consider and adjudicate on the merits of this element of the First Petition on the sole account of such element being non-compliant with Section 52 (1b) (e) of the Constitutional Court Act, since, in line with the practice of the Constitutional Court, an insufficient statement of reasons under constitutional law constitutes an impediment to the assessment of the merits of the case under review {Order 3015/2015 (I. 27.) AB, Reasoning [13]; Order 3119/2020 (V. 8.) AB, Reasoning [7]}.

[20] 2. The petitioners have requested the Constitutional Court to act within the scope of its competence pursuant to Section 26 (2) of the Constitutional Court Act. Pursuant to Section 26 (2) of the Constitutional Act, proceedings before the Constitutional Court may exceptionally be initiated even if the violation of rights has occurred directly, without a judicial decision, as a result of the application or the effectiveness of a provision of a statute that is contrary to the Fundamental Law, and there is no legal remedy procedure to remedy the violation of rights. "The primary objective of the legal institution of constitutional complaint under Article 24 (2) (c) and (d) of the Fundamental Law is [...] individual and subjective legal protection: the remedy of the legal prejudice caused by the law or judicial decision which is contrary to the Fundamental Law and which has caused the actual legal prejudice. [...] The admissibility of a complaint is subject to the condition of concernment, namely that the legislation which the complainant considers to be unconstitutional in violation of the Fundamental Law establishes a provision directly and actually concerning the person or the specific legal relationship of the complainant, and that as a result the fundamental rights of the complainant are violated {Decision 33/2012 (VII. 17.) AB, Reasoning [61] and [62], [66]." {Order 3367/2012 (XII. 15.) AB, Reasoning [13] and [15]} Thus, "[i]n the case of an exceptional complaint, since it is directly addressed against the norm, the assessment of the concernment is of particular importance, since the personal, direct and current prejudice to the fundamental right of the complainant distinguishes the exceptional complaint from the previous version of ex post review of the norm, which could be initiated by anyone. [Section 20 (2) of Act XXXII of 1989 on the Constitutional Court (the former Constitutional Court Act)]" {Order 3105/2012 (VII. 26.) AB, Reasoning [3]} In the context of an exceptional constitutional complaint, the Constitutional Court has consistently held that "[t]he concernment [...] must be personal, direct and current {Decision 3110/2013 (VI. 4.) AB, Reasoning [27]}" {Order 3120/2015 (VII. 2.) AB, Reasoning [55]}.

[21] The petitioner cannot be found to be concerned if the challenged legal provision has not been applied to the petitioner or its entry into force has not directly affected him or her (that is, the violation of rights has not occurred, in other words, it is not current) {Order 3170/2015 (VII. 24.) AB, Reasoning [11]}. If the enforcement of the law requires an implementing act with constitutional effect, the petitioner must first challenge the act of State authority that directly implements the infringement, after which it is possible to review the norm indirectly. "The requirement of current concernment means that the concernment must exist at the time the constitutional complaint is lodged." {Decision 3110/2013 (VI. 4.) AB, Reasoning [27] to [31]; Order 3123/2015 (VII. 9.) AB, Reasoning [12]; Decision 33/2019 (XI. 27.) AB, Reasoning [18] and [19]}

[22] The legal provisions challenged by the petitioners provide for the following: 1. the conversion of the public sector employment status of health care workers employed by health care providers into a health service status by a rule of the Act; 2. the conclusion of an employment contract under the new status, the time limit for the conclusion of such a contract; 3. the termination, *ex lege*, of the employment contract offered by the employer as a legal consequence of the employee's failure to accept it; and 4. the entitlement to severance pay and the amount of severance pay payable to the persons concerned who have not signed the contract of employment necessary for the new employment relationship.

[23] In support of their claims, the petitioners annexed to their petition the documents issued by their employers establishing the termination of their employment as public sector employees, which show that the First Petitioner had been employed by his employer as a health care worker with a medical qualification for 17 years and the Second Petitioner for 22 years. By comparing the facts thus established by the petitioners with the scope of the legislation which they challenge, it can be concluded that, since the legislation expressly contains provisions relating to the rights of health workers employed as public sector employees in health care institutions, the petitioners' personal concernment in relation to the legislation which they consider to be harmful is beyond doubt.

[24] As a result of its assessment of the direct concernment of the petitioners, the Constitutional Court made the following findings. The contested provision clearly and unambiguously requires the employee to sign a new employment contract as a condition for continuing employment with the employer in question and, in the absence of such a condition, provides for the termination of the employment relationship as a public sector employee and the entitlement to special severance pay in that regard. Although that legal provision formally takes effect upon the adoption of an employer's measure, the relevant rule does not give the employer any discretion in enforcing and applying the legal consequence of the failure to sign, and therefore, in terms of its content, it merely informs the public employee that his or her employment as a public sector employee has been terminated by operation of law. Although the employer's "measure" is an act against which the recipient may formally have a legal remedy, in fact and in substance it merely declares, by reference to a provision of law, the fact of the termination of the employment relationship and does not constitute a constitutive act. In view of the mandatory nature of the rule challenged in the petitions, which does not allow for exceptions and does not provide for any discretionary power on the part of the employer or other legal authority and, therefore, of the courts, any employment dispute which the petitioners might have brought would not have been effective to remedy the legal consequences which they considered to be adverse, it could not therefore have been expected that they would have initiated such a dispute, since the outcome of such a dispute, namely the dismissal of their application for legal redress, would have been clearly foreseeable, inevitable and determined by the logical content of the legal rule applicable to the court. In the light of the foregoing, the Constitutional Court held that the provision challenged by the petitioners was directly implemented in an individual case by means of information provided by the employer, in terms of its content, and as such it is evidence of the petitioners' direct concernment in their case.

[25] The requirement of current, that is, present concernment, on the basis of the above-mentioned practice, means that the concernment of the petitioner must exist at the time of filing the constitutional complaint. In that context, the Constitutional Court found that the petitioners brought their constitutional complaint before it after receiving the notification from their employer informing them of the termination of their employment as public sector employees and of the amount of the severance pay to which they were entitled under the relevant statutory provision, which they considered to be prejudicial. Since the acts which gave rise to the petitioners' actual concernment and which applied the challenged provision to them, and which were intended to give effect to the specific provisions of that norm, had taken place before the filing of their constitutional complaints, it can therefore be concluded that the legal prejudice alleged by the petitioners had occurred before the filing of their complaints and existed at the time of their filing.

[26] As a result of taking into account and weighing the above aspects, the Constitutional Court found, in the present case, that, on the basis of the petitioners' documentary evidence of their concernment and the alleged violation of their rights and the statements made by them in their petitions, the legislative provision which they considered to be in violation of the Fundamental Law directly and actually affects the persons and the specific legal relationships of the petitioning health care workers.

[27] 3. Section 29 of the Constitutional Court Act specifies as a condition for admissibility that a constitutional complaint, which meets other statutory conditions and is submitted pursuant to Section 26 (2) of the Constitutional Court Act, must raise a constitutional law issue of fundamental importance. The Constitutional Court, acting within its discretion, decides on the issue of compliance with this statutory criterion as regards the admissibility of the constitutional complaint on the merits. In the present case, the Constitutional Court considered as a constitutional law issue of fundamental importance, on the one hand, whether the method of converting the employment status of health care workers employed as public sector employees in health care institutions covered by the Act into a health service status and introducing it on a universal basis, that is to say, with a closing date, thus covering all employees, and the legal consequences of the failure of the persons concerned to accept the new status, on the other hand, whether the rules on the legal consequences of the failure of the persons concerned to accept the new status are compatible with the provision guaranteeing the right to the free choice of employment and occupation under Article XII of the Fundamental Law and the Constitutional Court also assessed as an issue of such importance whether the constitutional protection of the right to property under Article XIII of the Fundamental Law, including what are known as future entitlements under public law, extends to the severance pay promised to persons who do not accept the new legal relationship on the basis of the rules of the Public Sector Employees Act. Finally, the Constitutional Court considers that the question to be reviewed and answered is whether the legislation which provides for the application of a legal consequence for persons who have not accepted a change of employment which is different from, or more disadvantageous than, similar changes in other sectors also satisfies the criterion laid down in Section 29 of the Constitutional Court Act and thus infringes the prohibition of discrimination under Article XV of the Fundamental Law.

[28] 4. On the basis of the foregoing, the Constitutional Court found that the petitions met the formal and substantive requirements of the Constitutional Court Act, subject to the restrictions set out in point 1.2 (Reasoning [18] et seq.); therefore, applying Section 31 (6) of the Rules of Procedure, without a separate admissibility procedure, assessed them on the merits as regards the elements of the petitions alleging infringement of Article XII (1), Article XIII (1) and Article XV (1) and (2) of the Fundamental Law.

IV

[29] The constitutional complaints are found to be unfounded.

[30] 1. The First Petitioner argues that the regulation which he considers to be prejudicial to the free choice of occupation is contrary to Article XII (1) of the Fundamental Law, because its objective is to 'deter' health care workers from leaving the health care system by significantly reducing the severance pay to which they would otherwise be entitled, and therefore the severance pay imposed as a penalty constitutes an unnecessary and disproportionate restriction on their right to freedom of choice of employment and occupation, which may also be regarded as an abuse of legislative power. Instead, the applicant submits1. that the legislature could have taken positive measures to encourage the persons concerned to remain in their positions, to continue their employment, that is to say, to accept a new employment relationship, as it has done, as the applicant states, by means of several provisions of the Health Service Act, in particular by introducing a substantial wage increase, which is long overdue in the health sector.

[31] 1.1 The Constitutional Court subsequently reviewed the relevant case law on the detailed content of the right to the free choice of occupation. In its Decision 3134/2013 (VII. 2.) AB, the Constitutional Court stated that the point of departure for the assessment of the legislation on this right to be considered by the panel is that "the fundamental right to work, occupation and enterprise is protected against State interference and restrictions in a manner similar to that of freedoms. The constitutionality of those restrictions must, however, be assessed according to different criteria, depending on whether the State restricts the exercise of the occupation or the freedom to choose it, and the latter also differs according to the objective or subjective limits to which the right to engage in the occupation in question is subject. The right to work, occupation or enterprise is most seriously threatened if a person is excluded from the activity in question and cannot opt for it. The imposition of subjective criteria is also a restriction on freedom of choice, but their fulfilment is in principle open to all. Therefore, in such cases the legislator's margin of manoeuvre is somewhat greater than in the case of objective restrictions." (Reasoning [12]).

[32] In the context of the possibility of limiting the right to the free exercise of an occupation, the Constitutional Court held that "[t]he right to choose an occupation is complete if it includes the possibility of exercising it. The free exercise of an occupation, including both its commencement and its continuation, is possible within the limits laid down by law. It is clear,

however, that this protection cannot be unlimited and that constitutional limits must be set as to its extent, subject to other fundamental rights and values. In the assessment of whether such limits may be set, it is necessary to state that the exercise of the fundamental right to the free choice of occupation may be subject to objective or subjective criteria. An objective condition is one whose fulfilment is entirely independent of the personal characteristics and circumstances of the individual. A restriction is subjective if the conditions can be fulfilled individually. In the latter case, the possibility is in principle open to all on equal terms (for example, the requirement to sit an examination) and the legislator has a wider margin of manoeuvre than in the case of objective criteria." {Decision 20/2013 (VII. 19.) AB, Reasoning [30] and [31]}

[33] 1.2 The rule challenged by the First Petitioner, in order to introduce a new type of relationship which did not previously exist in the health sector and to make it general in the health care sector for State-run or municipal health care providers, placed the health care worker concerned by the rule in a situation of choice in connection with the *ex lege* termination of his employment as a public sector employee with his particular employer: He could continue his employment if he so elected, that is, he could continue to work for his previous employer in the same job, doing the same work, but under the rules applicable to the new legal relationship. His negative decision, that is to say, his refusal to accept the new employment relationship, led to the automatic termination of his previous employment relationship by operation of law, and no new employment relationship was created.

[34] In this sense, the legislation did not restrict, but made the continued exercise of the health care worker's occupation subject to a condition which was made dependent on the choice of the worker, thus, for example, not creating new or even different qualification requirements, compliance with which would have been a condition for the continued exercise of the occupation. The legislator did not therefore require or impose any additional activity or any new objective or subjective conditions on the worker in order to continue working in the same job in the same capacity; therefore, far from imposing any constraint or restriction, the legislator actually allowed the health care workers concerned more than three months, corrected by the legislation on the state of danger, to decide whether or not to transfer to the new legal status.

[35] In another approach, the opportunity and freedom of choice offered to the persons concerned in the present case also meant that they were forced to make a choice, which is borne out by the interest and the objective, justified by the legitimate public interest in ensuring the efficient functioning of health care institutions, of having all health care workers employed by the same employer under the same legal relationship. It would be inconceivable to ensure the continuity and quality of the specific health service provider's operations in accordance with professional standards if some of the health workers remained public sector employees and others continued to work in the health care sector under the new legal status. In this case, working under different employment laws would have meant significantly different remuneration, different working hours, different overtime arrangements and, for example, different severance pay schemes for the same employer for those doing the same work. In order to avoid this situation, which was unacceptable from the point of view of workers' rights

and from the employer's point of view of work organisation, it was necessary to ensure that all the jobs concerned were carried out by employees with the same qualifications and the same employer, that is, under the same new legal relationship. In order to achieve that, it was undoubtedly necessary for all the public sector employees concerned, including the petitioner, to take a compelling decision to continue their own employment.

[36] Nevertheless, this decision was based solely on the employee's free discretion, the employee did not have to provide any reasons for the non-acceptance of the new legal relationship, and the employer and other bodies could not investigate the reasons for the non-acceptance, the validity of the reasons, or their reality. The decision to continue or not to continue the employment was therefore solely a matter of the employee's prior consideration of his or her own criteria and, on that basis, of his or her unilateral decision to do so, which could not be questioned, reviewed or challenged by anyone. The fact that the subjective feeling of the First Petitioner in his complaint that the reduction of the severance payment was intended to exert legislative pressure on him to stay on and to accept and sign the new employment contract does not alter that assessment and legal classification of the decision-making situation. The actual existence or effectiveness of that pressure, as alleged by the petitioner, is contradicted by the fact that the petitioner ultimately decided to reject the new employment contract and did not sign the employment contract offered to him.

[37] On the basis of the considerations set out above, the Constitutional Court held that there was no violation of Article XII (1) of the Fundamental Law, in other words, it does not infringe the right to the free choice of employment and occupation, which, in order to render the new type of employment relationship introduced in the health sector general in the public interest, makes the continued employment of the workers concerned within the framework of the new employment relationship conditional upon their free choice and provides for the termination of the employment relationship as a public sector employee in the event of the worker's refusal to accept the new employment relationship, even under the provisions of the Public Sector Employees Act even if the termination of the contract of employment is at a lower level than the severance pay which may be obtained under other legal entitlements, and only in that case.

[38] 2. The Constitutional Court subsequently considered the elements of the petitioners' submissions alleging that the legislation challenged by them infringed Article XIII (1) of the Fundamental Law. In that regard, the First Petitioner took the view that he had a legitimate future entitlement to severance pay under the rules of the Public Sector Employees Act, which the State granted to the public sector employees, and that the expectation of receiving the benefit was a future entitlement under public law, which was protected by Article XIII of the Fundamental Law. In his judgment, the level of severance pay received under the Health Service Act constitutes a degree of deprivation of property which cannot be justified by the public objective pursued. The Second Petitioner added to her objections, which were in essence the same, that in her opinion there was neither an inevitable reason nor a justification for the deprivation or radical reduction of her acquired rights of pecuniary value, but that it could in any event not be said to be proportionate, since the legislature had also had at its disposal a means of achieving the objective which was less restrictive.

[39] 2.1 In order to assess the issues raised in the petitions, the Constitutional Court first provided an overview of the relevant legislative context of the case.

[40] Sections 37 to 38/A of the Public Sector Employees Act contain the rules on the severance pay of public sector employees. Pursuant to those provisions, severance pay is payable to a person employed as a public sector employee if his or her employment as a public sector employee is terminated by dismissal, extraordinary resignation or the employer's dissolution without legal succession [Section 37 (1) (a), (b) and (c) of the Public Sector Employees Act] Severance pay is also payable to an employee if the same employer establishes a fixed-term public sector employment relationship with the employee on at least two occasions and no more than six months have elapsed between the termination of the previous public sector employment relationship and the date of the new public sector employment relationship, the termination of the public sector employee's employment was due to the cessation of the employer's activity in which the public sector employee was employed or to the employer's having to reduce or reorganise its workforce, and it was therefore not possible to continue the public sector employee's employment, and the fixed term of appointment has expired [Section 37 (1) (d) Section 37 (3) of the Public Sector Employees Act] The statutory provision setting out the grounds and entitlements to severance pay is a closed, exhaustive list, and therefore the conditions and grounds for severance pay regulated therein cannot be neither extended nor reduced. In that connection, the Constitutional Court held that the method of termination of the public sector employment relationships of the First Petitioner and the Second Petitioner in the present case is not set out in any of the provisions of the Public Sector Employees Act which define the legal grounds for severance pay in the above-mentioned list.

[41] However, under the subheading "Termination of employment as a public sector employee", Chapter II of the Public Sector Employees Act, Section 25 (1) (d) of the Act regulates the case of termination of employment which ensued in the case of the petitioners and which also allows for the termination of employment as a public sector employee by statutory provision. However, the rules of the Public Sector Employees Act on severance pay do not confer any entitlement to severance pay on that type of termination of employment as a public sector employee, which has existed since November 2010. On the other hand, Section 19 (4) of the Health Service Act, which is challenged by the petitioners, establishes a new entitlement to severance pay at the rate provided for in the contested provision, introduced specifically with regard to the conversion of the employment relationship at issue in the present case, in the event of termination of the employment relationship based on the choice of the persons concerned, that is to say, on their decision not to continue their employment under a new legal relationship.

[42] In Section 1 of Government Decree 530/2020 (XI. 28.) Korm on Certain Issues Related to the Legal Relationship of Health Care Workers and Persons Employed in the Health Care Sector (hereinafter referred to as the "Government Decree"), the legislator changed the time limit of 1 January 2021 for the conversion of the legal relationship and the decision on the acceptance or rejection of the new legal relationship of the employees concerned to 1 March 2021..

[43] 2.2 The Constitutional Court went on to look at its practice concerning the legal institution of severance pay, its purpose, function, legal nature and constitutional assessment. In this

context, the Court first reiterates the points of principle summarised by the Court in 2006, which, due to the nature of the legal instrument, have been considered to be unchanged and have been repeatedly relied upon and reaffirmed in subsequent and related decisions of the Constitutional Court. "As the Constitutional Court has formulated it, »[r]eduction pay is a form of financial support during the period of job-seeking until the time of re-employment and is intended to ensure the livelihood of employees who are not entitled to a pension and whose employment is terminated through no fault of their own (that is, not because of professional incompetence, unworthiness for service, etc.).« (Decision 174/B/1999 AB, ABH 2005, 870, 875) The function of severance pay as a means of ensuring a decent severance is therefore to provide financial security for the person who has been dismissed for a reason on the employer's side until he or she is re-employed. The relatively higher level of severance pay for public sector employees can also be seen as a counterweight to the specific constraints of labour law (wage restraints, restrictions on the right to strike, special rules on overtime, etc.). As a result of the amendment to the Labour Code, those employed in the public sector will receive both their severance pay and their average earnings (absence pay) during the period of exemption from the obligation to work differently, that is, in a differentiated manner, compared to those covered by the Labour Code. [...] The Constitutional Court has already addressed the constitutionality of the regulation of the legal institution of severance pay and the change in the statutory conditions of entitlement in several decisions. In its Decision 1399/B/1995 AB, it stated that »[s]everance pay is a legal institution under labour law. The right to severance pay, as opposed to the constitutional guarantee of the right to work, to equal pay for equal work and to an income commensurate with work, is not included among the fundamental rights listed in Chapter XII of the Constitution.« (ABH 1996, 589, 590) The Constitutional Court has consistently held that the legislator has wide discretion in determining the conditions for severance pay, and that unconstitutionality can only be established in very extreme cases [*see* Decision 174/B/1999 AB, ABH 2005, 870, 877-878; also with reference to Decision 2180/B/1991 AB, ABH 1992, 559, 562; Decision 2264/B/1991 AB, ABH 1992, 567, 568; Decision 397/B/1994 AB, ABH 1994, 712, 714-715; Decision 1399/B/1995 AB, ABH 1996, 589, 590 and Decision 1221/B/1992 AB, ABH 1993, 610, 611]".

[44] The Constitutional Court took a similar position on the constitutional criteria that may be relied upon in respect of the regulation of severance pay in its Decision 184/2010 (X. 28.) AB, reaffirming the earlier relevant decisions of the Constitutional Court: "One of the benefits typically paid in connection with the termination of the legal relationship concerned is severance pay. In relation to severance pay, it may be noted that this legal instrument was introduced into Act II of 1967 (hereinafter referred to as the "First Labour Code") by Section 2 of Act XLVIII of 1991. Pursuant to Section 27/A (3) of the First Labour Code, the right to severance pay is conditional, inter alia, upon the continued employment relationship with the employer for a specified period. »The right to severance pay is not part of the scope of human rights or the rights of citizens. The legislator may make a distinction in the rules for the distribution of severance pay according to the conditions of employment of workers, provided that this does not otherwise infringe human dignity. A person entitled to severance pay has a constitutionally protected right not to be subjected to prohibited discrimination between persons of the same status.« (Decision 2180/B/1991 AB, ABH 1992, 559) »Since the right to

severance pay does not fall within the scope of human rights or the rights of citizens, nor does it affect human dignity, the legislature has wide discretion in determining the conditions of severance pay.« (Decision 1221/B/1992 AB, ABH 1993, 610)"

[45] In the light of the above, the Constitutional Court emphasises, also in the context of the present case, also states and reaffirms, and considers as relevant for the assessment of the issue raised by the petitioners, that the right to severance pay, contrary to the constitutional guarantee of the right to work, equal pay and income commensurate with work, was not included in the fundamental rights listed in Chapter XII of the former Constitution, nor is it included in the catalogue of fundamental rights of the Fundamental Law. Since, as stated above, the right to severance pay is not a fundamental right guaranteed by the Fundamental Law and is therefore based on the laws governing the public service or other legal relationships, in the present case the public sector employment relationship and the health service relationship, the legislature has wide discretion in determining the conditions for the grant of severance pay and only in the most extreme cases can unconstitutionality be established.

[46] 3. In the subsequent stage of its deliberations, the Constitutional Court addressed the question whether the petitioners had an acquired right or a future entitlement to severance pay for public servants under the rules of the Public Sector Employees Act. The Constitutional Court's practice on the protection of property under fundamental rights has developed an understanding of the protection of property under fundamental rights in line with the European Convention on Human Rights and the case law of the Human Rights Court, whereby such understanding primarily serves to protect property already acquired and does not typically extend to the protection of the right to acquire property under fundamental rights {Decision 3209/2017 (IX. 13.) AB, Reasoning [19]}.

[47] In line with the practice of the Constitutional Court, the scope and manner of protection of property under fundamental rights cannot be identified with the concepts of civil law, that is, the protection of abstract civil property; the former "also extends to rights of asset value which are not considered property under civil law. The Constitutional Court, in its practice with regard to rights of asset value, has established the existence of constitutional protection of property mainly in relation to services and future entitlements in connection with social security [Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 380]." {Decision 3048/2013 (II. 28.) AB, Reasoning [39]} The acquired rights enjoying constitutional protection are the rights that already appear as subjective rights in specific legal relationships, or the statutory "pledges" and "future entitlements" that the legislator associates with the possibility of the creation of specific legal relationships {*see* Decision 29/2011 (IV. 7.) AB; Decision 23/2013 (IX. 25.) AB, Reasoning [74]; Decision 3115/2013 (VI. 4.) AB, Reasoning [34]; Decision 3021/2017 (II. 17.) AB, Reasoning [62]; and Decision 3209/2017 (IX. 13.) AB, Reasoning [20]}.

[48] As pointed out by the petitioners, in accordance with the practice of the Constitutional Court, future entitlements under public law enjoys the same protection as future entitlements o property in the classical sense only in exceptional cases. In the Constitutional Court's view, protection in this case cannot mean that the legislature cannot amend the relevant legislation for years or even decades and cannot bring about any change in future entitlements under public law. In this respect, the Court has also stated in its Decision 3116/2021 (IV. 14.) AB, inter

alia, in considering certain provisions of Act CXXV of 2018 on Government Administration, that "[t]he legislative power has the possibility to comprehensively review and re-regulate certain statutes [...] However, the decisive factor in assessing the constitutionality of a newly established statute will never be the direction of the change in the new statutory provisions compared to the previous legislation. A change which is positive for the employee will not become constitutional from the outset, nor will a change which restricts the rights of the employee necessarily be contrary to the Fundamental Law. New legislation must always be assessed in its entirety and in its own right, and its constitutionality must be decided on that basis." (Reasoning [97])

[49] 4. The Constitutional Court, as a result of the above-mentioned comparison between the legal provisions applicable to the petitioners' specific case and the previous decisions of the Constitutional Court, which are considered relevant, found that the petitioners did not have a constitutionally protected future entitlement of property in respect of their severance pay, in view of the manner in which their legal relationship was terminated. The petitioners identified Section 25/A of the Public Sector Employees Act as the statutory provision which, in their view, established their future entitlement under public law, and in their view that statutory provision created their acquired right. That provision, however, did not provide for the payment of severance pay in the event of termination of the employment relationship in the petitioners' case, but in the event of a possible change in the employer. The possibility of the petitioners' actual termination of their employment relationship, that is to say, the possibility of termination of their employment relationship under a statutory provision, was introduced by the legislature in the Public Sector Employees Act of 1992 by its 2010 amendment [Section 48 (1) of Act CXXVI of 2010], which added this new termination ground under Section 25 (1) (d) of the Public Sector Employees Act. The legislator, however, did not provide for the right to severance pay for this type of termination, which was created by the Act, and the exhaustive list of provisions of the Public Sector Employees Act entitling to severance pay were not supplemented with regard to this type of termination. The legislator did not, therefore, provide for any entitlement to severance pay for this new form of termination of employment, either when it was introduced or subsequently, and the petitioners could not therefore expect to receive severance pay for this *ex lege* case of termination of employment.

[50] In the light of the preceding considerations, the Constitutional Court held that in the absence of a statutory pledge to this effect, the severance pay linked to the change of legal status by operation of law, as non-existent, could not be considered part of the petitioners' future entitlement under public law, and the petitioners could not reasonably expect to receive it, unlike the right to severance pay provided for in the event of any other termination of legal status as defined in Section 37 of the Public Sector Employees Act. Put another way, where the termination of the employment relationship as a public sector employee is not effected in a manner for which the Public Sector Employees Act provides that the legal consequence is payment of severance pay, as was the case with the petitioners in the present case, the persons concerned could not have accrued any acquired right or future entitlement under public law to severance pay in respect of the termination of employment on that ground and the employment relationship is terminated without payment of severance pay. By contrast, in the rule of the Health Service Act challenged by the petitioners, the legislature, in the event of

refusal of the option offered to the persons concerned to accept a new legal status, with the prospect of termination of their employment as a public sector employee as a consequence, established an entitlement to severance pay which must be regarded as a new rule establishing a benefit applicable only in that case, and that the legislature enjoyed a wide discretion both as to its constitution and as to the determination of its detailed conditions and the level of its regulation, including the fact that, by reason of the termination of their employment by operation of law, it was not necessary to have regard to the acquired rights of the persons concerned protected by the Fundamental Law or to their future entitlements under public law, since such future entitlements had not arisen at the time when their original employment was created or during the period of their employment.

[51] On the basis of the above, the Constitutional Court held that the protection of the right to property guaranteed by Article XIII (1) of the Fundamental Law does not preclude the legislation which falls within the wide discretion of the legislator, which, in the context of the creation and generalisation of a new legal status and a new type of employment relationship, establishes as a legal consequence of the termination of the previous relationship by operation of law, that is to say, as a consequence of the termination of the previous relationship not giving rise to any right to severance pay under the rules governing the Public Sector Employees Act in the present case, only a new right to severance pay in that case, and the amount and other conditions of the benefit are not the same as, or, where appropriate, less favourable than, the amount of the benefit provided for in the law governing the original employment of the persons concerned in other cases of termination of their employment, in view of the nature and constitutional nature of the legal instrument, the legislature was allowed a great deal of freedom in the drafting of the legislation, not only as regards the award of severance pay itself, but also as regards the determination of the periods of entitlement to severance pay, the eligibility of periods of previous employment to offset against the amount of the severance pay and the extent of the amount of the severance pay.

[52] 5. Finally, the Constitutional Court assessed the petitions from the point of view of the infringement of Article XV of the Fundamental Law alleged by the petitioners. In the view of the First Petitioner, the provision challenged by him infringed the prohibition of discrimination because the health care workers who did not wish to join the new scheme were severely disadvantaged by a radical reduction in their severance pay, whereas those who opted for the new rules would receive severance pay at the same level as before, and there was no reasonable justification for that distinction. Even in the case of ex gratia benefits, the requirement of equal treatment must apply and any discrimination in spite of this must not be arbitrary. The Second Petitioner submits that persons in a comparable situation to her, namely public sector employees who continue to work under the rules of the Public Sector Employees Act and persons who have entered the medical service, are entitled to severance pay under rules more favourable than those applicable to her and that the discrimination thus existing does not satisfy the test of reasonableness in the light of the objective considerations. In addition, the Second Peitioner relies on three Acts governing the conversion of employment relationships under which persons in a comparable situation to her (public service officials, professional staff of law enforcement agencies and civil servants) were also required to contribute to the conversion of their employment relationships, but, failing that, their original employment

relationships were terminated by dismissal with payment of severance pay under the rules governing their original employment relationships, which also resulted in discrimination against her.

[53] 5.1 In the practice of the Constitutional Court, the unconstitutionality of a distinction can be established if the legislation distinguishes without constitutional justification between subjects of law in a comparable situation with regard to the regulation {*see*, for example, Decision 10/2015 (V. 4.) AB, Reasoning [19]}. In several of its decisions, the Constitutional Court has emphasised that the prohibition under Article XV (2) of the Fundamental Law applies primarily to discrimination in respect of fundamental rights, but can also be extended to the entire legal system, since "discriminatory distinctions may occur not only in legislation falling within the scope of protection of fundamental rights, but in any legislation. It is reasonable to assume that, according to the values of the Fundamental Law, such discrimination is prohibited even if it is not contained in legislation regulating subjects falling within the scope of protection of fundamental rights." {Decision 42/2012 (XII. 20.) AB, Reasoning [42]}

[54] The Constitutional Court has previously expressed in several decisions that the method and standard of assessment for discrimination concerning constitutional fundamental rights is the necessity and proportionality test of Article I (3) of the Fundamental Law, in the case of discrimination concerning other rights than fundamental rights, the body will find discrimination contrary to the Fundamental Law if there is no reasonable justification for it according to objective consideration, in other words, it is arbitrary {*see* Decision 10/2015 (V. 4.) AB, Reasoning [20]; Decision 35/2017 (XII. 20.) AB, Reasoning [43]}. In accordance with the also consistent practice of the Constitutional Court, discrimination between persons in violation of the Fundamental Law can be established if a person or a group of persons is treated in a more unfavourable way in comparison with other persons or groups of persons in the same situation. The discrimination is unconstitutional if the rule distinguishes between legal entities belonging to the same group from the point of view of the legislation, in other words, subjects of law in a comparable situation, without there being a constitutional justification for it, and accordingly unconstitutional discrimination can only be raised between subjects of law in a comparable situation. On the basis of the foregoing, the Constitutional Court held that the fact that the right claimed by the petitioners to be infringed by the contested legislation does not constitute a fundamental right guaranteed by the Fundamental Law does not preclude further constitutional review as to whether the contested provision of law constitutes a rule contrary to Article XV of the Fundamental Law.

[55] 5.2. In view, therefore, of the fact that, in the present case, the petitioners allege and complain of discrimination in respect of their entitlement to severance pay in relation to other rights which do not constitute fundamental rights, the Constitutional Court was required, on the basis of its practice as set out above, to determine whether the petitioners were in a comparable situation to the categories of employees they had identified as regards entitlement to severance pay under the contested provision.

[56] The Constitutional Court, in its interpretation of the earlier Constitution, had already on several occasions considered the relationship between the statutory amendment to certain benefits linked to the termination of employment relationships and the constitutional provision

declaring the prohibition of discrimination and the requirement of equal treatment. In view of the unchanged content of the legal provision at issue and the substantive identity between the relevant provision of the Fundamental Law and the earlier relevant constitutional rule, the Constitutional Court considered those previous decisions to be applicable and authoritative in the present case.

[57] The Constitutional Court explained the general content of the relationship between the constitutional rule prohibiting discrimination and the severance pay as follows:

"The legislator may, in the rules for the distribution of severance pay, apply a distinction according to the conditions of employment of workers, provided that it does not otherwise infringe human dignity. A person entitled to severance pay has a constitutionally protected right not to be discriminated against in relation to other persons in the same legal situation." (Decision 2180/B/1991 AB, ABH 1992, 559, 562) This latter conceptual element is expanded in Decision 1303/B/1996 AB: "The Acts of Parliament, with the exception of the Constitution, do not have a hierarchical relationship to one another. The Labour Code, the Act on the Status of Civil Servants [Act XXIII of 1992] and the Public Sector Employees Act apply different labour law regulations in a number of respects to the three large groups of persons in employment. Therefore, it is not in itself unconstitutional for the laws to differentiate between the groups in determining the conditions for severance pay (ABH 1997, 693, 694). It clearly follows from the interpretation set out above, also in the present case, that only an unjustified differentiation between persons with the same legal status (those subject to the individual employment laws) can result in a violation of Article 70/A (1) of the Constitution." [Decision 68/2006 (XII. 6.) AB, ABH 2006, 740]

[58] The Second Petitioner with regard to the equality of rights and the prohibition of discrimination seeks to qualify and assess the situation of health care workers covered by the Health Service Act as comparable both to other cases of severance pay for public employees and to other employees with other legal status and previously covered by a change of legal status. If the situation were comparable, different rules could constitute a breach of the principle of equal treatment and non-discrimination. However, the Constitutional Court considers that, from the point of view of constitutional law, including the assessment of discrimination, the situation of the persons covered by the employment rules referred to in the Second Petition, which are completely different from those applicable to the Second Petitioner, is not comparable.

[59] The significantly different, sometimes radically different, qualities of the determining features and characteristics of the legal relationship result in a significant difference in the way in which the legal relationship is created, in the content of the legal relationship, in particular the system of promotion, the performance of the work, the remuneration for the work carried out and other benefits in addition to remuneration, the rules governing working hours, overtime, rest periods, transfers, secondment, conflicts of interest, the conditions for the establishment of multiple employment relationships, chains of responsibility, labour interest reconciliation and the termination of employment relationships, as well as the rules governing the status of the persons concerned. It is precisely the need to ensure this diversity and variety which is both the reason for and the purpose of the creation of the multitude of different types

of legal relationship regulated by Acts of Parliament in the various sectors, that is, the nature of the work carried out by the persons concerned, the circumstances and specificities of the work, the expectations placed on them and the significant differences in comparative advantages have forced the creation of markedly differentiated rules, or precluded the applicability of homogeneous rules containing essentially identical rights and obligations and, ultimately, the possibility of classifying these groups as homogeneous or even in a comparable situation as regards the rules applicable to them when the constitutional prohibition of discrimination is being infringed.

[60] The petitioners also argued that, as regards their severance pay, an unjustified, disproportionate and unnecessary distinction contrary to the Fundamental Law could be established between them and other health care workers who had opted to accept a new legal status under the Health Service Act since they also formed a homogeneous group in a comparable situation to that group in the context of the assessment of the infringement of Article XV of the Fundamental Law.

[61] The Constitutional Court does not share the petitioners' view in this respect either. It is true that the situation of the persons concerned, who now belong to two groups, was not only comparable as long as they continued their health care activities in a uniform manner, under the Public Sector Employees Act., in the context of their status as public sector employees, but was also identical in terms of the essential features of the formation of the group, due to the identical rules applicable to them, that is, the identical legal status, concerning the creation of their legal relationship, its content, including their rights and obligations, and the termination of their legal relationship. That homogeneous community status, which had once existed because of the identical legal status, was broken by the fact that, as a result of the legislation ordering the conversion of the petitioners' status and that of their colleagues who were subsequently transferred to the health service status, they were all, for the first time, excluded from the scope of the uniform regime of the Public Sector Employees Act, and then, making use of their rights under the law providing for the possibility of joint continuation or refusal to do so, some of them, accepting the new status and the conditions of the new status, signed the employment contract offered to all of them and continued their work under the new health service status, while others, as the petitioners did, did not avail themselves of that possibility. The latter category of persons are no longer public servants either, since their status has been abolished by law, but nor did they become health workers under the new legal relationship and status governed by the new law, the Health Service Act, as a result of the combined effect of the legal provision governing the conversion and their own personal decision.

[62] On the basis of the findings of the Constitutional Court hereinabove made, the Court held that the unified group of health care workers who were originally uniformly subject to the Public Sector Employees Act and employed as public sector employees had thus ceased to exist, also from the point of view of the constitutionality of the rules governing the conversion of their legal status, in particular the rules governing their severance pay, on the basis of their different decisions to enter into a new legal relationship and the provision of the law, they no longer form a homogeneous group in a comparable situation from the point of view of the legislation, and consequently the legislation challenged by the petitioners did not, and could

not, give rise to discrimination against the groups which have now been placed in different situations.

[63] 6. Having regard to the reasoning set out in points IV/1 to 5 of the Reasoning for this Decision (Reasoning [40] et seq.), the Constitutional Court did not find that Section 19 (4) of the Health Service Act infringed the provisions of the Fundamental Law relied on in the petitions and that it was contrary to the Fundamental Law, and therefore dismissed the petitions.

Budapest, 11 February 2022

Dr. Egon Dienes-Oehm sgd., Panel Chair Justice of the Constitutional Court

Dr. Egon Dienes-Oehm sgd., Panel Chair Justice of the Constitutional Court on behalf of *dr. Ildikó Hörcher-Marosi* Justice of the Constitutional Court, prevented from signing

Dr. Egon Dienes-Oehm sgd., Panel Chair Justice of the Constitutional Court on behalf of *dr. Marcel Szabó* Justice of the Constitutional Court, prevented from signing

Dr. Egon Dienes-Oehm sgd., Panel Chair alkotmánybíró on behalf of *dr. László Salamon* Justice of the Constitutional Court, prevented from signing

Dr. Egon Dienes-Oehm sgd., Panel Chair Justice of the Constitutional Court on behalf of *dr. Péter Szalay* Rapporteur Justice of the Constitutional Court, prevented from signing