

## **Decision 23/2023. (X. 25.) AB**

### **establishing an omission related to the payment of damages in connection with the unjustified or unlawful ordering of emergency and compulsory psychiatric treatment pursuant to section 199 of the Act CLIV of 1997 on Health Care**

The plenary session of the Constitutional Court, in the subject-matter of a constitutional complaint – with concurring reasoning by Justices *dr. Ágnes Czine Justice, dr. Ildikó Hörcherné dr. Marosi, dr. Zoltán Márki* and *dr. Balázs Schanda* – adopted the following

decision:

1. The Constitutional Court – acting *ex officio* – finds that in respect of Article IV (4) of the Fundamental Law, the National Assembly had caused a violation of the Fundamental Law manifested in an omission by failing to lay down the rules for compensation for damages if a person's freedom was unjustifiably or unlawfully restricted during the ordering of emergency and compulsory psychiatric treatment under section 199 of the Act CLIV of 1997 on Health Care. The Constitutional Court calls upon the Parliament to meet its legislative duty by 31 March 2024.
2. The Constitutional Court rejects the constitutional complaint aimed at establishing the a conflict with the Fundamental Law and annulling the ruling No. Pfv. III. 20. 953/2021/4 of the Curia as the review court.

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

#### Reasoning

I

[1] 1 The petitioner submitted a constitutional complaint through his legal representative (Dr. Márk Pető, lawyer), who is certified by the attached power of attorney. Based on section 27 of the Act CLI of 2011 on the Constitutional Court (hereinafter: ACC), the petitioner requested the declaration that the judgement No. Pfv. III. 20. 953/2021/4 of the Curia as the review court was contrary to the Fundamental Law and asked for its annulment.

[2] 2 The background to the case can be traced back to the police measure – described and not contested in the petition – established in the review procedure on which the constitutional complaint is based: the order for emergency medical treatment and its judicial review, and the order for compulsory medical treatment.

[3] 2. 1 As a measure taken by the police, on 8 May 2016, the petitioner was arrested by the police and, as he did not provide identification, he was taken to the police station.

[4] During a search of his clothing and luggage, the petitioner was found to be in possession of two gas sprays and a switch-blade knife with a blade longer than 7 cm. After being taken to the police station, the petitioner was found to be disoriented and the National Ambulance Service was informed, who arranged for the petitioner to be taken to a psychiatric ward. On admission, a tape recorder and a four-page letter of request for help written in pencil were found in the applicant's bag. The doctor who admitted the patient read the letter with the applicant's consent and found that it contained a lengthy request for help from the applicant, who believed that he was being persecuted by a political party and that it wanted to kill him. The admitting doctors considered that the applicant's admission to a psychiatric ward was justified on the basis of a diagnosis of acute psychosis.

[5] 2.2 Subsequently, the hospital notified the Central District Court of Buda (hereinafter: CDCB) in order to initiate the procedure provided for in Chapter X of the Act CLIV of 1997 on Health Care (hereinafter: AHC). In that connection, the court appointed a guardian ad litem for the applicant and obtained the opinion of an independent forensic psychiatrist expert. According to the forensic psychiatrist's expert opinion of 10 May 2016, the petitioner's admission was necessary and his brief placement in a ward was also necessary. At the court inspection held by the court on 10 May 2016 in the psychiatric ward, a junior judge, the trainee lawyer of the guardian ad litem, the seconded forensic psychiatrist expert and the doctor appointed by the institution were present. The doctor appointed by the Institute stated that the applicant's treatment was necessary. In the opinion of the forensic expert, the placement of the applicant in an in-patient psychiatric institution was justified on the basis of his pathological condition. The guardian ad litem did not oppose the treatment.

[6] By its ruling No. 76.Pke.62.032/2016/3 of 10 May 2016, the court found that the plaintiff's admission for emergency treatment was justified and ordered his compulsory institutional treatment. In the reasoning of the ruling, it referred to sections 189 to 192 of the AHC and cited the provisions of section 188 (b) and (c) and section 199 (1). It found that the applicant had behaved in a directly dangerous manner prior to his arrest by behaving in a disorderly manner during the police

procedure. The court referred to the fact that the expert opinion obtained stated that the need for the applicant to be given compulsory medical treatment for his dangerous behaviour was justified, because the applicant was suffering from paranoid delusional disorder and therefore required further investigation. The court of first instance served its ruling on the hospital and on the appointed guardian ad litem on 24 May 2016. Four to five days after the inspection, the head of the department informed the applicant that the court had ordered his compulsory medical treatment for 30 days.

[7] As the plaintiff's mental condition had resolved, he was discharged from the hospital on 25 May 2016. According to the final report taken at that time, the psychodynamic tests carried out during the applicant's treatment in the ward confirmed the clinical picture. Since, as a result of the treatments, his condition did not require further acute psychiatric inpatient treatment and no immediate dangerous behaviour was observed, he was discharged to his home at his request, with the obligation to report for further psychiatric check-ups at the competent psychiatric care centre in the area on 7 June 2016. The therapy applied at the time of discharge was medication, after which he saw an outpatient psychiatrist for a year at the competent district psychiatric care centre.

[8] 2.3 The petitioner requested his medical records in 2018 and appealed to the court of second instance, claiming that he had not received the ruling of the court of first instance. In view of the medical documentation received by the requested party in person on 7 March 2018, the defendant considered the appeal, which was posted on 14 March 2018, to have been received within the time limit.

[9] By its ruling No. 54.Pkf.632.635/2018/9 of 11 June 2018, the Budapest-Capital Regional Court, as the court of second instance, did not affect the non-appealed provision of the ruling of the court of first instance, altered the provisions appealed against and dismissed the applications for declaring that it was justified to transfer the plaintiff, as the requested party, to emergency treatment on 8 May 2016 and for ordering his compulsory treatment in a psychiatric institution. The court pointed out that the imposition of compulsory psychiatric hospitalisation is the most severe coercive measure applied by a court in civil matters, which restricts the fundamental right to personal liberty and self-determination protected by the Fundamental Law and international conventions, and that it may be applied only if the conditions laid down by law are fully met, and that those provisions of law cannot be interpreted broadly. The court referred to section 199 (1) of the AHC, according to which admission for emergency treatment is justified only if the patient has engaged in conduct that is directly dangerous, and to section 188 (1) (e) of the AHC, which gives the definition of dangerous behaviour as follows: the patient, as a result of acute mental disorder, poses an immediate and serious threat to his or her own life,

physical integrity or health or that of others, and failure to treat him or her immediately would result in further deterioration of his or her condition, which could be averted by immediate institutional treatment.

[10] The court of second instance did not share the view of the court of first instance that the plaintiff's admission to the institution had been accompanied by proof of the existence of directly dangerous conduct in accordance with the statutory provisions. In its view, the oral expert opinion of the forensic expert appointed by the court was not in itself suitable for this purpose, and the written expert opinion was about the treatment required for persecutory delusions. Therefore, the respondent, as the court of second instance, found that the first instance ruling for the applicant's compulsory institutionalisation was unfounded.

[11] 3 The petitioner then brought an action for a declaration of infringement of his personality rights and for the payment of grievance award.

[12] 3.1 The petitioner – on the basis of section 2:51 and section 2:52 of the Act V of 2013 on the Civil Code (hereinafter: Civil Code) – sought in his action a declaration that the CDCB had violated his right to personal liberty, human dignity, the general freedom of action and right to self-determination deriving therefrom, and his right to privacy by unlawfully ordering his compulsory treatment in a psychiatric institution and by failing to notify him of the ruling, thereby depriving him of an effective remedy. He requested the court to prohibit the CDCB from committing similar infringements in the future, including by requiring it to take general measures to ensure that judges and junior judges working in the courts also serve their rulings relating to emergency and compulsory treatment on the requested parties at their home address and at the address of the hospital, so that they can effectively appeal against them during the treatment. He also asked the court to order the respondent to pay grievance award in the amount of HUF 200 000.

[13] 3.2 The court of first instance rejected the claim. The court argued that there is no doubt that compulsory psychiatric treatment is the most severe coercive measure applicable by a court in civil matters and that any conduct which causes or threatens to cause harm to the interests of the individual is unlawful, but that, in its view, still certain circumstances preclude the unlawfulness of the conduct. It pointed out that, among other things, the unlawfulness of the transgression of the limits of those rights on the basis of an express authorisation by law is excluded. The court referred to section 199 (5) of the AHC, which gives the courts the power to limit the rights of the person admitted as an emergency patient within the appropriate procedural guarantees.

[14] According to the reasoning of the court, the decision of the court of second instance delivered in the non-litigious procedure does not in itself support the

violation of rights. In the court's view, an infringement of personality rights within the meaning of section 2:43 of the Civil Code is also only established if the person acting in a judicial capacity commits a blatantly unlawful act or omission. As argued, the court was also required to examine whether there had been a serious error of interpreting the law, applying the law or assessment in the main proceedings, with regard to no-fault sanctions and grievance award. As regards the service of the ruling on emergency medical treatment, the court found that there was no procedural mistake, since no obligation to serve the order separately on the requested party in addition to the guardian ad litem follows from the AHC and the rules of non-litigious procedure. Nor did it share the applicant's view on challenging the imposition of compulsory medical treatment. It pointed out that, according to the final report, the applicant's paranoid and psychotic state was confirmed by the tests carried out during his treatment, in addition to the medical opinions of the specialist at the time of ordering the treatment. The court stressed that significant danger is not defined in detail in the legislation, and that in many cases the judicial case-law includes a more remote risk of deterioration in health among dangerous conduct, so that compulsory treatment may be ordered in order to prevent the occurrence of a condition which is directly dangerous. Taking all of the above into account, the court held that, in ordering the applicant's compulsory medical treatment, the court of first instance had acted in accordance with its statutory powers, had not exceeded the procedural limits imposed on it and had not committed any manifest error of interpreting or applying the law, and therefore dismissed the applicant's action for the infringement of his personality right.

[15] 3.3 Acting on appeal by the applicant, the court of second instance upheld the judgement of the court of first instance. It argued that, in the context of unlawfulness, it was necessary to examine whether the respondent's conduct, as set out in the statement of claim, constituted an erroneous application of the AHC or of the Act III of 1952 on the Civil Procedure which could be regarded as an attack on the applicant's personality rights, or whether the defendant had infringed, in the course of its proceedings, any rule of the AHC which directly protects the applicant's personality rights. The court pointed out that the applicant had identified two measures taken by the respondent as unlawful conduct in connection with which his personality rights, in particular his right to personal liberty, had been infringed: first, the order for compulsory institutional treatment and, second, the failure to serve on the applicant the decision of the first instance. As regards the latter, the court confirmed that the method of service was not unlawful.

[16] However, it argued that the applicant had good reason to claim that the decision of the court of first instance in the main proceedings was unfounded and unlawful. The court considered that it was a mistake to hold that – as in the case of grievance

award – the court proceeding in a personality rights’ case should examine, as regards no-fault sanctions, whether the error of interpreting the law, applying the law or assessment committed by the court was blatantly serious. The court stressed that the fact of an infringement of personality rights is sufficient for the application of these personality protection instruments. The court of second instance stressed that the provisions wrongly applied by the respondent court at first instance – sections 189 (2), 199 (1) and (5) and 200 (1) of the AHC – are rules directly protecting the applicant's personality rights and that their infringement therefore also gives rise to a violation of personality rights. However, in its view, the applicant's claim for objective legal consequences cannot be upheld, since they may be applied only if they serve the purposes of the protection of personality and are necessary in the relationship between the parties.

[17] It stressed that the respondent court had changed its non-final decision violating the personality right in its own second instance proceedings, thus the declaration of infringement in a judgement was unnecessary and unfounded in the given facts and circumstances. The court explained that the purpose of declaring an infringement of rights is to have the unlawfulness of the infringing conduct recognised by the court and thus to provide the injured party with moral satisfaction. In his view, in the present case, the respondent, as the court of second instance, had already declared that unlawfulness, had reversed the injurious decision, and had thus provided the applicant with adequate moral satisfaction for the harm resulting from the misapplication of the law, and there was no need to repeat the declaration of unlawfulness, even if the respondent had not been a party to the main proceedings but had acted as a court of adjudication. The court found that the applicant's request for an injunction against the respondent's further infringement was unfounded, since, in its view, it was incompatible with the principle of the independence of courts and judges.

[18] In relation to the applicant’s claim for grievance award, it held, in agreement with the court of first instance, that liability for the infringement of personality rights in the exercise of judicial power can only be established in the case of a blatantly serious error of applying or interpreting the law. The decision of the court of first instance in the main proceedings, taken on the basis of the content of a medical expert's opinion, cannot be regarded as a decision based on an unreasonable conclusion and a serious error of assessment even if it was subsequently reversed by the court of second instance, since the court of first instance had to base its decision on the information available to it at the time. In the light of the foregoing, the court held that the respondent had not committed any blatant error of applying the law or assessment in its proceedings which could give rise to liability for the infringement of personality rights and therefore upheld the judgement of the court of first instance.

[19] 3.4 The petitioner brought an application for review of the final judgement, asking for it to be set aside and for his application to be upheld.

[20] The Curia set aside the final judgement in part and altered it. In the holdings of its judgement, it held that the respondent had infringed the applicant's right to personal liberty by ordering his compulsory institutionalisation. In other respect, it upheld the final judgement.

[21] It stated that it had examined the unlawfulness of the final judgement within the limits of the application for review, in relation to the legislation referred to therein. The applicant relied, among other things, on several articles of the Fundamental Law as being breached, but the Curia could not, for lack of jurisdiction, carry out an investigation of conflict with the Fundamental Law in relation to the articles of the Fundamental Law relied on, nor could it investigate the breach of the European Convention on Human Rights (ECHR) in respect of the articles referred to. Therefore, the Curia stated that it could only examine whether the provisions of the Civil Code and the AHC, which the applicant had indicated in its application for review, had been violated. On the other hand, it also referred to decisions of the Constitutional Court concerning the applicability of objective sanctions in the interpretation of human dignity, the personality rights and the guarantees embodied in the system of legal remedies.

[22] As regards the unfoundedness of the objections relating to the service of a ruling ordering emergency medical treatment, it confirmed the findings made in the previous judgements. It also confirmed the finding in the judgement under review that the question of imputability can be examined only in the context of a claim for grievance award, whereas for the application of no-fault legal consequences, the fact of the infringement is sufficient. The Curia also shared the view that, for the purposes of applying no-fault sanctions, the infringement should be understood not as the harm, i.e. the damage to personality rights, but as the unlawful conduct which, in a causal connection, causes the damage to personality rights. This is expressed in the different wording of section 2:51 (1) and section 2:52 (1) of the Civil Code. No-fault sanctions can be enforced on the basis of the fact of the infringement, while grievance award can be claimed for the damage suffered. The Curia emphasised that the court of second instance also rightly pointed out that, when acting in a judicial capacity, a conduct violating personality rights may be deemed to have occurred if the misapplication of the law can also be assessed as an attack on the person and personality rights of the injured party, or if the court misapplies a substantive law directly affecting personality rights, i.e. the misapplication of the law itself constitutes a violation of personality rights. The Curia did not agree with the court of second instance that, as a result of the amendment of the previous ruling, it was no longer necessary to establish the fact of infringement in the personality rights action by way

of a judgement pursuant to section 2:51 (1) (a) of the Civil Code. Therefore, in the holdings of the judgement, it stated that the respondent had infringed the applicant's right to personal liberty by ordering institutional treatment. However, it essentially shared the view of the court of second instance as regards the other violations of personality rights relied on and the unfoundedness of the other objective sanctions claimed by the applicant in his action.

[23] The Curia confirmed that the applicant's claim for grievance award was unfounded: "The case-law is consistent in holding that the liability of the body applying the law is only based on a blatantly serious error of applying or interpreting the law. However, in cases where, in the course of the application of the law, it was necessary to establish the facts and interpret the law, defining the relevant legal facts, and the decision taken was based on a weighing of the available evidence, the administrative body's error or mistake falls outside the scope of imputability. (Case-law published in BH. 1996.311, BH2000. 55, BH2001.423 and BH2003.236.)"

[24] The Curia pointed out that the fact that the court of second instance found the decision of the court of first instance to be unlawful in the non-litigious proceedings is not in itself a basis for the obligation to pay grievance award. Pursuant to section 2:52 (1) of the Civil Code, a person whose personal rights have been infringed may claim grievance award for non-material damage suffered. According to paragraph (2), conditions of the obligation to pay grievance award, and in particular the identification of the person who is under the obligation to pay and the ways of exculpating him, shall be governed by the rules on liability for damages, with the proviso that, apart from the fact of the violation, there is no need to prove further loss. The Curia held that the trial courts were right to take the position that liability for the infringement of personality rights in the exercise of judicial authority can only be established in the case of a blatantly serious error of applying or interpreting the law. The second instance court also pointed out correctly that, in the non-litigious procedure, the court of first instance had to take its decision in the light of the information available at the time. In view of the medical expert's statement and the four-page letter found with the applicant, the contents of which were a request for assistance, and the conduct of the applicant immediately prior to the act of the respondent complained of, the fact that he had with him instruments capable of causing bodily harm or even loss of life, which are not normal elements of street attire, particularly together, the first instance court did not act in a blatantly unreasonable manner in deciding, with a high degree of caution, to prevent any subsequent dangerous conduct. On the basis of the above, the Curia found no violation of section 2:52 of the Civil Code.

[25] 4 The petitioner then filed a constitutional complaint under section 27 of the ACC, in which he requested a declaration that the contested decision of the Curia

violated his fundamental rights guaranteed by Articles IV (1) to (2) and (4) and XV (1) to (2) of the Fundamental Law.

[26] He marked as a question of fundamental constitutional importance "whether fundamental rights are infringed in the case of a restraint of personal liberty which is subsequently found to be unlawful if the injured party cannot receive financial compensation for the infringement which entails an irreversible restraint of liberty, [ . . . ], does the procedure for the determination of grievance award constitute an effective means of redress and thus guarantee the fundamental right of the petitioner (and other citizens in similar situation) to obtain compensation for the harm suffered in the event of an unjustified and unlawful deprivation of their personal liberty?" In this context, the petitioner referred to the holdings of the Constitutional Court in the Decision 3142/2013. (VII.16.) AB.

[27] In addition, according to the petitioner, there is also a violation of the Fundamental Law which substantially influenced the court's decision. In the case at hand, the interpretation and application of the law by the Curia contrary to the Fundamental Law concerning section 2:52 of the Civil Code was of such gravity that it substantially affected the fundamental rights of the petitioner guaranteed by Article IV (1) to (2) and (4) and Article XV (1) to (2) of the Fundamental Law. The petitioner's fundamental rights would not have been infringed if the Curia had taken its decision in the light of fundamental rights. According to the petitioner, "in the case of deprivation of personal liberty under civil law (emergency and compulsory psychiatric treatment), a case-law which ensures the protection of fundamental rights and is in accordance with the wording of the Fundamental Law should require the courts to consider it imputable if the restriction of fundamental rights was unlawful or unfounded. The Curia failed to take into account the fundamental rights aspects of the case, in particular Article IV (4) of the Fundamental Law, in its application of the law, and thus failed to provide the petitioner with an adequate opportunity for compensation for the infringement of his personal liberty."

[28] Before its detailed arguments, the petitioner summarised its reasons as follows: "Article IV (1) to (2) and (4) and Article XV (1) to (2) of the Fundamental Law is infringed by failing to guarantee the applicant's fundamental right to compensation following the unjustified and unlawful infringement of his personal freedom, by failing to recognise and decide on the fundamental rights relevance of the case in the interpretation and application of the civil law rules on grievance award, and by making an unjustified distinction between the persons whose freedom was restricted based on the form of the restriction of personal freedom, and thus by discriminating against the applicant in the enforcement of his fundamental rights claim."

[29] In his detailed reasoning, the petitioner set out his views on emergency and compulsory medical treatment, on compensation linked to the infringement of personal liberty, on the relationship between the action on personality rights and the claim for compensation, on the presentation of discrimination and the absence of compensation in the judgement.

## II

[30] 1 The affected provisions of the Fundamental Law:

“Article IV (1) Everyone has the right to liberty and security of the person.

(2) No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.

[...]

(4) Everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation.”

“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.”

[31] 2 Sections of the Civil Code affected by the petition:

“Section 2:43 [Specific personality rights]

Violation of personality rights means in particular

[. . .]

(b) violation of personal liberty and privacy, and trespass;”

“Section 2:51 [No-fault sanctions]

(1) Any person whose personality rights have been violated may claim, based on the fact of violation, within the limitation period and according to the circumstances of the case

(a) the establishment of the violation by the court;

(b) that the violation be ceased and the person committing the violation be forbidden from continuing the violation;

(c) that the person committing the violation give appropriate satisfaction, and provide for its publicity at his own expenses;

(d) the ending of the injurious situation, the restoration to the situation existing prior to the violation, and the destruction of things produced through the violation or the depriving such things of their unlawful character;

(e) that the person committing the violation or his legal successor relinquish the material gain obtained by the violation according to the rules on unjustified enrichment.”

#### Section 2:52 [Grievance award]

(1) Any person whose personality rights have been violated may claim a grievance award for non-material harm done to him.

(2) Conditions of the obligation to pay grievance award, and in particular the identification of the person who is under the obligation to pay and the ways of exculpating him, shall be governed by the rules on liability for damages, with the proviso that, apart from the fact of the violation, there is no need to prove further loss.”

### III

[32] 1 Pursuant to section 56 of the ACC, the Constitutional Court first examined the statutory conditions for the admission of a constitutional complaint.

[33] According to section 27 (1) of the ACC, based on Article 24 (2) (d) of the Fundamental Law, persons or organisations affected in an individual case may submit a constitutional complaint to the Constitutional Court against a court decision contrary to the Fundamental Law, if the decision adopted in the merits of the case or another decision terminating the judicial proceedings violates the petitioner's right granted in the Fundamental Law, and the possibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her. The petitioner was the applicant in the case that resulted in the contested court judgement, therefore he is affected, and he is – in part – entitled to file a constitutional complaint. The applicant has exhausted the legal remedies available to him.

[34] According to section 30 (1) of the ACC, constitutional complaints are to be submitted not later than sixty days of serving the challenged decision. According to

the downloading certificate, the judgement No. Pfv. III. 20. 953/2021/4 of the Curia as the court of review was received by the legal representative on 17 March 2022, and the constitutional complaint against it was lodged in due time with the court of first instance on 13 May 2022. No extraordinary legal remedy proceeding is pending in this case.

[35] According to section 52 of the ACC, the petition should contain an explicit request. In his constitutional complaint, the petitioner indicated section 27 of the ACC, on the basis of which he initiated the constitutional complaint procedure, the challenged court decision and the provisions of the Fundamental Law alleged to be violated, thus formally fulfilling the requirement of an explicit request.

[36] 2 Pursuant to section 29 of the ACC, a constitutional complaint may be admissible in the case of the infringement of the Fundamental Law which substantially affects a judicial decision, or a question of fundamental constitutional significance. These two conditions are of an alternative nature, therefore the existence of one of them in itself justifies the Constitutional Court's substantive proceedings {Decision 3/2013 (II. 14. ) AB, Reasoning [30]; and Decision 34/2013 (XI. 22. ) AB, Reasoning [18]}, the examination of the existence of these conditions falls within the scope of discretion of the Constitutional Court.

[37] The problem raised by the petitioner as a question of fundamental constitutional importance is the question of how the interpretation and application of the rules on personality rights actions and, in particular, the rules on grievance award in the event of unjustified or unlawful restrictions on the personal freedom of psychiatric patients can guarantee the right to redress for the harm suffered, as enshrined in Article IV (4) of the Fundamental Law. Is the procedure for grievance award a sufficiently effective means of enforcement to guarantee compensation for the harm suffered in the event of an unjustified and unlawful deprivation of personal liberty?As the petitioner states:"it is a question of fundamental constitutional importance whether fundamental rights are infringed in the case of a restriction of personal liberty which is subsequently found to be unlawful if the injured party cannot obtain financial compensation for the infringement of the right which results in the irreversible restriction of liberty."

[38] 3 The former issues can generally be considered as issues of constitutional significance, but in the procedure under section 27 of the ACC, their examination requires that they are related to the challenged court decision. The petitioner essentially argued against the court's decision that the court had not interpreted and applied section 2:52 of the Civil Code on grievance award in his personality rights action in accordance with the Fundamental Law. As a fundamental right of the injured

party, he relied on Article IV (1), (2) and (4) and Article XV (1) and (2) of the Fundamental Law.

[39] 3.1 As stated above, the petitioner complained in part that the contested court decision violated Article IV (1) and (2) of the Fundamental Law. With regard to the court decision referred to in the present constitutional complaint, the subject of the examination was, as the Curia clearly stated in the grounds of the judgement under appeal (Reasoning [48]), the application and interpretation of the provision of the Civil Code referred to by the applicant in the application for review. Under Article IV (1) of the Fundamental Law, everyone has the right to freedom and personal security; and as laid down in paragraph (2), no one shall be deprived of his freedom except on the grounds and in accordance with the procedures specified by law. However, as can be ascertained from the available documents and the submission of the constitutional complaint, the restriction of liberty was not the subject-matter of the case challenged by the present constitutional complaint, but of a prior, separate and non-litigious procedure which ended with a final court order. Consequently, no direct breach of Article IV (1) to (2) of the Fundamental Law could arise in the application of the rules on liability for damage caused by the judicial power. In that regard, the petitioner's claim that the proceeding courts failed to recognise the fundamental rights' relevance in respect of Article IV (1) and (2) of the Fundamental Law could not therefore be examined on the merits.

[40] 4 The basis for reviewing the judicial decision is the obligation to interpret the law in accordance with the Fundamental Law. As summarised by the Constitutional Court in the Decision 3/2015. (II. 2. ) AB: "According to Article 28 of the Fundamental Law, in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. This provision of the Constitutional Court lays down as a constitutional requirement for the courts in the course of the application of law to interpret the laws primarily in accordance with the Fundamental Law [...]. Based on this obligation, the courts should identify the fundamental rights' aspects of the relevant case within the limits of interpretation provided by the laws, and they should interpret the laws applied in the judicial decisions with due account to the constitutional content of the affected fundamental right. The constitutional complaint allowing the constitutional review of judicial decisions (Section 27 of the ACC) is a legal institution that serves the purpose of enforcing Article 28 of the Fundamental Law." (Reasoning [17] to [18]).

[41] In order for the Constitutional Court to determine in the present case whether section 2:52 of the Civil Code has been applied and interpreted in accordance with or contrary to the Fundamental Law, it shall take into account the starting points of its examination. The exploration of the legislative context and the interpretation of Article IV (4) of the Fundamental Law, which also refers to the case-law of the

Constitutional Court are such preliminary questions. The Constitutional Court was also required to examine whether the application and interpretation of Article XV (1) and (2) of the Fundamental Law could have been raised in the court decision and, if so, whether the interpretation of the law applied was in accordance with the Fundamental Law. This requires an examination of the merits.

#### IV

[42] The constitutional complaint against the judicial decision is unfounded.

[43] 1 In the petition, as well as in the underlying personality rights action and the preceding non-litigious proceedings, reference was made to the legislation on compulsory medical treatment of psychiatric patients, the grievance award for violation of personality rights, liability for damages, liability related to damages caused in the jurisdiction of the courts and compensation.

[44] 1. 1 The substantive rules on emergency and compulsory medical treatment are laid down in the AHC, in particular Chapter X of the Act. After the interpretative provisions, the specific rules on the rights of psychiatric patients are laid down in the Act. In this context, the legislation specifically states that only patients who show dangerous or directly dangerous conduct may have their personal freedom restricted by any means (physical, chemical, biological or psychological methods or procedures). The restriction shall only be maintained for a period and shall only be employed to the extent and in the manner that is absolutely necessary to avert the danger [section 192 (1) of the AHC].

(45) Section 10 (4) to (5) shall apply to ordering restraints and to the mode of restriction. Accordingly, "the patient's personal freedom may be restricted by physical, chemical, biological or psychological methods or procedures exclusively in case of emergency, or in the interest of protecting the lives, physical integrity and health of the patient or others."

[46] In relation to psychiatric patients, the Act makes the restriction of personal liberty subject to special conditions, while at the same time it provides for the application of general rules as to the imposition and manner of the restriction. The institutional treatment of psychiatric patients may take the form of voluntary treatment, emergency treatment (in cases detected by a doctor) or compulsory treatment ordered by a court (section 196 of the AHC). In its decision No. ECHR 2004, 1130, the Curia interpreted, among others, the relationship between the above two types of psychiatric institutional treatment carried out without the patient's consent. It held that, for the purposes of the applicability of sections 199 and 200 of the AHC, it is not

a question of gradualness, still less of the degree of severity of the illness, but of the urgency of the treatment that determines the distinction.

[47] In the precedent case underlying the present constitutional complaint, emergency treatment and compulsory treatment were ordered. Pursuant to section 199 of the AHC, the former can be applied if the psychiatric patient engages in directly dangerous conduct, which can only be prevented by immediate admission to a psychiatric institution. In such cases, the doctor who detects the problem shall take direct action to have the patient transferred to an appropriate psychiatric institution, with the assistance of the police if necessary. Within 24 hours of admission of the patient, the head of the psychiatric institute shall notify the court and initiate a court finding that there were grounds for the admission, and request a court order for mandatory treatment of said patient in a psychiatric institute. The Act lays down detailed safeguards for the non-litigious procedure (appointment of an expert and a guardian ad litem, taking of minutes, time limits, etc. ). With regard to legal remedies, the AHC also stipulates that appeals may be lodged against decisions taken in the course of the procedure within 8 days of notification, and that in appeal proceedings the court shall act out of turn. However, an appeal against a decision ordering compulsory institutionalisation in the course of emergency treatment does not have suspending effect on the enforcement of the decision.

[48] There is no doubt, as the court of first instance stated in its reasoning, that compulsory psychiatric treatment is the most severe coercive measure applicable by the courts in civil matters and necessarily entails deprivation of liberty.

[49] 1. 2 Grievance award is regulated in section 2:52 (2) of Part Three of Book One of the Civil Code. This Third Part contains the rules on personality rights and the sanctions for their infringement. According to section 2:42 (1) of the Civil Code, "everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely and not to be hindered by anyone from exercising these rights". Paragraph (2) derives the personality rights from human dignity and as such provides for the obligation to respect them and that personality rights are protected by the Civil Code. The Act expressly mentions eight cases of possible violations of personality rights. These include the violation of personal freedom [section 2:43 (b) of the Civil Code]. The Act also provides for sanctions for the violation of personality rights. These are described in the legal literature as objective and subjective sanctions. Sanctions no-fault sanctions (objective sanctions) are listed in section 2:51 of the Civil Code, which also specifies against whom they may be enforced in certain cases. Grievance award is not included in this list, i. e. grievance award is not a no-fault sanction. In section 2:52 of the Civil Code, the law-maker provides for the grievance award to be claimed in the case of non-material damage. Accordingly, a person whose personality rights have been violated may

claim a grievance award for the non-material damage suffered. At the same time, it provides that the conditions for ordering the payment of grievance award, in particular the determination of the person liable to pay grievance award and the method of exculpation, are to be governed by the rules on liability for damages. Separately from the foregoing, the Act also ensures that material damage resulting from an infringement of personality rights may be enforced (section 2:53 of the Civil Code).

[50] The rules of liability for damages referred to in section 2:52 (2) of the Civil Code, the rules of liability for non-contractual damages, are laid down in Part Four of Book Six of the Civil Code. First, it lays down general and common rules on liability for damages. As a general rule of liability, it stipulates that "a person causing unlawfully damage to another shall compensate for the damage caused. The person causing damage shall be exempted from liability if he proves that he was not at fault. (section 6:519 of the Civil Code). The Act contains special provisions on certain cases of liability (e. g. activities involving increased risk, liability for damage caused by another person). Among these cases it mentions liability for damage caused by the exercise of public authority. Within this, it provides separately for liability for damage caused within administrative powers and liability for damage caused by judicial authority, the latter, however, also referring back to the former rule. Pursuant to section 6:548 (1) of the Civil Code, "liability may be established for damage caused in the course of exercising administrative powers if the damage has been caused by exercising public authority or by failing to exercise it, and the damage could not be averted by an ordinary legal remedy or an administrative court action." Under section 6:549 (1) of the Civil Code, the rules on liability for damage caused in the course of exercising administrative powers shall apply accordingly to the damage caused in the course of exercising judicial powers. It is also stipulated here that the prerequisite for an action for damages is the exhaustion of ordinary remedies. It is a question of legality for judicial case-law to assess the question of imputability, the standard of fault, in an action for the protection of personality rights based on a challenged judicial procedure or in an action for damages.

[51] 1. 3 Section 6:564 of the Civil Code provides for recompense separately from damages. It provides that "if the obligation to provide recompense for damage caused lawfully is set forth by law, the rules on damages shall apply accordingly to the form and extent of the recompense". This provision also implies that the lawfulness of causing the damage alone does not give rise to a legal consequence of recompense, as this requires an express statutory provision.

[52] With regard to the unjustified restriction of liberty, such statutory provisions can be found in the Act XC of 2017 on Criminal Procedure (hereinafter: ACP) and the Act II of 2012 on Offences, the Procedure in Relation to Offences and the Offence Record

System. According to section 844 of the ACP, "if the conditions set out in this Act are met, compensation shall be paid to the accused person if his or her liberty has been unjustly restricted or deprived in or as a result of criminal proceedings."The ACP also contains detailed rules on the cases, conditions, method of enforcement, simplified compensation procedure, compensation litigation and payment of compensation. The ACP mentions compulsory medical treatment as one of the cases of deprivation of liberty justifying compensation. Compulsory medical treatment is – unlike emergency and compulsory medical treatment described above and regulated by the AHC – a criminal measure regulated by section 78 of the Act C of 2012 on the Criminal Code (hereinafter: Criminal Code). According to the Criminal Code, this measure shall be imposed on the perpetrator of a punishable act of violence against a person or causing or public threat, if he is not punishable because of a pathological state of his mind and if there is a fear that he will commit a similar act.

[53] 2 As stated in Article IV (4) of the Fundamental Law, "everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation."According to the constitutional reasoning attached to Article IV, the Fundamental Law formulates the right to be free from detention as the right to liberty and personal security, a customary term that is also used in the text of international conventions, and also defines the elements of guarantee of the restriction.

[54] 2. 1 In the past, Article 55 (3) of the Constitution provided in a different wording for more narrowly understood cases, but in a substantially similar way:"any person who has been the victim of unlawful arrest or detention shall be entitled to compensation."A number of Constitutional Court decisions have been made in relation to this fundamental rights provision. Decision 104/2009 (X. 30. ) AB established the following: it does not follow from Article 55 (3) of the Constitution that the State is under an obligation to compensate, in the context of a form of liability for damages without examination of the fault for damage, all victims of coercive measures of criminal procedure and criminal sanctions involving deprivation of liberty or restriction of liberty, which are applied by the organisations acting in the course of the enforcement of the State's criminal claim, and which are subsequently applied by the organisations acting in the course of the enforcement of the criminal claim, and which are subsequently found to be unjustified because of the absence or lesser degree of criminal liability. At the same time, it laid down as a constitutional obligation on the law-maker to establish rules for the effective enforcement of the right to compensation. In view of the essential identity of the fundamental rights provision on unlawful detention, this argument is also applicable in relation to Article IV (4) of the Fundamental Law.

[55] Article IV (4) of the Fundamental Law does not limit the possible cases of restriction of liberty to arrest and detention in criminal proceedings. On the other

hand, it also provides for the right to compensation in cases of unjustified restraint in addition to cases of infringement of the law.

[56] 2. 2 The petitioner claimed that the Curia had failed to take into account the fundamental rights aspects of the case, in particular Article IV (4) of the Fundamental Law. In his view, the Curia should have interpreted fault in the application of the Civil Code in such a way that the court of first instance could have been expected not to order compulsory medical treatment in the non-litigious procedure. Since the court of first instance had unjustifiably and unlawfully restricted his freedom, this should in itself have been a basis for his entitlement to grievance award.

[57] As a result of the examination of the merits, it can be concluded that the petitioner's application essentially sought a constitutional review of the decision of the Curia delivered in the action for damages under the Civil Code, focusing on certain alleged violations [including Article IV (4) of the Fundamental Law].

[58] 3 In his application, the petitioner also alleged a violation of Article XV (1) and (2) of the Fundamental Law. Referring to the Decision 65/2003. (XII. 18. ) AB, the petitioner claimed that the guarantee of the right to personal liberty is that no one may be deprived of his liberty except for reasons and in accordance with procedures laid down by law. He also considered that it was a right guaranteed by the Fundamental Law that a person whose liberty has been unjustly or unlawfully restricted is entitled to compensation for the damage suffered. In the petitioner's view, "everyone has the same fundamental rights, regardless of the procedure by which his or her personal liberty has been restricted." According to the petitioner, the court decision was therefore discriminatory, since the Curia interpreted and applied section 2:52 of the Civil Code in such a way that the petitioner, who was ordered to undergo psychiatric treatment in a closed psychiatric institution on the basis of the AHC by an unfounded and unlawful decision, was placed in a more disadvantageous position than persons who are ordered to undergo psychiatric treatment in a closed psychiatric institution on the basis of the Criminal Code. The petitioner claimed that if his personal liberty had been restricted in criminal proceedings rather than in civil proceedings, the remedy for his prejudice would have been at least partially provided for in the compensation procedure granted in Chapter CVIII of the ACP.

[59] According to Article XV (1) of the Fundamental Law, everyone is equal before the law and every person has the capacity to act. Paragraph (2) states that 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. According to the petitioner, the judgement under appeal "unjustifiably distinguished between those who suffered a restriction of liberty according to the

form of the restriction of personal liberty and thus the petitioner suffered discrimination in the course of the enforcement of his fundamental rights."In his view, "the Curia, in its assessment of the blatant error of interpretation or application of the law, failed to take into account the fact that an effective, easily accessible simplified compensation procedure is available in the case of unjustified deprivation of liberty in criminal proceedings (section 851 of the ACP), therefore, the petitioner argues that the Judicial Decision would have been constitutional if the Curia had filled and applied the concept of fault in the scope of granting the grievance award with a content that more closely approximates to the compensation procedure under the ACP."

[60] According to the Constitutional Court, in a system of separation of powers, the interpretation of the law by the courts shall be recognised by the other public authorities, in particular where that interpretation is reflected in a decision of the Curia{see: Decision 3325/2012. (XI. 12. ) AB, Reasoning [14]}. The Constitutional Court points out that, acting on a constitutional complaint, it only examines the constitutionality aspects and refrains from reviewing the activity of the courts responsible for interpreting and applying the law on questions of legality and application of the law. "The fact that the courts before them interpreted the legal norm applied differently from the interpretation considered by the petitioner to be the authoritative interpretation does not in itself raise doubts as to whether the contested judicial decisions are unconstitutional and does not give rise to a question of fundamental constitutional significance."{Decision 3060/2016. (III.22.) AB, Reasoning [41]}.

[61] After examining the merits of the case, the Constitutional Court found that the petitioner essentially complained that the courts had adjudicated his claim for grievance award filed with reference to section 2:52 (1) of the Civil Code according to section 2:52 (2) of the Civil Code, i.e. the rules of liability for damages. In other words, he suffered discrimination because the courts did not include the compensation rules of the ACP within the scope of interpretation of the applicable law.

[62] The constitutional complaint does not explain how the rules of the ACP on compensation for damage could be applied to the facts of the case in an action for compensation for damage caused within judicial powers and brought under the Civil Code, or how rules "more closely approximating" to the provisions applicable in the procedure for compensation under the ACP could be applied by way of interpretation of the law. The complaint raises, in substance, the question of how the courts could have ruled in his favour on the issue of the grievance award.

[63] In this context, the complaint against the judicial decision had to be dismissed on the merits because, after reviewing the rules in force on damages and compensation,

it was found that they did not allow the interpretation which the complaint sought. The Curia interpreted the applicable legislation in the case in accordance with the Fundamental Law.

V

[64] 1 In his constitutional complaint, the petitioner complained, with regard to Article IV (4) of the Fundamental Law, that there was no sufficiently effective legal remedy to claim compensation for the harm suffered as a result of the unlawful deprivation of his personal liberty during the compulsory psychiatric treatment. The content of this part of his application alleges a violation of the Fundamental Law manifested in an omission which cannot be raised in an individual application.

[65] However, section 46 (1) of the ACC empowers the Constitutional Court to call upon the body that committed an omission to fulfil its duty, together with specifying the time limit, if, in the course of its proceedings in the exercise of its powers, it finds an infringement of the Fundamental Law caused by the law-maker's omission. According to paragraph (2) (c) of the relevant statutory regulation, the omission of the law-maker's tasks may be established when the essential content of the legal regulation that can be derived from the Fundamental Law is incomplete. In the exercise of its powers to admit the complaint, the Constitutional Court noted that the present case might involve an omission to fulfil a legislative task.

[66] 2 After carrying out an overview of the applicable regulations, the Constitutional Court found that the application of the rules of the Civil Code may ultimately, in certain cases and under certain conditions, provide for the possibility of compensation for the damage caused by the exercise of public authority to persons whose emergency and compulsory psychiatric treatment was subsequently found to be unlawful, and whose personal rights were thus violated. However, Article IV (4) of the Fundamental Law lays down as a guarantee that, everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation. The fact that the statutory provision applies only in cases where the conditions for liability for damage caused in the exercise of public authority are met, is inconsistent with this provision of the Fundamental Law. The Constitutional Court therefore concluded that the current legislation does not provide an effective procedural framework for the enforcement of claims in line with this expectation of guarantee under the Fundamental Law. In view of this, the Constitutional Court held that the law-maker had failed to fulfil its legislative obligation under Article IV (4) of the Fundamental Law, thereby creating a situation contrary to the Fundamental Law.

[67] The Constitutional Court therefore held, acting *ex officio*, on the basis of section 46 (2) (c) of the ACC, that Parliament had caused an infringement of the Fundamental Law by failing to regulate in the context of section 199 the AHC the procedural framework for compensation for damage under Article IV (4) of the Fundamental Law. The Constitutional Court therefore called upon Parliament to meet its legislative duty by 31 March 2024.

VI

[68] The Constitutional Court ordered the publication of the decision in the Hungarian Official Gazette on the basis of the second sentence of section 44 (1) of the ACC.

Budapest, 10 October 2023.

*Dr. Tamás Sulyok*, President of the Constitutional Court

*Dr. Ágnes Czine*, Justice of the Constitutional Court

*Dr. Tünde Handó* rapporteur, Justice of the Constitutional Court

*Dr. Mária Ádám-Haszoniczné*, Justice of the Constitutional Court

*Dr. Attila Horváth*, Justice of the Constitutional Court

*Dr. Ildikó Hörcherné dr. Marosi*, Justice of the Constitutional Court

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

*Dr. Miklós Juhász*, Justice of the Constitutional Court

*Dr. Zoltán Lomnici*, Justice of the Constitutional Court

*Dr. Zoltán Márki*, Justice of the Constitutional Court

*Dr. András Patyi*, Justice of the Constitutional Court

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

*Dr. Balázs Schanda*, Justice of the Constitutional Court

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

*Dr. Réka Varga*, Justice of the Constitutional Court