

## **Decision 3154/2019 (VII. 3.) AB**

### **on the annulment of a judicial decision**

In the matter of a constitutional complaint, the panel of the Constitutional Court has adopted the following

decision:

The Constitutional Court holds that Order No 1.Bpkf.226/2017/2 of Székesfehérvár Regional Court is in conflict with the Fundamental Law, and therefore annuls the said Order.

### Reasoning

I

[1] 1 The petitioner, acting through his legal representative (Dr. Róbert Belcsák; H-1133 Budapest, Váci út 110), initiated the procedure of the Constitutional Court pursuant to Section 27 of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act").

[2] On 24 March 2017, in the matter on which the constitutional complaint is based, the petitioner brought an action seeking compensation before the competent court for the conditions of his detention following his having been housed in a penal institution between 29 October 2014 and 10 March 2016. By its first instance Order No Bv.529/2017/4, the Penal Enforcement Group of Székesfehérvár Regional Court awarded the petitioner compensation of HUF 543,200 for 388 days of imprisonment from the period in question due to the housing conditions in breach of fundamental rights.

[3] By order of Székesfehérvár Regional Court, acting as the court of second instance on appeal, reduced the amount of compensation to HUF 155,400. In the reasoning of the Order, the court claimed that in 2015, for a period of more than thirty days, from 25 September to 28 October, the fundamental rights' violating conditions were interrupted, because the petitioner was housed for thirty-three days in a manner that the living space required by law (at least three square metres of space for movement during detention) was secured. Accordingly, at the time of the submission of the application for compensation, the 6-month preclusive limitation period set out in Section 10/A (4) of Act CCXL of 2013 on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Infractions (hereinafter referred to as the "Penal Enforcement Act") has expired with respect to the preceding period; therefore, only the 111 days of imprisonment spent thereafter could be taken into account in determining the compensation.

[4] 2. The petitioner then applied to the Constitutional Court.

[5] In the petitioner's view, the Order of the court seized of the matter in the underlying proceedings violates the principle of the rule of law as enshrined in Article B (1) of the Fundamental Law because it infringes the prohibition of retroactive application of the law, and thus, in a causal context, violates his right to a fair trial as declared in Article XXIV (1) and Article XXVIII (1) of the Fundamental Law. He argued that a law may not impose an obligation, make an obligation more onerous, withdraw or restrict a right, or declare conduct unlawful, for a period prior to its entry into force. In that context, the petitioner argued that the court of second instance imputed to him a circumstance which he could not have fulfilled in 2015, as he had no such obligation and the time limit for bringing a claim did not exist, it was not in force, as the legal provisions providing for the possibility of compensation only entered into force on 1 January 2017.

[6] The petitioner further claims that the court unconstitutionally disregarded the rules of Decree 16/2014 (XII. 19.) IM of the Minister of Justice on the Detailed Rules for the Execution of Imprisonment, Detention, Pre-Trial Detention and Incarceration in Lieu of Fines in Contempt of Court (hereinafter referred to as the "Decree"), which stipulate that each prisoner shall have at least six cubic metres of air space, and in case of shared accommodation at least four square metres of living space per person.

[7] In light of all the above, the petitioner requested that Order No 1.Bpkf.226/2017/2 of Székesfehérvár Regional Court be declared to be contrary to the Fundamental Law and annulled.

[8] 3 In his constitutional complaint, the petitioner also requested the conduct of an "investigation into the conformity of the legislation under Section 26 of the Constitutional Court Act with the Fundamental Law" by invoking Section 28 (1) of the Constitutional Court Act.

## II

[9] The provisions of the Fundamental Law affected by the petition read as follows:

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

"Article XXIV (1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities."

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

[10] The relevant provisions of the Penal Enforcement Act read as follows:

"Section 10/A (1) Compensation shall be granted to a convicted person or a person detained on other legal grounds for the harm caused by the lack of living space provided for by law and any other related housing conditions that violate the prohibition of torture, cruel, inhuman or

degrading treatment, in particular the lack of separate toilet facilities, inadequate ventilation, lighting, heating or insect control (hereinafter together referred to as "housing conditions violating fundamental rights"). Compensation is to be paid for each day spent in housing conditions violating fundamental rights. The State is liable to pay the compensation.

(2) No further compensation or damages shall be payable in respect of the rights specified in Subsection (1), but the convicted person or other person detained under any other legal title shall be entitled to pursue any claim in excess thereof before a civil court.

(3) The amount of compensation per day shall be at least one thousand two hundred forints, but not more than one thousand six hundred forints.

(4) The claim for compensation may be brought within six months from the date on which the accommodation conditions violating the fundamental rights ceased to exist. Missing the the above time limit implies forfeiture of such claims by preclusion. For the purposes of this Subsection, the termination of a housing condition violating fundamental rights shall not be deemed to be a termination of the existence of such a condition if it is interrupted for a short period of time, but not more than thirty days, because the living space provided for by law was ensured during the placement of the sentenced person or the person detained under other law."

"Section 436 (10) Pursuant to Section 10/A of this Act, as laid down in Section 22 of Act CX of 2016 amending Act CCXL of 2013 on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Infractions and other Related Acts, a claim for compensation may also be submitted by a convicted person or a person detained on other grounds,

(a) whose prejudice resulting from housing conditions that violate fundamental rights ceased within one year before the entry into force of the amendment,

(b) who has submitted an application to the ECtHR on the grounds of housing conditions violating fundamental rights, if the application has been registered by the ECtHR by the date of entry into force of the amendment, unless the application to the ECtHR was submitted by the prisoner after 10 June 2015 and more than six months have elapsed since the date of the end of the violation.

(11) In the case of Subsection (10), the period of limitation specified in Section 10/A (4) shall begin to run on the day on which this provision enters into force. [...]"

### III

[11] 1 In accordance with Section 56 (1) of the Constitutional Court Act, the Constitutional Court shall first decide on the admissibility of the constitutional complaint.

[12] First of all, the Constitutional Court records that the petitioner in the constitutional complaint, as quoted above, also mentioned Section 26 of the Constitutional Court Act, but he only expressed arguments and gave reasons for his arguments in relation to the constitutional

complaint specified under Section 27 of the Constitutional Court Act; therefore, the Constitutional Court judged upon the complaint on the basis of its content only as a complaint under Section 27 of the Constitutional Court Act.

[13] 1.1 Pursuant to Section 30 (1) of the Constitutional Court Act, constitutional complaints are to be submitted in writing not later than 60 days of the challenged decision being served. The Constitutional Court found that the petitioner had submitted his constitutional complaint within the required time limit.

[14] 1.2 The Constitutional Court, in assessing the preconditions under Section 52 (1b) for an explicit request, came to the following conclusion.

[15] 1.2.1 The Constitutional Court first determined whether the constitutional complaint fulfilled the conditions for an explicit request with regard to Article B (1) of the Fundamental Law.

[16] Even following the entry into force of the Fundamental Law, the Constitutional Court has preserved its previous practice, pursuant to which the principle of the rule of law cannot be considered a right guaranteed by the Fundamental Law; therefore, a constitutional complaint seeking a finding of a violation of Article B (1) can only be based on exceptional cases, in the case of retroactive legislation and application of the law, and lack of preparation time. {See Decision 3051/2016 (III. 22.) AB, Reasoning [14]; Decision 23/2016 (XII. 12.) AB, Reasoning [72]; Decision 3306/2017 (XI. 24.) AB, Reasoning [43]}. The Constitutional Court found that the petitioner, in alleging a violation of Article B of the Fundamental Law, expressly referred to the retroactive application of the law, that is, the essence of the right guaranteed by the Fundamental Law was identified in this context. In addition, the constitutional complaint also meets the other requirements for an explicit request, since it contains a reference to the competence of the Constitutional Court and the petitioner's entitlement, and contains an adequate statement of reasons. The petitioner also identifies the contested decision and expressly requests that it be annulled.

[17] 1.2.2 At the same time, the Constitutional Court also found that the constitutional complaint does not contain any reasoning with regard to Article XXIV (1) and Article XXVIII (1) of the Fundamental Law; thus, the petition is not suitable for a substantive assessment with regard to these fundamental rights.

[18] 2. Based on Section 56 (2) of the Constitutional Court Act, the Constitutional Court also ascertained whether the constitutional complaint fulfilled the substantive requirements under Section 27 of the Constitutional Court Act and Sections 29 to 31 of the Constitutional Court Act. Being concerned in an individual case can be established, since the petitioner, as a convicted person in the case under complaint, sought compensation for his own housing conditions. It is also noted that the petitioner has no further legal remedy against the contested Order.

[19] Section 29 of the Constitutional Court Act specifies as an additional condition of admissibility that the complaint must contain a violation of the Fundamental Law or a constitutional law issue of fundamental importance that has a substantial impact on the judicial decision.

[20] In this context, the Constitutional Court found that the violation of fundamental rights

alleged in the constitutional complaint in connection with the violation of retroactive application of the law could have influenced the decision of the judge, which raises doubts as to whether the decision of the judge was in conflict with the Fundamental Law.

[21] On the basis of the above, the panel of the Constitutional Court admitted the constitutional complaint on 29 May 2018.

#### IV

[22] The petition is well-founded.

[23] 1. In the petitioner's view, the order of the court violates the principle of the rule of law enshrined in Article B (1) of the Fundamental Law because it infringes the prohibition of retroactive application of the law due to the fact that the court of second instance imputed to the petitioner a circumstance which he could not have complied with in 2015, since the time limit for the enforcement of claims, invoked and imputed to the petitioner in the court decision, did not exist and was not in force at that time.

[24] 2. In the light of the above, the Constitutional Court highlights the following points from its case law related to the prohibition of retroactive legislation and application of the law.

[25] The Constitutional Court has previously stated that the prohibition of retroactivity *ad malam partem* is primarily a requirement formulated against the creation of norms, since the prohibition of retroactive legislation can also be derived from the principle of legal certainty, the core of which is the prohibition formulated in Act on Legislation, pursuant to which a law may not impose an obligation or declare a conduct unlawful for a period prior to its promulgation. {Decision 30/2014 (IX. 30.) AB, Reasoning [106]; Decision 3051/2016 (III. 22.) AB, Reasoning [15]}. However, the Constitutional Court has also held that the violation of the Fundamental Law may be raised not only in the context of legislation, but also in the context of the retroactive application of the law, if a case is decided on the basis of a rule that did not exist, or was not in force, at the time when the legal relationship or dispute arose {Decision 3051/2016 (III. 22.) AB, Reasoning [16]; Decision 3314/2017 (XI. 30.) AB, Reasoning [32]}.

[26] 3. In the course of its analysis, the Constitutional Court first briefly reviewed the rules on compensation for housing conditions that violate fundamental rights.

[27] 3.1 This legal institution was created by Act CX of 2016 amending Act CCXL of 2013 on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Infractions and Other Related Acts (hereinafter referred to as the "Amendment Act"), supplementing the rules of the Penal Enforcement Act. By introducing the possibility of compensation, the legislator's aim was "to provide an effective domestic remedy before a domestic forum, in accordance with the requirements of the [European Court of Human Rights] ECtHR, for the violations of rights caused by detention in overcrowded conditions [...]" (See the detailed explanatory memorandum to Section 22 of the draft Amendment Act).

[28] The provisions entered into force on 1 January 2017, after which date compensation claims can be made. Under the key provisions of the law, compensation is to be paid for each day

spent in housing conditions violating fundamental rights, in an amount of at least one thousand two hundred forints but not more than one thousand six hundred forints. [Section 10/A (1) and (3) of the Penal Enforcement Act].

[29] The claim for compensation may be brought within six months from the date on which the accommodation conditions violating the fundamental rights ceased to exist and the missing the time limit implies forfeiture of claims by preclusion. The termination of a housing condition violating fundamental rights shall not be deemed to be a termination of the existence of such a condition if it is interrupted for a short period of time, but not more than thirty days, because the living space provided for by law was ensured during the placement of the sentenced person or the person detained under other law [Section 10/A (4) of the Penal Enforcement Act].

[30] Consequently, for the purposes of determining the claim for compensation, in view of the provision explained, the housing condition violating fundamental rights is deemed to be terminated if it is interrupted for more than thirty days because the prisoner or other person detained under other legal title was provided with the living space prescribed by law.

[31] This does not mean, of course, that a claim for compensation for the preceding period cannot be asserted by the convicted person or the person detained on other grounds. The interpretative provision merely states that if, for a period exceeding thirty days during detention, the person concerned was housed in conditions such that his or her fundamental rights were not violated as a result of providing the living space required by law, the six-month limitation period for claiming compensation for the preceding period starts to run from that date, irrespective of the duration of further detention and of the further development of the conditions of housing.

[32] The submission of a claim for compensation is also subject to the condition that the convicted person or, with certain exceptions, the person detained on other grounds must have submitted to the head of the body responsible for the execution of the sentence a complaint about the housing conditions violating fundamental rights, as provided for in Section 144/B of the Penal Enforcement Act, as a provision also introduced by the Amendment Act. [Section 10/A (6) of the Penal Enforcement Act].

[33] 3.2 The legislator, by supplementing the Transitional Provisions of the Penal Enforcement Act by the Amendment Act, extended the possibility of claiming compensation to include, among others, convicted persons or persons detained on other grounds whose previous prejudice resulting from housing conditions that violated fundamental rights ceased within one year before the entry into force of the amendment [see Section 436 (10) (a) of the Penal Enforcement Act]. These special cases required different provisions from the general rules on compensation in certain cases; therefore, the legislator made it clear that the limitation period for the submission of claims in the latter case would start to run uniformly from the date of entry into force of the amendment, that is, 1 January 2017. In addition, in these cases, it goes without saying that compliance with the aforementioned requirement to lodge a complaint, which was only created when the amendment entered into force, is not a prerequisite for the filing of a claim for compensation [see Section 436 (11) of the Penal Enforcement Act].

[34] 3.3 The Constitutional Court has already reviewed the conformity of the described provisions of the Penal Enforcement Act with the Fundamental Law, precisely in connection with

retroactive legislation. In this context, the Constitutional Court stated the following: “The legal institution of compensation for housing conditions violating fundamental rights establishes a new entitlement for convicted prisoners and persons detained on other legal grounds. The new transitional provision of the Penal Enforcement Act broadened the scope of the beneficiaries and specifically provided that the limitation period set out in Section 10/A (4) shall commence on the date of entry into force of Section 42 of the Amendment Act, that is, 1 January 2017 [see Section 436 (10) to (11) of the Penal Enforcement Act and Section 46 (2) of the Amendment Act]. [...] In the Constitutional Court’s view, the new rules of the Penal Enforcement Act on compensation for housing conditions that violate fundamental rights, and applied in the specific case, are exclusively provisions of the law establishing rights, which do not entail any unfavourable content,, do not impose any obligation for the period prior to entry into force, do not make any obligation more onerous, do not withdraw or restrict any right, do not declare any conduct unlawful, and have a law-forming effect only for the future {see similarly: Decision 3314/2017 (XI. 30.) AB, Reasoning [40]}” {Decision 3295/2018 (X. 1.) AB, Reasoning [28] and [30]}.

[35] 4. In the present case, however, the Constitutional Court was not called upon to ascertain the constitutionality of the legal provisions described, but, in the light of the above, to determine whether the court of second instance in the main proceedings had interpreted the provisions of the Penal Enforcement Act, which the Constitutional Court had previously found to be constitutional, in accordance with the provisions of the Fundamental Law, in particular the prohibition of the retroactive application of the law.

[36] 4.1 The Constitutional Court found that the petitioner was released from the penal institution on 10 March 2016; thus, he was entitled to file a claim for compensation under Section 436 (10) (a) of the Penal Enforcement Act and did so within the time limit provided for in Section 436 (11) of the Penal Enforcement Act. The court of first instance awarded compensation for 388 days to the petitioner for the housing conditions that violated his fundamental rights. Székesfehérvár Regional Court, acting as second instance court on appeal, reversed the first instance Order and considered the claim for compensation to be well-founded for 111 days. The Constitutional Court found that the court of second instance in its contested decision clearly adjudicated the case as described by applying the interpretative provision contained in the last sentence of Section 10/A (4) of the Penal Enforcement Act, as a result of which it held that the petitioner was responsible for missing the time limit for filing a claim for compensation, since during his detention the conditions of detention violating fundamental rights had been interrupted once for more than 30 days, and therefore he would have had the opportunity to file a claim for compensation for the period before the interruption until 25 April 2016, taking into account the applicable six-month time limit.

[37] 4.2 The Constitutional Court held that the last sentence of Section 10/A (4) of the Penal Enforcement Act clearly applies to the circumstances of interruption occurring after the entry into force of the new compensation legislation, that is, 1 January 2017. This is also obvious from the wording of the legislation, since the scope of application of the interpretative provision is clearly set out in relation to Section 10/A (4), which is worded as “[this] Subsection”.

[38] However, the transitional rules of the Penal Enforcement Act applicable to the petitioner,

such as Subsections (10) and (11) of Section 436 do not contain the above provision on interruption, but rather expressly state that the limitation period shall start from 1 January 2017 {cf. Decision 3295/2018 (X. 1.) AB, Reasoning [28]}.

[39] On the basis of the above, the Constitutional Court has concluded that the court of second instance, disregarding the transitional provisions, by applying Section 10 (4) of the Penal Enforcement Act, assessed a circumstance against the petitioner, which he could not have fulfilled before 1 January 2017. It goes without saying that compliance with an obligation (time limit for filing a claim) imposed in the context of legal institution which did not exist in the period of time referred to above is conceptually impossible before the entry into force of the legal institution. Thus, the relevant interpretation of the court of second instance decided to the detriment of the petitioner in the context of the compensation claim, by requiring compliance with a statutory obligation that had not existed in the period reviewed, that is, by applying a law that had not been in force in the period assessed, resulting in the violation of the prohibition, guaranteed in Article B (1) of the Fundamental Law, of applying the law retroactively.

[40] In view of the foregoing considerations, the Constitutional Court found that Order No 1.Bpkf.226/2017/2 of Székesfehérvár Regional Court, which was sought to be annulled in the constitutional complaint, expressed an interpretation of the law resulting in a violation of Article B (1) of the Fundamental Law, and therefore annulled the Order in question.

Budapest, 25 June 2019

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