

DECISIONS AND ORDERS OF THE PANELS OF THE CONSTITUTIONAL COURT



DECISION NO. 1050/2026 (II. 11.) AB OF THE CONSTITUTIONAL COURT

on the dismissal of a constitutional complaint

The Panel of the Constitutional Court, sitting in proceedings concerning a constitutional complaint, has adopted the following

D e c i s i o n :

The Constitutional Court hereby dismisses with prejudice the constitutional complaint seeking a finding that Section 5 (5), Sections 5 (5a)–(5c), and Section 5 (5f)—the latter as in force between 1 January 2024 and 31 December 2024—of Government Decree No. 273/2007 (X. 19.) Korm on the Implementation of Certain Provisions of Act LXXXVI of 2007 on Electric Energy are contrary to the Fundamental Law and seeking annulment thereof.

R e a s o n i n g

I

- [1] 1. A considerable number of petitioners submitted to the Constitutional Court constitutional complaints pursuant to Section 26 (2) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the “Constitutional Court Act”). In their petitions, the petitioners sought a finding that Section 5 (5), Section 5 (5a), Section 5 (5b), Section 5 (5c), and Section 5 (5f) of Government Decree No. 273/2007 (X. 19.) Korm on the Implementation of Certain Provisions of Act LXXXVI of 2007 on Electric Energy (hereinafter referred to as the “Implementing Decree”) are contrary to the Fundamental Law, and requested their annulment with *ex tunc* effect, that is to say, with retroactive effect to the date of their promulgation. By Instruction No. 2/2024 (III. 14.), the Deputy President of the Constitutional Court ordered that leading decision proceedings be conducted pursuant to Subheading 18/A of the Rules of Procedure. In accordance with Section 44/A (2) of the Rules of Procedure, the Secretary General of the Constitutional Court selected two petitions for the purposes of conducting the leading decision proceedings. In both constitutional complaints selected for adjudication within the framework of the leading decision procedure, the petitioners acted in person and without legal representation.
- [2] 1.1 The First Petitioner installed a household-scale small power plant based on photovoltaic technology (hereinafter referred to as an “HMKE”) in 2012. In respect thereof, he has, with effect from 4 January 2013, been party to an indefinite-term contract concluded with the distribution licensee service provider. Accordingly, at the time of lodging the constitutional complaint, he was already entitled to gross settlement (gross accounting). The Second Petitioner installed an HMKE in 2022. In respect thereof, he has, with effect from 23 November 2022, been party to an indefinite-term contract concluded with the distribution licensee service provider. Accordingly, at the time of lodging the constitutional complaint, he was still entitled to what is known as net settlement (net accounting).
- [3] The essence of net settlement lies in the fact that, during the relevant settlement period (whether calculated on a monthly or annual basis), only the difference between the quantity of electrical energy drawn from (i.e. consumed from) the public grid and the quantity of electrical energy generated by the HMKE and fed into the grid is to be taken into account for the purposes of financial settlement [see Section 1 (1), point 30, of the Implementing Decree]. By contrast, the essence of gross settlement is that, during the settlement period

(on a monthly basis), the quantities of electrical energy drawn from (i.e. consumed from) the grid and those fed into the grid must be treated separately for accounting purposes; the quantities supplied to, and taken from, the grid may not be set off against one another. Within the framework of gross settlement, the consumer is obliged to pay the system usage fee in respect of the entire quantity of electrical energy drawn from the grid. However, in respect of electrical energy fed into the grid, the consumer is not entitled to any system usage fee, nor to any other charge, levy, fee or reimbursement beyond the price of electrical energy itself. Under the regime of gross settlement, energy generated may not be carried forward to another place of consumption, nor may it be carried over to a subsequent settlement period.

- [4] According to the constitutional complaints, at the time when the HMKE installations were established, the Government provided substantial State subsidies. On the basis of the related public communications and the regulatory framework then in force, it could reasonably be inferred that the installation of a HMKE constituted a remunerative and revenue-generating investment, the operational lifespan of which had been calculated at twenty-five years by the designing and contracting company. The anticipated return on investment and revenue-generating capacity were underpinned by the fact that, at the time of installation of the HMKE (in the case of the First Petitioner, in the years 2012–2013; in the case of the Second Petitioner, in 2022), the prevailing legislative environment applied what is known as net settlement. The Petitioners decided to implement the HMKE investment in reliance upon, and with full knowledge of, that specific form of settlement.
- [5] 1.2 The legislature subsequently amended the provisions of the Implementing Decree on several consecutive occasions, as set out below.
 - [6] 1.2.1 Section 5 (5) of the Implementing Decree, in force from 13 September 2023, modified the rules governing net settlement in such a manner that entitlement to net settlement is available only until the end of the tenth year calculated from the commissioning (or expansion) of the HMKE, provided that the notification of demand in respect of the HMKE was submitted no later than 7 September 2023 and that commissioning takes place no later than 1 January 2026. On the basis of that provision, the First Petitioner had, by the time of lodging the constitutional complaint, already ceased to be subject to net settlement, whereas the Second Petitioner (assuming no further alteration to the legislative environment) remains entitled to net settlement until 2032.
 - [7] Pursuant to Section 5 (5a) of the Implementing Decree, in force from 13 September 2023, in the case of those HMKE installations where the ten-year operational period calculated from the date of commissioning or expansion expires by 31 December 2023, the electricity trader applies net settlement until 31 December 2023.
 - [8] Section 5 (5b) of the Implementing Decree, in force from 13 September 2023, provided that, in the case of those HMKE installations where the electricity trader did not apply annual net settlement on 7 September 2023, the settlement between the parties is governed by their agreement.
 - [9] 1.2.2 Pursuant to Section 5 (5c) of the Implementing Decree, in force from 6 October 2023, in the case of HMKE installations settlement is to be carried out in such a manner that the quantities of electrical energy fed into the grid and drawn from the grid are determined separately by direction, on the basis of the aggregated energy balance of load and consumption across the individual phases, in all cases other than those in which entitlement to net settlement applies.
 - [10] Section 5 (5e) of the Implementing Decree, which was not contested by the Petitioners and which entered into force on 6 October 2023, also amended the pricing regime applicable to electrical energy fed into the grid. It did so by replacing the previously applicable average product price of electrical energy with the tariff specified in row 4 of the table set out in Annex 2 to Decree No. 4/2011 (I. 31.) NFM of the Ministry of National Development on the Pricing of Universal Electricity Supply.
 - [11] 1.2.3 With effect from 1 January 2024, Section 5 (5) of the Implementing Decree was further amended so as to provide that entitlement to net settlement subsists until the last day of the calendar month in which the ten-year period following the commissioning or expansion of the HMKE expires. The legislature introduced the same amendment into points (d), (f) and (h) of Section 5 (5c) of the Implementing Decree [of which only point (d) was challenged by the Petitioners].
 - [12] Furthermore, pursuant to Section 5 (5b) of the Implementing Decree, likewise in force from 1 January 2024,

in respect of all those entitled to net settlement for whom the electricity trader had previously not applied annual net settlement, the settlement is no longer governed by the agreement of the parties; instead, monthly net settlement is to be applied. The newly introduced Section 5 (5f), also effective as from 1 January 2024, provides that in the case of gross settlement (that is to say, where the quantities of electrical energy fed into the grid and drawn from the grid are accounted for separately), monthly settlement must be applied.

- [13] 1.2.4 The Petitioners summarise the practical consequences of the above legislative amendments as meaning that a transition to gross settlement can now be regarded as economically viable only if the consumer consumes energy solely at the time, and in the quantity, in which it is generated; or installs a proportionately much larger system capable of offsetting the difference between the feed-in tariff and the purchase tariff; or alternatively provides for the temporary storage of electrical energy at his own expense (which constitutes a distinctly costly investment).
- [14] 2. In their constitutional complaints, the Petitioners allege violations of Article B (1), Article P (1), Article XIII (1), Article XV (1) and (2), and Article XXI (1) and (2) of the Fundamental Law. They further refer to an alleged infringement of Article E (2) of the Fundamental Law, as set out below.
- [15] 2.1 The Petitioners assert a violation of Article B (1) of the Fundamental Law on three grounds. First, although the challenged provisions of the Implementing Decree did not formally enter into force with retroactive effect, the legislature nonetheless intervened in a long-standing and continuing legal relationship (in the case of the First Petitioner, existing for more than ten years; in the case of the Second Petitioner, for nearly two years), and did so in a manner manifestly detrimental to the Petitioners, by mandating the transition from net settlement to gross settlement (contrary to the prohibition of retroactive legislation). Secondly, certain provisions of the Implementing Decree entered into force, in substance, immediately upon promulgation, at 11:00 p.m. on the day of their publication; and even in respect of other provisions, the preparatory period afforded by the legislature was conspicuously short, amounting to no more than three days. This occurred notwithstanding the fact that the regulatory changes required consumers to take responsible decisions and to undertake careful consideration of the options available to them within the altered legislative framework (contrary to the requirement of sufficient preparation time). Thirdly, the continuous and successive amendments to the Implementing Decree resulted in an unpredictable legal environment, particularly regard being had to the fact that the regulatory framework concerned is linked to a long-term decision, namely the installation of a HMKE (contrary to the requirement of normative clarity and legal certainty).
- [16] 2.2 The constitutional complaints further allege a violation of Article P (1) and Article XXI (1) and (2) of the Fundamental Law on the basis that the use of renewable energy sources, and the enhancement of their role in energy production, constitute both domestic and international policy objectives. The utilisation of solar panels represents an effective instrument for climate protection and the achievement of carbon neutrality. The challenged provisions of the Implementing Decree, however, in the Petitioners' submission, in reality penalise natural and legal persons who have installed HMKE systems on account of their commitment to climate protection, by disrupting the energy supply structure of households based on sustainable energy. According to the constitutional complaints, this unfavourable legislative amendment amounts to a breach of the principle of non-regression. In this context, the Petitioners expressly refer to the State's institutional protection obligation. In their submission, that obligation entails that the conditions governing a durable investment undertaken for several decades should not be altered in the interim. The phasing out of net settlement, in the present case, has the effect of deterring citizens from investing in environmentally conscious renewable energy sources, thereby constituting a regression from the level of climate protection previously attained. The Petitioners further contend that, by virtue of the precautionary principle, an infringement of the right to a healthy environment may be established even where environmental deterioration has not yet occurred, provided that the risk of such deterioration is already present.
- [17] 2.3 The constitutional complaints allege a violation of the right to property enshrined in Article XIII (1) of the Fundamental Law on the basis that the election of net settlement in respect of the HMKE constitutes, in constitutional law terms, an acquired right. In the Petitioners' view, net settlement was not merely a political promise but was also embodied with normative content in the Implementing Decree, thereby guaranteeing

to them that their HMKE investment would be recouped through annual net settlement of indefinite duration. By reason of the fact that, under gross settlement, the settlement period is unrealistically curtailed and there exists a substantial disparity between the purchase price and the feed-in tariff, the utilisation of HMKE systems is, in practice, rendered unviable; it no longer ensures the recovery of the investment and does not even cover maintenance costs. According to the Petitioners, the legislature has not even identified a public interest objective capable of justifying the restriction of the right to property. Even if such an objective were to be identified, the restriction would, in their submission, be manifestly disproportionate, since it formally places the Petitioners in the same position as traditional electricity consumers, whilst in reality creating for them an even more disadvantageous situation (given that, unlike traditional consumers, the Petitioners have undertaken a substantial capital investment).

- [18] 2.4 In connection with the alleged infringement of the right to property, the constitutional complaints also invoke a violation of Article E (2) of the Fundamental Law, on the ground that the challenged provisions of the Implementing Decree are, in the Petitioners' view, contrary to Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter referred to as the "Directive"). In particular, Article 15 (4) of the Directive requires the abolition of net settlement only prospectively, that is to say, in respect of newly installed HMKE systems. Furthermore, pursuant to Article 15 (1), Member States must ensure that consumers are not subject to disproportionate or discriminatory technical and administrative requirements, procedures and charges, nor to network tariffs that do not reflect costs.
- [19] 2.5 Finally, the constitutional complaints allege a violation of Article XV (1) and (2) of the Fundamental Law on the basis that the legislature has, in essence, treated consumers possessing HMKE installations in the same manner as consumers who do not utilise renewable energy (solar panels), notwithstanding that the situations of the two groups differ significantly. On the one hand, the installation of a HMKE presupposes a substantial investment from private resources, the recovery of which requires a considerable period of time. On the other hand, users of HMKE systems generate and consume renewable energy, and, moreover, HMKE installations also contribute to the supply of electricity. According to the constitutional complaints, the prohibition of discrimination has thus been infringed in the present case, in that the legislature treated materially different factual situations in an identical manner, without providing any justification for doing so.
- [20] 3. Following the lodging of the constitutional complaints, the Constitutional Court, by its Decision No. 2/2025 (V. 8.) AB, declared contrary to the Fundamental Law and annulled, with effect as of 31 May 2025, the phrases "based on a demand notification submitted by 7 September 2023" contained in points (a) and (b) of Section 5 (5) of the Implementing Decree, point (a) of Section 5 (5c), as well as the phrase "submitted by 7 September 2023" contained in points (b) and (c) of Section 5 (5c). In response to that decision of the Constitutional Court, the legislature amended certain provisions of the Implementing Decree by Government Decree No. 114/2025 (V. 26.) Korm. That amendment did not affect the adjudication of the constitutional complaints at issue here. The Constitutional Court further observed that, subsequent to the submission of the constitutional complaints, the legislature repealed Section 5 (5f) of the Implementing Decree with effect from 1 January 2025.
- [21] Government Decree No. 470/2025 (XII. 30.) Korm on the amendment of the Implementing Decree again amended the challenged provisions, with effect from 11:00 p.m. on 30 December 2025. Pursuant to Section 4 (a) of the amending decree, in Section 5 (5) (a) of the Implementing Decree, the phrase "is commissioned" was replaced by the phrase "its completion is notified." Pursuant to Section 4 (b) of the amending decree, in Section 5 (5) (b), the term "its expansion" was replaced by the phrase "notification of completion in respect of the expansion." Pursuant to Section 4 (c) of the amending decree, in Section 5 (5c) (b) and (c) of the Implementing Decree, the phrase "is commissioned only after 1 January 2026" was replaced by the phrase "its completion is notified only after 1 January 2026."
- [22] In light of the foregoing, in these proceedings the Constitutional Court conducted a constitutional review of Section 5 (5) and Sections 5 (5a)–(5c) of the Implementing Decree, as in force at the time of adjudication, as well as of Section 5 (5f) as in force between 1 January 2024 and 31 December 2024.
- [23] 4. In accordance with Section 57 (1b) of the Constitutional Court Act, the Administrative State Secretary of the Ministry of Energy informed the Constitutional Court of the Ministry's legal position concerning the

challenged provisions of the Implementing Decree.

II

[24] 1. The provisions of the Fundamental Law implicated by the petitions are as follows:

“Article B (1) Hungary shall be an independent and democratic State governed by the rule of law.”

“Article E (2) In its role as a Member State of the European Union and by virtue of international treaty, Hungary may - to the extent necessary for exercising its rights and fulfilling its obligations stemming from the Founding Treaties - exercise certain competences deriving from the Fundamental Law, together with the other Member States, through the institutions of the European Union. The exercise of powers under this Paragraph must be consistent with the fundamental rights and freedoms set out in the Fundamental Law, and it must not be allowed to restrict Hungary’s inalienable right of disposition relating to its territorial integrity, population, political system and form of governance.

“Article P (1) Natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation’s common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.”

“Article XIII (1) Everyone shall have the right to property and to succession, and to use cash as a means of payment. Ownership of property shall entail social responsibility.”

“Article XV (1) Everyone shall be equal before the law. Every person shall have legal capacity.
(2) Hungary shall guarantee the fundamental rights to everyone without discrimination based on any ground such as race, color, sex, disability, language, religion, political or any other opinion, ethnic or social origin, wealth, birth or any other circumstance whatsoever.”

“Article XXI (1) Hungary shall recognize and implement the right of all to a healthy environment.
(2) Any environmental damage shall as a priority be rectified at source in accordance with the relevant legislation and the principle that the polluter shall pay.”

[25] 2. The provisions of the Implementing Decree implicated by the petitions, as in force at the time of adjudication, are as follows:

“Section 5 (5) In respect of a household-scale small power plant feeding electrical energy into the public grid at the connection point, the electricity trader in a contractual relationship, as supplier, with the operator of the household-scale small power plant as user shall apply annual net settlement in respect of the total quantity of electrical energy fed into and drawn from the grid until the last day of the calendar month affected by the expiry of the ten-year period following the date of commissioning of the household-scale small power plant — in the case of an expanded household-scale small power plant, in respect of the entire plant, following the date of expansion of the nominal active power capacity of the household-scale small power plant —

(a) in the case of a household-scale small power plant for which, on the basis of a demand notification submitted by 13 September 2023, notification of completion takes place no later than 1 January 2026; and
(b) in the case of an expanded household-scale small power plant, in respect of the entire plant, where, on the basis of a demand notification submitted by 13 September 2023, notification of completion in respect of the expansion of the nominal active power capacity takes place no later than 1 January 2026.

“(5a) By way of derogation from Subsection (5), in the case of a household-scale small power plant for which the ten-year operating period calculated from the date of commissioning — in the case of an expanded household-scale small power plant, in respect of the entire plant, from the date of expansion of the nominal active power capacity — expires by 31 December 2023, the electricity trader in a contractual relationship with the operator of the household-scale small power plant as user shall apply net settlement, in respect of the total quantity of electrical energy fed into and drawn from the grid, for the period commencing

ing on the day following the last day of the settlement period and ending on 31 December 2023.

(5b) In the case of a household-scale small power plant where, on 13 September 2023, the electricity trader in a contractual relationship with the operator as user did not apply annual net settlement, or, in the absence of an existing contractual relationship, would not have been required to apply annual net settlement — with the exception of a user equipped with a smart meter installed pursuant to Section 14/B and, by way of derogation from Subsection (5) — the electricity trader shall apply monthly net settlement until the last day of the calendar month affected by the expiry of the period specified in Subsection (5).

(5c) Where a household-scale small power plant feeds electrical energy into the public grid at the connection point, the electricity trader in a contractual relationship with the operator of the household-scale small power plant as user shall apply a settlement method under which, irrespective of the settlement period applied, the quantities of electrical energy fed into the grid and drawn from the grid shall be determined separately according to direction,

(a) where the household-scale small power plant is commissioned on the basis of a connection demand notification submitted after 13 September 2023, from the date of commissioning;

(b) where, on the basis of a connection demand notification submitted by 13 September 2023, notification of completion of the household-scale small power plant takes place only after 1 January 2026, from the date of commissioning;

(c) in the case of an already commissioned household-scale small power plant, where, for the purposes of expansion, a demand notification was submitted by 13 September 2023 and notification of completion of the expanded part occurs only after 1 January 2026, in respect of the entire household-scale small power plant, no later than from the date of commissioning of the expanded part;"

(d) in the case of a household-scale small power plant falling within Subsection (5), following the expiry of the period specified therein, from the first day of the calendar month subsequent to the expiry of that period;

(e) in the case specified in Subsection (5a), from 1 January 2024;

(f) in the case of a user falling within Subsection (5b), from the first day of the calendar month following the expiry of the tenth year after the commissioning of the household-scale small power plant — in the case of an expanded household-scale small power plant, in respect of the entire plant, following the date of expansion of the nominal active power capacity — but not earlier than 1 January 2024, or, if the parties had already applied such settlement as at 13 September 2023;

(g) where the operator of the household-scale small power plant so requests;

(h) in the case of an expanded household-scale small power plant, in respect of the entire household-scale small power plant, where the expansion of the nominal active power capacity is implemented on the basis of a demand notification submitted after 13 September 2023, no later than from the first day of the calendar month following the commissioning of the expanded part; and

(i) where the household-scale small power plant participates in settlement pursuant to Section 66/B(9)(a) or (b) of the Act on Electric Energy."

[26] 3. The provision of the Implementing Decree implicated by the petition and in force between 1 January 2024 and 31 December 2024 reads as follows:

"Section 5 (5f) In the case of a system user who draws electrical energy under profile-based settlement pursuant to Subsection (5c), monthly settlement shall be applied, on the basis of the metering data supplied by the network licensee, in respect of the settlement point affected by gross settlement."

III

[27] In accordance with Section 56 (1) of the Constitutional Court Act, the Constitutional Court, as a preliminary matter and prior to engaging in any examination of the substance of the case, first reviewed whether the statutory conditions governing the admissibility of the constitutional complaint were satisfied.

[28] 1. Pursuant to Section 30 (1) of the Constitutional Court Act, a constitutional complaint under Section 26 (2) thereof may be submitted in writing within one hundred and eighty days from the entry into force of the

legislative provision alleged to be contrary to the Fundamental Law. Of the provisions challenged by the Petitioners, Sections 5 (5), 5 (5a) and 5 (5b) of the Implementing Decree entered into force on 13 September 2023; Section 5 (5c) entered into force on 6 October 2023; and Section 5 (5f) entered into force on 1 January 2024. The Petitioners lodged their constitutional complaint on 4 March 2024. Accordingly, in respect of each and every one of the contested provisions of the Implementing Decree, the constitutional complaint was submitted within the statutory time-limit prescribed by law.

- [29] 2. The Constitutional Court may admit a constitutional complaint only if it contains a definite and properly formulated petition. Pursuant to Section 52 (1b) (b) of the Constitutional Court Act, a petition shall be regarded as definite where it identifies the essence of the alleged infringement of a right guaranteed by the Fundamental Law. Furthermore, in accordance with Section 52 (1b) (e), the petition must set out clear and unequivocal reasoning demonstrating why the legislative provision or judicial decision impugned is contrary to the specified provisions of the Fundamental Law. The Constitutional Court established that, in so far as the constitutional complaints rely upon Article XXI (2) of the Fundamental Law — that is to say, the “polluter pays” principle — they do not contain any reasoning whatsoever in support of that allegation. Accordingly, in this respect, the constitutional complaints fail to satisfy the statutory requirement of definiteness, and, to that extent, do not meet the conditions laid down by law for admissibility.
- [30] 3. Pursuant to Section 26 (1) (a) of the Constitutional Court Act, a condition precedent for the submission of a constitutional complaint under Section 26 (1) and (2) thereof is that the Petitioners must allege an infringement of a right guaranteed by the Fundamental Law. According to the consistent and settled case-law of the Constitutional Court, Article E (2) of the Fundamental Law does not, for the purposes of constitutional complaint proceedings, enshrine a right guaranteed by the Fundamental Law {see, for example, Order No. 3280/2024 (VII. 24.) AB, Reasoning [14]}. Likewise, Article P (1) of the Fundamental Law does not, from the perspective of the present generation, contain a right guaranteed by the Fundamental Law within the meaning relevant to constitutional complaint review {see, for example, Order No. 3355/2025 (XI. 12.) AB, Reasoning [13]}. Furthermore, in accordance with the Constitutional Court’s consistent judicial practice, Article B (1) of the Fundamental Law may serve as the basis of a constitutional complaint exclusively in connection with the prohibition of retroactive legislation and retroactive application of the law, as well as with the constitutional requirement of adequate preparation time; it cannot, however, ground a constitutional complaint in relation to the requirement of normative clarity {see, for example, Order No. 3306/2025 (IX. 30.) AB, Reasoning [13]}. The Petitioners relied, in part, upon an alleged infringement of Article B (1) of the Fundamental Law in connection with the principles of the rule of law, the protection of acquired rights, and the protection of legitimate expectations. In respect of those arguments, however, there is no scope for substantive examination, as they fall outside the ambit delineated above {see, for example, Decision No. 3052/2025 (II. 14.) AB, Reasoning [39]}. Accordingly, in these elements, the constitutional complaints do not satisfy the statutory requirement laid down in Section 26 (1) (a) of the Constitutional Court Act.
- [31] By contrast, in so far as the constitutional complaints allege an infringement of Article B (1) of the Fundamental Law in relation to the prohibition of retroactive legislation and the constitutional requirement of sufficient preparation time, as well as an infringement of the right to property enshrined in Article XIII (1), they do meet the requirement of explicit request applicable to a constitutional complaint.
- [32] 4. Pursuant to Section 26 (2) of the Constitutional Court Act, proceedings before the Constitutional Court may, by way of exception, be initiated where the alleged infringement of a right has occurred directly, without the interposition of a judicial decision, as a consequence of the application or operative effect of a legislative provision contrary to the Fundamental Law, and where no remedy is available for the redress of such infringement. The Constitutional Court established that, in the present case, no legal remedy is available to the Petitioners against the challenged provisions. Accordingly, the statutory condition relating to the absence of an available remedy is fulfilled.
- [33] 5. According to the consistent and uninterrupted jurisprudence of the Constitutional Court, in proceedings initiated by way of a constitutional complaint under Section 26 (2) of the Constitutional Court Act, the Petitioners’ standing must be personal, direct and current {see, for example, Decision No. 3110/2013 (VI. 4.) AB, Reasoning [27]}. Having regard to the fact that, pursuant to the challenged provisions of the Implementing Decree, the First Petitioner ceased to fall within the regime of net settlement with effect from 1

January 2024 (that is to say, the method of settlement applicable to his HMKE installation was in fact altered), and that the Second Petitioner will cease to fall within the regime of net settlement upon the expiry of ten years calculated from 23 November 2022 (the date of conclusion of the contract relating to his HMKE installation), such that, in his case, the alteration of the settlement regime prescribed by statute will occur automatically and with certainty upon the lapse of the legally determined period, the Constitutional Court accepted that the Petitioners' standing was established.

- [34] 6. Pursuant to Section 31 (1) of the Constitutional Court Act, where the Constitutional Court has already adjudicated, on the basis of a constitutional complaint, upon the conformity of a legislative provision with the Fundamental Law, no further constitutional complaint seeking a finding of unconstitutionality may be entertained in respect of the same legislative provision, on the basis of the same right guaranteed by the Fundamental Law and invoking the same constitutional law nexus, provided that the relevant circumstances have not fundamentally changed. In its Decision No. 2/2025 (V. 8.) AB, the Constitutional Court had already examined the compatibility with the Fundamental Law of the phrases "based on a demand notification submitted by 7 September 2023" contained in Section 5 (5) (a) and (b) of the Implementing Decree, point (a) of Section 5 (5c), as well as the phrase "submitted by 7 September 2023" contained in points (b) and (c) of Section 5 (5c), in the light of the prohibition of retroactive legislation enshrined in Article B (1) of the Fundamental Law. The Constitutional Court annulled the aforementioned provisions. In consequence of that decision, the legislature amended certain provisions of the Implementing Decree by Government Decree No. 114/2025 (V. 26.) Korm, thereby remedying, at the textual level, the unconstitutionality identified by the Constitutional Court.
- [35] Having regard to the amendment of the challenged provisions of the Implementing Decree, and further taking into account that the constitutional complaint underlying Decision No. 2/2025 (V. 8.) AB invoked the alleged infringement of the prohibition of retroactive legislation in connection with the regulatory framework governing the possibility of entering into the regime of net settlement, whereas the Petitioners in the present proceedings rely upon the prohibition of retroactive legislation enshrined in Article B (1) of the Fundamental Law in relation to the regulatory framework governing exclusion from the regime of net settlement (that is to say, in a distinct constitutional context), the Constitutional Court established that, in so far as the constitutional complaints concern the prohibition of retroactive legislation under Article B (1) of the Fundamental Law, they do not constitute *res judicata*.
- [36] 7. A constitutional complaint under Section 26(2) of the Constitutional Court Act — that is to say, in the absence of prior judicial proceedings — may, pursuant to Section 29 thereof, be admitted only where it raises a constitutional law issue of fundamental importance.
- [37] In their constitutional complaint, the Petitioners also invoked an alleged infringement of the right to a healthy environment enshrined in Article XXI (1) of the Fundamental Law. In the consistent judicial practice of the Constitutional Court, the protective scope of the right to a healthy environment extends to substantive, procedural and organisational rules governing the protection of the environment and of nature, since only the combined operation of those elements is capable of ensuring the full realisation of the right to a healthy environment as derived from the Fundamental Law {first articulated in this sense in Decision No. 3223/2017 (IX. 25.) AB, Reasoning [28]}. Whilst it is beyond doubt that the challenged provisions of the Implementing Decree relate to one of the sources of renewable energy (namely, the use of solar panels), the method of settlement applicable to the energy generated by HMKE installations — that is to say, the rules governing net and gross settlement — no longer bears a constitutionally cognisable nexus to the right to a healthy environment. This is all the more so given that the Petitioners invoked the constitutional protection of the right to a healthy environment not in connection with the establishment of new renewable energy sources, but rather in relation to HMKE installations already in operation. In the settled judicial practice of the Constitutional Court, in the absence of such a constitutionally relevant connection, those elements of the petition are not subject to substantive examination {see, for example, Decision No. 3074/2016 (IV. 18.) AB, Reasoning [44]; Decision No. 3193/2017 (VII. 21.) AB, Reasoning [15]}.
- [38] In their constitutional complaints, the Petitioners further allege that the challenged provisions of the Implementing Decree are incompatible with Article XV (1) and (2) of the Fundamental Law, contending that the regulatory framework treats consumers possessing HMKE installations and those without such installations in an identical manner. In the guiding judicial practice of the Constitutional Court, the prohibition of discrimination may be infringed where a legislative provision, without a constitutionally justifiable reason, dif-

ferentiates between legal subjects who are in comparable situations from the standpoint of the regulation {see, for example, Decision No. 25/2024 (XII. 30.) AB, Reasoning [80]}, or, conversely, where it treats materially different situations in an identical manner {Decision No. 3073/2015 (IV. 23.) AB, Reasoning [45]}.

- [39] The identification of a homogeneous group must, in every instance, be undertaken within the framework of the specific legislative provision or regulatory concept in question {Decision No. 8/2021 (III. 2.) AB, Reasoning [117]}. Given that both net settlement and gross settlement, by their very nature, can apply only to users who possess a household-scale small power plant (HMKE), the Constitutional Court established that the scope of application of the challenged provisions of the Implementing Decree manifestly does not — and conceptually cannot — extend to users who do not possess an HMKE. Consequently, the regulatory framework does not, and indeed cannot, treat users with HMKE installations and those without such installations in an identical manner. It follows that, on the basis of the submissions contained in the constitutional complaints, no constitutionally cognisable nexus can be established between the challenged provisions of the Implementing Decree and Article XV (1) and (2) of the Fundamental Law. In line with the judicial practice outlined above, and in the absence of such a constitutionally relevant connection, the Constitutional Court likewise refrained from conducting a substantive examination of these elements of the petition.
- [40] The Constitutional Court formed the view that it could be determined only upon a substantive examination whether the challenged provisions of the Implementing Decree infringe the prohibition of retroactive legislation and the requirement of sufficient preparation time, and whether they violate the Petitioners' right to property. Accordingly, applying Section 31 (6) of the Rules of Procedure, the Constitutional Court adjudicated the constitutional complaints on the merits, dispensing with a separate admissibility procedure.

IV

[41] The constitutional complaints are unfounded.

[42] 1. Hungary undertook, in its National Energy and Climate Plan (updated version of 2024; hereinafter referred to as the "NECP"), to increase the share of renewable energy sources to 30% — and within that target, to 32% in the electricity sector — by 2030, from the 14% level recorded in 2021 (NECP, pp. 52–53). The NECP records that, by 2024, Hungary had already achieved the solar power generation capacity target originally set for 2030 (6 GW), and that it therefore appears feasible to raise installed solar capacity to 12 GW during the period up to 2030. This assessment was corroborated by the Administrative State Secretary of the Ministry of Energy, who indicated that, as at 1 April 2024, Hungary possessed solar generation capacity amounting to 6,258.5 MW, of which 2,416.3 MW qualified as household-scale small power plants (HMKE). Expressed in numerical terms, there were at that time 264,312 HMKE installations in Hungary, of which 87% (223,823 installations) were owned by natural persons (see pp. 2–3 of the position paper).

[43] The intensified utilisation of renewable energy sources is warranted also for the reason that Hungary is, in comparison with other European States, particularly exposed to the adverse effects of climate change, owing to its inland geographical location and the specific microclimatic characteristics of the Carpathian Basin {for a detailed exposition, see Decision No. 5/2025 (VI. 30.) AB, Reasoning [100]–[101]}. The challenged provisions of the Implementing Decree, albeit indirectly — through the regulation of the settlement mechanism applicable to electrical energy generated by HMKE installations — serve to advance precisely that objective expressly identified in the NECP.

[44] 2. In this context, the Constitutional Court further records that the introduction of gross settlement with effect from 1 January 2024 derives from Article 15 (4) of the Directive (and thus directly from European Union law), which provides as follows: "Member States that apply existing schemes that do not separately account for electricity fed into the grid and electricity drawn from the grid shall not, after 31 December 2023, grant new rights under those schemes." At the same time, no obligation follows directly from the Directive requiring the phasing out of net settlement in respect of users who were already participating in the net settlement regime.

[45] 3. Primarily as a result of the favourable investment environment created by the net settlement regime, both the number of photovoltaic installations and overall installed solar capacity in Hungary increased at an accelerating pace by the early 2020s. This dynamic expansion, however, was accompanied by a marked rise in periodic market anomalies. During the daytime hours of the summer months, a recurrent oversupply fre-

quently emerged on the electricity market, whereas during the evening hours — and in particular in the winter season — structural excess demand manifested itself. As a consequence of the former phenomenon, wholesale electricity prices were, at times, driven into negative territory; conversely, the latter circumstance contributed to an increase in the duration and intensity of periods characterised by exceptionally elevated electricity prices.

- [46] 4. The Constitutional Court first examined whether, by enacting the challenged provisions of the Implementing Decree, the legislature infringed the prohibition of retroactive legislation and the constitutional requirement of sufficient preparation time.
- [47] 4.1 One of the most fundamental constituent elements of the rule of law deriving from Article B(1) of the Fundamental Law is the principle of legal certainty. That principle, *inter alia*, requires that legal subjects must have a genuine and effective opportunity to align their conduct with the prescriptions of the law. To ensure this possibility, legislative provisions must not impose obligations in respect of periods preceding their promulgation, nor may they retrospectively classify conduct as unlawful by attaching legal consequences to past behaviour with retroactive effect {see, for example, Decision No. 3021/2020 (II. 10.) AB, Reasoning [34]}.
- [48] Article B (1) of the Fundamental Law thus affords protection, first and foremost, against the subsequent, retroactively effective and disadvantageous alteration of legal relationships that have already been established and, where applicable, have already been brought to a close — what is known as genuine retroactivity. In addition, however, the requirement of legal certainty also imposes constitutional limits upon immediate or prospective legislative intervention in legal relationships that arose in the past but have not yet been concluded, that is to say, in what are known as subsisting or durable legal relationships (what is known as quasi-retroactivity).
- [49] In the guiding judicial practice of the Constitutional Court, where an alleged infringement of the prohibition of retroactive legislation is invoked, the primary question to be examined is whether the challenged provision imposes a more burdensome legal position upon the persons concerned; the prohibition applies exclusively to legislative measures that worsen the situation of legal subjects (*ad malam partem*) {see, for example, Decision No. 3043/2021 (II. 19.) AB, Reasoning [34]}. If the norm is disadvantageous in nature, the Constitutional Court must, as a second step, determine whether it was brought into force with retroactive effect; if so, the regulation is contrary to the Fundamental Law. Where the entry into force did not occur retroactively, the Constitutional Court must, as a third step, examine whether the provision subsequently alters, with retroactive effect, the legal assessment of legal relationships that were created in the past and may already have been concluded. Such intervention — similarly to formal retroactive entry into force — constitutes what is known as genuine retroactive legislation and is therefore incompatible with the Fundamental Law. Where, however, a norm modifies legal relationships of a durable nature that arose in the past solely with effect for the future — that is to say, in what is known as quasi-retroactivity — and where such intervention is supported by a constitutionally acceptable justification, the prohibition of retroactive legislation is not infringed {Decision No. 8/2022 (V. 25.) AB, Reasoning [19]}.
- [50] 4.1.1 The challenged provisions of the Implementing Decree undoubtedly affected the Petitioners — who had previously installed HMKE systems and were already subject to the net settlement regime — in an adverse manner, in so far as the legislature limited the availability of net settlement to a maximum period of ten years. Upon the expiry of that period, the Petitioners were, or will be, transferred into the regime of gross settlement. In other words, the contested provisions of the Implementing Decree rendered the Petitioners' legal position more onerous and disadvantageous, thereby constituting legislative intervention *ad malam partem*.
- [51] 4.1.2 In the present case, the challenged provisions of the Implementing Decree did not enter into force with retroactive effect. Government Decree No. 427/2023 (IX. 13.) Korm on the amendment of the Implementing Decree (hereinafter referred to as the "Amending Decree I") entered into force at 11:00 p.m. on the day of its promulgation (see Section 3 thereof). Government Decree No. 460/2023 (X. 5.) Korm on the amendment of the Implementing Decree (hereinafter referred to as the "Amending Decree II") entered into force on the day following its promulgation (see Section 3 thereof). Government Decree No. 680/2023 (XII. 29.) Korm amending the Implementing Decree and Government Decree No. 243/2019 (X. 22.) Korm on

certain issues relating to electromobility services (hereinafter referred to as the “Amending Decree III”), in so far as it amended the challenged provisions of the Implementing Decree, entered into force on 1 January 2024 [see Section 23 (1) thereof]. Government Decree No. 470/2025 (XII. 30.) Korm on the amendment of the Implementing Decree (hereinafter referred to as the “Amending Decree IV”) provided that certain of its provisions entered into force on the day of promulgation [see Section 6 (1) thereof], whilst other provisions — not challenged by the present Petitioners — entered into force on the sixteenth day following promulgation [see Section 6 (2) thereof].

- [52] 4.1.3 The challenged provisions of the Implementing Decree provided, with effect for the future, for the phasing out of net settlement in respect of the Petitioners who possessed HMKE installations (that is to say, in what is known as quasi-retroactivity). Accordingly, the Constitutional Court was required to assess whether the legislative intervention was constitutionally justifiable.
- [53] The exclusion, for the future — at the latest with effect from 1 January 2024 — of the possibility of electing net settlement constituted an obligation deriving from European Union law, namely from Article 15 (4) of the Directive, which Hungary was required to implement. In his position paper, the Administrative State Secretary of the Ministry of Energy explained that, in the period preceding the amendment of the Implementing Decree, the number of HMKE installations had, in essence, doubled from year to year. That development, in itself, rendered it necessary to adjust the regulatory framework in order to ensure the more efficient operation of the electricity network and to safeguard security of supply (see p. 3 of the position paper).
- [54] It cannot, however, be directly inferred from the Directive that there exists an obligation to phase out net settlement in respect of HMKE installations already participating in the net settlement regime. Nevertheless, in his position paper, the Administrative State Secretary of the Ministry of Energy drew attention, in connection with net settlement, to the following considerations. A defining characteristic of the net settlement regime was that the operator of an HMKE was entitled to use the public electricity network both for the withdrawal of electrical energy and for the feeding-in of electrical energy without payment of a system usage fee, notwithstanding that the network was in fact utilised. The actual costs associated with such utilisation of the network were borne by those consumers who did not possess an HMKE, thereby giving rise to what may properly be described as cross-subsidisation. One of the express and deliberate effects sought by the transition to gross settlement was precisely to ensure that the costs attributable to the system usage of HMKE operators would be borne by those operators themselves. A further objective of the transition to gross settlement was to mitigate overproduction by HMKE installations and, consequently, to alleviate periodic market anomalies, whether by encouraging increased self-consumption or by promoting the expansion of storage capacities. In this context, the Administrative State Secretary further indicated that the rapid proliferation of solar installations rendered the development of the electricity network necessary. Accordingly, the Government temporarily suspended, throughout the entire territory of the country, the possibility of feeding electricity into the grid in respect of those HMKE installations for which the demand notification had been submitted after 31 October 2022 (see pp. 3–4 of the position paper).
- [55] In order to attain the aforementioned objectives, the legislature introduced the transition to gross settlement in a differentiated and phased manner: prospectively in respect of new demand notifications, and, in relation to systems already participating in the net settlement regime, by way of a graduated and ascending system, implemented progressively over time. In his position paper, the Administrative State Secretary further emphasised that HMKE producers remain at liberty to sell the electrical energy generated but not consumed by them to other electricity traders or market participants on a market basis, whilst, as consumers drawing electricity from the grid, they continue to be entitled to avail themselves of universal service (see p. 5 of the position paper).
- [56] Having regard to the fact that the legislature justified the phasing out of net settlement by reference to constitutionally acceptable grounds — namely the safeguarding of security of supply, the reduction of market anomalies, and the elimination of cross-subsidisation (that is to say, considerations of public interest) — and further taking into account that the average payback period of investments in solar installations may be estimated at approximately seven to eight years even in the absence of State support (according to data published by the Financial Navigator of the National Bank of Hungary), whilst the phasing out of net settlement occurs, in the case of every HMKE installation, only after the lapse of ten years (thus ensuring that the savings realised on electricity costs secure the recovery of the HMKE investment), the Constitutional Court concludes that the challenged provisions of the Implementing Decree do not infringe the prohibition of retroactive legislation.

- [57] 4.2 The Petitioners further alleged, in connection with Article B (1) of the Fundamental Law, that the constitutional requirement of sufficient preparation time had been infringed.
- [58] In the established judicial practice of the Constitutional Court, it constitutes a requirement deriving from Article B (1) of the Fundamental Law that the date of entry into force of a legislative provision must be determined in such a manner as to ensure that sufficient time remains for preparation for its application. Preparation time denotes the interval between the enactment and promulgation of a legislative provision and its entry into force, or — where the date of entry into force is distinct from the date of its applicability — the period between promulgation and the point in time at which the provision becomes applicable. The requirement of legal certainty, as derived from the principle of the rule of law enshrined in Article B (1) of the Fundamental Law, imposes upon the legislature, in determining the date of entry into force or applicability of legislation, the obligation to allow sufficient time for the text of the legislative provision to be duly ascertained and understood; for bodies charged with its application to prepare for its implementation; and for persons and entities affected by the legislation to determine how they are to adapt their conduct to its provisions. An essential element of the requirement of sufficient preparation time, flowing from the principle of legal certainty, is that all addressees of legislative provisions — in particular those upon whom the legislation imposes new or additional obligations, whether they be authorities responsible for its enforcement or other persons and entities concerned from the standpoint of voluntary compliance — must be placed in a position to be capable of performing their obligations, and must not, against their will and as a consequence of insufficient preparation time, commit a breach of duty or engage in unlawful conduct. Both lawful application of the law and voluntary compliance with it presuppose that the legislative provision in question is capable of being known; from that perspective, preparation for the application of the law and knowledge of the law stand in a means–end relationship to one another {Decision No. 6/2013 (III. 1.) AB, Reasoning [233]–[236]}. The determination and provision of a sufficient period necessary for preparation for the application of legislation fall within the sphere of the legislature’s responsibility-laden assessment and decision-making. In that regard, a finding of incompatibility with the Fundamental Law may arise only where the period afforded for preparation is conspicuously inadequate, or where its absence is so pronounced as to gravely endanger or violate the principle of legal certainty {Decision No. 3209/2015 (XI. 10.) AB, Reasoning [51]}. Although the assessment of precisely how much time is required, in the case of a given legislative provision, for adequate preparation does not in itself constitute a constitutional law question, the complete absence of preparation time, or its manifestly deficient provision, may give rise to unconstitutionality by non-conformity with the Fundamental Law. Legal certainty is seriously impaired where a legislative provision imposing new or additional obligations enters into force without any interval between promulgation and entry into force, or where the interval is so short that it is evident that the addressees of the provision would be unable, despite their good faith, best intentions and diligent efforts — or only by means of extraordinary exertion — to comply with their obligations {Decision No. 3209/2015 (XI. 10.) AB, Reasoning [52]}.
- [59] As the Constitutional Court has already indicated in point IV/4.1.2 of this Decision (Reasoning [51]), of the legislative instruments amending the challenged provisions of the Implementing Decree, Amending Decree I entered into force at 11:00 p.m. on the day of its promulgation (13 September 2023); Amending Decree II entered into force on the day following its promulgation (6 October 2023); the provisions of Amending Decree III relevant for the purposes of adjudicating the present constitutional complaint entered into force on the third day following promulgation, namely on 1 January 2024; and the relevant provisions of Amending Decree IV entered into force at 11:00 p.m. on the day of their promulgation (30 December 2025). The Constitutional Court was therefore required to examine the precise normative content of the challenged provisions of the Implementing Decree, the extent to which they affected the rights and obligations of the Petitioners, and, in that context, whether the preparation time available for becoming acquainted with and applying the legislation must be regarded as manifestly insufficient. The Constitutional Court notes that, in accordance with its consistent judicial practice, the requirement of sufficient preparation time must be assessed by reference to the period between promulgation and entry into force, or, where applicability is separated from entry into force, by reference to the interval between promulgation and applicability {Decision No. 24/2019 (VII. 23.) AB, Reasoning [46]}.
- [60] Amending Decree I modified, among the provisions of the Implementing Decree challenged in the present constitutional complaints, Subsections 5 (5), (5a) and (5b), in a manner relevant from the perspective of the Petitioners — and thus for the purposes of assessing compliance with the constitutional requirement of suf-

ficient preparation time — by providing that, in the case of HMKE installations already participating in the net settlement regime, net settlement would remain applicable until the end of the tenth year following the date of commissioning or expansion. It further stipulated that, in respect of those HMKE installations where the ten-year operating period expired by 31 December 2023, net settlement would remain applicable until 31 December 2023. This means that Amending Decree I, in every instance, maintained the applicability of net settlement from the date of its promulgation (13 September 2023) at least until 31 December 2023 (or, where later, until the end of the tenth year following commissioning or expansion). Accordingly, although Amending Decree I formally entered into force at 23:00 hours on the day of its promulgation, the modified provisions of the Implementing Decree produced their legal effects — in so far as relevant to the adjudication of the present constitutional complaints and to the assessment of the requirement of sufficient preparation time — only after 31 December 2023. That interval cannot, in constitutional terms, be regarded as manifestly short or evidently insufficient.

- [61] Amending Decree II modified, among the provisions of the Implementing Decree challenged in the present constitutional complaints, Subsection 5 (5c), in such a manner that, in respect of the First Petitioner, the transition to gross settlement was to occur with effect from 1 January 2024, whereas, in respect of the Second Petitioner, the introduction of gross settlement was to take place only upon the expiry of the ten-year period. Accordingly, for the purposes of assessing compliance with the constitutional requirement of sufficient preparation time, the provisions of the Implementing Decree as amended by Amending Decree II — promulgated on 5 October 2023 — produced, in relation to the First Petitioner, their legal effects only after 1 January 2024, and, in relation to the Second Petitioner, will produce their legal effects only upon the expiry of the ten-year period. Such intervals cannot, from a constitutional perspective, be regarded as manifestly short or patently insufficient.
- [62] Amending Decree III modified, among the provisions of the Implementing Decree challenged in the present constitutional complaints, Subsections 5(5b) and 5(5c), and inserted a new Subsection (5f) into the Implementing Decree. From the perspective of assessing compliance with the constitutional requirement of sufficient preparation time in the present proceedings, those amendments provided that, in the case of the First Petitioner, monthly settlement within the framework of gross settlement was to be applied with effect from 1 January 2024, and, in the case of the Second Petitioner, only upon the expiry of the ten-year period. Accordingly, for the purposes relevant to the adjudication of the present constitutional complaints and to the assessment of the requirement of sufficient preparation time, the provisions of the Implementing Decree as amended by Amending Decree III — promulgated on 29 December 2023 — produced their legal effects only after 1 January 2024 in respect of the First Petitioner, and will produce their legal effects only upon the expiry of the ten-year period in respect of the Second Petitioner. Such intervals cannot, even in this instance, be regarded in constitutional terms as manifestly short or patently insufficient, particularly in view of the fact that the administrative steps necessary for the implementation of monthly gross settlement create obligations not on the part of the Petitioners, but rather on the part of the electricity trader.
- [63] Section 4 (a) of Amending Decree IV modified the condition for annual net settlement by substituting, in place of commissioning, the requirement that the declaration of completion must have occurred, whilst Section 4 (b) replaced the reference to expansion with a requirement of declaration of completion in respect of the expansion. Section 4 (c) of Amending Decree IV likewise replaced commissioning with the requirement that declaration of completion must have taken place. Having regard to Section 13/J (3) of the Implementing Decree — under which declaration of completion precedes commissioning — the conclusions set out above, in relation to Amending Decrees I, II and III and in respect of the requirement of sufficient preparation time, apply equally to Amending Decree IV. Accordingly, the challenged provisions of the Implementing Decree, whether as amended by Amending Decree I, Amending Decree II, Amending Decree III or Amending Decree IV, did not necessitate any preparation on the part of the Petitioners for which the interval between entry into force and actual application of the respective provisions would not, in constitutional terms, have been sufficient.
- [64] In light of the alterations made to the challenged normative text, the Constitutional Court also examined whether the amendments were capable of affecting or remedying the alleged violation of fundamental rights invoked by the Petitioners (cf. Decision No. 3441/2022 (X. 28.) AB, Reasoning [52]–[53]). In the course of that examination, the Constitutional Court established that the legislative amendments did not affect the constitutional grievance originally advanced by the Petitioners, nor did they give rise to the possibility of remedying it.

- [65] 5. The Constitutional Court thereafter proceeded to examine whether the Petitioners had acquired, in a constitutional sense, any future entitlements to property in respect of the continued application of net settlement, and, if so, whether the phasing out of net settlement amounted to an infringement of the right to property as guaranteed by Article XIII (1) of the Fundamental Law.
- [66] In its established judicial practice, the Constitutional Court has held that the constitutional protection of property — structured around the guarantees of value protection and the criteria governing restrictions in the public interest — affords protection primarily against exercises of public authority by the State that interfere with proprietary positions. The fundamental right to property protects property already acquired and, in exceptional circumstances, future entitlements to property as well {most recently: Decision No. 3278/2024 (VII. 24.) AB, Reasoning [31]}.
- [67] In the consistent judicial practice of the Constitutional Court, the scope and modalities of constitutional property protection do not necessarily follow the conceptual categories of civil law, nor can they be equated with the protection of abstract civil law ownership, with the subsidiary entitlements of possession, use and disposition, or with the characterisation of ownership as a negative and absolute right. The content of the right to property as protected as a fundamental right must be construed together with the prevailing public law and (constitutional) private law limitations applicable at any given time. The extent of constitutional property protection is always concrete and context-specific; it depends upon the subject of the property, its object and function, as well as upon the nature and manner of the restriction imposed {Decision No. 26/2013 (X. 4.) AB, Reasoning [161]}.
- [68] “The judicial practice of the Constitutional Court concerning future entitlements demonstrates that the Constitutional Court has extended the protection of property as a fundamental right not to future entitlements in general, but specifically to public law future entitlements, and in particular to those relating to social security entitlements, which are grounded in consideration furnished by the beneficiaries, that is to say, in the payment of contributions [...]” {Decision No. 3209/2015 (XI. 10.) AB, Reasoning [66]}. In the judicial practice of the Constitutional Court, the protection of future entitlements under the right to property has typically arisen in the context of the relationship between private individuals and the State, and, in the case of pensions and pension-like benefits, has been underpinned by the long-term payment of contributions by private persons. Future entitlements, in particular those falling within the category of future entitlements to property, and connected to pensions or pension-like benefits protected by the Constitutional Court under the constitutional right to property, were, however, characterised by predictability and calculability {Decision No. 8/2021 (III. 2.) AB, Reasoning [149]}.
- [69] Future entitlements to property enjoy protection as a fundamental right only where they are founded upon legislation {Decision No. 3329/2020 (VIII. 5.) AB, Reasoning [17]}. At the same time, a public-law future entitlement enjoys the same level of protection as a classical future entitlement to property only in exceptional circumstances. Even in such cases, constitutional protection cannot be understood as precluding the legislature, for years or even decades, from amending the relevant regulatory framework, nor can it imply that no changes whatsoever may be introduced in relation to a public-law future entitlement {Decision No. 3053/2022 (II. 11.) AB, Reasoning [48]}.
- [70] The Constitutional Court established that, in the case under examination, the Petitioners’ existing property — namely, their HMKE installations — was not infringed or subjected to any restriction in the constitutional sense; in other words, contrary to the submissions advanced in the petitions, the use of the HMKE installations was not rendered impossible.
- [71] No deprivation or expropriation of acquired property occurred; accordingly, the State’s obligation to provide compensation under Article XIII(2) of the Fundamental Law is not engaged. The challenged provisions do not divest the Petitioners of their assets, do not deprive them of their ownership rights over their equipment, and do not extinguish any right of patrimonial value vested in them.
- [72] The Constitutional Court emphasises that, in the relationship between the individual and the State, recourse to the net settlement regime cannot be equated with consideration comparable to the payment of mandatory contributions of a general character. Nor can the alteration of the possibility of net settlement be brought into connection with the right to property as regulated in the Fundamental Law; it does not qualify as a public-law future entitlement.
- [73] In light of the foregoing, no public-law future entitlement of a determinate and specific content arose, on the basis of the Implementing Decree, in favour of the persons concerned that would warrant constitutional protection equivalent to that afforded to acquired rights. The constitutional protection of the right to property does not extend to the method of settlement.

- [74] The calculation of settlement depends upon individual consumption, the extent of electricity withdrawn from and fed into the network, the individual decisions of consumers, the developments undertaken, and environmental factors; the resulting amounts are therefore not based exclusively upon legislation and are not susceptible of precise prior calculation. For that reason as well, such settlement arrangements do not constitute a public-law future entitlement. The determination of settlement requires differentiated treatment, which cannot be directly derived from constitutional property protection.
- [75] Having regard, therefore, to the fact that constitutional property protection is directed primarily at the safeguarding of acquired property, and given that the method of settlement cannot be brought into connection with the right to property as regulated in the Fundamental Law, does not constitute a public-law future entitlement, and, owing to its inherently individualised and case-specific character, cannot be derived directly from constitutional property protection, the Constitutional Court reached the conclusion that no constitutionally relevant nexus exists between the present case and the constitutional protection of the right to property {cf. Decision No. 3048/2016 (III. 22.) AB, Reasoning [33]–[34]}.
- [76] In the settled judicial practice of the Constitutional Court, the absence of a substantive constitutional connection necessarily results in the dismissal of the petition {Decision No. 3176/2013 (X. 9.) AB, Reasoning [24]}. For that reason, the Constitutional Court likewise dismissed the claim founded upon an alleged infringement of the right to property.
- [77] 6. Having regard to the findings set out in point IV/4.1 of the present Decision (Reasoning [47] et seq.) in connection with the prohibition of retroactive legislation — namely considerations relating to security of supply, the mitigation of market anomalies, and the elimination of cross-subsidisation — the Constitutional Court considers it necessary to add the following observations.
- [78] On the one hand, the challenged provisions of the Implementing Decree ensure, in respect of all HMKE installations admitted to the net settlement regime, the possibility of availing oneself of net settlement for a period of at least ten years, thereby affording sufficient time for HMKE investments to recoup their costs. In this regard, the Constitutional Court reiterates that the average payback period of HMKE installations in Hungary, within the framework of net settlement and even in the absence of State support linked to the investment, may be estimated at approximately seven to eight years. On the other hand, following the expiry of the ten-year period, the gross settlement regime — which may be utilised without temporal limitation — continues to provide, as compared with consumers not possessing an HMKE, a more favourable financing arrangement for HMKE operators (albeit undeniably significantly less advantageous than net settlement), thereby further improving the economic recovery of the HMKE investment over its planned average operational lifespan of approximately twenty-five to thirty years. Thirdly, additional State support schemes available for the expansion of HMKE installations — including, in particular, the enhancement of storage capacities and improvements in operational efficiency — together with other legal arrangements available in lieu of gross settlement, some of which are already accessible in practice, may confer further economic advantages upon HMKE operators.
- [79] In connection with the alleged infringement of the right to property, the Petitioners also relied upon Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereinafter referred to as the “ECHR”).
- [80] “In the present case as well, the Constitutional Court emphasises that Article 1 of Protocol No. 1 to the ECHR guarantees, at the level of the Convention, the right to the peaceful enjoyment of possessions, whereas Article XIII (1) of the Fundamental Law — in accordance with the governing judicial practice of the Constitutional Court — protects property already acquired against expropriation and affords constitutional protection in cases of restrictions of property not reaching the level of expropriation. Given the substantive differences between the Convention standard and the constitutional standard — having regard to the jurisprudence developed by the European Court of Human Rights and by the Constitutional Court in the application of those respective standards — their application may necessarily lead to the establishment of differing Convention-based and constitutional legal consequences” {Decision No. 3345/2023 (VII. 5.) AB, Reasoning [82]}.
- [81] 6. Taking all of the foregoing considerations into account, the Constitutional Court dismissed the constitutional complaint in accordance with the operative part of the present Decision.

- [82] The Constitutional Court did not find the challenged regulatory framework to be contrary to the Fundamental Law; at the same time, it considers it necessary to emphasise the following.
- [83] The legislature was entitled — subject to the conditions set out in the present Decision — to withdraw from the statutory entrenchment of the net settlement regime. In the same vein, the legislature was entitled to amend the regulatory framework governing the purchase price of the electricity generated, as well as — with particular regard to the issue of cross-subsidisation — the rules relating to the calculation of system usage charges.
- [84] The amendments to the Implementing Decree affected an energy cooperation system consciously established by the legislature and maintained over an extended period of time, within which the exceptionally large number of legal subjects operating HMKE installations had, *de facto*, become a functional component of the State's energy system.
- [85] The Constitutional Court emphasises that the Administrative State Secretary of the Ministry of Energy himself observed, in his position paper, that “HMKE producers may sell the electricity generated and not consumed by them to other traders or market participants — including aggregators — on a market basis, whilst, as consumers withdrawing electricity, they remain entitled to avail themselves of universal service” (see p. 5 of the position paper). The applicable legislative framework also (in principle) permits the establishment of energy communities (see the institution of energy communities under Section 66/B of Act LXXXVI of 2007 on Electricity). These arrangements constitute alternative options available alongside (or in lieu of) gross settlement, and may, in appropriate cases, materially improve the long-term economic return of HMKE installations.
- [86] In this context, the Constitutional Court further observes that, where the State seeks to ensure the effective attainment of socially significant objectives — such as the increasing utilisation of renewable energy sources — it follows, from the principle of cooperation between the State and legal subjects, that it may be constitutionally expected that the State regulate, by means of legislation founded upon predictable and transparent criteria, the support of investments requiring substantial financial risk-taking on the part of individuals (in the present case, the establishment, expansion and modernisation of HMKE installations). In so doing, the State contributes to enabling legal subjects to engage in long-term planning with regard to the economic recovery of their investments. In this regard, the Constitutional Court could not disregard that, by Government Resolution No. 1548/2025 (XII. 11.) on the residential energy storage programme, the Government intends, in 2026, to provide substantial financial support for the expansion of solar energy storage capacities, with particular regard to HMKE installations that have already existed, or are expected in the near future to exist, the net settlement regime.

Budapest, 20 January 2026

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Case reference of the Constitutional Court: IV/525/2024.

