Decision 3114/2016 (VI. 10.) AB

On the dismissal of a petition seeking a finding of *ex post* unconstitutionality by non-conformity with the Fundamental Law of certain legal provisions

In the matter of an *ex post* review of conformity of certain legal provisions with the Fundamental Law, with the dissenting opinion by *dr. László Salamon*, Justice of the Constitutional Court, the Constitutional Court, sitting as the Full Court, passed the following

decision:

1. The Constitutional Court hereby dismisses the petition seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 1 (2) (a) of Government Decree 284/2007 (X. 29.) Korm on Certain Rules for Protection against Ambient Noise and Vibration.

2. The Constitutional Court further dismisses the petition seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of Section 2 (4) of Joint Decree 27/2008 (XII. 3.) KvVM-EüM of the Minister for Environmental Protection and Water Management as well as for Health Care on the Establishment of Limits Values for Ambient Noise and Vibration Exposure.

Reasoning

I

[1] 1.1 The Parliamentary Commissioner for Future Generations submitted a petition seeking a finding of unconstitutionality and annulment of Section 2 (4) of Joint Decree 27/2008 (XII 3.) KvVM-EüM of the Minister for Environmental Protection and Water Management as well as for Health Care on the Establishment of Limits Values for Ambient Noise and Vibration Exposure (hereinafter referred to as the "Decree"). The impugned legislation provides that, in the case of cultural festivals held in the summertime, the daytime period extends longer and the night-time period begins later than is the case under the general rules, and that the exposure limit values in areas to be protected from noise are higher.

[2] The petitioner considers that the disputed legislation is unconstitutional in several respects. On the one hand, it violates the requirement of legal certainty under the rule of law that the term 'cultural festival' is not defined in the Decree and is not defined in higher-level legislation, while the absence of regulation 'provides an opportunity for both the applicants for a permit and the authority making the decision to interpret this term in the broadest possible sense, even considering all events as cultural festivals', which, in the petitioner's view, leads to a

violation of both legal certainty under the rule of law and the right to a healthy environment. The indeterminate nature of the concept of cultural festival also leads to a situation in which judicial review of the legality of the decision of the authority responsible for the protection against noise on the issue of the permit is not possible on the merits, since there is no restriction on the authority's unfettered discretion as regards the concept of cultural festival.

[3] The right to a healthy environment is also infringed. In that regard, the petitioner submits that a fundamental principle of the Constitutional Court's earlier case-law on environmental protection was that the level of environmental protection achieved cannot be reduced, a principle which was applicable not only to the protection of nature but also to the protection of the environment in general. In comparison, the provision under scrutiny in the Decree extended the time limit for the daytime period, that is, the period permitting increased noise pollution, and reduced the time limit for the night-time period, that is, the period permitting less noise pollution, thereby increasing the noise pollution that may be applied periodically. That curtailment of the previously attained level of the right to a healthy environment does not, in the petitioner's view, preclude the protection of other fundamental rights; "the provision of a particular form of entertainment cannot be an argument for allowing a derogation from the level of protection already attained". All of these arguments considered in combination with the lack of conceptual clarity resulting from the failure to provide a legal definition of "cultural festival" lead to unconstitutionality.

[4] The Commissioner for Fundamental Rights defended the petition and added that, in his view, the contested legislation infringed Article B (1), Article 25 (2) (b), Article I (3), Article XX, Article XXI (1) and Article XXVIII (1) and (7) of the Fundamental Law and, in addition, sought the annulment of the legislation under consideration.

[5] 1.2 The Constitutional Court contacted the Minister for Agriculture in order to obtain his observations on the petition. The Minister has advised the Constitutional Court that legislation was under preparation to determine the definition of the term "cultural festival". In particular, as regards the infringement of the right to a healthy environment, the Minister pointed out that the limit values laid down in the Annex to the Decree referred to long-term exposure to noise, but that the exceptional rule allowed a temporary derogation from the general rule on noise exposure for a maximum of eight days; therefore, the level of protection was not lessened. The Minister further noted that the issue of higher noise exposure levels, which is a major concern for popular music festivals, is not at all the case for other cultural festivals (e.g. theatrical, gastronomic, etc.). As a further point, the Minister pointed out that the R could not apply to festivals organised on public ground, but only to festivals organised on private ground, because of its scope.

[6] 1.3 Decree 91/2015 (XII. 23.) FM of the Minister for Agriculture altered the challenged legal regulation in a form that also affected Section 2 (4) of the Decree and substituted the concept of cultural festival with that of occasional event. In view of the alteration of the legal environment, the Constitutional Court called upon the legal successor of the petitioner, the Commissioner for Fundamental Rights, to make a statement on the continuance of his petition and on the possible amendment of its reasoning. In his submission received by the Constitutional Court on 2 February 2016, the Commissioner for Fundamental Rights sustained

his petition, supplementing his previous arguments with the following arguments, and also requested the annulment of Section 1 (2) (a) of Government Decree 284/2007 (X. 29.) Korm on Certain Rules of Protection against Ambient Noise and Vibration (hereinafter referred to as the "Noise Protection Government Decree").

[7] Section 1 (2) (a) of the Noise Protection Government Decree excludes from the scope of this Decree, and thus from the regulation on protection against noise, occasional events held exclusively on public ground. From his own experience derived from his own investigations, the Commissioner for Fundamental Rights points out that events (SZIGET, B.My.Lake, Balaton Sound or Red Bull Air Race), which typically take place in public places and affect the territories falling within the jurisdiction of several municipalities, are the ones that give rise to the majority of concerns. However, the limit values laid down in the Noise Protection Government Decree and in the Decree governing it are not applicable to these events, as they are excluded from the material scope of the legislation.

[8] The petitioner draws attention to Decision 73/2006 (XII. 15.) AB, on the basis of the quotation from which it is highlighted that "the rules on protection against noise lay down regulations on protection against noise and vibration in order to protect the environment and human health", and to Decision 430/B/2000 AB, which states that "the limit values prescribed in relation to noise and vibration exposure [...] may be understood as a guarantee for a healthy environment." From the cited Constitutional Court position, the Commissioner for Fundamental Rights considers that "it can be deduced that the legislator must set noise limits for the entire territory of the State, including public ground." The distinction between areas is discriminatory, in his view, because it results in an uneven guarantee of the right to a healthy environment as perceived as an obligation of institutional protection. The petitioner further submits that the restriction on the right to a healthy environment, recognised as a fundamental right by Decision 16/2015 (VI. 5.) AB, could only be regulated at the level of an Act of Parliament, in accordance with the provisions governing the restriction of a fundamental rights: the impugned Noise Protection Government Decree does not comply therewith.

[9] In view of the changed legal context, the petitioner also supplements its earlier arguments concerning the absence of a legal remedy. Taking as a point of departure that occasional events held exclusively on public ground are not covered by the Noise Protection Government Decree, and thus the Decree, it is neither necessary nor possible to apply for the determination of a noise emission limit value for recreational noise sources [*cf*. Section 10 (1) of the Noise Protection Government Decree]. In this case, however, in accordance with the interpretation of Section 110 (6a) of Act LIII of 1995 on General Rules for the Protection of the Environment (hereinafter referred to as the "Environmental Protection Act"), no matter what noise effects may be generated, no action or other means of redress can be brought on this ground. For all these reasons, the right to a legal remedy and the right to turn to court are infringed, as claimed by the petitioner.

[10] As contended by the petitioners, the concept of 'occasional event', which has replaced the concept of 'cultural event', remains an excessively broad and vague concept which infringes the rule of law. Furthermore, the change in concept did not remedy the concerns of the petitioner regarding the right to legal remedy, since, in his view, the conceptual indeterminacy

continues to preclude the proper exercise of the right to legal remedy. In addition, the imposition of a limit value that is 5 to 20 dB higher than the general limit value and a shorter night-time (protected) period leads to a violation of the right to a healthy environment. As a new argument, the petitioner maintains that the exceptional regulation of occasional events not held in the public ground is also unconstitutional, infringing the right to physical and mental health (Article XX of the Fundamental Law) and the right to a healthy environment (Article XXI of the Fundamental Law). The petitioner also claims that Article I (3) of the Fundamental Law is infringed, since the legislature restricts a fundamental right at the level of a decree, in other words, at the level of a lower source of law.

[11] The petitioner also extends the petition to a review of Section 1 (2) (a) of Government Decree 284/2007 (X. 29.) Korm on Certain Rules for Protection against Ambient Noise and Vibration (the Noise Protection Government Decree). In the petitioner's view, the contested provision of the Noise Protection Government Decree, which excludes from its material scope occasional events held exclusively on public ground, infringes the right to physical and mental health (Article XX of the Fundamental Law) and the right to a healthy environment (Article XXI of the Fundamental Law), and this exceptional rule also infringes Article I (3) of the Fundamental Law, since the legislature restricts a fundamental right at the level of a decree, that is to say, at the level of a lower source of law. Lastly, as claimed by the petitioner, Section 1 (2) (a) of the Noise Protection Government Decree is also unconstitutional because, interpreted in conjunction with Section 110 (6a) of the Environmental Protection Act, it excludes the noise impact from such a source from the concept of unjustified trespass or unnecessary disturbance of neighbours or jeopardising the exercise of their rights, in breach of their right to a remedy [Article XXVIII (7) of the Fundamental Law] and their right turn to court [Article XXVIII (1) of the Fundamental Law].

[12] The Constitutional Court conducted its scrutiny in relation to the provisions in force at the time of the adjudication of the petition.

II

[13] 1. The relevant provisions of the Fundamental Law regarding the present case are as follows:

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

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

"Article XX (1) Everyone shall have the right to physical and mental health."

"Article XXI (1) Hungary shall recognise and endorse the right of everyone to a healthy environment."

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

(7) Everyone shall have the right to seek legal remedy against decisions of the courts, the public administration or other authorities, which infringe their rights or legitimate interests."

"Article 25 (2) The courts shall decide on

[...]

(b) the legality of public administrative decisions;"

[14] 2.1 The relevant provisions of the Environmental Protection Act are as follows:

"Noise and vibration

Section 31 (1) The protection against noise and vibration in the environment shall cover all artificially generated energy emissions that cause unpleasant, disturbing, hazardous or impairing exposure to noise or vibration.

(2) Within the framework of protection against noise and vibration, the following shall be resolved using technical and organisational methods:

(a) the reduction of the degree to which sources of noise and vibration emit noise and generate vibrations;

(b) the reduction or prevention of an increase in the exposure to noise or vibration;

(c) the subsequent protection of environments that are permanently exposed above standard levels.

(3) The reduction of ambient noise in highly exposed areas and the preservation of unexposed areas regarding noise damage shall be implemented by way of an action plan built on strategic noise mapping pursuant to specific separate legislation."

"Section 48 (1) The municipal representative body of the local government or, in the case of the Local Government for Budapest-Capital, the Metropolitan General Assembly may only lay down regulations regarding environmental protection for its area of competence in a municipal decree, and in a manner and to the extent specified in an Act or Government Decree, that are more restrictive than the provisions defined in other legislation.

[...]

(4) The competence of the representative body of the municipality local government shall cover:

[...]

(f) setting local rules for the protection against noise."

"Section 110 (6a) Noise emissions by cultural, recreational or sports events and other gatherings of large crowds which are considered to be of particular importance for national economy reasons or for considerations of tourism shall not be construed as trespassing without legal basis in possession and / or unnecessary disturbance of others, especially neighbours or jeopardising the exercise of their rights, if it does not exceed the noise emission limit value prescribed by the relevant legislation, or provided for in the official permit granted therefor."

[15] 2.2 The provisions of the Noise Protection Government Decree sought to be reviewed and relevant to the case read as follows:

"Section 1 (1) The scope of this Decree shall, with the exceptions set out in Subsection (2), cover activities and installations which cause or are likely to cause ambient noise or vibration.

(2) The scope of the Decree shall not cover:

(a) occasional events held exclusively on public ground;

(b) occupational hazards caused by noise and vibration at work;

(c) activities for the domestic needs of private individuals;

(d) noise and vibration within transport vehicles;

(e) noise and vibration generated by medical rescue activities, fire-fighting activities, technical rescue and law enforcement activities;

(f) the conduct of religious activities; and

g) events covered by the Act on the Right of Assembly.

"Section 2 For the purposes of this Decree:

[...]

(v) 'casual event' shall mean an event held on a predetermined occasion and at a predetermined time, lasting for a maximum of 8 days, which takes place on a site which is not intended for the holding of an event of that type;

(w) 'public ground' shall mean any publicly or municipally owned area for public use which is open to any person for the use of the public in accordance with its intended purpose, including that part of public ground which is used as a public road and that part of private ground which is opened to public traffic by the owner (user);"

[16] 2.3 The relevant provisions sought to be reviewed of the Decree as in force at the time of the adjudication of the petition read as follows:

"Section 2 (1) The exposure limit values for noise emitted from an industrial or recreational noise source in areas to be protected from noise shall be as set out in Annex 1 hereto.

(2) The limit values laid down in Annex 1, point 1, are expressed in terms of the assessment level, where the assessment period shall be:

(a) daytime (6:00 am to 10:00 pm): a continuous period of 8 hours with the highest noise exposure;

(b) night-time (10:00 am to 6:00 am): a continuous period of 30 minutes with the highest noise exposure;

(3) If the quiet zone, specially protected area

(a) is situated in an area protected from noise, is less than 5 dB below the limit value laid down in point 1 of Annex 1;

(b) is situated in an area unprotected against noise, the noise exposure limit value corresponding to the resort zoning in point 1 of Annex 1

shall be complied with in its territory.

(4) In the case of an occasional event held on non-public ground and covered by the Decree on certain rules for the protection against ambient noise and vibration, for the purposes of this Decree

(a) daytime period shall be understood as the period between 6:00 am and 11:00 pm, night-time period as the period between 11:00 pm and 6:00 am;

(b) the noise exposure limit values for all areas to be protected from noise shall be 65 dB during the day and 55 dB at night;

(c) the limit values referred to in point (b) shall be expressed in terms of the assessment level, where the assessment period is a continuous period of 8 hours during the daytime for the highest noise exposure and 30 minutes at night for the highest noise exposure.

[...]

Annex 1 to Joint Decree 27/2008 (XII. 3.) KvVM-EüM of the Minister for Environmental Protection and Water Management as well as for Health Care

Noise exposure limit values for industrial and recreational noise in areas to be protected against noise

1. Noise exposure limit values for industrial and recreational noise sources, with the exceptions set out in Section 2 (3) to (4) and point 2

	A	B	C
1	Noise sensitive area	Limit value (LTH) for the LAM assessment level (dB) daytime 6:00 am to 10:00 pm	Limit value (LTH) for the LAM assessment level (dB) night-time 10:00 pm to 6:00 am
2	Recreational area, health areas within special areas	45	35
3	Residential areas (small urban, suburban, rural, built-up estate areas),	50	40

	special areas including the premises of educational facilities, cemeteries, green areas		
4	Residential (metropolitan), mixed areas	55	45
5	Economic area	60	50

III

[17] Taking into consideration the changes in the law that have taken place during the scrutiny, the Constitutional Court has first of all reviewed the legislation on the protection against noise that is relevant to the petition. Summarising the merits of the legal context, the following situation emerges from the legislation challenged. Section 31 of the Environmental Protection Act provides the general background for protection against noise and vibration when it states that "[t]he reduction of protection against noise and vibration in the environment shall cover all artificially generated energy emissions that cause unpleasant, disturbing, hazardous or impairing exposure to noise or vibration." [Section 31 (1) of the Environmental Protection Act] The Government shall be authorised to lay down the rules for protection against noise and vibration by decree [Section 110 (7) (23) of the Environmental Protection Act] on the basis of which the Government has established the Noise Protection Government Decree. The implementation of the Noise Protection Government Decree is regulated by the Decree, including, *inter alia*, the originally contested Section 2 (4), which lays down specific rules for the calculation of noise protection limit values.

[18] The pyramidal regulatory regime is supplemented by the system of local rules on the protection against noise, which, pursuant to Section 48 (4) (f) of the Environmental Protection Act, falls within the competence of the representative body of the local government, and in the capital city is shared between the district and the Local Government for Budapest-Capital [*cf.* Section 48 (5) of the Environmental Protection Act]. This lowest level of regulation may, by analogy, apply to the regulatory domains which are not regulated by the higher level legislation and is limited to the adoption of regulations with the content of the authorisation or legislative call given in the Environmental Protection Act and the lower level legislation.

[19] The Environmental Protection Act itself contains a further provision on protection against noise, in fact a rule with negative content: "Noise emissions by cultural, recreational or sports events and other gatherings of large crowds which are considered to be of particular importance for national economy reasons or for considerations of tourism shall not be construed as trespassing without legal basis in possession and / or unnecessary disturbance of others, especially neighbours or jeopardising the exercise of their rights, if it does not exceed the noise emission limit value prescribed by the relevant legislation, or provided for in the official permit granted therefor." [Section 110 (6a) of the Environmental Protection Act, which entered into force on 1 August 2015]. This rule is in fact a special rule compared to the provisions of the Civil Code on the protection of possession, since it excludes from the main

rule of protection of possession, {namely Section 5:5 of the Civil Code [Possessor's right to protection of possession] (1) If the possessor is deprived of his possession without legal basis or is restrained in maintaining such possession (hereinafter referred to as "unlawful arbitrary conduct"), he shall be entitled to protection of his possession}, an event which complies with the conditions herein, if the legal or licensing limit values have not been exceeded during the event. {A similar conclusion may be drawn with regard to the general private law limitation on the use of a thing (Section 5:23 of the Civil Code [General limitation of use under private law] When using a thing, the owner shall refrain from engaging in any conduct that would needlessly disturb others, especially his neighbours, or that would jeopardise the exercise of their rights.), since it also excludes from its application, in precise terms, an event of major importance, subject to certain conditions.}

[20] The Noise Protection Government Decree contains the detailed rules for the protection against noise and vibration, in particular it states the general rule that "[i]t shall be prohibited to cause an environmentally hazardous level of noise or vibration in the environment subject to protection." [Section 3 (1) of the Noise Protection Government Decree] However, before stating this, Section 1 (1) defines the material scope of the Noise Protection Government Decree, but excludes from its material scope "occasional events held exclusively on public ground" [Section 1 (2) (a) of the Noise Protection Government Decree]. It is against this rule that the Commissioner for Fundamental Rights seeks the annulment of the rule, for the reasons set out below.

[21] The recent amendment to the Noise Protection Government Decree also defines the term "occasional event", pursuant to which such an event is defined as an event "held on a predetermined occasion and at a predetermined time, lasting for a maximum of 8 days, which takes place on a site which is not intended for the holding of an event of that type" [Section 2 (v) of the Noise Protection Government Decree]. This concept replaces the previously contested concept of a cultural festival and is otherwise consistent with it in that it makes the provisions applicable to events of up to eight days' duration, in other words, it no longer applies to events of longer duration.

[22] Section 2 (4) of the contested Decree has also been amended. Under the rule with the new content, in the case of an occasional event held on non-public ground within the meaning of the Decree on certain rules for the protection against ambient noise and vibration, the following periods of time are to be taken into account for the application of this Decree, (a) the period from 6:00 am to 11:00 pm shall be understood as the daytime period and the period from 11:00 pm to 6:00 am as the night-time period; (b) the noise exposure limit values for all areas to be protected from noise shall be 65 dB during the daytime period and 55 dB during the night-time period; and (c) the limit values referred to in point (b) shall be expressed in terms of the assessment level, where the assessment period is a continuous period of 8 hours during the daytime for the highest noise exposure and 30 minutes at night for the highest noise exposure. The original content of the rule is therefore unchanged in that it continues to allow for a longer daytime period and provides for higher limit values for both daytime and night-time periods. What has changed, however, is that the Decree links this change to the term "occasional event"; it no longer includes the former periodic restriction which (essentially)

limited festivals to the summer period; and finally, it provides for occasional events not held on public ground.

IV

[23] The petition is unfounded.

[24] 1. The Constitutional Court first considered the infringement of legal certainty under the rule of law.

[25] Pursuant to Decision 3/2016 (II. 22.) AB, the Constitutional Court held that "[t]he positive rules of law are always subject to interpretation; however, it is a fundamental requirement that the wording of legislation must have a recognisable normative content. It is the legislator's task to regulate the life situations covered by the law by means of appropriate provisions and, in this context, to determine the scope for interpretation of the law granted to those applying the law. This does not constitute an infringement of the Fundamental Law, in connection with the requirement of clarity of the norms, as long as the regulation is not considered to be uninterpretable for those applying the law, or as long as the overly general wording does not open up the possibility of subjective or arbitrary application of the law {Decision 34/2014 (XI. 14.) AB, Reasoning [97], [116]}. Thus, within this recognisable range, it is the fundamental task of the bodies interpreting the law to »find« the actual content of the law, and the legislator can only assist this process with its own means in the interests of a predictable and uniform interpretation." {Decision 3/2016 (II. 22.) AB, Reasoning [11] to [12]}

[26] The Constitutional Court analysed the concept of "occasional event" in the light of these considerations. The provision under scrutiny is clear and its content is unambiguous. The definition of the occasional event is clear: "an event held on a predetermined occasion and at a predetermined time, lasting for a maximum of 8 days, which takes place on a site which is not intended for the holding of an event of that type". In other terms, any event of no more than 8 days is an occasional event, which is not held at a venue intended for the holding of an event (e.g. a community centre, event hall, etc.). This concept is grammatically clear, its interpretation is not ambiguous and the authorities and courts, although not yet in practice because of its novelty, will be able to interpret and apply it correctly.

[27] Since the content of the legal provision in the case under consideration is clear, the Constitutional Court dismissed the petition for annulment of Section 2 (4) of the Decree on the basis of Article B of the Fundamental Law.

[28] 2. The Constitutional Court considered the issue of recourse to the courts and the right to legal remedy.

[29] The petitioner argued that Section 2 (4) of the Decree violates the right to judicial remedy due to conceptual ambiguity—an argument that was made in the previous petition and that is still maintained. The Constitutional Court had previously dismissed the arguments relating to the absence of legal certainty; therefore, the concept of the occasional event is clear in a

manner consistent with the Fundamental Law, as it includes all events within its scope by a simple functional negation and time limitation. And if the concept is sound and not open to misinterpretation, the argument that there is a consequent absence of a right of recourse to the courts or of legal remedy cannot be upheld: Both the authority responsible for the protection against noise and the court reviewing its act can rule on whether an event is longer or shorter than 8 days and whether the place where it is held is intended to be used for such event (because if it is, the event is not occasional) or not (because if it is not, the event held there may be considered an "occasional event"). Given the existence of a genuine possibility of judicial review, there is no absence of a right of redress. The Constitutional Court, in its Decision 39/1997 (VII. 1.) AB, stipulated as a constitutional requirement that "[i]n regulating the judicial review of the legality of public administrative decisions, it is a constitutional requirement that the court may rule on the merits of the rights and obligations in the case in accordance with the conditions laid down in Article 57 (1) of the Constitution." This practice has been reaffirmed by the Constitutional Court on several occasions, e.g. in its Decision 3100/2015 (V. 26.) AB (Reasoning [55]). If, however, the review on the merits is warranted and the legislation in question is not open to interpretation by the bodies implementing the law, as the Constitutional Court has already dismissed the petition to that effect, neither the right to turn to court nor the right to judicial remedy may be infringed. For this reason, the Constitutional Court also dismissed the petition in respect of Section 2 (4) of the Decree and Article XXVIII (1) and (7) of the Fundamental Law.

[30] The petitioner also challenges Section 1 (2) (a) of the Noise Protection Government Decree, arguing that, read in conjunction with Section 110 (6a) of the Environmental Protection Act, it infringes the right to legal remedy and the right to turn to court, namely because it excludes occasional events taking place exclusively in public places from the scope of the Noise Protection Government Decree. Taking as a point of departure that occasional events held exclusively on public ground are not covered by the Noise Protection Government Decree, and thus the Decree, it is neither necessary nor possible to apply for the determination of a noise emission limit value for recreational noise sources [*cf.* Section 10 (1) of the Noise Protection Government Decree] as is claimed by the petitioner. In this case, however, in accordance with the interpretation of Section 110 (6a) of the Environmental Protection Act, no matter what noise effects may be generated, no action or other means of redress can be brought on this ground. For all these reasons, as claimed, the right to a legal remedy and the right to turn to court are infringed.

[31] The petitioner's argument raises the fundamental issue of whether the conclusion that, by derogation from the scope of the Noise Protection Government Decree, the activity in question is no longer subject to any limit value, it cannot apply to it, since it was not necessary to apply for in a specific permit - can be regarded as correct.

[32] The Constitutional Court found this argument to be unsound. The Decree was enacted by the Minister, in agreement with other Ministers, but within the framework of his autonomous legislative competence and not within the framework of his legislative competence derived from the Noise Protection Government Decree. This is supported by the fact that Section 89 (3) of the Environmental Protection Act defines the emission limit value as a legislative task of the

Minister (in agreement with the ministers concerned, but not dependent on the Noise Protection Government Decree or other government-level decree) within his own competence. Similarly, Section 110 (15) of the Environmental Protection Act authorises the Minister (meaning the Minister for Agriculture) to issue pollution limit values for air, ambient noise and ambient vibration, with the agreement of the Minister responsible for health care. The implication is that the limit values for protection against noise will certainly apply to all noise-generating activities. This also makes sense of Section 110 (6a) of the Environmental Protection Act, which applies not only to the limit value laid down in the individual permit, but also to the limit value laid down in the legislation.

[33] As far as *ratione materiae* is concerned, the scope of the Decree is exhaustive and covers the entire territory of the country. This also leads to the conclusion that the general limits of the Decree apply to occasional events held exclusively on public ground, and not to the "preferential" rules of Section 2 (4) of the Decree, since the latter provides for a special daytime and night-time period and an increased dB value for events not held on public ground. However, as the ministerial authorisation flows directly from the Act, the limit values are regulated in the same terms for all noise sources (including the recreational noise sources under consideration). It does indeed follow from the mere fact that the Noise Act excludes from its scope occasional events held exclusively in public places that there is no need to apply for a leisure noise source limit value in advance, but not that any noise-generating activity can be carried out without a valid limit value for the protection against noise. This absurd conclusion would also imply that, for example, a religious activity could be allowed to sound at any volume as an exempted noise source. On the contrary, it is subject to the limits under Decree, since the material (and territorial) scope is complete.

[34] On this basis, since the Decree establishes the limits on the basis of a statutory authorisation, they can be considered as statutory limits for the purposes of Section 110 (6a) of the Environmental Protection Act, and are binding for the occasional event; therefore, the exception rule for the protection of possession can be applied appropriately on the basis of the calculation of the noise impact. Only noisy activities (only occasional events on public ground) that do not exceed the (general) limit values in Annex to the Decree are not considered to be trespassing without legal basis in possession.

[35] The petitioner also invokes the fact that the municipality cannot make up for the missing regulation on the basis of the decision of the Judicial Panel of the Municipality of the Curia No. Köf.5025/2012/5. However, after that decision was adopted, Section 48 (4) (f) of the Environmental Protection Act entered into force, which expressly and directly authorises the local government to lay down local rules on the protection against noise. Obviously, it can do so within the framework provided by the Environmental Protection Act, the Noise Protection Government Decree and the Decree, but if they exclude something from their scope, it follows logically that the legislative power of the local authority now extends to this by virtue of its direct authorisation.

[36] It follows, therefore, from the existing legislative context that the powers and responsibilities of local government provide a means of regulating the protection against noise within the framework of higher-level rules. In this context, "[t]he municipal representative body

of the local government or, in the case of the Local Government for Budapest-Capital, the Metropolitan General Assembly may only lay down regulations regarding environmental protection for its area of competence in a municipal decree, and in a manner and to the extent specified in an Act or Government Decree, that are more restrictive than the provisions defined in other legislation." [Section 48 (1) of the Environmental Protection Act] The local legislators thus have the possibility to tighten the rules, which can also be seen as an institutional guarantee of the right to a healthy environment, since they can deviate from the uniform minimum standards of the State in favour of stricter protection.

[37] In the absence of local legislation favourable to citizens, those who are disturbed by the sound effects have the possibility to take legal action against the court decision in the framework of Section 110 (6a) of the Environmental Protection Act. The legislation being challenged and sought to be annulled does not in itself restrict citizens from taking legal action in any case. Section 110 (6a) of the Environmental Protection Act, which the petitioner seeks not to have annulled but only to have interpreted in conjunction with the contested legislation, is a rule which, by means of a special provision on the protection of possession, declares lawful noise emission activities to be lawful from the point of view of the protection of possession and the protection of neighbours, and, on the other hand, removes lawful noise emission conduct within the limits of the law from the concept of unlawful arbitrary conduct and disturbance under the law relating to neighbours as a substantive legal basis for legislative discretion. The determination of the exception to the main rule of protection of possession or protection of neighbours is a legislative competence which may be subject to an independent constitutional review, but in the present case, Section 110 (6a) of the Environmental Protection Act is the framework for interpretation and not the direct subject matter of the review.

[38] On the basis of the above, the Constitutional Court did not consider the petitioner's arguments with regard to Article XXVIII (1) and (7) of the Fundamental Law to be well-founded in relation to Section 1 (2) (a) of the Noise Protection Government Decree, interpreted in conjunction with Section 110 (6a) of the Environmental Protection Act, and therefore rejected the petition in this respect as well.

[39] 3. The Constitutional Court subsequently considered the issue of the right to a healthy environment and the right to physical and mental health.

[40] 3.1 The Constitutional Court began its interpretation of the right to a healthy environment on the basis of Article 18 of the Constitution.

[41] Following the entry into force of the Fourth Amendment to the Fundamental Law of Hungary (25 March 2013), the Constitutional Court ruled, with regard to clause 5 of the Final and Miscellaneous Provisions of the Fundamental Law, that "in the course of reviewing the constitutional questions to be examined in the new cases, the Constitutional Court may use the arguments, legal principles and constitutional relationships elaborated in its previous decisions if the application of such findings is not excluded on the basis of the identical contents of the relevant section of the Fundamental Law and of the Constitution, the contextual identification with the whole of the Fundamental Law, the rules of interpretation of the Fundamental Law and by taking into account the concrete case, and it is considered necessary

to incorporate such findings into the reasoning of the decision to be passed" {Decision 13/2013 (VI. 17.) AB, Reasoning [32]}.

[42] Article XXI of the Fundamental Law, invoked by the petitioner, contains in paragraph (1), in the same wording as before, that Hungary recognises and enforces the right of everyone to a healthy environment. Compared to the previous constitutional provision, the reference to the liability of the polluter in the event of damage to the environment and the constitutional prohibition of the importation of polluting waste for disposal into the country appear in our current Fundamental Law as an additional provision. The provisions of paragraphs (2) to (3) of the latter are not relevant to the current analysis and the Constitutional Court will continue to consider the right to a healthy environment.

[43] Given that the purpose of the relevant provision of the Fundamental Law has not changed in relation to the purpose established in the Constitution and that the National Avowal does not contain any guidance which the Constitutional Court could take into account in its analysis when interpreting the provision of the Fundamental Law, the Constitutional Court may use the arguments contained in its previous relevant decisions. The Constitutional Court, having assessed the criteria set out in the cited Decision 13/2013 (VI. 17.) AB, has concluded that the reasoning of the decisions cited below interpreting Article 18 of the Constitution in the present case can be adequately incorporated into this Decision.

[44] In its Decision 16/2015 (VI. 5.) AB, the Constitutional Court, focusing on the right to the environment and environmental protection, summarised the framework of the relevant interpretation of the Constitutional Court, in particular that the objective institutional protection aspect of this fundamental right is predominant (Reasoning [80], [85], [147]), and that the level of nature conservation provided by legislation may not be reduced by the State unless this is unavoidable for the enforcement of another constitutional right or value (Reasoning [80], [83]). Even then, the extent of the reduction in the level of protection must not be disproportionate to the objective pursued (Reasoning [80]). The prohibition of reverting from preventive to punitive rules of protection, or more precisely, the permissibility of such rules only in cases of unavoidable necessity or in proportion (Reasoning [80]), is among the reaffirmed theorems. However, the Constitutional Court, in relying on Decision 14/1998 (V. 8.) AB, also reaffirmed its reasoning, which, in the service of sectoral interests, e.g. regional development, but of course with equal weight given to environmental protection, recognised the burden on the environment as a necessary corollary of development policy, stating that "[n]o developed country is capable of guaranteeing a minimum burden on the environment throughout the country without differentiation. Improving or even maintaining human living conditions is unthinkable without productive investment and infrastructure development, and whether it is road, rail or urban development, it inevitably increases the previous environmental pressures in the area concerned." (ABH 1998, 126.)

[45] What emerges from all this is a nuanced picture whereby the right to a healthy environment is a right that the State is obliged to guarantee within the scope of its objective obligation of institutional protection, and any derogation from the level of environmental protection once achieved must be justified by the State in terms of necessity and proportionality on the basis of the exercise of another fundamental right.

[46] The Minister for Agriculture pointed out in his reply following receipt of the petition that the limit values laid down in the contested R., which were therefore necessarily corrected by the mitigating rules, also apply only to long-term exposure to noise, since only "the harmful effects on health of continuous exposure to noise over a long period of time have been demonstrated".

[47] The Guidelines for Community Noise (http://whqlibdoc.who.int/hq/1999/a68672.pdf?ua=1), published on the World Health Organization (WHO) website, address the health effects of noise exposure from recreational activities and point out that there is conflicting research findings and scant information on the causal relationship between health damage (hearing impairment) and noise from recreational activities. A study by the World Health Organisation points out that epidemiological studies have also failed to show a causal relationship between noise and health damage in the presence of exposure to continuous noise levels below 70 dB (p. 22). Also cited is the finding that a lifetime exposure to noise slightly below 70 dB does not cause permanent impairment in hearing. And at the turn of pages 22 and 23, a statement is made that a causal relationship between hearing impairment and noise activity could be established for a constant exposure of 70 dB, that is, for 24 hours.

[48] On the basis of the WHO study and the position of the Minister acting in his legislative capacity, the Constitutional Court cannot treat as a scientifically proven fact the harmful effects of short-term exposure to noise and, consequently, the derogation from the level of protection achieved. The Constitutional Court is concerned solely with the constitutionality of the legislation in its entirety and not with the expediency or appropriateness of the specific limit values. Accordingly, a derogation from the level of protection achieved, which is a matter of constitutional law, could be established if it were possible to demonstrate, not only speculatively, by intuitively interpreting a brief, slight increase in noise exposure, but also by scientific evidence, that there is a correlation between the increase in noise sources of up to 65 dB for a maximum of eight days (by a maximum of 15 to 20 dB) and the potential for health impairment. The petitioner has not relied on such a case, the legislator has expressly challenged it in its professional competence and it cannot be supported by the UN study cited by the Constitutional Court. On the basis of the information obtained by the Constitutional Court, there is no causal link between low and short-term exposure to noise and hearing impairment, nor has there been any argument in support of such a causal link in the context of wider health impairment. For all the above considerations, the derogation from the attained level of protection as a basis for the violation of the Fundamental Law alleged by the petitioner cannot be established either, and the Constitutional Court dismissed the petition under Article XXI of the Fundamental Law with regard to Section 2 (4) of the Decree. The Constitutional Court observes that it does not follow from the dismissal that the problem considered in the present case cannot be raised in a new and duly reasoned petition in a different context (in relation to other health effects within the scope of noise and vibration nuisances, such as sleep disturbances, circulatory disturbances or mental health effects).

[49] As indicated in points [25] and [26] of the Reasoning for Decision 3075/2016 (IV. 18.) AB of the Constitutional Court, the object of protection of the right to a healthy environment is

the external phenomena which can be influenced by the State, which are directly capable of having an effect on human health and which, through State regulation, achieve the regulatory objectives of the Fundamental Law. The physical integrity and well-being of citizens is the object of protection of the right to physical and mental health. Although the two fundamental rights have different objects of protection, they are necessarily interrelated, since as part of the right to a healthy environment, the right to physical and mental health may be affected by restrictions. Nevertheless, from a constitutional doctrinal point of view, they are also common in that only their actual restriction raises the possibility of a fundamental right being infringed. The Constitutional Court above did not see any reason to find an infringement of the Fundamental Law in the area of the right to a healthy environment, in the absence of a restriction of that right. Despite the difference in the protected legal interest (object of protection), the doctrinal similarity in the case of the right to physical and mental health (Article XX of the Fundamental Law) also gives grounds to conclude that only its restriction would raise the issue of a violation of fundamental rights, which, contrary to the petitioner's argument, cannot be supported by constitutional arguments based on scientific evidence, and therefore, the violation or restriction of this fundamental right cannot be raised on any grounds. Considering that the harmful effects on health of temporary, that is, non-permanent exposure to noise of up to 65 dB (which could be a basis for finding that the fundamental right to physical and mental health is restricted) have not been proven, there is no need to assess the necessity and proportionality of the restriction. The Constitutional Court therefore also dismissed the petition for annulment of Section 2 (4) of the Decree with regard to Article XX of the Fundamental Law.

[50] 3.2 Section 1 (2) (a) of the Noise Protection Government Decree, which excludes from its material scope events held exclusively on public ground, in the petitioner's view also infringes the right to a healthy environment and the right to physical and mental health, since it makes an arbitrary distinction as regards the enforcement of noise protection rules: It excludes the enforcement of noise protection legislation for a specific part of the State territory. As the Constitutional Court has pointed out above, the fact that the legislator has excluded certain activities from the material scope of the Noise Protection Government Decree does not mean that they are completely unregulated. Thus, in the case of occasional events held exclusively on public ground, although there is indeed no need to apply in advance for the setting of a noise emission limit value for a source of noise for recreational purposes, the activity is subject to the general rules of the Decree, since the Decree has full material and territorial scope and was adopted under the Minister's autonomous legislative power by direct delegation, and thus the general limit values in Annex 1 apply accordingly. There is undisputedly a difference in the limit values between occasional events not held exclusively on public ground and occasional events held exclusively on public ground: The latter will be subject to the general, stricter rules, since the Decree only provides for the application of the special rule to occasional events not held on public ground. Since the Decree does not exclude its own material scope for events held exclusively on public ground, and indeed Section 2 (1) thereof provides in general that "[t]he exposure limit values for noise emitted from an industrial or recreational noise source in areas to be protected from noise shall be as set out in Annex 1 hereto", it follows that the general rule, in other words the general limit in Annex 1, applies to occasional events held

exclusively on public ground. The result is that the Noise Protection Government Decree, far from creating a less restrictive or unregulated environment by exempting it from the scope of the legislation, has opened up the door to lower limits by imposing a more stringent general rule. For all of the foregoing arguments, the Constitutional Court also found unfounded the part of the petition seeking the annulment of Section 1 (2) (a) of the Noise Protection Government Decree on the basis of Article XX and Article XXI of the Fundamental Law.

[51] 3.3 Nor is there any basis for the Constitutional Court to annul the contested provision of the Decree on the basis of Article I (3) of the Fundamental Law.

[52] Article I (3) of the Fundamental Law, invoked by the petitioner, regulates in a slightly different wording from Article 8 (2) of the former Constitution, but in the same substantive content as the petitioner invokes, that fundamental rights and obligations must be regulated by the legislature at the level of an Act of Parliament. The difference arises in relation to the permissibility of the restriction of such rights; in comparison with the previous constitutional provision, our Fundamental Law in force provides, in a manner which is additional to the previous provision, that "[a] fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued". Under the previous constitutional provision, the essential content of a fundamental right could not be restricted, whereas Article I (3) of the current Constitution provides that a restriction meeting the above conditions may only be permitted "with full respect for the essential content of that fundamental right".

[53] The petitioner requests the Constitutional Court to conduct an inquiry into the level of regulation required. Having regard to the reasoning set out in points [40] to [49] of the Reasoning for this Decision in relation to the applicability of the previous Constitutional Court decisions based on the Constitution, and in particular the criteria set out in Decision 13/2013 (VI. 17.) AB, the Constitutional Court has concluded, by considering the criteria set out in that decision, that in the present case Article 8 (2) of the Constitution, in particular the reasoning of the decisions cited below examining the level of regulation required, can be incorporated into this Decision to the extent necessary and appropriate.

[54] The Constitutional Court has already addressed the issue of the expected level of regulation of restrictions on fundamental rights on several occasions. In its previous decisions, it has pointed out that it follows from the State's obligation to secure the exercise of fundamental rights that such rights may only be restricted in a manner permitted by the current Constitution [Decision 27/2002 (VI. 28.) AB, ABH 2002, 146]. In this respect, Article I (3), first sentence, of the Fundamental Law is applicable, pursuant to which "rules for fundamental rights and obligations shall be laid down in an Act " The Constitutional Court has recently reaffirmed its practice in this regard in its Decision 36/2014 (XII. 18.) AB (Reasoning [79]), which provides that "not every type of connection with fundamental rights requires regulation at the level of an Act of Parliament. The determination of the content of a certain fundamental right and the establishment of the essential guarantees thereof may only occur in Acts of Parliament; furthermore, the direct and significant restriction of a fundamental right also calls for an Act of Parliament. However, when the relationship with fundamental rights is indirect and remote, a decree is sufficient. If it were otherwise, everything would have to be regulated by Acts of

Parliament." [Decision 64/1991 (XII. 17.) AB, ABH 1991, 300] "[T]he issuance of rules in the form of a decree which are also related to constitutional rights, but which only affect them remotely and indirectly, and which are of a technical and non-restrictive nature, is not in itself unconstitutional [Decision 29/1994 (V. 20.) AB, ABH 1994, 155.]." However, in the case of an indirect and remote connection with a fundamental right, and it should be stressed that it is only the regulation and not the restriction that is concerned, the regulation by decree is also admissible [Decision 64/1991 (XII. 17.) AB, ABH 1991, 300; Decision 31/2001 (VII. 11.) AB, ABH 2001, 261]. From this, the Constitutional Court also concluded that it is always possible to determine only on the specific regulation whether, depending on the intensity of its relationship with a fundamental right, it should be enshrined in an Act of Parliament or not.

[55] In the present case, as stated above, it cannot be proved that the restriction of the right to physical and mental health is causally linked to the legislation sought to be reviewed, and therefore the legislation at the level of an Act is not required. The previously described rules of the Environmental Protection Act satisfy the requirement that a rule on a fundamental right be laid down at the level of an Act of Parliament.

[56] On this basis, the Constitutional Court dismissed the petition in its entirety.

Budapest, 7 June 2016

Dr. Tamás Sulyok, sgd., Deputy Chief Justice of the Constitutional Court

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

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

Dr. Imre Juhász, sgd., Justice of the Constitutional Court

Dr. Tamás Sulyok, sgd., Deputy Chief Justice of the Constitutional Court, on behalf of dr. Béla Pokol, Justice of the Constitutional Court, prevented from signing

Dr. László Salamon, sgd., Justice of the Constitutional Court

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

Dr. Péter Szalay, sgd., Justice of the Constitutional Court

Dr. Mária Szívós, sgd., Justice of the Constitutional Court

Dr. András Varga Zs., sgd., Justice of the Constitutional Court