

HUMAN RIGHTS HANDBOOK

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1. CONCEPT AND FEATURES OF FUNDAMENTAL RIGHTS

Human rights are rights rooted in morality. Even though their inherent contents are not established by states, they are to be respected by them. Individuals are equally entitled to these rights simply because they exist as human beings. Human rights are enshrined in a number of international instruments and in national constitutions. Fundamental rights define the rules of the relationship between individual and state; they determine the limits of state interference.

The idea of human rights was born at the same time as the idea of constitution arose in Europe. Although the French Revolution (1789–1799) is considered to be the starting point, mention should also be made of the Virginia Declaration of Rights (12 June 1776) and the United States Declaration of Independence (4 July 1776). Both declarations were based on the idea that human beings have certain imprescriptible rights, such as the right to happiness, safety and acquiring property. Inspired by these ideals, the French Declaration aspired to define universal values. The Declaration of the Rights of Man and of the Citizen, adopted on 26 August 1789, set the foundations for a revolutionary new state organisation and legal system, and solemnly proclaimed that everyone should observe human rights at all times. The primary role of human rights is to protect the individual against state interference and to ensure the right or the possibility to act freely. States must recognise and enforce human rights and freedom, a requirement that is reflected in national constitutions and international instruments. These rights are also called fundamental rights. In general, the right-holders are the individuals, and the duty-bearer is the state. While it is the state's obligation to ensure the protection of fundamental rights through its institutional systems, the state itself cannot rely on the infringement of a fundamental right, since the role of fundamental rights is to protect the freedom of individuals against the state.¹

Several classifications of the fundamental rights exist in literature. The most common of these is the one that presents three generations of human rights based on the chronology of their evolution.

First-generation rights are the achievements of civil revolutions and generally include classic freedoms (e.g. right of free movement, equality, non-discrimination, freedom of speech, etc.).

¹ Curia Decision Knk.IV.37.943/2018/2, [22], and Constitutional Court Decision 23/2009 (III. 6.) AB.

These rights are often described as negative rights, because they impose a negative obligation on the state and require non-interference on the part of public authority. Interference is only allowed exceptionally and in a very limited form, like temporary measures in a state of exception (in Hungary, this is called a special legal order). Such a measure was in Hungary the restriction on movement (curfew) introduced due to the coronavirus pandemic during the period of a so called state of danger, a type of special legal order.²

The second-generation rights appeared in first third of the 20th century. They include economic, social and cultural rights (e.g. the right to social security, the right to work, the right to education and training, the protection of marriage and family, the rights of the child). Social rights bring forth positive state obligations requiring from the state, depending on its carrying capacity, positive action, like ensuring appropriate legislative environment and establishing the institutional framework.

The third-generation human rights are mainly collective rights that appeared in the second part of the 20th century. They focus on solving global problems which cannot be handled within the bounds of a single state. In this regard, the role of solidarity of international communities and effective international cooperation is crucial. Examples include the right to a healthy environment, the rights of future generations and the need to protect information freedoms. At present, some of these rights are only expressions of certain wishes (right to peace, right to development, etc.).

In addition to the above grouping, it is customary to group fundamental rights according to whether they can be enforced individually or by a community.

Fundamental rights can also be categorised according to whether or not they can be restricted. Based on this, we can establish a category of human rights to which a prohibition of restriction applies. Since they cannot be compromised, they are absolute fundamental rights. (For example, no one should be subjected to torture or to inhuman or degrading treatment or punishment; further absolute rights are the right to human dignity, the right to freedom of conscience and the part of the freedom of religion that relates to the choice or change of belief.)

² See section 1 of Government Decree 40/2020 (11 March) on the declaration of state of danger, according to which the Hungarian Government, acting within its power laid down in Article 53(1) of the Fundamental Law, declared a state of danger in the entire territory of Hungary for the elimination of the consequences of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens. Also see section 3 of Government Decree 71/2020 (27 March) on restricting movement.

During a period of special legal order (e.g. state of emergency, state of danger), some rights that may be temporarily restricted on grounds of public interest, community order or social peace. (An example is restricting certain guarantees in court proceedings as an extraordinary measure introduced during the coronavirus pandemic.³)

The third category includes rights that may be restricted permanently under specific, strict conditions and only on the basis of a statutory authorisation. Such restrictions can be introduced in order to safeguard public order or public health (e.g. restrictions on hospital visiting hours, restrictions on freedom of movement when coercive measures are taken in criminal proceedings, or legal preconditions for the exercise of the right of assembly).

It is clearly stated in fundamental rights documents that the restriction of fundamental rights is subject to strict formal and substantive criteria. A restriction of rights can, on the one hand, only take place in a specific form, and, on the other hand, subject to certain substantive limitations. To meet the formal requirements, the restrictive measures must take the form of laws that are known in advance, clear and comprehensible. In terms of substance, fundamental rights tests developed by international courts and national constitutional courts serve as milestones (general test (clause) or, in other words, necessity and proportionality test). The Fundamental Law of Hungary of 25 April 2011 (hereinafter the “Fundamental Law”), in line with the Charter of Fundamental Rights of the European Union (hereinafter the “Charter of Fundamental Rights” or “Charter”) summarises this as follows: “A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.”⁴ Additionally, the Constitutional Court has also developed the public interest test and the exceptionality test. The former allows interference with economic processes on public interest grounds unless this would harm another fundamental right, while the latter applies when rights other than fundamental rights are restricted.⁵

Today’s system of fundamental rights protection has developed in relation with classical, i.e. first-generation, fundamental rights. For the state, this protection constitutes a duty. The state is not only required to declare these rights, but also to establish an institutional framework for their legal protection, and to develop legal protection mechanisms with a view to remedying

³ Exclusion of the public from trials in section 71 (1) of Government Decree 74/2020 (31 March) on certain procedural measures applicable during the period of state of danger.

⁴ Article I (3) of the Fundamental Law.

⁵ Constitutional Court Decision 29/2017 (X. 31.) AB.

the infringements suffered by individuals. The exercise of public power is thus confined within the boundaries outlined by the fundamental rights, and the opportunity to take the judicial path is thus guaranteed.

2. FUNDAMENTAL OBLIGATIONS

The need for laying down the fundamental obligations in a constitution arose with the beginning of the development of civil society. However, the first roots can be traced back to the legal systems of the Greek poleis and the Roman Empire. The American War of Independence (1775-1783) and the French Revolution (1789), which marked the emergence of civil societies, as well as the accompanying constitution-making processes had their starting point in republican thinking which construed the concept of freedom as non-domination, and stated that the boundaries of freedom are anchored in the laws created by the state that regulate rights and obligations. By contrast, according to liberal theory, fundamental rights can be ensured on the basis of non-interference with the rights of the individuals. Nonetheless, these views did not prevail. The early civil constitutions already specified legal and moral obligations that citizens had to fulfil vis-à-vis the state.⁶

In the aftermath of the Second World War, ensuring rights was clearly the priority again, yet in many Western European democracies, the fundamental obligations were enshrined also in the fundamental laws. Along a similar trend in international law, while the fundamental rights of the individual were put to the forefront, obligations have also been determined. The Universal Declaration of Human Rights, adopted in 1948, also stated that “Everyone has duties to the community in which alone the free and full development of his personality is possible.”⁷

In Hungary, the fundamental obligations were first laid down at constitutional level in Act XX of 1949. In the socialist ideology this certainly meant that the rights and responsibilities of the individual and the society were in accordance with each other and, consequently, they did not require protection.

By contrast, the Fundamental Law laid down a number of obligations; according to the basic idea of the legislation, the proper fulfilment of the obligations imposed on the individual has

⁶ Declaration of the Rights of Man and of the Citizen (1789) and the United States Bill of Rights (1791); furthermore, KAZAI Viktor: Alapvető kötelezettségek, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SÜLYOK Gábor (eds.): Internetes Jogtudományi Enciklopédia (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/alapveto-kotelezettsegek> (2021), [1]

⁷ Article 29 of the Universal Declaration of Human Rights (1948).

an impact on the exercise and protection of fundamental rights. What appears for the individual as a claim-right (ensuring of fundamental rights), is a fundamental obligation for the state. However, there are fundamental rights for which a beneficiary cannot be identified (right to a healthy environment, right to peace). Where a fundamental obligation and certain fundamental rights are linked, the obligation serves the protection and facilitates the enforcement of the fundamental rights, but is not derived from them. An example is the obligation to share public burdens, by which the citizens contribute to generating the budget funds necessary to maintain the public health system.

On the other hand, independent obligations that are not directly linked to fundamental rights can be linked to constitutional values and state objectives. In the view of the Hungarian constitution-makers, coexistence in a democratic society also entails obligations for the members of the community (individuals and entities) observing which is necessary for reasons of maintaining order, social integration, social consensus and avoiding conflicts, and essential for the fulfilment of state functions.⁸

However, contrary to the rights specified in the Fundamental Law, from a state objective follows an express obligation to ensure the achievement of that objective by means of legislation only if the Fundamental Law itself provides for such a legislative obligation. Nonetheless, regardless of whether there is such an express obligation, the legislator may not adopt laws with content contrary to the state objective or rendering explicitly impossible or difficult its achievement.

According to the Constitutional Court, the primary function of sharing public burdens is to provide the necessary resources for the maintenance of state organs and for the performance of various duties in the public interest in order to ensure the functioning of the democratic rule-of-law state. Reading certain provisions of the Fundamental Law in conjunction with each other, it can be concluded that the right to work is also an obligation requiring everyone to contribute to the development of the community by working according to his or her abilities and possibilities. Thus, the exercise of constitutional rights and the fulfilment of obligations are inseparable from each other.⁹

⁸ Statement of reasons of legislative proposal T/2627 on the Fundamental Law of Hungary (hereinafter the “Statement of reasons to the Fundamental Law”).

⁹ Article O of the Fundamental Law (“Everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities.”), Article XII (1) of the Fundamental Law (“Everyone shall have the right to choose his or her work, and employment freely and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.”) and Article XIX (3) of the Fundamental Law (“The nature and extent of social measures may be determined in an

The Fundamental Law clearly specifies the individual's obligations. These are the following: obligation of resistance (Article C (2)), protection of natural resources (Article P (1)), respect for the fundamental rights of others (Article I (1)), obligation of parents to care and teach (Article XVI (3)), restoration of environmental damage (Article XXI (2)), obligation to share public burdens (Article XXX (1)) and national defence obligation (Article XXXI). Furthermore, obligations like compliance with the law (Article R (2)) and responsibility associated with property [Article XIII (1)], even if they are not expressed as such. The general obligation to contribute to the performance of state and community tasks and to the enrichment of the community (Article O) and Article XII (1)) and the obligation of adult children to take care of their parents (Article XVI (4)) are also worth mentioning.

It is worth pointing out here that in the law of nation states, linking citizenship and fundamental obligations still had an important function, because it helped to establish a connection between the citizen, the nation and the state. The legal definition of the individual, however, slowly distanced from citizenship (and thus also from the community surrounding and protecting the individual), and humanity became the exclusive foundation of legal personality in constitutional law. The lack of a necessary link between the two legal institutions is illustrated by the fact that European Union citizenship has created a form of citizen status to which practically no obligations are attached.¹⁰

Act in accordance with the usefulness to the community of the beneficiary's activity."); furthermore, Constitutional Court Decision 8/2007 (II. 28) AB.

¹⁰ KAZAI Viktor: Alapvető kötelezettségek, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SULYOK Gábor (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/alapveto-kotelezettsegek> (2021), [24].

3. THE INTERNATIONAL PROTECTION OF FUNDAMENTAL RIGHTS

One of the obligations of every state is the protection of fundamental rights, be it a negative or a positive obligation, and accordingly, all state organs must take part in it. With the establishment of the United Nations, a major boost was given to comprehensive international human rights legislation. In addition to the UN institutions and legal documents, there are now regional mechanisms, too, that serve the same purpose. The Handbook only seeks to present briefly those UN and European systems of a general nature that are of particular interest to Hungary.

The institutions involved in UN human rights forums may be organisations established on the basis of international treaties and institutions formed by resolutions of the organs of the United Nations.

The Covenant on Civil and Political Rights¹¹ established a body of independent experts. The Human Rights Committee¹² is responsible for monitoring the implementation of the Covenant.

States Parties submit reports to the Committee on the measures they have adopted which give effect to the rights recognised in the Covenant. The First Optional Protocol, to which Hungary acceded in 1988,¹³ also allows individuals to complain to the Human Rights Committee. Individuals may, however, submit their communication only if they have exhausted all available domestic remedies and the violation is not subject to any other proceeding before an international forum. Although the Committee's decisions are not binding on the States Parties, they are of great importance on the basis of customary international law.

The UN Economic and Social Council established the Committee on Economic, Social and Cultural Rights as the body responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights¹⁴ adopted by the United Nations General Assembly in its 21st session. This Committee considers regular reports and publishes general comments.

¹¹ Law-Decree 8 of 1976 promulgating the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly in its 21st session on 16 December 1966. (Although adopted on 16 December 1966 in the 21st session of the United Nations General Assembly, the Covenant has only entered into force in 1976.)

¹² Article 28 of the International Covenant on Civil and Political Rights.

¹³ Law-Decree 24 of 1988 promulgating the Optional Protocol to the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly in New York on 16 December 1966.

¹⁴ Law-Decree 9 of 1976 promulgating the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly in its 21st session on 16 December 1966.

The Second Optional Protocol to the Covenant, adopted in 2008, also provides competence for the Committee to consider communications from individuals, but only if domestic remedies have been exhausted and not later than within one year after exhausting those remedies. This Protocol entered into force in 2013. Hungary has not yet acceded to it.

In addition to the above, a number of UN conventions on specific topics have set up similar committees (e.g. Committee on the Elimination of Racial Discrimination, Committee against Torture, Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women), which are responsible for considering reports in specific areas, and for settling disputes between states.

The Human Rights Council¹⁵, established in 2006, is a body of the UN General Assembly with central role to play in addressing key human rights issues. The Human Rights Council examines the human rights situation in the 193 UN member states every four years in the Universal Periodic Review. It is assisted by the Office of the High Commissioner for Human Rights. Mandated directly by the UN General Assembly, the High Commissioner is responsible for the protection and promotion of human rights and the implementation of human rights programmes, and responds to human rights violations.

The Council of Europe plays a prominent role in the protection of fundamental rights on our continent. It contributed to the development of the European Convention on Human Rights (hereinafter the “ECHR”)¹⁶, thus promoting the establishment of the most effective fundamental rights protection system. The European Social Charter, adopted in 1961, and the Revised European Social Charter, adopted in 1996 due to accelerated changes in social conditions, are of paramount importance.¹⁷ The Revised Charter declared the rights and principles for which protection needs to be made more effective in the future.

The European Court of Human Rights¹⁸ (hereinafter the “ECtHR”) was established in Strasbourg, under the auspices of the Council of Europe. The cases brought before the ECtHR

¹⁵ The Human Rights Council was established by the United Nations General Assembly in Resolution 60/251 to replace the Commission on Human Rights, established by the UN Economic and Social Council in 1946. The Human Rights Committee, established by the International Covenant on Civil and Political Rights, is a separate body, which continues to perform its duties.

¹⁶ ECHR was adopted in 1950, entered into force in 1953, and has 17 additional Protocols. Hungary ratified the Convention on 5 November 1992 and transposed it into national law in 1993 (Act XXXI of 1993 promulgating the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome, on 4 November 1950, and its eight additional Protocols).

¹⁷ Act C of 1999 promulgating the European Social Charter; Act VI of 2009 promulgating the Revised European Social Charter.

¹⁸ ECtHR has been established by Article 19 in Section II of the ECHR (1950).

are considered in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a so-called Grand Chamber of seventeen judges. The Court first examines the admissibility on its own initiative, and only then the merits of the case. An application is only admissible if the applicant has exhausted the available domestic remedies. The Court is competent to hear both inter-state cases and individual applications. It has jurisdiction to decide complaints concerning violations of the rights granted by the ECHR and its additional Protocols, provided that the violation was committed by a State Party. The ECtHR is the most effective international fundamental rights body to date. It is not an appellate court, so it cannot alter decisions of national authorities or courts. Its decisions are of declaratory nature; if it establishes a violation, it may order the State Party to pay compensation (just satisfaction). A judgment handed down by the ECtHR is only legally binding on the State Party against which the case was brought. Observing the principle of good faith fulfilment of obligations, the states generally draw the conclusions that follow from the decisions of the Court.

As a result of decades of development, the European Union has made human rights an integral part of the values of a community originally created only for economic cooperation. In this process, the Treaty of Amsterdam deserves special attention, since it declared that the Union respects fundamental rights, which, as they are guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, constitute general principles of the Community law. Their violation may result in the suspension of the rights of Member States arising from the Treaties.

The Charter of Fundamental Rights, the first fundamental rights catalogue of the European Union, was adopted in 2000. Its adoption was preceded by protracted and often very heated debates. The final text of the Charter was signed in Strasbourg in 2007. The Treaty of Lisbon, also signed in 2007, provided that the Union recognises the rights and freedoms set out in the Charter. The Charter has the same legal value as the Treaties. The accession of the European Union to the ECHR is currently under way. The legal conditions for this accession were created by the Treaty of Lisbon on the side of the Union, and by Protocol 14 to the ECHR on the side of the Council of Europe.

The next stage in this process was the establishment of a European Union Agency for Fundamental Rights in Vienna in 2007. The Fundamental Right Agency is primarily responsible for providing assistance and advice to the institutions of the Union and the Member States regarding the implementation of Union law.

In addition to the enshrining of fundamental rights guarantees in international instruments and national constitutions, the effective enforcement of these rights is also supported by the establishment and maintenance of institutional systems for their protection, as well as the development of a seamless system of remedies. In the various legal systems, the constitutional courts, the judiciary, the ombudspersons and other alternative or specific forms of the administration of justice also serve this purpose.

In democratic countries, fundamental rights violations can be effectively remedied through the judicial path.¹⁹ In the EU law, the protection is very extensive, since it guarantees the right to an effective remedy before a court.²⁰ The courts are independent and therefore have the necessary freedom to remedy violations.²¹ In line with the case law of the ECtHR, states are required to adopt rules for legal aid (or other practical support, such as translation) if the absence of such assistance would make it impossible to effectively take action before the court or to make remedies available.²² With regard to the right to court proceedings, the constitutions of the various states, and in particular the sectoral procedural rules, oblige the states to provide judicial channels for the resolution of disputes. The ECtHR and the CJEU have developed principles for determining which bodies qualify as courts. Also the enforcement of the right to court proceedings may be limited; however, such restrictions may not weaken the substance of this right.²³ A restriction can be lawful if it is justified by the requirement of legal certainty. However, even in this case, the restriction must not lead to the extinction of the fundamental right. Therefore, judicial assessment requires statutory regulation, it cannot be excluded beyond certain limits, but there may be rules in place that

¹⁹ The first paragraph in Article 47 of the Charter of Fundamental Rights is based on Article 13 of the ECHR: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

²⁰ The CJEU enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313).

²¹ The second paragraph in Article 47 of the Charter of Fundamental Rights is based on Article 6 (1) of the ECHR.

²² ECHR judgment of 9 October 1979, Airey, Series A, Vol. 32, p. 11. There is also a system of legal assistance for cases before the Court of Justice of the European Union.

²³ Handbook on European law relating to access to justice, European Union Agency for Fundamental Rights and Council of Europe, 2016, 2.1.1. Right of access to a court.

make access to a court subject to certain conditions (e.g. time limit and formal requirements for bringing an action, fee obligation, etc.).²⁴

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations.²⁵

According to Article 6 (1) of the ECHR: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”²⁶ It is to be noted that the terms used in Article 6 of the ECHR with respect to criminal charge and civil law dispute are based on a distinct interpretation, and thus, they are independent of the legal concepts employed in national legal systems.²⁷

In the specific case of an action in the public interest (*actio popularis*), the reason for bringing the action is not an infringement of an individual's rights; the judicial proceedings become necessary due to public interest (neither a direct violation of a subjective right nor the injured persons can be identified). Human rights organisations and authorities as well as the prosecution service are entitled to bring such an action.

The majority of European countries, including Hungary, have developed a specific dualistic system, as both the ordinary courts and the constitutional court are involved in remedying fundamental rights violations. In general terms, ordinary courts proceed if the infringement arises from an individual act of public authority, and the Constitutional Court comes into play if the infringement occurs in a piece of legislation. Of course, the true picture is much more nuanced, and the relationship between the two judicial forum systems is much more complex.

²⁴ BALOGH Zsolt, HAJAS Barnabás, SCHANDA Balázs: Alapjogok és alapvető kötelezettségek fogalma, értelmezése, 6.2. A jogorvoslathoz való jog, és a bírósághoz fordulás joga; and Constitutional Court Decision 22/2013 (VII. 19.) AB on the right to remedy.

²⁵ That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, ‘Les Verts’ v European Parliament (judgment of 23 April 1986, [1986] ECR 1339). Article 47 of the Charter of Fundamental Rights.

²⁶ The second paragraph in Article 47 of the Charter of Fundamental Rights is based on Article 6 (1) of the ECHR.

²⁷ ECtHR, Engel and Others v. the Netherlands, No. 5100/71.

A link between the two types of judicial forums is formed in the case of a judicial initiative, that is, when a judge dealing with a particular case refers to the Constitutional Court and requests it to review the conformity with the Fundamental Law of a legal provision to be applied. If the judge presumes that in the proceedings before him or her, a certain piece of legislation is, in whole or in part, unconstitutional, the judge is required to initiate norm control (i.e. constitutionality review). However, such a judicial initiative must be based on the professional opinion of the judge; a request by the parties to the proceedings to that effect is not enough in itself.

In addition to the judicial path, alternative solutions are also available for the effective protection of fundamental rights. These complementary instruments are often more favourable to injured persons due to their easier accessibility, flexibility and relative quickness. They do not replace, but effectively complement fundamental rights jurisdiction. Among these, a legal institution of paramount importance is ombudsperson (in Hungary called the Commissioner for Fundamental Rights). Ombudspersons investigate fundamental rights violations, in a comprehensive manner if needed, on the basis of complaints from citizens or on their own initiative, and make recommendations of a specific or general nature, depending on whether the violation is an individual case or a systemic problem. Where a problem of a general nature is rooted in an error in legislation, ombudspersons are entitled to make a legislative proposal. Because of their role as the guardian of fundamental rights, ombudspersons have the right to turn to the constitutional court, initiating a constitutionality review or a constitutional complaint procedure.

The powers of authorities responsible for fundamental rights protection and the guarantees of their functioning are not nearly as extensive as those of ombudspersons. This is due to the fact that these bodies are closely linked to the apparatus of the executive branch. However, with respect to certain fundamental rights, their stability is guaranteed by EU legal acts.²⁸

²⁸ Article 51 (1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and Article 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

4. THE SYSTEM OF FUNDAMENTAL RIGHTS PROTECTION IN HUNGARY

The implementation of fundamental rights is safeguarded by two conditions. Based on the first and most important condition, the fundamental rights are declared in the Fundamental Law and regulated in Acts. Under the other condition, which requires the democratic structure to value the enforcement of these rights, an institutional system has been put in place for the protection and enforcement of fundamental rights. The state is responsible for the effective functioning of this system.

The Constitutional Court

The Hungarian Constitutional Court was established by way of a constitutional amendment in 1989, and began its activities on 2 January 1990.²⁹ The Fundamental Law and a new (cardinal) Act, which entered into force on 1 January 2012, brought substantial changes in its operation. The Preamble of this Act on the Constitutional Court stated that the rules on the principal organ for the protection of the Fundamental Law were revised with a view to protecting the democratic state governed by the rule of law, the constitutional order and the rights guaranteed in the Fundamental Law and to safeguarding the inner coherence of the legal system, and enforcing the principle of the division of powers.³⁰

The strengthening of the powers of the Constitutional Court has led to the establishment of a system of fundamental rights jurisdiction and made it possible to directly enforce fundamental rights on the basis of the Fundamental Law and to remedy violations through judicial channels. The Constitutional Court has jurisdiction to carry out preliminary review and abstract review of legislation, and to decide on constitutional complaints. On the initiative of a judge, the Constitutional Court reviews the conformity with the Fundamental Law or an international treaty of a piece of legislation to be applied to a particular case. This review may also be requested with regard to lower-level regulations, in Hungary called public law regulatory instruments, and uniformity decisions adopted by the Curia to harmonise the administration of justice within Hungarian judiciary. Finally, on its own initiative, the Constitutional Court also examines laws, public law regulatory instruments and uniformity decisions for possible conflict with an international treaty. Under the new Hungarian Constitutional Court Act, not only a law applied to a particular case, but also court decisions

²⁹ Section 17 of Act XXXI of 1989 amending the Constitution, and Act XXXII of 1989 on the Constitutional Court.

³⁰ Preamble and section 2 of Act CLI of 2011 on the Constitutional Court.

can be challenged on grounds of unconstitutionality. This attaches special weight to the constitutional complaint.³¹

Hungary, like the majority of European countries, grants citizens the right to initiate a constitutional complaint procedure. A citizen can make use of this opportunity if his or her case has been concluded with a final and binding court decision that was based on a law or a provision of law that violated the citizen's fundamental rights. This procedure is also known as "non-real" constitutional complaint.

A constitutionality review of a law which caused the violation of an individual's fundamental rights may also be carried out if ordinary courts cannot be used to remedy the violation, or if the injured party cannot be expected to initiate such a procedure.³² This type of constitutional complaint is commonly known as a direct constitutional complaint. Only those personally, actually and directly affected by the violation are allowed to make use of it. In such cases, the Constitutional Court itself provides legal protection to the petitioners. Such a petition may be submitted in writing within one hundred and eighty days of the entry into force of the law conflicting with the Fundamental Law.

The responsibility for addressing fundamental rights violations caused by individual decisions of public authorities lies with the judiciary. Hungary followed the German model when it introduced the "real" constitutional complaint into its legal system through the adoption of the Fundamental Law. This is the best example for the dualistic system featuring the judiciary, since both the Constitutional Court and ordinary courts play a key role in the protection of fundamental rights. In this procedure, it is not the constitutional deficiencies of the law applied, but the constitutionality of the court decision itself that is examined; however, only if all available remedies before the ordinary courts have been exhausted. In such cases, the Constitutional Court reviews the specific judicial decisions, instead of the pieces of legislation.

In this procedure, the Constitutional Court has the power to annul the judicial decision that resulted in the fundamental rights violation, and is entitled to specify binding fundamental rights guidelines for the new proceeding. However, the Constitutional Court is not entitled to carry out a general review of the judgments of ordinary courts.

³¹ KISS Barnabás: Emberi jogok – az emberi jogok nemzetközi jogi védelme, <http://www.juris.u-szeged.hu/download.php?docID=48277>, III/1.

³² It applies to a procedure under section 26 (3) of Act CLI of 2011 on the Constitutional Court, that the injured party cannot be expected to initiate the procedure.

In addition, constitutional courts are entitled to carry out ex ante and ex post reviews of laws. An ex ante or preliminary review can result in the law contrary to fundamental rights not being promulgated at all. An ex post review can lead to the annulment of the unconstitutional law and to prohibiting the adoption of new legislation with similar content. With regard to the protection of fundamental rights, it is of crucial importance, which state organ or person the legislation authorises to initiate such proceedings. In this respect, the ombudsman has a very important role in Hungary and also in many other countries. Namely, the ombudsman has the right to initiate constitutionality review.

Ordinary courts

In the Hungarian legal system, as in other states, the primary responsibility for remedying individual violations of rights lies with the organs of the judiciary, the courts. The Fundamental Law provides that everyone has the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act. Furthermore, it grants remedy against any court, authority or other administrative decision which violates the rights or legitimate interests of anyone.³³

This principle is reinforced by the Act on the organisation of courts stating that courts have to pass final decision on disputed or violated rights in accordance with a procedure governed by an Act.³⁴ Consequently, a fundamental rights violation is not in itself sufficient to bring legal proceedings before an ordinary court. This becomes possible only if fundamental rights protection is dealt with in a sectoral Act or a fundamental rights Act (such as the Act on the right of assembly or the Civil Code providing for the protection of personality rights).³⁵

Specific forms of the administration of justice

According to the Fundamental Law, other organs can also have a role in certain disputes. Arbitration and mediation, which is used increasingly often in the Hungarian legal system, are such alternative options. The purpose of mediation is to settle a dispute by mutual agreement, which should be requested jointly by the parties. Reaching the agreement is facilitated by an impartial mediator. Another option besides court mediation is administrative mediation,

³³ Article XXVIII (1) and (7) of the Fundamental Law.

³⁴ Section 2 of Act CLXI of 2011 on the organisation and administration of the courts.

³⁵ Act V of 2013 on the Civil Code.

which can be employed in procedures before administrative authorities.³⁶ Similarly, the Act on consumer protection has set up conciliation boards to resolve disputed matters. In the context of police procedures, the former Independent Police Complaints Board³⁷ was responsible for the same until 27 February 2020, when its functions have been transferred to the Commissioner for Fundamental Rights.³⁸

The Commissioner for Fundamental Rights as the main alternative institution for fundamental rights protection

The institution of ombudsman has its roots in Sweden. In the Hungarian legal system, before the entry into force of the Fundamental Law, it was called parliamentary commissioner. Besides a general commissioner three further ombudsmen worked in various specialised fields (minority, data protection and future generations). The Fundamental Law brought substantial changes in the ombudsman system. It established the office of the Commissioner for Fundamental Rights and vested it with actually general powers. The functions of the former specialised ombudsmen for future generations and for national and ethnic minority rights are now performed by the deputies of the Commissioner for Fundamental Rights. After the position of the commissioner for data protection ceased to exist, its tasks have been taken over by the National Authority for Data Protection and Freedom of Information. The Office of the Commissioner for Fundamental Rights took over the tasks of the Independent Police Complaints Board and, from 1 January 2021, the Equal Treatment Authority.

In this extended and changed system, the ombudsman investigates, or has investigated, any fundamental rights abuses of which he or she becomes aware. To remedy them, he or she can initiate general or specific measures. Particular attention is paid to the protection of the rights of children, the interests of future generations, the rights of national minorities and the rights of vulnerable social groups. In the context of his or her annual report, the Commissioner for Fundamental Rights can present certain matters to the National Assembly and can request their investigation. In addition, in relation with the performance of an obligation under an international treaty, he or she may be designated to carry out national preventive and legal protection tasks. He or she performs the tasks connected to the national preventive mechanism

³⁶ Government Decree 185/2009 (10 September) on administrative mediators.

³⁷ See Act LX of 2017 on arbitration, chapter IV/A of Act LV of 2002 on mediation, Act CLV of 1997 on consumer protection, section 92 of Act XXXIV of 1994 on the Police.

³⁸Section 145 of Act CIX of 2019 amending Act CXXV of 2018 on government administration and certain other Acts with respect to Act CXXV of 2018 on government administration.

specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁹

The Commissioner investigates alleged maladministration in the operation of the authorities on his or her own initiative, but can launch investigation also on individual request. Anyone whose rights have been violated by an authority can initiate such proceedings after having exhausted the administrative remedies and not later than within one year after communication of the decision with administrative finality. The Commissioner for Fundamental Rights draws up a report on the investigation with the findings and the conclusions. If the complaint is founded, the ombudsman has multiple options to choose from. He or she may make recommendations to the supervisory body of the investigated organ with a view to putting an end to the maladministration, or may urge the head of the organ to remedy the infringement. In certain cases, the Commissioner can initiate prosecutorial action through the Prosecutor General. The ombudsman is also entitled to initiate a review by the Constitutional Court if he or she finds that a piece of legislation conflicts with the Fundamental Law.⁴⁰ If he or she holds that a local government decree is unlawful, he or she can refer to the Curia. If encountering a criminal offence or an infraction, he or she can report it to the investigating authorities or can initiate disciplinary proceedings. Moreover, the ombudsman is also entitled to file an application with the National Authority for Data Protection and Freedom of Information. He or she may even propose to adopt, amend or repeal a law.⁴¹

The responsibility for the protection of fundamental rights lies in principle with the state, and every organ of the state is required to contribute to it. Nonetheless, there are also certain institutions specifically dedicated to this task. These include courts, the Constitutional Court, the Commissioner for Fundamental Rights, and the National Authority for Data Protection and Freedom of Information. The most important requirement concerning the fundamental rights protection institutions of the state is that they must be guaranteed independence, since they monitor the fundamental rights related activities of the executive organs. In this system of fundamental rights protection institutions, the rules of constitutional law ensure the independence of the Constitutional Court, the courts and the ombudsman at the highest level.

³⁹ Act CXLIII of 2011 promulgating the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴⁰ Section 34 of Act CXI of 2011 on the Commissioner for Fundamental Rights, and section 24 (2) of Act CLI of 2011 on the Constitutional Court.

⁴¹ KISS Barnabás: Emberi jogok – az emberi jogok nemzetközi jogi védelme, <http://www.juris.u-szeged.hu/download.php?docID=48277>, III/4/B.

Compared to these constitutional institutions, the fundamental rights protection authorities in the organisation of state administration are granted only limited independence.⁴²

⁴² SOMODY Bernadette - VISSY Beatrix: Az alapjogok védelme, in JAKAB András - KÖNCZÖL Miklós - MENYHÁRD Attila - SULYOK Gábor (eds.): Internetes Jogtudományi Enciklopédia (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/az-alapjogok-vedelme> (2019), [4]-[5].

5. THE FUNDAMENTAL LAW OF HUNGARY

The Fundamental Law is based on a declaration of legal continuity with the constitutional systems of the historical Hungarian state. Until 1946, the Holy Crown was the symbol of the state. It was the legal source of all rights as well as the division of powers until 1848, and, on the basis of the so-called Acts of 1848, even in the modern legal order after 1867. The Holy Crown was the holder of sovereignty, but sovereignty was exercised by the nation and the king. This meant that if there is no king ruling, the nation had an exclusive right to exercise the supreme authority, and the nation could have existed without a king, even in the form of a republic. It follows from the Holy Crown Doctrine that in times of authoritarian rule, legal power ceases to exist, and legal continuity is interrupted. Under the doctrine, power acquired by force is illegitimate.⁴³

The restoration of the self-determination of the state is dated from 2 May 1990, the day of the first free elections, as following the amendments at the time of the regime change, the constitution became compatible with democratic requirements. However, even the framers considered this reshaped constitution transitional.⁴⁴ In 2011, acting on the basis of legitimacy obtained from the electors, relying on a national consultation body and taking into account the wishes of the citizens of the country, the National Assembly enshrined the most important values in a Fundamental Law. Taking up the natural-law concept of the historical constitution, the Fundamental Law defines a person not as an individual (*individuum*), but as a person (*persona*), who can complete his intellectual and spiritual abilities in the community, assuming responsibility for both his or her own actions and the community.

By adopting the Fundamental Law, recognising the Holy Crown as symbol of the constitutional continuity of Hungary's statehood and the unity of the nation, declaring the invalidity of the communist constitution of 1949, not recognising the suspension of the historical constitution due to foreign occupations, and setting aside the decisions of the Constitutional Court passed before the entry into force of the Fundamental Law (Article 19 (2) of the Fourth Amendment to the Fundamental Law), the legislature broke with the public law consequences of occupations after 19 March 1944. Based on the achievements of the historical constitution and the declaration of legal continuity with the constitutional

⁴³ Statement of reasons to the National Avowal of the Fundamental Law, and TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in Polgári Szemle, vol. 9, Nos. 3-6, p. 281-282.

⁴⁴ Statement of reasons to the National Avowal of the Fundamental Law.

systems of the historical Hungarian state, it establishes a new democratic system governed by the rule of law. The democratic adoption of the Fundamental Law was the first ever act for the Hungarian people to accept (even if only indirectly), through the free exercise of popular sovereignty, republic as the form of government. This was not possible in 1918, 1919, 1946 and 1989–90, because the key actors of transition merely declared it, “proclaimed” the republican form of government without feeling the need to seek the nation’s opinion. By contrast, the Fundamental Law contains the principles of national sovereignty based on natural law, a constitutional system based on the rule of law and protecting the national assets and material-legal continuity; therefore, the historical constitution can be considered the predecessor of the Fundamental Law.⁴⁵

Structure of the Fundamental Law

The Fundamental Law consists of six parts: *National Avowal, Foundation, Freedom and Responsibility, The State, Special Legal Order, Closing and Miscellaneous Provisions*. It begins with the first line of the Hungarian anthem, the poem *Himnusz* by KÖLCSEY Ferenc: “God bless the Hungarians”, and ends with the following wish: “May there be peace, freedom and accord”. As the first uniform, democratic and written fundamental law of the country that forms part of the thousand-year history of the Hungarian historical constitution and legitimate constitutionalism, the Fundamental Law could not have a more dignified beginning than that provided by the first line of our national anthem. The Fundamental Law, as implied by its name too, wishes to follow the traditions of the thousand-year legitimate development of law. As a codified constitution, it incorporates the most important constitutional rules, while it also bears the marks of a historical constitution. Therefore, considering its structure, it can be classified as following the system of mixed constitutions (United States) rather than that of codified constitutions (France, Germany).

By mixing the attributes of inflexible codified constitutions with the characteristics of a historical constitution, the framers intended to establish a constitutional order shaped to reality that is capable of providing more flexible responses to the new challenges. In this sense, the Hungarian constitutional order is founded, in addition to the Fundamental Law, on the Amendments to the Fundamental Law and the Transitional Provisions. The following can be identified as further characteristics of the historical constitution: the system of cardinal Acts,

⁴⁵ TÓTH Zoltán József: *Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés*, in *Polgári Szemle*, vol. 9, Nos. 3-6, p. 280, 283.

the elevation of the achievements of the historical constitution into the legal system, the declaration that the constitutional orders of the foreign military occupations and the dictatorships were illegitimate, and the non-recognition of the suspension of the historical constitution.⁴⁶

National Avowal – Preamble of the Fundamental Law

The National Avowal can be perceived as a compass and as a catalogue of fundamental values as well, since “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution.”⁴⁷ It is evident from this phrasing that this part of the Fundamental Law constitutes more than just a simple preamble, as it provides a clear basis for law-making and legal interpretation.

“Since it sets out the principles guiding the moral coexistence of the members of a nation, the National Avowal provides a basis for preserving the remaining Hungarian nation and Hungarian statehood. Introducing these values into the practice of our public law, it offers an opportunity for restarting, survival and rebirth after the destructions of last centuries, including the last twenty five years.”⁴⁸

The National Avowal can be divided into four parts. Its first part declares the unity of the Hungarians and the national minorities living with us, and sets out the values that serve the identity and cohesion of community (e.g. reference to the Hungarian State having been part of Christian Europe since king Saint Stephen, declaration of the role of Christianity in preserving nationhood, appreciation of national minorities and protection of the Hungarian language and culture, etc.).

The second part lists the fundamentals upon which state and community approach are based, which are the products of natural-law thinking. It states that human existence is based on human dignity, and at the same time declares that individual freedom can only be complete in cooperation with others. In addition to professing commitment to a labour-based society, it emphasises that family, nation, loyalty, faith and love, as well as honour, are the most

⁴⁶ TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in *Polgári Szemle*, vol. 9, Nos. 3-6, p. 276.

⁴⁷ Article R) (3) of the Fundamental Law.

⁴⁸ Statement of reasons to the National Avowal of the Fundamental Law, and TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in *Polgári Szemle*, vol. 9, Nos. 3-6, p. 277.

important elements of community coexistence. Moreover, recognition of the achievements of human mind and solidarity with the vulnerable and the poor are also proclaimed here.

The third part of the National Avowal defines the Fundamental Law as part and continuation of the historical state and constitution. It declares the communist constitution of 1949 invalid, proclaims that our current liberty was born of our 1956 Revolution, and dates the restoration of our country's self-determination from 2 May 1990, when the first freely elected National Assembly as the organ of popular representation was formed.⁴⁹

The fourth part emphasises the contractual nature of the Fundamental Law, and notes that this contract restores and maintains legal continuity among Hungarians of the past, present and future. The legislature expresses its confidence that it provides an appropriate framework for the future generations to “make Hungary great again”.⁵⁰

The Fundamental Law begins with the elevated and eloquent language of the National Avowal and ends with a solemn formulation. As was pointed out in the foregoing, in interpreting the Fundamental Law, account must be taken of the values enshrined in the National Avowal (love, faith, loyalty, solidarity) too. Accordingly, the state must not act in a neutral way with respect to these values. The citation before the National Avowal borrowed from Himnusz, the national anthem does not, however, mean that the Fundamental Law originates from God. It is evident to all Hungarians, regardless of what worldview they hold, that this invocation refers to a value commonly shared by all members of the nation. For religious citizens, the national anthem may carry additional contents; however, this does not prevent non-believers from identifying themselves with a symbol of national unity. The symbolic significance of this initial sentence is very strong, but its legal relevance is by far not.

The phrasing “[...] being aware of our responsibility before God and man [...]” made in the closing part of the Fundamental Law clearly states that public power does not wish to have sacral legitimacy and recognises its own limited nature and moral responsibility. The last sentence of the first paragraph in the preamble recognises the role of Christianity in preserving nationhood. This is nothing more than merely the recognition of a historical fact, and does not mean that Christianity would become state religion. This is not about appreciating Christianity as a religion, but only about the decisive role of Christianity in national history. The National Avowal only pays a tribute to religious traditions, but it does

⁴⁹ National Avowal of the Fundamental Law.

⁵⁰ The Fundamental Law and TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in Polgári Szemle, vol. 9, Nos. 3-6, p. 278.

not contain any reference to the recognition of non-religious tradition or of the current role that religion plays.⁵¹

Foundation - The fundamentals and objectives of the Hungarian State

In the Fundamental Law, the National Avowal is followed by the part titled “Foundation”. This part enumerates the fundamental values and the state objectives, and contains provisions affecting the Fundamental Law and other laws.

The division of powers, the idea of the state's claim to a monopoly on violence, the establishment of citizenship, the protection of the Hungarian language, setting our national and state holidays, encouraging the commitment to have children, commitment to an economy based on value-creating work, and the principles of balanced, transparent and sustainable budget management and maintaining and protecting a healthy environment appear for the first time at a constitutional level. 20 Articles in total list the fundamentals and objectives of Hungary and the Hungarian state.

Article A) provides that the name of the Hungarian state is Hungary, both in national use and for the purposes of external relations. Beyond emotional ties, this also expresses the continuity of the Hungarian state independently of the form of government. Indeed, our country has been identified by this name both in and outside its borders for a thousand years.

Article B) sets out the constitutional principles that serve as guiding principles for both the fundamental rights part and the part dealing with state organisation within the Fundamental Law. These principles are independence as the external side of the sovereignty of the state, democracy and rule of law. This Article also specifies Hungary’s form of government, which is republic. It declares that the source of the power is the people, which exercise its power through elected representatives, that is, the Members of the National Assembly.⁵² The direct exercise of power is allowed only in exceptional cases. The instrument provided in the Fundamental Law to this end is national referendum.

Article C) lays down the principle of the division of powers. This principle requires that power is not unlimited, and provides for the separation and balance of powers, and interaction obligation between the branches. The provision providing for the possibility of resistance, which implies the necessity of defending democracy and preventing the concentration of

⁵¹ SCHANDA Balázs: A gondolat, a lelkiismeret és a vallás szabadsága, in JAKAB András – FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/a-gondolat-a-lelkiismeret-es-a-vallas-szabadsaga> (2018)., [81]-[84].]

⁵² TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in *Polgári Szemle*, vol. 9, Nos. 3-6, p. 285.

power, takes the form of both a constitutional prohibition and obligation. It is a last guarantee, an ultima ratio regarding the protection of the constitutional state. As a general rule, however, force may be used exclusively by the organs of the state.

Hungary holds that there is one single Hungarian nation that belongs together, wherever its members may live in the world. In addition to this, Article D) declares that Hungary bears responsibility for the fate of Hungarians living beyond its borders. Since this is an active responsibility, Hungary undertakes to facilitate the survival and development of the communities of Hungarians living beyond its borders. Moreover, it supports their efforts to preserve their Hungarian identity, and promotes their contact and cooperation with each other and with Hungary. Hungary attaches high importance to the protection of Hungarians and the Hungarian nation.

With express reference to the European Union, Article E) enshrines it as a constitutional principle that Hungary contributes to the creation of European unity that enhances the liberty, well-being and security of the people of Europe. The European Union has its own legal order founded on international treaties, under which the European Union is authorised to adopt legal acts directly applicable within the Member States and to directly confer rights and impose obligations on the subjects of law. Participation in the European Union has a significant impact on the methods and framework of the exercise of public power in Hungary, and Union law determines to a large extent the rights and obligations of Hungarian legal subjects. Therefore, the Fundamental Law provides, among its immanent guiding principles, for an express authorisation for the purpose of exercising power within the framework of the European Union,⁵³ with the proviso that the exercise of such competences must comply with the fundamental rights and freedoms provided for in the Fundamental Law and must not limit the inalienable right of Hungary to determine its territorial unity, population, form of government and state structure.⁵⁴

Article F) defines the territorial division of Hungary. In line with historical traditions, Hungary applies a two-level division system: the territory of the state consists of the capital city Budapest, towns and villages, and the territorial unit formed by a number of towns and villages is the county. The territorial division is the basis of the local exercise of public power, that is the system of local governance (Budapest enjoys a special status both in terms of law

⁵³ TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in Polgári Szemle, vol. 9, Nos. 3-6, p. 285-286., and Statement of reasons to Article E) of the Foundation of the Fundamental Law.

⁵⁴ Seventh Amendment to the Fundamental Law.

and local governance). It serves as a guiding principle for the organisation of the judiciary and public administration; however, the legislature can establish different levels.

Article G) contains rules regarding the acquisition of Hungarian citizenship. Citizenship includes mutual rights and obligations, and embodies the closest relationship, a legal relationship, between state and citizens. Our country commits itself to the protection of its citizens, which includes also the guarantee that no one can be deprived of Hungarian citizenship established by birth or acquired in a lawful manner. The acquisition of citizenship is governed by the principle of *jus sanguinis*: “The child of a Hungarian citizen shall be a Hungarian citizen by birth.”

Article H) declares that the official language in Hungary is Hungarian. The Hungarian language and the Hungarian sign language (the latter since 2009) are primary expressions of our national coherence and parts of our culture; therefore, they are subject to special protection. While providing special protection to the Hungarian language, Hungary respects the languages of the national minorities living here and their official use as well.⁵⁵

Article I) describes and depicts the two most important symbols of Hungarian statehood, the coat of arms and the flag of Hungary. It is worth mentioning that they are used to symbolise not only the Hungarian statehood, but also the Hungarian nation. Beside state sovereignty and independence, these symbols also represent belonging to the nation as community. The Fundamental Law defines that the national anthem of Hungary is the poem Himnusz by KÖLCSEY Ferenc set to music by ERKEL Ferenc.

Article J) sets out at a constitutional level the national holidays, which are the expressions of fostering national awareness and national cohesion. Accordingly, national holidays are the 15th day of March, the 20th day of August and the 23rd day of October, from among which the official state holiday is the 20th day of August.

Article K) states that the official currency of Hungary is the forint. The fact that national currency, as well as coat of arms, national anthem and national holidays, are dealt with at constitutional level is an expression and confirmation of the internal and external sovereignty of the country.

Article L) defines marriage, in line with natural law theory, as an emotional and economic union of one man and one woman established by voluntary decision. Stating that family ties

⁵⁵TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in Polgári Szemle, vol. 9, Nos. 3-6, p. 286, Statement of reasons to Article H) of the Foundation of the Fundamental Law, and section 1 of Act CXXV of 2009 on the Hungarian sign language and the use of the Hungarian sign language.

are based on marriage or the relationship between parents and children, and declaring that the mother is a woman and the father is a man, the Fundamental Law protects values based on natural law. It holds that marriage and family are the basis of the survival of the nation. Besides the protection of marriage and family, this Article also states that Hungary supports the commitment to have children. The protection of families is regulated in a cardinal Act.⁵⁶ Providing constitutional protection to children and to the commitment to have children as well as the aspect of mutual care within family are values that characterise the Fundamental Law as a whole.

Article M) points out that economy is based on two fundamental values: value-creating work and the freedom of enterprise. Strengthening and presupposing each other, they contribute to the rise of Hungary and the Hungarian nation. Hungary ensures the conditions for fair economic competition, acts against any abuse of a dominant position, and protects the rights of consumers. This provision has elevated reasonable limitation of competition by the common good to the level of the Fundamental Law.

According to Article N), “Hungary shall observe the principle of balanced, transparent and sustainable budget management”.⁵⁷ The enforcement of fundamental rights, the effective and democratic functioning of the state and the safety of people and organisations in Hungary can only be guaranteed if the social and economic balance of the state is not endangered by serious public finances problems.

Article O) points out that the state is not all-powerful; it can only perform its responsibilities in cooperation with, and with the contribution of, the citizens.⁵⁸ It is not able and cannot strive to promote their personal, family and community prosperity in their place.

Article P) declares that Hungary protects and maintains a healthy environment. In this way, the requirement of sustainability is introduced as a new element in the Fundamental Law. The requirement of sustainability guides the state and the economy towards a responsible treatment of environmental values. This Article highlights in particular the specific Hungarian environmental values and the values of Hungarian culture, emphasising that, with a view to preserving them for future generations, their protection is everyone’s responsibility.

Article Q) sets out Hungary’s striving for cooperation with all the peoples and countries of the world with a view to creating and maintaining peace and security, and achieving sustainable

⁵⁶ Sections 1 to 25 of Act CCXI of 2011 on the protection of families.

⁵⁷ Article N) of the Fundamental Law.

⁵⁸ TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in *Polgári Szemle*, vol. 9, Nos. 3-6, p. 288.

development of humankind as a basic principle. In the interest of good faith compliance with obligations under international law, the Fundamental Law requires that conformity of Hungarian laws be ensured with the rules of international law binding on Hungary. The Hungarian constitutional order follows a dualist approach with regard to international treaties, with the result that international conventions become part of Hungarian law through explicit transposition (i.e. promulgation in the case of Hungary). However, other sources of international law, such as customary law and the general principles of law recognised by civilised nations, become part of Hungarian law directly by virtue of Article Q) (3) of the Fundamental Law (the so-called general transformation). European Union law falls outside the scope of Article Q) and is to be interpreted within the framework of Article E).

According to Article R), the Fundamental Law is the foundation of the legal system. It is at the top of the legal system; all other laws are derived from the Fundamental Law and may not conflict with it. This Article sets forth a general obligation requiring everyone to comply with the Fundamental Law and laws. Moreover, it also contains an interpretation rule: “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution.”

The purpose of Article S) is to create the stability of the Fundamental Law. To this end, it lays down a requirement for the Fundamental Law stricter than that governing the adoption of laws: for the adoption or amendment of the Fundamental Law, the votes of two thirds of the Members of the National Assembly are required.

Article T) sets out the general rules on legislation. It lists the types of laws as follows: “Laws shall be Acts, government decrees, prime ministerial decrees, ministerial decrees, decrees of the Governor of the Hungarian National Bank, decrees of the heads of independent regulatory organs and local government decrees. In addition, decrees of the National Defence Council adopted during a state of national crisis and decrees of the President of the Republic adopted during a state of emergency shall also be laws.” Cardinal Act is not a separate source, but a specific legislative category, which is adopted with the votes of two thirds of the Members of the National Assembly present.

Article U) states that “The state structure based on the rule of law, established in accordance with the will of the nation [...] and the previous communist dictatorship are incompatible.” Having regard to the invalidity of the communist constitution and for the sake of society’s

sense of justice, the Article lists the crimes that are not subject to the statute of limitation, and provides for the obligation to reveal them.⁵⁹

State objectives are mission statements set at constitutional level; in other words, they are the articulation of the values and commitments that constitute the goals of the state and the political community, and serve as benchmarks for the decisions of the state.⁶⁰ They can be of use when it comes to exercising public authority, and make abidance by the law more acceptable for a wide range of citizens.

One of the innovations of the Fundamental Law is the classification of certain fundamental rights as state objectives. State objectives can be found in many parts of the Fundamental Law; however, their wording may be very different. The jurisprudence of the Constitutional Court has shown that, for example, the responsibilities set out in Article XV (4) and (5) as the tasks of the State, such as helping to achieve equality of opportunity and social inclusion, and protecting families, children, women, the elderly and persons living with disabilities; and the employment policy objective set out in Article XII (2), also fall within the category of state objectives.

One of the most important features of state objectives is their teleological nature: they impose an obligation on the State to act in order to achieve specific objectives. This teleological nature is often reflected in the wording. Therefore, it needs to be pointed out that phrases in the text of a norm like the State “shall take special care to ensure” or “shall strive for” something, “shall support”, “shall protect”, or “shall promote” something, or “shall contribute to” achieving something, are the typical formulations of state objectives.⁶¹ Since the adoption of the Fundamental Law, the Government of Hungary has taken the two fundamental obligations arising from state objectives very seriously: the obligation to continuously strive for the goal and to achieve the goal. It has attached to the state objectives specific tasks that can be enforced through judicial means (e.g. family protection measures, prohibition of discrimination, and protection of children). State objectives also play a role in assessing the constitutionality of measures restricting fundamental rights. A restriction of a fundamental right may also be justified on grounds of

⁵⁹ TÓTH Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, in Polgári Szemle, vol. 9, Nos. 3-6, p. 289.

⁶⁰ Jeff KING: Constitutions as Mission Statements, in Denis J. GALLIGAN – Mila VERSTEEG (eds.): Social and Political Foundations of Constitutions, New York, Cambridge University Press, 2013, 80–81.

⁶¹ KILÉNYI Géza: Az alkotmány egyes (alapelvi, alapjogi) rendelkezéseinek jogi jellege, in Társadalmi Szemle 1995/11, 50.

the promotion of public interest embodied by state objectives; however, such a measure can only stand the constitutionality test if it complies with strict requirements. The Constitutional Court is responsible for monitoring this area, and thereby, every citizen of Hungary is guaranteed a seamless legal protection of fundamental rights.⁶²

Interpretation rules for the Fundamental Law

Organs of the judiciary and legislative organs can rely on the achievements of the historical constitution, when interpreting and applying the Fundamental Law, or when making law, respectively (see Article R) and the National Avowal). The Fundamental Law also sets out the limits, since a change to the form of government and the chancellor-type parliamentary system is only possible subject to an amendment to the Fundamental Law. It follows from the explanations provided in the Reasoning of Constitutional Court Decision 22/2012 (V. 11.) AB that the legal culture of constitutional interpretation after 1990, the modern rule-of-law principles, and the public-law and private-law traditions of the historical constitution can be applied together even as regards positive law.

The Fundamental Law regulates the use of constitutional interpretation methods in an explicit constitutional rule. According to Article R), “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution.” Additionally, the original Article 28 relating to ordinary courts also stated that “In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law”, and “When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense.” Although this latter rule is placed in the sub-chapter on ordinary courts within the chapter titled “The State”, Article 28 provides criteria not only as regards the interpretation of laws, but also in terms of the interpretation of the Fundamental Law. The Seventh Amendment to the Fundamental Law, which entered into force on 1 January 2019, added further provisions to both Articles. In Article R), a paragraph (4) was added with the following text: “The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State.” According to the new second sentence in Article 28, “In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of

⁶² KAZAI Viktor: Államcél, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SÜLYÖK Gábor (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/allamcel> (2021).

that law and the justification of the proposal for, or for amending, the law.” The Seventh Amendment mainly changed or clarified legal interpretation by ordinary courts, but did affect the existing main rules relating to the interpretation of the Fundamental Law. Accordingly, Article 28 refers to the purpose of laws, while Article R) mentions the “provisions of the Fundamental Law”. In addition, Article R) provides for an interpretation in line with the achievements of the historical constitution, a method of constitutional interpretation that has not existed before the entry into force of the Fundamental Law.

6. FREEDOM AND RESPONSIBILITY – FUNDAMENTAL RIGHTS IN THE FUNDAMENTAL LAW

The fundamental rights chapter of the Fundamental Law is titled “Freedom and Responsibility” and contains a fundamental rights catalogue.

European fundamental rights instruments, in particular the Charter of Fundamental Rights and the ECHR have played an important role among the sources of fundamental rights. The part titled “Freedom and Responsibility” of the Fundamental Law provides for the fundamental rights and obligations, following the wording and structure of the Charter.⁶³ Taking over provisions from the Charter, however, does not have an impact on the interpretation of the Fundamental Law, since for the Constitutional Court and those applying the law, the Fundamental Law is the primary source of fundamental rights, while the interpretation of the European Founding Treaties lies with the European Court of Justice (hereinafter “CJEU”).⁶⁴

According to Article I (1) and (2) of the Fundamental Law: “(1) The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights. (2) Hungary shall recognise the fundamental individual and collective rights of man.” The respect of the inviolable and inalienable fundamental rights of man, that is, human beings, implies that human rights exist independently of state and constitution. The Fundamental Law declares that it is a general obligation of the state to protect fundamental rights.

⁶³ Statement of reasons to Article I of the Fundamental Law.

⁶⁴ In exploring the obligations of Hungary arising from international treaties (that is, when examining non-compliance with an international treaty), the Constitutional Court not only takes a close look at the wording of the international treaty, but also the case law of the institution vested with the power to interpret it (Constitutional Court Decision 3157/2018 (V. 16.) AB, Reasoning [21], Constitutional Court Decision 21/2018. (XI. 14.) AB, Reasoning [16]).

Article I also sets the formal and substantial requirements for the restriction of fundamental rights: the rules for fundamental rights and obligations must be laid down at the level of Acts.⁶⁵ Fundamental rights cannot be regulated in lower-level legislation. The Fundamental Law specifies the subjects that may only be regulated by cardinal Acts. Not even a cardinal Act may conflict with the Fundamental Law.

A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.⁶⁶ The importance of the objective pursued by the regulation and the gravity of the violation of fundamental rights caused for that purpose must be proportionate to each other, and it is a condition that no less stringent means are available to achieve that objective. Thus, according to the provisions of the Fundamental Law developed in line with the practice of the Constitutional Court, there are boundaries on the individual's autonomy that cannot be exceeded either by the state or by any other power.⁶⁷

The Fundamental Law provides for the restriction of fundamental rights among the common rules on special legal order in Article 54 (1). It is a new provision in Article I (4) of the Fundamental Law compared to the provisional Constitution that not only natural persons can be entitled to certain fundamental rights. The said provision of the Fundamental Law states that fundamental rights and obligations that, by their nature, do not only apply to man have to be guaranteed also for legal entities established by an Act. Legal entities established by an Act can be both legal persons and organisations without legal personality.⁶⁸

⁶⁵ Article I (3) of the Fundamental Law.

⁶⁶ Article I (3) of the Fundamental Law.

⁶⁷ Constitutional Court Decision 23/1990 (XI. 31.) AB.

⁶⁸ Statement of reasons to the Fundamental Law.

6.1 RIGHT TO LIFE AND HUMAN DIGNITY

The right to human life and human dignity can also be found in the essential content of the other fundamental rights. It is a specific first-generation fundamental right, which can also be considered the foundation of human rights and as such may not be restricted. Christianity has significantly contributed to the appreciation of human dignity. In the changing philosophical thinking throughout history, the path has led from the public thinking in Rome to the level of a constitutional clause. This fundamental right received recognition in the various international instruments and national constitutions only after the Second World War. Taking a negative approach, and considering the violations of human life and human dignity experienced in history, international instruments and national constitutions, as well as the related legal practice prohibit certain conducts in order to protect this right.⁶⁹

The Universal Declaration of Human Rights enshrines in its Article 1 a comprehensive protection of human dignity, stating that “All human beings are born free and equal in dignity and rights.” Recognising the inherent dignity and the equal and inalienable rights of all members of the human family, and that “these rights derive from the inherent dignity of the human person”, the International Covenant on Civil and Political Rights) was the first to voice in its Preamble that human dignity is the foundation of human rights. The Charter of Fundamental Rights declares already in its Preamble that “the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity”. Article 1 in Title I called “Dignity” of the Charter declares the inviolability of human dignity, and the fundamental rights catalogue of the Charter prohibits death penalty and extradition to countries where there is a serious risk that the person concerned would be subjected to the death penalty. In response to challenges of modern medical biology, Article 3 (2) of the Charter prohibits the reproductive cloning of human beings.⁷⁰

According to the above international instruments, the Fundamental Law and the jurisprudence of the Constitutional Court developed based on it, the right to life is an absolute right which cannot be limited and precedes all other rights (except Articles 2 and 15 of the ECHR⁷¹).

⁶⁹ ZAKARIÁS Kinga: Az emberi méltósághoz való jog, in JAKAB András - FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányos rovat, section editors: BODNÁR Eszter, JAKAB András) (2018).

⁷⁰ Article 2 (2), Article 19 (2) and Article 3 (2) d) of the Charter of Fundamental Rights.

⁷¹ Article 2 of the ECHR. Right to life 1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a)

Article II of the Fundamental Law enshrines the two most important human rights, the right to human life and the right to human dignity.

The Fundamental Law declares the right to human dignity as the fundament of human life in unity with the right to life, and recognises the right of all human beings to human dignity. In the same sentence it provides that the life of the foetus is to be protected from the moment of conception, a requirement that imposes an objective institutional protection obligation on the state to protect unborn human life.⁷²

The right to life and to human dignity constitutes a value that precedes everything else when it comes to external limitations. This right can be relied on at any time, even in the absence of any other legal basis, and other fundamental rights can also be derived from it. Important parts attached to it are the prohibition of death penalty, torture and inhuman and degrading treatment. The Constitutional Court holds that human life and human dignity form a unity of inseparable values, and the rights to human life and human dignity form an indivisible and unrestrainable fundamental right (indivisibility doctrine).⁷³

The right to life is closely linked to legal capacity; consequently, specifying its start point and end point is of cardinal importance. While specifying the start point plays a cardinal role in the regulation of abortion, the accurate knowledge of the end point of life is decisive for whether death penalty and euthanasia are admissible.⁷⁴

According to the provisional Constitution, legal capacity began from live birth, thus, this was also a condition of the right to life. By contrast, the Fundamental Law guarantees protection from the conception.⁷⁵ Consequently, abortion is an issue that cannot be ignored. There is a conflict between the mother's right to self-determination and the right to life of the foetus (in the absence of the legal capacity of the foetus in terms of the protection of fundamental rights, the state's obligation to protect life).

It follows from the objective obligation of the state to protect life that abortion cannot be constitutionally permitted without appropriate justification. The Constitutional Court pointed out that the state has a duty to protect human life from the moment of conception, and hence,

in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. ARTICLE 15 Derogation in time of emergency, 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

⁷² Statement of reasons to Article II of the Fundamental Law.

⁷³ Article III (1) to (3) of the Fundamental Law, and Constitutional Court Decision 23/1990 (X. 31.) AB.

⁷⁴ Statement of reasons to Article II of the Fundamental Law.

⁷⁵ Cf. Section 54 (1) of Act XX of 1949 on the Constitution of the Republic of Hungary and Article II of the Fundamental Law.

the mother's right to self-determination cannot prevail alone even in the earliest stages of pregnancy. However, it also held that both completely allowing and completely banning abortion would be against the Constitution, and consequently, allowing it within a statutory framework is not unconstitutional (see danger to the mother's life, time limits, justified cases, etc.).⁷⁶ As regards sterilisation, the same conflict occurs between the individual's right to self-determination and the state's obligation to protect life. The use of medical intervention, including if based on a self-destructive decision,⁷⁷ may be restricted by the state, but objectives of population policy are not to exercise an impact on such restriction. Primary goal is to ensure the statutory conditions for a free, informed and responsible decision, and to minimise the irreversible consequences.⁷⁸

In line with its commitments under international treaties, Hungary has abolished death penalty. In 1990, following the regime change, the Constitutional Court took the position that death penalty is against the Constitution, and declared that human life and dignity form an inseparable value that precedes everything else, and the right to this absolute value constitutes a barrier to the state's punitive power. The death penalty, as interpreted by the Hungarian Constitutional Court, not only restricts the essential content of the right to life and human dignity, but also leads to its complete and irretrievable destruction.

For this reason, the judicial body declared unconstitutional and annulled the provisions governing death penalty of the relevant Act, and held that, due to its indivisibility, the right to life and dignity cannot in principle be restricted and is also a limit in principle to the restriction of any other right.⁷⁹ In the Fundamental Law, the prohibition of death penalty appears in the provisions dealing with expulsion, and not in the Article on the right to life and dignity. According to Article XIV (3) of the Fundamental Law: "No one shall be expelled or extradited to a State where there is a risk that he or she would be sentenced to death, tortured or subjected to other inhuman treatment or punishment."

⁷⁶ Sections 5 to 7 of Act LXXIX of 1992 on the protection of foetal life, and Constitutional Court Decision 48/1998 (XI. 23.) AB.

⁷⁷ The legal background for sterilisation is set out in Act CLIV of 1997 on healthcare (section 187). Sterilisation for family planning purposes may be requested by a person having the capacity to act who is over the age of 40 years, or who is over the age of 18 years and has three blood children. The application is to be drawn up in a public deed or a private deed of full probative value. This application must be reaffirmed after 6 months, and the intervention can take place following another 6 months. The Act also provides for sterilisation for health reason, and sets out the rules for persons having limited capacity to act.

⁷⁸ Constitutional Court Decision 43/2005 (IX.14.) AB.

⁷⁹ Constitutional Court Decision 23/1990 (X. 31.) AB.

In certain specific cases, even the right to life may be restricted. In the case of justifiable defence, restriction is permitted by international conventions⁸⁰ and also in Hungary. In Hungary, the Criminal Code⁸¹ specifies the specific admissibility conditions for such a restriction.

Article V of the Fundamental Law provides for the right to repel an unlawful attack. Legal thinking on the question of lawfulness of defence against an attack on a human being is as old as the oldest legal systems. It has come a very long way from the “eye for an eye” principle, through the Twelve Tables of Roman law and the canon law rules also covering the protection of others, to the declaration of this right as a fundamental right in both international instruments and national law. One of the oldest legal institutions in Hungary is justifiable defence. Nevertheless, it took a rather long time until the Fundamental Law, following professional and social debates, has opened up a new chapter in its regulation, and enshrined justifiable defence in Article V of the part relating to fundamental rights. Article V provides as follows: “Everyone shall have the right to repel any unlawful attack against his or her person and property, or one that poses a direct threat to them, as provided for by an Act.” The Fundamental Law only provides for the frames of the right to repel an unlawful attack. The detailed rules are contained in the new Hungarian Criminal Code, which entered into force on 1 July 2013, among the reasons for excluding liability to punishment.⁸²

Nevertheless, the statutory regulation establishes neither an obligation, nor an entitlement; it just states that the law does not wish to interfere in this issue, and takes note of the choice between lives. Both in the area of legislation and the application of law, the new changes are aimed at protecting the interests of the attacked person by transferring the risks of the attack to the attacker. The Fundamental Law takes it as a premise that the attack to be repelled must be unlawful and must pose a direct threat.⁸³ In this respect, the interpretation of unlawfulness is a task incumbent upon the legislator, since in criminal law, a situation connected to justifiable defence can arise only if the conduct by the attacker constitutes a criminal offence, and, at the same time, is an active conduct that harms, directly endangers or threatens the person who is on the defensive or that person’s property. However, a necessity and proportionality test must be carried out almost always.

⁸⁰ Article 2 (2) of the ECHR.

⁸¹ Act C of 2012 on the Criminal Code.

⁸² Sections 21 to 22 in chapter IV of the Criminal Code.

⁸³ Article II of the Fundamental Law.

With a view to making response to severe and violent offences more effective, the Hungarian Criminal Code extends the scope of justifiable defence, and establishes a statutory presumption that in certain cases of unlawful attack, when the attacked person has reasonable grounds to believe that the attack was also directed against his or her life, it is allowed to exceed the necessary extent of averting the unlawful attack. The jurisprudence of the Curia has also led to decisions which not only called for the law-based application of this legal institution regulated in the General Part of the new Criminal Code but also express the intention of the legislature that judicial practice should also reflect that this right, which has been elevated to a constitutional fundamental right, is available to everyone. It lists, in the context of situational justifiable defence established on the basis of legal practice, the categories of cases in which an unlawful attack on a person or property is to be considered an attack on life. The Curia holds that “a person who attempts another person’s life loses his or her right not to be killed”; necessity is the only requirement that lawfulness of the defence acts is conditional upon. Necessity means that the defending person was not in a position to use a less powerful means of defence than the one he or she actually used to avert the illegal attack. If there was another, less powerful way of averting the attack, but the defending person was not able to choose it due to fright or excusable excitement caused by the attack, the act of the defending person is punishable, but the defending person is not liable to punishment for his or her exceeding the necessary extent. The law includes justifiable defence among the reasons for excluding or limiting liability to punishment, and considers it to be an objective obstacle to punishability, when it states that an act committed in a situation of justifiable defence is not punishable. Thus, the act that the defending person conducts in order to avert an unlawful attack, even if it would qualify as a criminal offence under the Special Part of the Criminal Code, is not dangerous to society, and consequently, it does not constitute a criminal offence. The absence of a criminal offence is an obstacle to criminal proceedings. It must be taken into account *ex officio*, as a result of which not only the criminal proceedings already launched are to be terminated or, if already in the judicial stage, a judgment of acquittal is to be delivered, but it can also prevent the defending person from being subjected to criminal proceedings at all.⁸⁴ These issues can be regulated in Acts adopted by simple majority.

⁸⁴ Criminal Law Uniformity Decision 4/2013 of the Curia.

As regards military and police service, the willingness to accept the possibility of death is a personal choice of the individual, but this decision can only be constitutional if the state makes every effort to protect life, so the mission itself is constitutional and the state creates safe conditions for the performance of the service. With respect to national defence duties, the state also requires, as a last resort, the soldier to sacrifice his or her life.⁸⁵ The constitutional deployment of the army is only allowed in the case of an armed attack by a foreign power, mass immigration, in healthcare crisis, or in order to participate in averting acts of violence committed with weapons or with instruments capable of causing death, as defined in constitutional provisions. In such situations, the life of the soldier is obviously in danger, and additionally, the law tolerates if the soldier takes the life of the attackers.⁸⁶ In the case of a police officer, the risk of life does not arise in connection with the fulfilment of a constitutional duty, but in the context of a voluntarily chosen profession. Therefore, a police officer knows what professional requirements he or she must meet in the context of the service, and has the right to acquire the necessary skills to safeguard his or her own life, while he or she is obliged to protect public safety and internal order even by putting his or her life at risk.

In this context, a police officer may use a weapon against a person who has intentionally threatened to violate the right to life of others for the purpose of capturing or preventing the escape of the perpetrator.⁸⁷

As regards the legality of the use of a firearm, given that its use has the potential to take someone's life, the Constitutional Court pointed out that the liberty to keep a firearm can be deduced neither from the fundamental rights to life and human dignity, nor from the fundamental rights to freedom and personal security. For the purpose of preventing fatal mistakes in using firearms and with a view to protecting the fundamental right to life, firearm possession must be subject of severe regulation.⁸⁸

With regard to the controversial issue of euthanasia (good death), Hungary's laws strictly prohibit and punish all forms of participation in suicide.⁸⁹

⁸⁵ Section 40 of Act CXIII of 2011 on national defence, the Hungarian Defence Forces and measures applicable during special legal order.

⁸⁶ Constitutional Court Decision 46/1994 (X. 21.) AB.

⁸⁷ Sections 52 to 54 of Act XXXIV of 1994 on the Police, and Constitutional Court Decision 9/2004 (III.30.) AB.

⁸⁸ Constitutional Court Decision 22/1991 (IV. 26.) AB and Constitutional Court Decision 14/1992 (III.30) AB.

⁸⁹ Section 162 in chapter XV of the Criminal Code.

Euthanasia is a source of persistent ethical and medical controversy related to the dignified completion of life. According to the jurisprudence of the Constitutional Court, voluntary passive euthanasia is compatible with the constitutional regulation of the right to life and human dignity. If the patient decides not to seek treatment or refuses life-saving intervention, this must be respected, unless this would endanger the life or physical integrity of others. The judicial body held that a legal system based on ideologically neutral constitutional foundations may not reflect either a supporting or a condemning view about one's decision to end one's life; the role to be played by the state in this respect is limited to the absolutely necessary measures resulting from its obligation of institutional protection concerning the right to life.⁹⁰ The possibility of refusal is bound by a strict set of statutory conditions. However, non-voluntary passive euthanasia has no connection with the patient's right to self-determination and is therefore not allowed. Accordingly, no one may refuse a treatment, surgery, etc. on behalf of the patient.⁹¹

The right to human dignity and the protection of privacy are closely linked, since the full development of the individual's personality is ensured by the private sphere. Article VI (1) of the Hungarian Fundamental Law explicitly protects the right to private life. The Constitutional Court establishes the close link between the two fundamental rights by considering privacy as an element of the right to human dignity, where state interference is completely prohibited.⁹²

Neither the international instruments, nor the Fundamental Law precludes that the provision of a certain standard of living and housing constitute a prerequisite for the creation of decent conditions; however, social situation (and especially vulnerability) can result in the violation of human dignity. The Hungarian Constitutional Court took the position that the state is obliged to provide for the basic conditions of human existence, and as regards homelessness, the accommodation necessary to avert danger to human life.⁹³

The right to life and to human dignity is untouchable. According to the human dignity clauses enshrined in the constitutions, any restriction of this right also constitutes a violation of it. The protection of the right to life in the Fundamental Law is based on Article 2 of the ECHR, the Charter of Fundamental Rights and the recommendations of the Council of Europe. On the basis of the case law of the ECtHR, the main types of violations can be

⁹⁰ Constitutional Court Decision 22/2003. (IV.28.) AB.

⁹¹ Section 15 (2) and section 20 (1) of Act CLIV of 1997 on healthcare.

⁹² Constitutional Court Decision 56/1994 (XI. 10.) AB.

⁹³ Constitutional Court Decision 19/2019 (IV. 18.) AB.

identified. It follows from the Fundamental Law and the practice of the Constitutional Court that in the case of unrestricted rights, such as the right to life and human dignity, there are no grounds for restriction that merit consideration. In other cases, for example, in the event of a conflict regarding the individual's right to self-determination and the right to life and human dignity, in addition to an assessment of necessity and proportionality, it is also necessary to provide for legislation that cannot lead to the extinction of any fundamental right (e.g. abortion, self-destructive decisions, justifiable defence, etc.). In certain specific cases, even the right to life may be restricted. Both Article 2 (2) (b) of the ECHR and the Fundamental Law permit restrictions in the case of justifiable defence. The specific conditions for the admissibility of such restrictions are laid down in the Criminal Code. The right to life is also affected by national defence, military and police service and the right to use weapons. A fundamental right violation refers to an arbitrary, constitutionally unjustified restriction of a fundamental right which does not pass the necessity and proportionality test. The state must be ready to remedy the violations of the law by judicial means (without lacuna).⁹⁴

Domestic violence leads to the disruption of parity. Abused persons are trapped in a dependent, vulnerable position, which prevents them from properly pursuing their own interests. As an important element of the measures taken by the Government to prevent and combat domestic violence, including violence against women, domestic violence was included as a new criminal offence in the Criminal Code in 2013. Section 212/A of the Criminal Code criminalises a number of acts committed on a regular basis against a specific group of persons (parent of the perpetrator's child, or the perpetrator's relative, former spouse, former cohabitant, custodian, guardian or an individual under the perpetrator's custodianship or guardianship, provided that that person lived, prior to or at the time of the commission, in the same household or dwelling with the perpetrator). The legislature also provides that humiliating and violent conducts that seriously violate human dignity and conducts that lead to economic deprivation, even if they do not necessarily result in bodily harm, are punishable. In order to protect victims, the conditions for release on parole were tightened in 2020; furthermore, every person who, for committing a violent criminal offence against a relative, is serving a probation period of a suspended imprisonment or is released on parole, will be placed under probationary supervision, and will be required to observe

⁹⁴Statement of reasons to the Fundamental Law.

certain mandatory rules of behaviour for the purpose of restraining the perpetrator from contacting or interacting with an extended group of persons under protection.

In addition to these amendments to criminal law, a number of measures have been taken in recent years to combat domestic violence: the domestic violence support service has been significantly expanded (new secret shelters, crisis centres, crisis management ambulances and transitory homes), prevention programmes have been launched, awareness raising campaigns have been implemented, and trainings have helped to identify problems as soon as possible and to take appropriate action in the alert system.

The Hungarian Ministry of Justice has set up Victim Support Centres to make victim support services more accessible to citizens, and to make all those who need it more familiar with the options available in the context of victim support. Within the framework of victim support services, the Ministry of Justice maintains a Victim Support Hotline (in Hungarian: Áldozatsegítő Vonal; 06 80 225 225), which is available free of charge around the clock, to provide citizens who have become victims with information even beyond office hours. This freephone number is available to the widest possible public. After outlining their problem, callers will be provided with information and advice, adapted to their particular life situation, on their rights and obligations in criminal proceedings, the types of support accessible to them, the application conditions, and the best options for solving the problem. In Government Decision 1645/2019 (19 November) on the development of the victim support system, which was promulgated in the Hungarian official gazette on 19 November 2019, the Government invited the Minister of Justice to submit, by 30 June 2020, to the Government a proposal on the establishment of a state victim support system based on direct access to victims, and to ensure the establishment of a national network of victim support centres by 31 December 2025.

Its results can be summarised as follows: Following the opening of the centres in Budapest and in Miskolc and Szombathely in 2018, further victim support centres have been opened in Pécs, Szeged and Kecskemét in 2020. Three additional victim support centres are planned to be set up in 2021. Due to an amendment to the legal environment, as of 1 January 2021, victims receive assistance not only if they contact the victim support service and visit a centre themselves, but, on the basis of information received from the police, if the victim consents thereto, the victim support service itself contacts the victim and informs him or her of all forms of assistance available. An opt-out system based, as regards the manner of

contact between victim and victim support service, on direct access to victims has been introduced with regard to violent intentional crimes against persons. The basic idea of the system is that, once the victim's identity and contact details are known, the police inform him or her, as soon as possible, but within two days at the latest, about the victim support service and that he or she may be eligible for assistance and, if he or she consents to it, his or her particulars and contact details are forwarded to the victim support service for direct contact. The victim support service then contacts the person concerned within two working days and provides him or her with information on available victim support services and other relevant assistance. Also on 1 January 2021, a further amendment to the law made it easier for victims to benefit from state compensation. One of the most relevant elements of this amendment was that the time limit for application was increased from 3 months to 1 year (starting with the commitment of the criminal offence or, if there is an obstacle to submitting the application, as soon as that obstacle is passed). Another important measure was that the means-test ceilings were phased out; thus, victims can now benefit from all victim support assistances regardless of their income situation.

In addition to the above steps, a comprehensive victim support campaign is ongoing in Hungary. During 2020, the "Year of Victim Support", the Ministry of Justice, among other things, launched an extensive communication and media campaign to raise the awareness of citizens that if they become victims, they are not left alone, and there is help. The long-term aim of the campaign was to provide possibly all people in trouble with access to assistance tailored to their needs. A victim support portal called vansegitseg.hu ("there is help") has been set up to reduce, with constantly updated content, the number of victims and to help those who are already victims.

With the involvement of successful and well-known actors, a series of video podcasts entitled "Everyday stories" (in Hungarian "Hétköznapi történetek") was launched, providing both preventive and informative contents for all citizens and victims.

6.2 PROHIBITION OF TORTURE, INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT

The “*jus cogens*” nature of the prohibition of torture and inhuman or degrading treatment or punishment is internationally widely agreed upon. This means, that the international legal order is adamant on the implementation of this prohibition under all circumstances.

The National Avowal of the Fundamental Law declares that “We hold that human existence is based on human dignity.” The ECHR expressly ensures the protection of individuals against certain specific behaviours. Article 3 lays down the prohibition of torture, while Article 4 provides for the prohibition of slavery and forced labour. By doing so, it sets out, in line with public consensus, an unrestricted absolute prohibition of torture and inhuman or degrading punishment or treatment, which even applies to issues as serious as the fight against terrorism or organised crime. Situations of conflict with dignity are no exceptions. Accordingly, the so-called “rescue torture”, a situation when the acquisition of information could lead to saving the life of another human, cannot be allowed either.

Similarly to the provisions of the ECHR, the Fundamental Law also follows a negative approach when it affords protection for human dignity by providing a catalogue of forbidden behaviours.

According to the Fundamental Law “No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude. Trafficking in human beings shall be prohibited.” In connection with this, the Fundamental Law declares, for the protection of non-Hungarian citizens, that “No one shall be expelled or extradited to a State where there is a risk that he or she would be sentenced to death, tortured or subjected to other inhuman treatment or punishment.”⁹⁵

The major types of violations against Article 3 of the ECHR are the following: corporal punishment in educational or penal institutions (the most common reason for the ECtHR to establish a violation of Article 3 of the ECHR by Hungary is the overcrowding in prisons⁹⁶), violation of principles laying down guarantees relating to extradition and expulsion, treatment in highly hierarchical organisations (armed forces) and treatment in institutions for

⁹⁵Article III (1), Article IV and Article XIV (3) of the Fundamental Law.

⁹⁶ ECtHR CASE of VARGA AND OTHERS v. HUNGARY (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13).

accommodating vulnerable persons (psychiatric institutions, foster homes, prisons), and violations committed in time of civil war that do not receive punishment.⁹⁷

Torture and physical and mental, psychological abuse leading to the violation of human dignity are all prohibited behaviours.

According to the UN International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984,⁹⁸ to be able to establish torture, in addition to objective elements (physical and mental pain, suffering), subjective elements (intentionality and purpose) and state attributability are also required.

These are all implemented in the practice of the ECtHR, and complaints are adjudicated based on these criteria.⁹⁹

Pursuant to Article 3 of the ECHR, from among prohibited treatments only those can be considered inhuman that do not fall into the category of torture, but are more than simply being degrading

In ECtHR practice, inhuman or degrading treatment means a behaviour that is such as to arouse in the victim “feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance.”¹⁰⁰ In this context, it does not matter whether the act is intentional. In the course of the enforcement of sentences, special attention needs to be paid to ensuring that detentions do not conflict with the prohibition of inhuman and degrading treatment. The enforcement of a sentence is legitimate as long as it is compatible with the aim of the punishment.¹⁰¹

The ECtHR has declared only recently¹⁰² that a regulation on life imprisonment without parole is contrary to Article 3 of the ECHR if it does not offer the hope of release, because an aim that is legitimate at the time of sentencing can change over time. Accordingly, life imprisonment violates the right to human dignity if its term cannot be reduced. The Hungarian Constitutional Court did not examine the constitutionality of life imprisonment, but it did declare that based on the right to human dignity, convicts have to be ensured the possibility of rehabilitation so they can cope with the conditions of a free society after their release. As a

⁹⁷ Statement of reasons to the Fundamental Law (refers to ECtHR case law).

⁹⁸ Law-Decree 3 of 1988 promulgating the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁹⁹ ECtHR case of *Borbála KISS v Hungary* (Application no. 59214/11) and ECtHR case of *RÉTI and FIZLI v. HUNGARY* (Application no. 31373/2011).

¹⁰⁰ ECtHR case of *TYRER v. The United Kingdom*, (Application no. 5856/7), ECtHR case of *SELMOUNI v. France*, (Application no. 25803/94), ECtHR case of *D. v. The United Kingdom* (Application no. 30240/96).

¹⁰¹ ECtHR case of *István Gábor KOVÁCS v. Hungary* (Application no. 15707/10).

¹⁰² ECtHR case of *(VINTER and others v. The United Kingdom)* (Applications no. 66069/09) and ECtHR case of *László MAGYAR v. Hungary* (Application no. 73593/10).

general rule, it declared that, when imposing a sentence of imprisonment, efforts should be made to restrict fundamental rights only to the minimum extent absolutely necessary for the protection of society.¹⁰³

Based on Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,¹⁰⁴ the Council of Europe established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the “CPT”). The CPT examines the treatment of persons deprived of their freedom. Two important characteristics of the CPT are that it covers all of Europe and it deals with not only “torture”, but also many other situations that could be regarded as “inhuman or degrading treatment or punishment”. After every visit, the CPT sends a detailed report to the states concerned. These reports include the CPT’s findings, recommendations, comments and information requests. The CPT requests also a detailed response to the questions raised in the report. These reports and responses constitute a part of the ongoing discussion with the states concerned.

Based on Article 3 of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the tasks of the national preventive mechanism are performed by the Commissioner for Fundamental Rights. Anyone can turn to the Commission for Fundamental Rights with a complaint if he or she finds that the prohibition of torture or other cruel, inhuman or degrading treatment or punishment is not observed at any Hungarian place of detention. The national preventive mechanism has to ex officio regularly visit places of detention to prevent the application of torture and other cruel, inhuman or degrading treatment or punishment. Accordingly, its activities are not limited to investigating complaints. If the received indications are not investigated during the visits of the national preventive mechanism, they are forwarded to another department of the Office of the Commissioner for Fundamental Rights that handles complaints. The national preventive mechanism is entitled to reveal or disclose to the public the identity or personal data of a person turning to it only with express consent from the person concerned. Pursuant to the Act, persons are not to suffer any disadvantages for sharing information with the

¹⁰³ Constitutional Court Decision 144/2008 (XI. 26.) AB.

¹⁰⁴ Act III of 1995 promulgating the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted at Strasbourg on 26 November 1987.

Commissioner for Fundamental Rights or its colleagues authorised to perform the tasks of the national preventive mechanism.¹⁰⁵

As regards the accommodation of detainees, overcrowding is the most common circumstance based on which the ECtHR establishes a violation of human dignity and of Article 3 ECHR.¹⁰⁶ This is primarily related to the personal living space per person, even though there exists no international instrument that would quantify the preferred size. According to ECtHR practice,¹⁰⁷ ensuring a personal living space of 3 to 4 square metres is appropriate.¹⁰⁸ This is because that is the minimum standard specified by the CPT. The Hungarian Constitutional Court finds that the living and moving space provided for detainees in multi-person cells has to reach under all circumstances the minimum size that ensures their accommodation in the designated penal institution without violating the fundamental right to human dignity. Obviously, the violation of rights is established using a more nuanced approach, since when making the decision on it, the existence of compensatory factors has to be also examined (such as staying in the open air, hygiene, cleanliness, being free from vermin).

Due to the necessity to increase capacity and for meeting international expectations, the prison system continuously expands its capacity by creating bigger cells from several smaller ones, building new blocks, renovating and reopening previously closed premises, separating lavatories in order to improve accommodation conditions. As a result of the already completed capacity creation, the renovation and reopening of the Martonvásár facility of the Central Transdanubia National Penal Institution, the remodelling of the “E” and “F” blocks of the Solt Subunit of the Állampuszta National Penal Institution and the “*left star*” part of the Budapest Penitentiary and Prison, the creation of new capacities in the Szombathely National Penal Institution, the expansion and renovation works in the Vác Penitentiary and Prison and the Sopronkőhida Penitentiary and Prison, the creation of bigger cells from several smaller ones and the lavatory separation works in the majority of penal

¹⁰⁵The National Assembly adopted, on 24 October 2011, Act CXLII of 2011 promulgating the Optional Protocol to the UN Convention (OPCAT – Optional Protocol to the Convention Against Torture) (hereinafter “Protocol”), <https://www.ajbh.hu/opcat-npm>

¹⁰⁶ ECtHR case of István Gábor KOVÁCS v. Hungary (Application no. 15707/10), ECtHR case of VARGA and OTHERS v. Hungary (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13).

¹⁰⁷ The CPT standard of 15 December 2015 clearly includes 4 square metres as regards multi-person accommodations. In its judgments, the ECtHR set a limit of 3 square metres, but for example in the case of Muršić v. Croatia, it states that a space of less than 3 square metres is also permissible if compensated for by other factors.

¹⁰⁸ ECtHR case of István Gábor KOVÁCS v. Hungary (Application no. 15707/10).

institutions, the detainee capacity has been increased by 1600 so far.

The Kiskunhalas National Penal Institution has been established after taking over, renovating and slightly remodelling, primarily for security reasons, the Kiskunhalas site of the Guarded Asylum Reception Centre of the former Immigration and Asylum Office. It has a capacity of 472 detainees. By setting up the new prison, the overcrowding experienced in penal institutions could be significantly reduced. This solution offered a fast and cost-efficient possibility to continue the capacity expansion programme in a short time. The construction works of the Kiskunhalas site were completed by 31 January 2019, its ceremonial handover took place on 22 February 2019 and the transfer of detainees to it has started on 1 April 2019.

As part of the capacity increase, so-called lightweight (temporary) building complexes were also set up within the premises of ten penal institutions. This increases the number of detainees that can be held in penal institutions by 2750.

The new, almost 7000 square metres healthcare institution of the prison system has been established on the outskirts of the town of Berettyóújfalu, on a plot of almost 14 thousand square metres. It can accommodate 196 persons. The accommodation for detainees admitted for treatment complies, in all respects, with European prison standards. The institution accommodates several separate outpatient clinics, including clinics for general medicine, urology, surgery, respiratory medicine, otorhinolaryngology, obstetrics and gynaecology, which can ensure the treatment of detainees under prison conditions. Other interventions requiring special tools and equipment that can be planned in advance are carried out in the framework of professional cooperation with the Gróf Tisza István Hospital and the Debrecen University Clinical Centre. Due to its design and equipment, the new healthcare centre meets all modern security challenges and is in full compliance with every legal and professional requirement of detention. It also provides excellent working conditions for those working there.

In Hungary, the fundamental rights issues of biomedical research are regulated similarly to the Charter of Fundamental Rights, and at the highest level possible, in the Fundamental Law. Medical science is rapidly developing, our knowledge increases, and legislators and legal practitioners have to keep pace. Human genetics and embryonic technology is among the achievements of our modern age. Democratic constitutions react to these issues, even by means of criminal codification where appropriate.

According to Article III (2) of the Fundamental Law, “It shall be prohibited to perform medical or scientific experiment on human beings without their informed and voluntary consent.” Pursuant to paragraph (3), “Practices aimed at eugenics and the use of the human body or its parts for financial gain, as well as human cloning, shall be prohibited.”

The Committee of Ministers of the Council of Europe adopted a Convention on human rights and biomedicine,¹⁰⁹ in which it declared the following: “Primacy of the human being: The interests and welfare of the human being shall prevail over the sole interest of society or science.” This is the first binding international document that is aimed at protecting human beings against the inappropriate use of new biomedical procedure.

In the spirit of the Convention, any intervention seeking to create a human being genetically identical to another human being, whether living or dead, is prohibited. The Convention dedicates a separate chapter to the research of, and interventions on, the human genome. Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited, and the general issues relating to predictive genetic test are also regulated. Such predictive tests may be performed only for health purposes or for scientific research linked to health purposes, and subject to appropriate genetic counselling. An intervention seeking to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce any modification in the genome of any descendants. Choosing, with medical assistance, a future child’s sex of a human is also prohibited, except where serious hereditary sex-related disease is to be avoided.¹¹⁰ In addition to the Convention, the legal environment of human, biomedical and clinical research is shaped by the Helsinki Declaration¹¹¹, the Hungarian Act on the accession to the Oviedo Convention, European Union and WHO documents and further international guidelines in the same vein and, of course, Hungarian legislation. In these documents, special emphasis is put on the protection of the rights of the research subject. In the context of biomedical research on humans, the well-being of the research subject always prevails over the interests of science and society.

¹⁰⁹ Act VI of 2002 promulgating the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine adopted at Oviedo on 4 April 1997, and the Additional Protocol to the Convention on the Prohibition of Cloning Human Beings adopted at Paris on 12 January 1998.

¹¹⁰ Articles 1 to 2 and 11 to 14 of the Oviedo Convention.

¹¹¹ World Medical Association Declaration of Helsinki Ethical principles for medical research involving human subjects. Adopted by the 18th WMA General Assembly, Helsinki, Finland, June 1964.

Hungary undertook to continuously monitor the scope of bioethics and biomedical research regulation and to adopt laws on this subject matter. When drafting the laws, European Union norms had to be taken into account so that the statutory elements comply with legal harmonisation requirements.

In Hungary, in the field of healthcare, national research ethics committees are operated by the Medical Research Council (MRC). Clinical trials with investigational medicinal products fall within the competence of the MRC Clinical Pharmacology Ethics Committee, while the MRC Human Reproduction Committee has competence over genetic, human reproduction and certain other tests using advanced therapeutic methods, and for any other tests, the MRC Science and Research Ethics Committee is responsible. These national research ethics committees provide professional and ethical contribution to biomedical trials involving humans as research subjects.¹¹²

The Fundamental Law declares that it is prohibited to perform medical or scientific experiment on human beings without their consent.¹¹³ The general framework for research and procedures aimed at reproduction are laid down in the Act on healthcare (hereinafter “the Healthcare Act”).¹¹⁴

Pursuant to the ethical code on biomedical research, informed consent is a generally accepted legal, ethical and regulatory requirement at every intervention related to health – in everyday health care routine just as in medical research. It is clearly stated by the latest amendment to the 2013 Helsinki Declaration and the Belmont Report adopted in the United States and the guidelines laid down in 2013 that a health intervention may only be carried out by fully respecting the autonomy of the concerned persons (regardless of whether they are patients or healthy volunteers). The information should include the method, purpose, and potential benefits and risks of the intervention. The person involved should be given the opportunity to have a free choice between the acceptance and the refusal of interventions. In leaflets informing patients and healthy volunteers, cultural diversity of participants should be paid regard to. The information provided to patients must be clear, and no intervention should be started, except for those occurring in special circumstances (emergency, lifesaving), until the patient concerned is not in a state to give a valid consent. Within the provided information it

¹¹² Code of Bioethics on biomedical research (On the concepts and practice of biomedical and clinical research, second, expanded edition, 2019)).

¹¹³ Article III of the Fundamental Law.

¹¹⁴ Act CLIV of 1997 on healthcare.

should be clearly stated whether a directly therapeutic intervention or a scientific research is being referred to. The ethical and scientific assessment of clinical trials is inseparable.

Committees contributing to the authorisation of biomedical studies conducted on humans, as well as to the monitoring of the implementation of the protocol, give their opinion as independent professional and ethical bodies. Besides the representatives of the profession (researchers and physicians), non-professional “layman” members must also participate in formulating such an opinion. As a layman, anybody can participate in the work of an ethical committee, but it is expedient that committee members be primarily involved in health care, thus professionals other than physicians, nurses, bioethicists, or representatives of patient organizations, theologians, as well as health law specialists and jurists dealing with patient rights. The independence of the professional and ethical opinions of committee members as well as the complete independence of the committee are fundamental ethical principles.”¹¹⁵

The Fundamental Law aims to prevent any eugenics aspirations, organ trafficking and human cloning procedures at the highest level possible.

In line with this, the Healthcare Act declares that organs or tissues may only be donated, but transferring them for consideration is prohibited.¹¹⁶

Within the meaning of the Healthcare Act, biomedical or clinical research may be conducted with the aim of diagnosing, treating, preventing, improving rehabilitation from, or gaining better insight into the causes or origin of diseases. Research includes the use of means of observation or intervention or not fully known active substances other than those commonly used. The risk threatening a person has to be proportionate to the expected benefit of the research or the importance of its objective. Acquiring written consent from the research subject is indispensable.¹¹⁷

In accordance with the provision of the Act, in the course of a reproduction procedure, other healthcare service or medical research, it is forbidden to use an embryo to create more embryos or, in situations other than the exceptions laid down in the Act,¹¹⁸ a

¹¹⁵ Code of Bioethics on biomedical research (On the concepts and practice of biomedical and clinical research, second, expanded edition, 2019)).

¹¹⁶ Sections 206 to 207 of the Healthcare Act.

¹¹⁷ Sections 157 and 159 of the Healthcare Act.

¹¹⁸ Section 182 (1) to (2) of the Healthcare Act.

specimen that has other or further attributes than those developed during conception and also to create specimens that are genetically identical to each other.¹¹⁹ The objective of the Hungarian regulations is to prohibit the creation of genetically identical human specimens (cloning). The Act declares that if the research subject dies or suffers any damage, the state is obliged to pay recompense.

The criminal offences against the rules of medical intervention and research are laid down in Chapter XVI of the Criminal Code. The ministerial statement of reasons explains that criminal law regulation is required because previously unknown possibilities have opened up to medical science that not only help healing, but also cause many hazards and possibilities for abuse.¹²⁰

¹¹⁹ Section 180 (5) of the Healthcare Act.

¹²⁰ Chapter XVI of the Criminal Code.

6.3 RIGHT TO LIBERTY AND SECURITY

Personal freedom and security refer to the safety of the individual from certain measures of the state, but it does not mean that the state has an obligation to protect the citizen from any attack, or that such a measure cannot be taken for any reason. The Fundamental Law declares that “Everyone shall have the right to liberty and security of the person.” The constitutional requirements ensure that no one can be deprived of these rights arbitrarily. The establishment of institutional guarantees for the enforcement of the right to personal freedom is an objective obligation of the State.¹²¹

Respect for the right to liberty and personal security as a first generation fundamental right is also an international requirement. The ECtHR is consistent in considering liberty and security as a distinct whole.¹²² “Liberty” guarantees the freedom to come and go (*la liberté d’aller et de venir*). The ECHR treats any interference by a public authority against the person’s will as a restriction of this right if it involves de facto deprivation of liberty; however, it allows the restriction of a person’s liberty if this is in accordance with the law.¹²³ When laying down the rules on deprivation of liberty, the ECHR not only details the most important cases (e.g. arrest, detention, or deprivation of liberty for medical reasons), but also spells out the most important procedural rules. According to the ECHR, a judicial decision is not a prerequisite, but a subsequent decision by the court must be obtained without delay. The starting point of the UN International Covenant on Civil and Political Rights is the same as in the ECHR, i.e. it states that everyone has the right to liberty and security of person. The Covenant prohibits¹²⁴ arbitrary deprivation of liberty and provides that deprivation of liberty may only take place on grounds and in accordance with procedures established by law. The rights provided for in Article 6 of the Charter of Fundamental Rights correspond to those guaranteed by Article 5 of the ECHR.¹²⁵ All these are only minimum standards, which in part bind national legislators, but they do not replace national legislation.

National laws may set more stringent requirements, but less stringent conditions than minimum standards are not allowed. The recommendations of the United Nations, the Council of Europe and the European Union set out guidelines on criminal policy objectives that consider imprisonment as a measure of last resort in order to ensure personal liberty.

¹²¹ Article IV (1) of the Fundamental Law and the Statement of reasons to it.

¹²² ECtHR case of PLESÓ v. Hungary (Application no. 41242/08).

¹²³ Article 5 of the ECHR.

¹²⁴ Article 9 of the International Covenant on Civil and Political Rights.

¹²⁵ Article 6 of the Charter of Fundamental Rights.

International human rights instruments do not generally prohibit the use of life imprisonment, since the continued promotion of this punishment has led to the reduction and gradual abolishment of death penalty. It is also clear from the practice of the ECtHR and the Human Rights Committee that life imprisonment was not considered incompatible with Article 3 of the ECHR if it guaranteed the prospect of release.¹²⁶

The resolutions and recommendations of the Committee of Ministers of the Council of Europe also set a number of basic requirements in relation to detention prior to a final conviction. Detention prior to conviction cannot be automatic, may only be ordered in exceptional cases and applied in the event of a reasonable suspicion of a criminal offence and only for a minimum period of time. The Committee's recommendation refers to humanity and social reasons in this regard.¹²⁷ Since the 1960s, increasingly more attention has been paid to alternative punishments instead of imprisonment (suspended imprisonment, compensation or reparation, treatment of drug and alcohol addiction, community work in the public interest).

Personal liberty enjoys a protection unprecedented in Hungarian constitutional and legal history, since, in addition to recognising this right, the Fundamental Law also contains both the conditions for the restriction of this fundamental right and the legal consequences. The Fundamental Law enshrines the right to personal liberty and security in general terms, stating that "Everyone shall have the right to liberty and security of the person", and "No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act."¹²⁸

The Fundamental Law treats personal liberty and security as a distinct whole. The inviolability of these rights applies to all natural persons, irrespective of their capacity to act. In the positive sense, the right to personal liberty protects the physical liberty and ensures protection against arrest or other detention.

In the negative sense, it ensures that everyone can avoid certain (prohibited) places. All natural persons enjoy this constitutional fundamental right, regardless of their nationality.¹²⁹

¹²⁶ Criminal Law Uniformity Decision 3/2015 of the Curia, and ECtHR case of MAGYAR László v Hungary (Application no. 73593/10).

¹²⁷ Resolution 11 of the Committee of Ministers of the Council of Europe (1965).

¹²⁸ Article IV (1) and (2) of the Fundamental Law.

¹²⁹ KOÓSNÉ MOHÁCSI Barbara: A személyi szabadsághoz és biztonsághoz való jog, in JAKAB András - FEKETE Balázs (eds.) *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) [2]

It is a requirement under the Fundamental Law regarding the right to personal liberty that deprivation of liberty may only take place for a specified reason and only if it is strictly necessary. However, the conditions for ordering the deprivation of liberty must be interpreted in the context of the purposes of criminal procedure. One condition for ordering arrest may be the event of suspicion of a criminal offence, including the risk of absconding, and the other can be the prevention of a new criminal offence, i.e. the arrest ordered on grounds of the risk of recidivism. According to Hungarian law, arrest may last until the procedure is concluded with final and binding effect.¹³⁰

In relation to aliens policing matters, arrest may be applied in three cases: to prevent unauthorised entry into the country, for the purpose of expulsion or for the purpose of extradition.¹³¹

The main procedural guarantee for deprivation of personal liberty is that it must be decided by a court. If deprivation of liberty is not ordered by a court, the person concerned must be brought before the court without delay or must be released. In addition, detainees are entitled, throughout the period of detention, to take proceedings by which the lawfulness of detention is decided by a court (the so-called habeas corpus procedure).

The obligations specified in the Fundamental Law for the authorities, including information obligation, constitute further guarantees, in addition to the conditions for deprivation of liberty. The persons concerned are entitled to information not only in the case of arrest ordered upon suspicion of a criminal offence, but also during all detentions.¹³²

In line with the rules of the ECHR and the Charter of Fundamental Rights,¹³³ there are two major groups of restriction and deprivation of personal liberty under the Hungarian law:

Criminal procedure measures involving deprivation and most serious restriction of personal liberty (the so-called habeas corpus institutions, such as custody and arrest under Hungarian law) on the one hand, and the substantive criminal law sanction, i.e. imprisonment, on the other.¹³⁴

¹³⁰ Section 276, section 277 (4) and section 298 of Act XC of 2017 on the Code of Criminal Procedure.

¹³¹ Section 3 and sections 12 to 13 of Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal matters.

¹³² Section 12 (3) of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and confinement for infractions.

¹³³ Article 5 of the ECHR, and Article 6 of the Charter of Fundamental Rights.

¹³⁴ Sections 34 to 37 of the Criminal Code, and sections 274 to 275 and sections 297 to 298 of Act XC of 2017 on the Code of Criminal Procedure.

The defendant is the subject, and not the object of the criminal proceedings; therefore, the enforcement of his or her constitutional fundamental rights is ensured to a certain extent by Hungarian law.

On the basis of the presumption of innocence,¹³⁵ the defendant must not be subject to measures that are applied on the basis of guilt, but those necessary for the offence to be investigated are permitted. The primary objective of arrest is to ensure the successful conduct of the criminal proceedings instituted. An important constitutional safeguard is the application of the principle of graduality regarding the shaping of rules on coercive measures and in the implementation of coercive measures.

The laws specify reasonable suspicion of a criminal offence, the risk of escape, committing further criminal offences, frustration of justice, and threatening public order as the requirements for ordering arrest. As a guarantee, it is prescribed that the detainee must be heard without delay and measures must be taken to maintain arrest or to apply an alternative measure if the relevant conditions are met. The necessity of arrest is to be reviewed regularly, but at least once a month, and the person concerned must be granted the right to file legal remedy against the decision.

The reduction of imprisonment is primarily served by so-called outpatient or community sanctions, which do not involve deprivation of liberty. Under the legislation currently in force in Hungary, the following qualify as such: fines, community service, release on probation, suspended imprisonment or, during the execution of the penalty, release on parole from imprisonment and reintegration custody.¹³⁶

The laws also lay down the forms and procedural rules for the application of indefinite penalties to offenders lacking sound mind.

For the protection of public safety and society, the law provides for specific sanctions against dangerous offenders and recidivists, which essentially serve a dual purpose. On the one hand, the protection of society requires the punishment of perpetrators, while cure and treatment are important for the purpose of resocialisation.¹³⁷

There are also other cases of restriction of personal liberty, such as restrictions on various public health grounds (e.g. epidemiological measures, restriction of psychiatric patients) laid

¹³⁵ Section 1 of Act XC of 2017 on the Code of Criminal Procedure.

¹³⁶ Sections 61/A to 61/D of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and confinement for infractions.

¹³⁷ Section 81 (4) and section 89 to 90 of the Criminal Code.

down in the Healthcare Act, police measures listed in the Act on police, and sanctions under the Act on infringements.

In the Hungarian penal system, after the abolition of death penalty, life imprisonment became the most severe sanction. Compared to the Constitution, the Fundamental Law polished the content of the right to personal liberty by explicitly not excluding the possibility of permanent deprivation of liberty, which, however, must be based on a final and binding conviction by the court for the commission of an intentional violent crime, taking into account, *mutatis mutandis*, the criteria of necessity and proportionality.¹³⁸ Under the Criminal Code, life imprisonment without parole may be imposed only in respect of the types of acts specified in the Act (e.g. genocide, apartheid, aggravated cases of homicide) and on those who have attained the age of twenty years.¹³⁹

Act LXXII of 2014¹⁴⁰ introduced a mandatory pardon procedure for those sentenced to life imprisonment without parole. This means that after forty years of imprisonment have been served, a so-called pardon committee takes a position on whether continuing with the execution of life imprisonment is still justified; however, the decision remains with the President of the Republic. The President of the Republic has discretionary power to make this decision; he or she is not bound by the position of the pardon committee.¹⁴¹

Compared to the 1989 Constitution, which was framed on liberal grounds, the Fundamental Law provides for more extensive compensation. In the past only the victim of unlawful arrest or detention was entitled to compensation, but the constitutionality of laws allowing deprivation of liberty without adequate guarantees could thus become doubtful.

By contrast, the Fundamental Law guarantees compensation also to those against whom detention has been ordered in a lawful manner, that is, in accordance with the law, but unfoundedly. According to the Fundamental Law: “Everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation.”¹⁴² Under the Hungarian law derived from the Fundamental Law, compensation is granted for arrest, criminal supervision and preliminary compulsory

¹³⁸ Article IV (2) of the Fundamental Law.

¹³⁹ Section 41 (1) and section 90 (2) of the Criminal Code.

¹⁴⁰ Act LXXII of 2014 amending Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and confinement for infractions, and linked to that, other Acts.

¹⁴¹ Sections 46/A to 46/H of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and confinement for infractions.

¹⁴² Article IV (4) of the Fundamental Law.

psychiatric treatment if the proceedings have been terminated, the defendant has been acquitted, or if the defendant has been found guilty, but the penalties specified in the Act have not been imposed. The defendant who has been convicted with final and binding effect is also entitled to compensation for pre-trial detention and criminal supervision if its duration exceeds the length of the imprisonment, confinement, community service or special education in a reformatory imposed, or the daily units of the fine. If the defendant had been convicted by a final judgment, compensation is to be granted for the imprisonment, confinement, special education in a reformatory or compulsory psychiatric treatment that the defendant had served under the judgment if due to an extraordinary remedy, he or she has been acquitted, a more lenient penalty or measure has been imposed, or the proceedings were terminated.¹⁴³

The legislation in force complies with the principle previously established by the Constitutional Court,¹⁴⁴ according to which the risk associated with the enforcement of a demand for punishment lies with the state, and the subjects of the information obligation regarding the establishment of the right to compensation and the time limits for enforcing claims are the authorities.

Both international instruments and the Fundamental Law, in accordance with the principle of the presumption of innocence, give priority to the protection of personal liberty for defendants who in legal terms are not yet guilty. The principles *nullum crimen sine lege* and *nulla poena sine lege* prohibit the retroactive application of criminal law. This does not, however, preclude the prosecution and conviction of a person for an act which, at the time when it was committed, was a crime under the generally recognised rules of international law. The right to personal liberty may apply not only to the exercise of the state's criminal power but also, where appropriate, to other cases of deprivation of personal freedom. It is the duty of the state to ensure that no unlawful interference occurs with personal liberty.

On this basis, the law lays down the conditions and guarantees for restricting the right to personal liberty in criminal proceedings. Under Hungarian law, detention, arrest, compulsory psychiatric treatment and imprisonment qualify as such. Further criteria developed by the Constitutional Court are linked to this. Following the entry into force of the Fundamental Law, it became increasingly widely recognised in both Hungarian legislation and law enforcement that applying alternatives to deprivation of liberty is a key instrument for the

¹⁴³ Sections 844 to 850 of Act XC of 2017 on the Code of Criminal Procedure, and sections 75/B to 75/S of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and confinement for infractions.

¹⁴⁴ Constitutional Court Decision 104/1999 (X.30) AB.

protection of personal liberty.

6.4 NON-DISCRIMINATION AND EQUALITY

The need for equality is as old as the cultural history of humanity. It has already appeared in antiquity, and the most fundamental idea of Christian philosophy is that all people are equal before God.

The Declaration of the Rights of Man and of the Citizen was the first instrument to state that “Men are born and remain free and equal in rights.” In the first civil constitutions, this principle was typically formulated in the idea of equality before the law. Discrimination results in a violation of fundamental rights, especially of equality, where human rights and state obligations conflict with each other.

Article 14 of the ECHR defines that the enjoyment of rights and freedoms must be secured without discrimination. Since the entry into force of Protocol No. 12 in 2005, discrimination can be established with respect to any right set forth by law. The same principle is underlined in the Lisbon Treaty (2007) and in Article 21 of the Charter of Fundamental Rights. Even before the Charter, the CJEU’s case law included the requirement of equality and the prohibition of discrimination among the legal principles of the European Union. Equal rights and equality does not mean that every individual entitlement and obligation is absolutely identical, but only that people in the same situation should be treated equally by the law without unjustified discrimination. It is also generally recognised in Europe that disadvantaged people are supported by positive, special measures to ensure their equal opportunities. A number of states now allow exceptions to formal equality or, in other words, the formal requirement of equal treatment, and provide for the possibility to positively discriminate in favour of certain disadvantaged groups with a view to creating equal opportunities for them.

The first Summit of the Heads of State or Government of the Council of Europe on 9 October 1993 has adopted the Vienna Action Plan, which set up the European Commission against Racism and Intolerance (hereinafter the “ECRI”). The statute of the organisation was adopted by the Committee of Ministers of the Council of Europe on 13 June 2002. Each Council of Europe member state appoints one person to serve in the ECRI. The members are appointed for a term of office of five years, which may be renewed. This human rights monitoring body has been operational since 1994 with the aim to combat racism, intolerance, antisemitism, xenophobia, and discrimination on grounds of race. In this context, the ECRI draws on the ECHR and the case law of the ECtHR. In the course of its activities, it reviews member states’ legislation, policies and other measures taken, and their effectiveness, proposes further action

at local, national and European level, draws up country reports on member states every five years, consults the governments of the states, and formulates recommendations relating to current political and social events.

In Hungary, the basic anti-discrimination provisions are laid down in Article XV of the Fundamental Law and apply to the entire legal system. These provisions state that everyone is equal before the law. Every human being has legal capacity. Furthermore, the fundamental rights are guaranteed to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

Legal capacity is a formal capacity; every person is guaranteed legal capacity. In addition, the Fundamental Law adheres to the judicature of the Constitutional Court,¹⁴⁵ according to which also legal persons can be the subject of fundamental rights and obligations which, by their nature, do not only apply to humans and lack an untouchable substance.¹⁴⁶ However, the state cannot have legal capacity as regards fundamental rights, as those are the boundaries of the functioning of the state.

The legal capacity of natural persons is in principle independent of any characteristic; however, its start point and end point pose the same questions as in the case of the right to life and human dignity (c.f. protection of the life of the foetus, euthanasia).¹⁴⁷ Although all living persons are equally entitled to legal capacity, this does not mean that they can exercise their rights under the same conditions, as this is determined by the capacity to act, the rules of which are laid down in civil law.¹⁴⁸ With respect to fundamental rights, human beings have full legal capacity (except certain self-destructive decisions which are limited by the state¹⁴⁹). In its jurisprudence the Constitutional Court stated that restricting the fundamental rights of persons who lack certain characteristics or sound mind can be justified, and found that the state has to protect the subjects of law from taking risks in relation to which they are not able to understand and assess the options (e.g. due to age, sound mind), but these characteristics must be assessed on a case-by-case basis.¹⁵⁰

¹⁴⁵ Articles I and XV of the Fundamental Law.

¹⁴⁶ Constitutional Court Decisions 21/1990 (X.4.) AB, 7/1991. (II.28.) AB and 28/1991. (VI.3) AB.

¹⁴⁷ Constitutional Court Decision 64/1991(XII.17.) AB.

¹⁴⁸ Statement of reasons to the Fundamental Law.

¹⁴⁹ The legal background for sterilisation is set out in section 187 of the Healthcare Act.

¹⁵⁰ Constitutional Court Decision 21/1996 (V.17) AB.

The Fundamental Law specifically emphasises the equality of men and women.¹⁵¹ As an exception to the general prohibition of discrimination, it states that Hungary helps, by means of separate measures, to achieve equality of opportunity and social inclusion,¹⁵² and specifies families, children, women, the elderly and those living with disabilities as groups in need of special care and protection.¹⁵³

As an exception to the general prohibition of discrimination, the Fundamental Law allows the application of “positive action”, “supporting measure” or, in its more well-known form, positive discrimination with a view to eliminating and preventing inequality of opportunity. According to the Constitutional Court, if a societal objective or constitutional right can only be attained in such a way that equality in the narrower sense cannot be achieved, then positive action cannot be declared unconstitutional. The constitutional barriers to positive discrimination are the prohibition of discrimination to equal dignity and constitutional fundamental rights.¹⁵⁴ The Hungarian legislation thus allows positive discrimination, taking positive action in line with European standards and the practice of the Constitutional Court,¹⁵⁵ and subject to strict conditions. On this basis, positive action may constitute a constitutional constraint to the principle of equal treatment, but it must not infringe a fundamental right, must not result in unconditional advantage, and must not exclude the weighing of specific considerations.¹⁵⁶

The Hungarian rules on non-discrimination are implemented in a multi-level system. Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter the “Equal Treatment Act”),¹⁵⁷ the general Hungarian anti-discrimination Act, was adopted in December 2003.

The new law incorporated the previous sectoral rules in a coherent system, filled the lacunae in the then legislation, and laid down adequate procedural provisions to address infringements. In addition, a number of codes of the various branches of law and other substantive and procedural laws contain detailed rules on equal treatment.

¹⁵¹ Article XV (3) of the Fundamental Law.

¹⁵² Article XV (4) of the Fundamental Law.

¹⁵³ Article XV (1) to (5) of the Fundamental Law.

¹⁵⁴ The theoretical baselines for applying positive discrimination are set out in Constitutional Court Decision 9/1990 (IV. 25.) AB.

¹⁵⁵ Constitutional Court Decisions 9/1990 (IV.25) AB and 61/1992 (XI.20.) AB.

¹⁵⁶ Section 11 of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.

¹⁵⁷ Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.

In addition to natural persons staying within the territory of Hungary, also the groups of such persons, legal persons and organisations without legal personality fall within the scope *ratione personae* of the Equal Treatment Act. With regard to all of them, the Equal Treatment Act defined the principle of equal treatment in accordance with the case law of the Constitutional Court. On this basis, the law must treat everyone as equal (person of equal dignity), that is, the fundamental right of human dignity must not be compromised.

The “same respect and circumspection shall be exercised and individual aspects shall be taken into account to the same extent regarding” the legal entities concerned.¹⁵⁸

The Act follows a twofold approach in defining the scope of those obliged to observe the principle of equal treatment. Organisations performing a public service mission in the broad sense, such as the state, local governments, public authorities, public service organisations, educational institutions, etc., are obliged to meet this requirement in all legal relationships. On the other hand, the actors of the “private sector” are obliged to observe the principle of equal treatment only with regard to the given legal relationship. In order to protect private autonomy, the Act also defines legal relationships to which the principle of equal treatment does not apply. These include family law relationships, legal relationships between relatives, membership relationships of certain organisations and legal relationships of religious communities related to their faith-based activities.¹⁵⁹

The Act spells out a detailed list of the conducts that violate the principle of equal treatment. According to this, a provision constitutes direct discrimination if, as a result of it, a person or group is treated less favourably than another person or group in a comparable situation is, has been or would be treated on grounds of any of the following characteristics, whether actual or presumed: sex, race, colour, nationality, membership of a national minority, language, disability, state of health, religion or belief, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, gender identity, age, social origin, property, part-time or fixed-term nature of the occupational relationship or other employment-related relationship, membership in a representative organisation, any other status, characteristic, or attribute.¹⁶⁰

With regard to the conducts serving as grounds for discrimination, the Act provides an open-ended list, but in construing the concept of “other status”, which also appears in the

¹⁵⁸ Constitutional Court Decision 61/1992 (XI.20.) AB and section 1 of the Equal Treatment Act.

¹⁵⁹ Sections 4 to 6 of the Equal Treatment Act

¹⁶⁰ Section 8 of the Equal Treatment Act.

Fundamental Law, the legislature has relied on the practice of the Constitutional Court as well as on EU directives.¹⁶¹

A provision that does not constitute direct discrimination and apparently complies with the principle of equal treatment constitutes indirect discrimination if it puts, to a considerably higher extent, certain persons or groups bearing a characteristic listed above in a position more disadvantageous than that in which another person or group in a comparable situation is, has been, or would be. A conduct of sexual or other nature that violates human dignity constitutes harassment if it is related to a characteristic listed above of the person concerned and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.¹⁶² A provision constitutes segregation if it separates, without the explicit permission of an Act, certain persons or a group of certain persons from other persons or the group of persons in a comparable situation on the ground of a characteristic listed above. A conduct constitutes victimisation if it causes, is aimed at causing, or threatens to cause injury to a person in relation to that person's raising a complaint, launching a proceeding, or participating in such a proceeding because of the violation of the principle of equal treatment.

The Act also considers an instruction given concerning any of the aforesaid conducts to be a violation of the principle of equal treatment.¹⁶³

According to section 7 (2) of the Equal Treatment Act, in line with the practice of the Constitutional Court, discrimination with respect to fundamental rights requires other legal standard than the cases where rights other than fundamental rights are affected by discrimination. Accordingly, the Act provides that the necessity and proportionality test is to be employed for examining the restrictions of fundamental rights, while to judge other cases, the test of reasonability is used. A provision (conduct, measure, criterion, omission, instruction, or practice) does not constitute a violation of the principle of equal treatment if it limits a fundamental right of the party suffering the disadvantage in an inevitable situation with the objective of enforcing another fundamental right, provided that the limitation is appropriate for achieving, and proportionate to, that objective. If fundamental rights are not affected, the Act also defines a case as a general cause for exemption where the violation of the principle of equal

¹⁶¹ Article 21 and Articles 23 to 26 of the Charter of Fundamental Rights, and Constitutional Court Decision 11/2018 (V.18.) AB.

¹⁶² Section 222 of the Criminal Code.

¹⁶³ Section 7 (2) of the Equal Treatment Act.

treatment is justified by a reasonable ground that is directly related to the legal relationship concerned, as confirmed by objective assessment.¹⁶⁴

The Equal Treatment Act provides for the procedures for enforcing equal treatment. The tasks of the Commissioner for Fundamental Rights that are specified in the Equal Treatment Act¹⁶⁵ are carried out by the Directorate-General for Equal Treatment, a separate organisational unit within the Office of the Commissioner for Fundamental Rights.¹⁶⁶ In addition to initiating a proceeding at this specialised organ, the aggrieved party has, of course, the right to bring civil proceedings (personality right action, labour law action) for the violation of the equal treatment requirement. Besides, other administrative (labour, consumer protection) authorities and infraction authorities with a competence in specialised administrative cases continue to play an important role in the enforcement of rights in anti-discrimination cases. Rights can be enforced in both civil and administrative court proceedings, even in parallel. Chapter III of the Act addresses sectoral issues of the principle of equal treatment.

Accordingly, it deals in detail with negative discrimination in the fields of employment, social security and health, education and training, housing, trade in goods and use of services.¹⁶⁷

The Fundamental Law guarantees the anti-discrimination rights in Hungary, and this issue is further regulated in Acts and supported by an institutional system that provides seamless legal protection (Constitutional Court, ombudsman, other human rights institutions, courts, etc.). Rules come in place increasingly often to require also non-state actors to observe this principle. Families, children, women, the elderly and people with disabilities are granted special protection. Positive discrimination promotes social inclusion; however, it cannot replace performance. Accordingly, it is not against the Fundamental Law if members of a disadvantaged group are admitted to higher education under facilitated conditions, but granting them relief regarding their study and exam obligation would be unacceptable.

¹⁶⁴ Constitutional Court Decision 3001/2016 (I. 15.) AB.

¹⁶⁵ The Equal Treatment Act was modified by Act CXXVII of 2020 amending certain Acts with a view to ensuring more effective observance of the principle of equal treatment, which entered into force on 1 January 2021.

¹⁶⁶ Section 12 of the Equal Treatment Act.

¹⁶⁷ Chapter III of the Equal Treatment Act.

6.5 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

As regards the freedom of thought and conscience, the role of the state is to ensure the free flow of ideas. In accordance with the freedom of belief, both religious people and atheists are subjects of this right as it ensures freedom of worldview in the broadest sense possible.¹⁶⁸ Freedom of religion is rooted directly in human dignity, its violation is a severe attack against human dignity, as human personality itself is untouchable for law,¹⁶⁹ and thus, in a certain sense, freedom of religion is also a source of human rights.

The freedom of religion of individuals had been declared together with the freedom of conscience, as they are closely connected and these rights were the first of the currently recognised human rights to be formulated. Freedom of religion is a special freedom which is both individual and collective in nature. These two elements can only be implemented together. This right grants protection against the state and cannot be applied within religious communities.¹⁷⁰ The issues of the relation between religious communities and the state are important not only as elements of the institutional protection of the freedom of religion, but also determine the constitutional self-identity of each state.¹⁷¹

As regards the development of law, the edict of Torda, a landmark of religious tolerance, from 1568 and other settlements following the Reformation show that Hungary has always been at the forefront of regulating these rights. Between 6 and 13 January 1568, the Diet of Torda took place in Transylvania. The importance of the events that took place there is highlighted by the fact, that the International Day of Religious Freedom is celebrated on 13 January, because the freedoms of conscience and religion have been enshrined in a law on that day, for the first time in history.¹⁷² This was followed by Act XLIII of 1895 on the free exercise of

¹⁶⁸ Statement of reasons to Article VII (1) of the Fundamental Law.

¹⁶⁹ Constitutional Court Decisions 4/1993 (II. 12.) AB and 15/2015 (V. 29.) AB.

¹⁷⁰ Statement of reasons to Article VII of the Fundamental Law.

¹⁷¹ SCHANDA Balázs: A gondolat, a lelkiismeret és a vallás szabadsága, in JAKAB András – FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/a-gondolat-a-lelkiismeret-es-a-vallas-szabadsaga> (2018)).

¹⁷² Act I of 2018 on the significance of the 1568 edict on religion adopted in Torda and the Day of Religious Freedom: “On the sitting of the National Assembly on 20 February 2018, on a proposal from the Speaker of the National Assembly KÖVÉR László, the National Assembly of Hungary adopted, by five-party consent, the Act that considers the edict on religion adopted on the Diet of Torda in 1568 to be a part of the national spiritual heritage of Hungary and declares the day of the promulgation of the 450-years old edict, i.e. 13 January, the Day of Religious Freedom. Today’s decision was preceded by a proposal on the Day of Religious Freedom initiated by the Hungarian Unitarian Church that was also signed by the representatives of the Transylvanian Reformed Church and the Hungarian and Saxon Evangelical Lutheran Churches, which was given to the Members of the Hungarian National Assembly, the Romanian Parliament and the European Parliament present by KOVÁCS István the public affairs director of the Hungarian Unitarian Church on 13 January 2018 in the context of the celebration of religious freedom.” According to the statement of reasons to the adopted Act, “...the ideals

religions. In 1990, the National Assembly adopted Act IV of 1990 on freedom of conscience and religion and churches. This has been replaced by the current Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities. In Hungary everyone has the right to the freedom of thought, conscience and religion.

This right includes the freedom to choose or change one's religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practise or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life.¹⁷³

Every natural person is a subject of the freedom of thought, religion and conscience as an individual right, regardless of any possible boundaries of personal freedom. The Fundamental Law is in compliance with the relevant Article of the Charter of Fundamental Rights.¹⁷⁴

Any intervention forcing or motivating a person to abandon his or her internal beliefs (mind-altering substances or treatments, "re-education" by psychiatric or other means restricting personal freedom) would constitute a violation of the freedom of thought.

If the state takes a stance on questions of religion or worldview, i.e. it gives advantages or disadvantages to certain views instead of ensuring the free formation and flow of ideals, it may also mean a violation of the freedom of thought.¹⁷⁵ However, the recognition of historical past (and thus referring in the National Avowal to the specific role of Christianity in the case of Hungary) or protecting the cultural footprint of religious heritage does not, in itself, constitute a violation of freedom of thought.¹⁷⁶

The community dimension of the freedom of religion, that is, the manifestation, practice and teaching of religious conviction jointly with others, enjoys fundamental rights protection, even without recognition by the state.¹⁷⁷ Article XV¹⁷⁸ prohibiting discrimination specifically mentions that fundamental rights discrimination based on religious is forbidden. The right to

enshrined in the edict of Torda, i.e. the religious self-determination of a community, can be interpreted as one of the predecessors of modern democracy that gained general recognition, in the course of historical development, by Western civilisations and which can be rightly regarded as one of the fundamental values of Christian Europe."

¹⁷³ Article VII (1) of the Fundamental Law.

¹⁷⁴ Articles 10 and 52 of the Charter of Fundamental Rights.

¹⁷⁵ Constitutional Court Decision 4/1993 (II. 27.) AB.

¹⁷⁶ SCHANDA Balázs: A gondolat, a lelkiismeret és a vallás szabadsága, in JAKAB András - FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András).

¹⁷⁷ Article VII (1) of the Fundamental Law.

¹⁷⁸ Article XV of the Fundamental Law.

the protection of personal data, that is the right of informational self-determination, protects data on religious conviction as special, i.e. sensitive data.¹⁷⁹

The Fundamental Law guarantees the neutrality of the state. The state has to ensure the freedom to leave a religious community, but it cannot interfere with their internal disputes.¹⁸⁰

The state must not take a position on religious matters, must not judge whether a religious belief or conscientious conviction is true, and must protect the freedom of individuals from interference by others. It is the duty of the state, in particular through the public education system, to provide objective, comprehensive and balanced information on questions of worldview and to make people aware, in a fair manner, of the danger of religious deviancies. It is justified to criminalise violence and incitement to hatred against members of religious communities, among other groups.¹⁸¹

The Fundamental Law specifically mentions elements of religious activities and cults.¹⁸² The state ensured the collective implementation of the right to the freedom of conscience and religion by promulgating the Act on churches. The freedom of individual prayer, community worship, procession and pilgrimage, participating in these, and establishing and operating places of worship and liturgy are all essential elements of the freedom of religion.¹⁸³ The Hungarian legislation strives to provide exemption from work for the period of religious holidays to persons in an employment or other employment-related relationship so that they can exercise these rights. This is ensured by the right of employees that from their paid leave, their employer has to allocate seven days at the time requested by them.¹⁸⁴ State institutions also have to provide appropriate and effective possibilities for practising religion. This applies to hospitals, prisons and also to those serving in the military.

Regardless of whether someone practises any religion, freedom of conscience can be considered as the right to the integrity of the individual. The right to the freedom of

¹⁷⁹ Point 3 of section 3 of Act CXII of 2011 on the right to informational self-determination and on the freedom of information.

¹⁸⁰ Constitutional Court Decision 4/1993 (II. 12.) AB.

¹⁸¹ Ibid. and section 216 of the Criminal Code (violence against a member of a community)).

¹⁸² Article VII (1) of the Fundamental Law.

¹⁸³ Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities.

¹⁸⁴ Section 122 (2) of Act I of 2012 on the Labour Code.

conscience is a freedom to which not only religious persons, but also everyone else is entitled.¹⁸⁵

This protects an individual from being forced by the state to breach his own ideals or into positions incompatible with his or her essential convictions or, in extreme cases, to act contrary to his or her beliefs. To an individual, the primary concern is his or her own conscientious conviction and not whether he or she belongs to a particular religious or ideological community.¹⁸⁶

Accordingly, in the context of military service obligation, pursuant to Article XXXI (3) of the Fundamental Law, military service can be replaced by non-combatant service if the conscientious conviction of the person concerned so demands.¹⁸⁷ Similarly, an employee is entitled to refuse to perform a labour law obligation or employer's instruction (for example assisting in the termination of a pregnancy). In accordance with the Fundamental Law, parents have the right to choose the upbringing to be given to their children.¹⁸⁸ This provision is also meant to protect the ideological integrity of the family.

The freedom of religion enables an individual to adapt his or her entire life (lifestyle) to his religious beliefs. The Fundamental Law protects religious (worldview-based) associations. This includes allowing persons sharing the same principles of faith to establish and operate such associations.¹⁸⁹ The legislation authorising religious communities to establish and operate educational, child and youth protection, social and healthcare institutions is based on this principle. Similar protection is afforded to the right to a burial consistent with the belief of the deceased to which everyone is entitled and which is covered by the right of respect for the deceased.

The Fundamental Law provides for the neutrality of the state, according to which the state and religious communities operate separately and the religious communities are autonomous, but the state and religious communities in the form of an established church may cooperate to achieve community goals. At the request of the religious community, the National Assembly decides on such cooperation. The Fundamental Law also declares that the rules on the cooperation are to be laid down in a cardinal Act.¹⁹⁰

¹⁸⁵ SCHANDA Balázs: A gondolat, a lelkiismeret és a vallás szabadsága, in JAKAB András - FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András).

¹⁸⁶ Act CXXXV of 2003 on equal treatment and the promotion of equal opportunities.

¹⁸⁷ Article XXXI (3) of the Fundamental Law and Constitutional Court Decision 4/1993 (II. 12.) AB.

¹⁸⁸ Article XVI (2) of the Fundamental Law.

¹⁸⁹ Article VII (2) of the Fundamental Law.

¹⁹⁰ Article VII (3) to (5) of the Fundamental Law.

The Fundamental Law does not recognise the constitution of 1949 with reference to tyrannical rule. It declares, in the National Avowal, that individual freedom can only be complete in cooperation with others. This cooperation is based on faith, loyalty and love. Hungary values and recognises the various religious traditions of the country, while also acknowledging the role of Christianity in preserving nationhood. The Seventh Amendment to the Fundamental Law supplemented this by adding that “The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State.”¹⁹¹

The religious and ideological neutrality of the state has been solidified by new Acts deriving from the Fundamental Law. This is demonstrated by the preamble to the Act on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities¹⁹² and by the Act on the system of national public upbringing¹⁹³, which lays down guarantees for the right to an upbringing that is religiously and ideologically neutral. References to the obligation of confidentiality of church personnel supported by special provisions are to be found in numerous pieces of legislation.¹⁹⁴

It is the exclusive right of churches to determine who and under what conditions can become “church personnel”, that is to specify the scope of persons concerned. When granting state recognition to ecclesiastical education and upbringing institutions, universities, colleges or theology faculties or programmes, the substance of faith-based subjects and skills cannot be examined. Regarding these, qualification requirements have to be determined by church universities and colleges pursuant to applicable ecclesiastical legislation. In this context, the state may contribute only to providing the legislative framework.¹⁹⁵ According to the position of the Constitutional Court, the form of separation of church and state is based on the specific historical conditions of each state. From the principle of separation follows that the state must not regularly join with any churches and subscribe to any ideas of any church. However, the Constitutional Court declared also that the State's neutrality in connection with the right to freedom of religion does not mean inactivity.¹⁹⁶

¹⁹¹ National Avowal of the Fundamental Law and the statement of reasons to it.

¹⁹² Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities.

¹⁹³ Act CXC of 2011 on national public upbringing.

¹⁹⁴ Section 170 (1) b) of Act XC of 2017 on the Code of Criminal Procedure and section 289 (1) b) and 290 (1) c) of Act CXXX of 2016 on the Code of Civil Procedure.

¹⁹⁵ Sections 91 to 93 of Act CCIV of 2011 on national higher education.

¹⁹⁶ Constitutional Court Decision 4/1993 (II. 12) AB.

Freedom of religion is a fundamental human right based on which people are not only allowed to exercise their religion freely, but they can also spread it freely, provided that doing so does not violate the personality or other rights of others.

The freedom to choose belief cannot be restricted. However, other elements of the fundamental right, i.e. the expression, exercise and teaching of belief can be restricted, observing the requirements of necessity and proportionality, by an Act to promote the implementation of other fundamental rights.

Belief can be expressed orally, in writing or by conduct (e.g. wearing a specific outfit, using religious symbols).

However, data relating to conscientious or religious belief is considered special data, and thus cannot be registered in a state register and can only be processed otherwise subject to the written consent of the data subject. The fact that in neutral state schools different religions and worldviews are presented in a proportionate manner avoiding identification with any of them does not exclude the right of religious communities to present themselves in the form of religious education. The right to teaching belief does not only protect teaching in connection with the education system or in the course of faith-based higher education, but also the right to teach and spread it within a family or a community. Pursuant to the Fundamental Law, the freedom of religion presupposes the neutrality of the state. Historical experience shows that communist states or Islamic fundamentalist states which do not recognise the separation of religion and state cannot be considered neutral from a worldview aspect. However, from among liberal extremist views, blurring the line between religious and cultural neutrality can lead to eroding national cultures.

In Hungary, within the Prime Minister's Office operates the State Secretariat for the Aid of Persecuted Christians and for the Hungary Helps Programme. In Hungary, within the Prime Minister's Office operates the State Secretariat for the Aid of Persecuted Christians and for the Hungary Helps Programme. The migration and refugee crisis directed Europe's attention primarily to the social situation in the Middle East and Africa. Not only the protection of external borders, but also supporting human communities in humanitarian need, and among them, persecuted Christians, and promoting that they stay at their homeland play a crucial role in putting a halt to international migration to the continent of Europe and facilitating sustainable development. An emphatic, but not exclusive, objective of Hungarian international humanitarian policy is the protection of Christians who are

persecuted and whose human dignity has been violated and the promotion of their stay at their homeland and of the long-term persistence of their communities. Within the framework of the Hungary Helps Programme, the State Secretariat offers humanitarian and rehabilitation support to persecuted, excluded Christians in need throughout the world. This support includes, among others, bringing immediate food and medicine donations to those living under the most critical conditions, rebuilding houses, churches, schools and healthcare institutions destroyed by the conflicts and promoting efforts to make a living and to become self-sufficient. Projects designed directly and locally with involvement from local churches and faith-based organisation strengthen not only the supported religious communities, but also other people following other religions who are living with them. In the regions concerned, this often contributes to local interreligious dialogue and reconciliation and to the implementation of the freedom of religion.

6.6 FREEDOM OF EXPRESSION AND INFORMATION

Freedom of expression, as part of freedom of speech, is one of the fundamental human rights. It is a first-generation fundamental right and one of the most extensive rights ensuring that everyone has the right to freely express their thoughts.¹⁹⁷ As regards its roots, it was already present in Roman law, where the people had the right to speech, or in contemporaneous terms, the right to “dissatisfied complaining”. In the hierarchy of fundamental rights, freedom of expression is right below the right to life and the right to human dignity.¹⁹⁸

Regardless of the designation used in specific documents, the freedom of speech and opinion or the freedom of expression can be defined as a fundamental right of communication. According to interpretation by the Hungarian Constitutional Court, this is a “mother right” that gives right to further fundamental rights of communication such as the freedoms of the press, information, science and conscience and religion as well as the right to assembly.¹⁹⁹

The freedom of speech, as the right of an individual to self-expression is of fundamental importance, and also it is indispensable for formulating democratic public opinion in a democratic society. All legal systems afford more protection to political opinions than to others. We can consider these the most safeguarded inner core of freedom of expression.²⁰⁰

With the appearance of written press appeared also the need for freedom of the press as a first-generation political freedom as defence against censorship. However, neither the freedom of expression nor the freedom of the press is an unrestricted fundamental right.²⁰¹

Freedom of the press was already a key part of the 12 points of the Hungarian revolutionaries on 15 March 1848, and it was regulated for the first time in Hungary by Act XVIII of 1848. The freedom of expression has been enshrined in the provisional Constitution following the regime change, which also mentioned the freedoms of speech and the press separately.

Article IX of the Fundamental Law protects the freedoms of expression, the press and information; according to paragraph (1) “Everyone shall have the right to freedom of expression.”

¹⁹⁷ Statement of reasons to the Fundamental Law.

¹⁹⁸ SÓLYOM László: *Az alkotmánybíráskodás kezdetei Magyarországon*, Budapest, Osiris, 2001.

¹⁹⁹ Constitutional Court Decision 30/1992 (V. 26.) AB.

²⁰⁰ KOLTAY András: *A véleménynyilvánítás szabadsága*, in JAKAB András – FEKETE Balázs (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <http://ijoten.hu/szocikk/a-velemenynyilvanitas-szabadsaga> (2018.), [17].

²⁰¹ Statement of reasons to the Fundamental Law.

Based on the right to freedom of expression, everyone has equal rights within statutory bounds to freely express their opinion.

Under the freedom of expression, all opinions, viewpoints, utterances and expressions that fall within the scope of the fundamental right pursuant to the Fundamental Law and other Acts are protected subject to limitations set out by the relevant legislation. An expression or act that does not fall within the scope of freedom of expression is not afforded constitutional fundamental right protection either.²⁰²

Oral, written and printed expressions are equally considered opinion and enjoy freedom of speech protection. Various media programmes and films fall into this category; images and other visually perceptible objects and representations, such as works of arts can be declared as such. Also, texts and colourings in easily removable paint on a portion of a road or the pavement that constitutes public space can be regarded as such.²⁰³

Freedom of expression is directly connected to the freedom of press and the right to inform and be informed. In this regard, freedom of the press is of primary importance, which encompasses the freedom of the media, the right to be informed and also the freedom to receive information.²⁰⁴

Freedom of the press is not referred to as a separate right by Article 10 of the ECHR, but Resolution 1003 of the Parliamentary Assembly of the Council of Europe on the ethics of journalism declared that “The journalist's profession comprises rights and obligations, freedoms and responsibilities.” Pursuant to Article IX (2) of the Fundamental Law, “Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for the free dissemination of information necessary for the formation of democratic public opinion.”

One of the means of the implementation of the obligation relating to the diversity of the media is the requirement of balanced reporting set out in media regulation. Based on authorisation by the Fundamental Law, provisions laid down in cardinal Acts apply to the media, to other media services and also to their supervision. The Act on media services and mass communication (hereinafter the “Media Act”)²⁰⁵ provides for the requirement of balance relating to information and news programmes broadcasted by media services providing information services. The Act established the National Media and

²⁰² Constitutional Court Decision 1/2019. (II. 13.) AB [43] to [45]].

²⁰³ Constitutional Court Decision 1/2019 (II. 13.) AB [43]-[45]].

²⁰⁴ Statement of reasons to the Fundamental Law.

²⁰⁵ Act CLXXXV of 2010 on media services and mass communication.

Infocommunications Authority which is an independent regulatory organ with legislative power.²⁰⁶

The right to free information can be restricted in the interest of another value or fundamental right. The means to this restriction can be civil or even criminal law.²⁰⁷ All opinions that go against public interests meriting protection, public peace, public morality and public health, and in particular the interests of children, are contrary to public interests. In these cases, the aggrieved party is the entire society. In this context, the Acts limiting the freedom of expression and freedom of the press that afford the necessary protection are under sectoral regulation.

The protection of children is a constitutional obligation of the state. Thus, to ensure their proper development, this field needs to be regulated by Acts, since children are very vulnerable to, and are often defenceless against, external impacts due to their age-related characteristics and lack of life experience. The Act on economic advertising activities prohibits publishing an advertisement if it could damage the physical, mental or ethical development of children and juveniles. It prohibits also the publication of advertisements for goods and premium rate telecommunications services relating to pornography, sexual services and sexual stimulation.²⁰⁸ Another Act laying down limitations is the Act on the radio and the television, which, just like the Media Act, specifically prohibits broadcasting programmes that would have profound adverse consequences on the development of the personality of minors. However, it allows for programmes having adverse consequences on the development of the personality of minors to be broadcasted, provided that this fact is indicated by the appropriate symbols.²⁰⁹ Public health restrictions are most likely to be introduced relating to advertisements of commercial products with adverse health effects (cigarette, alcohol).

²⁰⁶ Article 109 of the Media Act.

²⁰⁷ Statement of reasons to the Fundamental Law

²⁰⁸ Section 5 of Act LVIII of 1997 on economic advertising activities.

²⁰⁹ Section 5 of Act I of 1996 on radio and television broadcasting.

The right of correction is a limitation on the freedom of the press that serves the protection of both the right to good reputation and the interest of the audience in having access to true information. Thus, it constitutes a limitation on the constitutional right of the freedom of the press.²¹⁰

Although the Fundamental Law contains no reference to the public service media system, the requirement laid down in Article IX (2) for ensuring “the conditions for the free dissemination of information necessary for the formation of democratic public opinion” implies that its operation is a duty of the state. Section 61 (4) of the provisional Constitution provided for state maintenance for the public service media as a constitutional obligation. According to the findings of the Constitutional Court, the legislator has to establish the organisation of the public service media in a way that it can ensure complete, balanced and accurate information provision.²¹¹ In addition to having a unique cultural mission and having to play a significant role in establishing community cohesion and social integration, the public service media also has to perform a key task in ensuring the constitutional fundamental right to access data of public interest. The constitutional obligation of the state to provide for the continuous and smooth operation of public service media arises from having to ensure the latter fundamental right.²¹²

Pursuant to the Fundamental Law, in the interest of the appropriate provision of information as necessary during the electoral campaign period for the formation of democratic public opinion, political advertisements may only be published in media services free of charge, under the conditions guaranteeing equal opportunities, as laid down in a cardinal Act.²¹³ The objective of the constitutional regulation is to ensure that the appropriate provision of information necessary for the formation of democratic public opinion be independent of financial relations.²¹⁴

The Constitutional Court specified its interpretation of the right to freedom of expression with reference to the freedom of the press. An important element of this interpretation is the principle of “equal distance”, which means the constitutional obligation of the independence

²¹⁰ Constitutional Court Decision 57/2001 (XII. 5.) AB.

²¹¹ Constitutional Court Decision 37/1992 (VI. 10.) AB.

²¹² Constitutional Court Decision 22/1999 (VI. 30.) AB.

²¹³ Article IX (3) of the Fundamental Law.

²¹⁴ Statement of reasons to the Fundamental Law.

of the media from the entire range of factors that could interfere with the content of programmes (such as the state, political parties, social and representative organisations).²¹⁵

The boundaries of the freedoms of opinion and of the press have to be set in accordance with undertaken international law obligations. From among these obligations, Article 10 of the ECHR, Article 11 of the Charter of Fundamental Rights and the case law of the ECtHR safeguarding compliance with them are of key importance.

Any restriction of the freedom of expression has to be based on an external reason, such as the protection of the right of others or a constitutional interest, and the means for such a limitation can be either the civil or the criminal law. The method and form of expression can be restricted if the same content can be freely expressed in another method or in another form. The various possible reasons for restriction are weighed differently when assessing necessity, depending on what they protect. “The laws restricting the freedom of expression are to be assigned a greater weight if they directly serve the realisation or protection of another subjective fundamental right, a lesser weight if they protect such rights only indirectly through the mediation of an “institution”, and the least weight if they merely serve some abstract value as an end in itself (public peace, for instance).”²¹⁶

It is enshrined in the Fundamental Law that the right to freedom of expression may not be exercised with the aim of violating the human dignity of others.²¹⁷

One of the most important areas of the legal protection of human personality is the protection of an external, social perception of a person against unfounded attacks, the protection of good reputation and against defamation. These provisions in the legal system are aimed at preventing the external perception of an individual from being destroyed, primarily by means of false, derogatory statements, by an opinion made public on that person. The protection afforded to personality may be in conflict with the interest in freely disputing public affairs. The legal system has to assess these two aspects when setting the boundaries of freedom of expression.²¹⁸ From a civil law standpoint, violation of good reputation means misrepresenting or reporting untrue facts concerning and offending another person, or misrepresenting true facts. Defamation means expressing an opinion in a way that is capable of adversely affecting society’s perception of another person and is unduly insulting in its

²¹⁵ Az alkalmazott (látható) Alkotmány az Alkotmánybíróság gyakorlatának tükrében, III. 2020., vol. XIX, 10 November and Constitutional Court Decision 165/2011 (XII. 20.) AB.

²¹⁶ Constitutional Court Decision 30/1992 (V. 26.) AB.

²¹⁷ Article IX (4) of the Fundamental Law.

²¹⁸ Constitutional Court Decision 3263/2018 (VII. 20.) AB.

formulation.²¹⁹ Under criminal law, publishing (stating or disseminating) a fact that is capable of harming one's reputation may constitute the criminal offence of defamation. Another provision prohibits the use of expressions that are capable of harming one's reputation. The criminal offence of defamation can only be committed by stating a fact, while the commission of the criminal offence of insult requires expressing an opinion.²²⁰ The personality of public actors is afforded limited protection. The possibility of publicly criticising the activity of bodies and persons fulfilling state and local government tasks, furthermore, the fact, that citizens may participate in political and social processes without uncertainty, compromise and fear is an outstanding constitutional interest.²²¹

The new Civil Code is an important milestone in the protection of the good reputation, and against defamation, of public actors as the legislator set out at a statutory level that the personality rights of public figures are afforded less protection.²²² However, the Civil Code aspires to grant extra protection to the freedom of expression thus ensuring wider possibilities for discussing public affairs, prohibiting, at the same time, as an objective restriction on this broader protection, the publication of opinions violating human dignity.²²³ Accordingly, "degrading expressions effecting the core of the personality of a person exercising public authority that are not related to his or her official activities do not fall into the scope of protection afforded to freedom of expression."²²⁴ Public debates are usually focused around public affairs and not public actors. Statements relating to such issues enjoy enhanced protection due to their nature.

The right to freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities are entitled to enforce their claims in court against the expression of an opinion which violates their community, invoking the violation of their human dignity, as provided for by an Act.²²⁵ In this provision the Fundamental Law, in addition to protecting the human dignity of individuals, lays down the constitutional foundations for using civil or criminal law instruments to sanction certain cases of hateful expression if the dignity of a community is violated.

²¹⁹ Section 2:45 of the Civil Code.

²²⁰ Sections 226 to 227 of the Criminal Code.

²²¹ Constitutional Court Decision 36/1994 (VI. 24.) AB.

²²² Section 2:44 of the Civil Code.

²²³ Constitutional Court Decision 7/2014 (III. 7.) AB.

²²⁴ Constitutional Court Decision 3333/2018 (X. 26.) AB.

²²⁵ Article IX (5) of the Fundamental Law.

In line with previous Constitutional Court practice, according to the statement of reasons to the Fourth Amendment to the Fundamental Law, the legislator considered warranted to lay the groundwork for the statutory protection against statements violating the listed communities with a view to taking effective action against hate speech.

The Criminal Code sanctions incitement to violence or hatred primarily. However, it does not criminalise profanity as it does not violate public peace.²²⁶ Provisions prohibiting incitement to hatred and exclusion are laid down in the Act on the freedom of the press and the fundamental rules on media contents,²²⁷ while for the case of a violation that is “grossly offensive to the community or unduly insulting in its manner of expression” specified in the Civil Code, the relevant rules are set out in the Civil Code²²⁸.

Tolerance towards extremist or offensive opinions can help making democratic debate more effective, but the exercise of the freedom of expression and freedom of the press does not allow the publication of hatred-inciting opinions. These opinions can be banned from democratic publicity.

The objective of the framework decision of the Council of the European Union on combating racism and xenophobia²²⁹ was to standardise at the EU level the prohibition of incitement to violence against communities and their members. Pursuant to the Framework Decision, Member States have to prohibit incitement to violence (and hatred) against communities. The Member States may choose to punish only conduct which is either carried out “in a manner likely to disturb public order” or which is threatening, abusive or insulting. The Framework Decision sets out also that EU Member States have to uniformly prohibit denying crimes against humanity, war crimes and genocides. Holocaust denial, even if it is masked as neutral historic research, still has to be regarded as an anti-democratic ideology and antisemitism.

²²⁶ Sections 332, 335, 333 and 334 of the Criminal Code.

²²⁷ Section 17 (1) and (2) of Act CIV of 2010 on the freedom of the press and the fundamental rules on media content.

²²⁸ Section 2:54 (5) of the Civil Code.

²²⁹ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Freedom of expression is interpreted to include also symbolic acts expressing opinions. The criminal offence of “use of symbols of despotism” as specified in the Criminal Code sanctions persons who disseminate, use in front of a large audience or display in public a swastika, SS insignia, arrow cross, hammer and sickle, five-pointed red star, or any symbol depicting such signs.²³⁰ A person commits “defamation of national symbols” if he or she verbally insults or humiliates or otherwise dishonours the national anthem, flag or coat of arms of Hungary or the Holy Crown in front of a large audience.²³¹ National symbols are the “constitutional symbols of the external and internal integrity” of the state and the country. Accordingly, the symbols of the expression of national sovereignty have to be afforded enhanced protection. Furthermore this rule protects also the dignity of the members of the nation, as the specified symbols, in addition to their above-mentioned official role, are also “tools to express belonging to the nation as a community”.

Taking account of historical circumstances, this dual expression of national identity merits more enhanced protection, as certain acts expressing belonging to the nation were severely restricted, and for certain periods, even forbidden, for decades in the past. The importance of symbols grew after the regime change and this has to be taken into account.²³²

In Hungary, the protection of freedom of expression and the diversity of information are enshrined in the Fundamental Law. The regulation focuses on opinions on public affairs which enjoy wide freedom. However, the protection also covers opinions expressed on private affairs. In line with the principles established in Constitutional Court practice, expressions and acts not falling within the scope of freedom of expression are not afforded constitutional fundamental rights protection. However, those expressions and acts that are protected by that freedom are regarded as “speech” under the law, and the constitutionality of any restrictions on them has to be examined taking account of the content and the nature of the speech. The modern approach and constitutional practice relating to the freedom of expression that emerged in the last decade have led to a seminal change in the Hungarian legal system and, accordingly, to detailed regulation in line with European norms. The freedom of speech and the freedom of the press require not only inactivity, but also activity from the state. The significance of this is clearly demonstrated by the example of the press.

²³⁰ Section 335 of the Criminal Code.

²³¹ Section 334 of the Criminal Code.

²³² Constitutional Court Decision 13/2000 (V. 12.) AB.

While for traditional press, eliminating restrictions and sanctioning violations subsequently were enough, for electronic media, the role of the state is indispensable in allocating available frequency. Public service mass media also requires unique regulation.

Content offered through and available on the internet is generally regarded as “media” – as on-demand media services or press products. Nevertheless, no general, comprehensive internet regulation has been developed since it became widespread. The greatest challenge of our age is whether we will be able to control technology or technology will control our lives. This issue is extremely topical as regards the so-called social media that collects and analysis our data, habits, behaviour, opinion and consumption in order to be able to influence them. The fundamental question is whether we will be able to retain our personal freedom in the digital space. Will we be able to protect ourselves, our children, our family and our loved ones from our lives being obscurely influenced by technology giants? The online/digital space makes us confront challenges relating to, among others, the security of our data, combating incentives to overconsumption and the ability to exert influence of certain market operators in connection with, for example, expressing opinions and accessing information. While becoming key actors in the public sphere, companies controlling social media have also developed their own, independent “quasi-legal system” that is faster and more effective than any other real (state) legal system, but the decisions made through it are not transparent and the operation of these companies is not restricted by the guarantees that apply to states as regards ensuring the freedom of expression. The Ministry of Justice set up the Digital Freedom Committee for this very reason. Its objective is to make transparent the operation of transnational technology companies. Building on the experience of public organs, the Committee examines the wide-ranging challenges and regulations of the online/digital space by subject areas in order to attain the possibility of personal freedom in the digital space with the help of transparency. The Committee's website serves several important purposes. Visitors of the website can share their experience and questions on the subject, and thus have an impact on the activity of the Committee. In addition, the Committee’s thematic sessions can be continuously followed through the website. To this end, the site is updated after each Committee session, thus providing the opportunity to give feedback on the results and findings thereof. As a starting point, a so-called “White Paper” is available on the Committee's website, in which the Ministry of Justice gathered the relevant experience of public organs accumulated so far.

Against the background of state of danger declared due to the coronavirus epidemic, the Government has amended section 337 of the Criminal Code on fearmongering. Previously, two separate criminal offences handled the communication of untrue facts in front of a large audience, threatening with public danger and fearmongering. Threatening with public danger sanctioned communicating untrue facts relating to the occurrence of public danger, while under fearmongering, all communications capable of causing unrest at the site of public danger were punished. The concept of “public danger” forced the hand of the legislator, since in the case of coronavirus, it was unclear whether it resulted in nationwide public danger. Nationwide public danger would have implied that fearmongering could have applied to all untrue acts of communication capable of causing unrest among the people. This would have resulted in a severe restriction on the freedom of speech. Act XII of 2020 on the containment of coronavirus clarified fearmongering and set out that the coronavirus epidemic does not constitute nationwide public danger and instead of the site of public danger, the period of state of danger is the relevant factor. Thus, fearmongering exclusively applies to the period of state of danger declared for the containment of coronavirus. It also declared that not all acts of communication capable of causing unrest are punished, but only those that can be interpreted in the context of containment. Relating to this issue, a constitutional complaint was filed as regards rule of law, clarity of norms, legal certainty, freedom of speech and the implementation of necessity and proportionality. The Constitutional Court dismissed the constitutional complaint with reference to multiple previous decisions on the issue of freedom of speech. In the context of clarity of norms, the Court underlined that it sees no problem at a constitutional level, since the new offence description uses concepts already recognised by criminal law. It also laid down further constitutional requirements for the content of the perpetrator’s consciousness by declaring that the perpetrator has to be aware of stating an untrue fact. Otherwise, the criminal offence cannot be established. The Constitutional Court found the regulation and fundamental right restriction appropriate also as regards necessity and proportionality, since special legal order is a category of necessity at the level of state organisation, and thus constitutes another reason for rights restrictions in such a case.

6.7 FREEDOM OF ART, SCIENCE AND EDUCATION

The freedom of art and science got enshrined at a constitutional level in the first half of the 20th century, together with economic, social and cultural rights. According to the Universal Declaration of Human Rights, everyone has the right to education. The Charter of Fundamental Rights declares that everyone has the right to education and to have access to continuing and vocational training.

Article X (1) of the Fundamental Law lays down that Hungary ensures the freedom of scientific research and artistic creation, the freedom of learning and the freedom of teaching.²³³ By doing so, the framers afford constitutional protection to the freedom of scientific, professional and artistic expression and the freedom of acquiring and transferring knowledge.²³⁴

It is evident that freedom of art is closely connected to cultural rights. Nevertheless, it has more similarities with freedom of expression, which is a first-generation right, than with second-generation rights. The reason for this is that the freedom of science is an aspect of communications rights. The Constitutional Court held that the freedom of expression is the “mother right” of several freedoms, the so-called fundamental rights of communication. These rights include artistic and literary freedoms, the freedom to distribute and disseminate works of art, the freedom of scientific research and the freedom to teach scientific knowledge.²³⁵ As interpreted by the Constitutional Court, the freedom of art as a fundamental right means “the freedom of creative artistic work, which is the self-expression of the artist free from any unauthorised restriction and the freedom to make public, present and disseminate artistic creations.”²³⁶ The Constitutional Court declared that the freedom to create art without any power-based influence, the free expression of opinions as manifested in works of art, and the right to make artistic creations public are all essential elements of this right.²³⁷

On the side of the right holder, the scope of freedom of art matches the scope of freedom of expression, effectively merging into the fundamental right of freedom of expression.

²³³ Article X (1) of the Fundamental Law: Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and, within the framework laid down in an Act, the freedom of teaching.

²³⁴ Statement of reasons to the Fundamental Law.

²³⁵ Constitutional Court Decision 30/1992 (V. 26.) AB.

²³⁶ Constitutional Court Decision 24/1996 (VI. 25.) AB.

²³⁷ Constitutional Court Decision 24/1996 (VI. 25.) AB.

In the practice of the Constitutional Court, artistic expression is a special form of expressing opinions. However, works of art should not extend beyond the scope of freedom of expression; they are still subject to the fundamental rights limitations of freedom of expression.²³⁸

To the right to art, the principle of state neutrality has to apply. In accordance with the constitutional principle of neutrality, all worldviews and systems of values are to be regarded as equal by the state. Accordingly, the implementation of the right to art requires from the state to ensure the diversity of artistic creations and to not to hold any movement or approach exclusive.²³⁹

The Fundamental Law specifically declares that the state has no right to decide on questions of scientific truth and that only scientists have the right to evaluate scientific research.²⁴⁰

The Fundamental Law touches upon also the autonomy of higher education. It lays down that the autonomy of higher education institutions covers primarily the content and the methods of research and teaching. Nevertheless, their organisation is regulated by the state in an Act.²⁴¹ As public higher education institutions are part of the organisational structure of the state and they are funded from the central budget, their management is determined and supervised by the Government.

The Fundamental Law provides for specific guarantees for the free and independent operation of high-priority scientific, artistic and higher education institutions.²⁴² The Fundamental Law specifically mentions the protection of the scientific and artistic freedom of two institutions. The Hungarian Academy of Sciences has been established for the service of science and the cultivation of the Hungarian language. According to the preamble of the Act on the Hungarian Academy of Arts, the Academy has been established “to protect and nurture cultural values, to strengthen the community conditions for high-quality creative work, to protect the freedom of creative work and to show personal appreciation to the excellent representatives of the Hungarian art scene.” In addition to the above, the state operates a complex, multi-element system of institutions to support art, including the National Cultural Fund for the promotion of artistic and literary creations and the Hungarian National Film Fund for cinematography.²⁴³

Setting up the Eötvös Loránd Research Network opened up new opportunities for the

²³⁸ KOLTAY András: A művészet szabadsága: a nem létező alapjog, Pázmány Law Working Papers 2016/4.

²³⁹ Constitutional Court Decision 18/2014 (V. 30.) AB.

²⁴⁰ Article X (2) of the Fundamental Law.

²⁴¹ Article X (3) of the Fundamental Law.

²⁴² Statement of reasons to the Fundamental Law.

²⁴³ KOLTAY András: A művészet szabadsága: a nem létező alapjog, Pázmány Law Working Papers 2016/4.

operation of the biggest Hungarian fundamental research network:

By establishing the Eötvös Loránd Research Network and specifying adequate guarantees and responsibilities, the Hungarian Government aims at creating a more functional and independent organisation. These guarantees and responsibilities are the following:

The research network is attached to the National Assembly and not to the Government; thus, as regard independence, it enjoys the same status as the Hungarian Academy of Sciences.

Its funding is under a separate budget line. This means that it is included separately in the Hungarian state budget and not under the budget line of a Ministry or the Hungarian Academy of Sciences. In the past two years, the budget of the Eötvös Loránd Research Network has seen a steady increase.

Its Managing Body consists of 13 members, 6 of which are proposed by the Hungarian Academy of Sciences, another 6 by the Ministry for Innovation and Technology, while on the president, the President of the Academy and the Minister in charge of the Ministry for Innovation and Technology are to make a consensual proposal. The members and the president are appointed for 5 years by the Prime Minister.

According to the Act, at least two thirds of the members need to be elected from among the practitioners of science to ensure that the scientific perspective is taken into account when making decisions.

To guarantee wide professional and scientific publicity, the Managing Body is assisted by the Scientific Council and the International Advisory Board, the latter consisting of only foreign scientists. These bodies do not exist in this form in the structure of the Hungarian Academy of Sciences.

Right to education

The right to education is a cultural right, and thus, a second-generation right. At an international level, it was the Universal Declaration of Human Rights that declared that everyone has the right to education. Education has to be compulsory and free in the elementary and fundamental stages. It also stated that higher education has to be equally accessible to all on the basis of merit.

The International Covenant on Economic, Social and Cultural Rights also specifies the “principle of compulsory education”, according to which everyone has the right to education and primary education has to be made compulsory and available free to all.²⁴⁴

The Charter of Fundamental Rights mentions the right of parents to ensure the education and teaching of their children in conformity with their philosophical and religious convictions.

The Fundamental Law declares that all Hungarian citizens have the right to education.²⁴⁵

According to the reasoning, this is a fundamental requirement for the development of personality and for becoming an informed and responsible citizen.²⁴⁶ The right to education has multiple elements: extending and generalising community culture on the one hand, and the right to education on the other.

As regards extending and generalising community culture, the Fundamental Law lays down an obligation for the state to ensure free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and to provide financial support as provided for by an Act to those receiving education.²⁴⁷

In terms of the right to education, we have to distinguish between the right to learning and the right to teaching. The former is discussed in the context of the right to education, while the latter is usually considered a part of the freedom of science and art. Compulsory education within the meaning of Article XI of the Fundamental Law is completed by Article XVI (3) obliging parents to provide schooling for their minor children. Thus, taking part in education is “not only a right, but [...] is also set out as an obligation for the parents to provide schooling for the child.”²⁴⁸

As regards the right to higher education, the Constitutional Court held that it is the obligation of the state to ensure the structural and legislative conditions for the exercise of this right. This, however, does not entail a subjective right for everyone to study in the higher education institution of his own choosing. In the field of higher education, the right to education is implemented if it is accessible to everyone according to his or her abilities, and if financial support is provided to those receiving education.²⁴⁹ The extent of financial support is limited by the budget capacity of the state. Accordingly, based on previous constitutional rules, the

²⁴⁴ Article 13 of the International Covenant on Economic, Social and Cultural Rights

²⁴⁵ Article XI (1) of the Fundamental Law.

²⁴⁶ Statement of reasons to the Fundamental Law.

²⁴⁷ Article XI (2) of the Fundamental Law.

²⁴⁸ Constitutional Court Decision 214/B/2003 AB.

²⁴⁹ Constitutional Court Decision 32/2012. (VII. 4.) AB.

Constitutional Court also declared that the state may prescribe an obligation to pay contribution to educational costs or a tuition fee for those participating in higher education.²⁵⁰ However, the state is required to ensure equal opportunities to persons with the same abilities. Thus, it may not make participating in education impossible for persons with the adequate capacities.²⁵¹

For the right to education with financial support by the state to contribute to not only personal development, but also to the performance of community tasks under Article O) of the Fundamental Law, Article XI (3) allows for financial support for participation in higher education to be subject to certain conditions. Under the Fundamental Law this means that financial support may be made conditional upon a specific period in employment or performing entrepreneurial activities.²⁵²

Student statements

Based on the provisions of the Universal Declaration of Human Rights, higher education has to be made accessible to everyone under equal conditions and according to their abilities. But there are no international law provisions stating that equality has to be ensured by making higher education accessible free of charge. Paying a tuition fee in higher education institutions is mandatory for everyone in many EU Member States. The majority of public opinion interpreted the legislative provision relating to study contracts, which gained press notoriety as the “tying to the soil” provision, as a restriction of freedom of movement and work. However, entering into that contract is the result of a voluntary decision and allows for the retrospective payment of tuition fee. Paying the fee exempts the student from the obligation to work in Hungary.

Student rights

The UN Convention on the Rights of the Child²⁵³ is the most widely ratified collection of children rights, its fundamental principles have been agreed upon by all signatory states without reservations. The Hungarian State undertook to mobilise all available tools, procedures, institutions and resources for the enforcement of the rights enshrined in the Convention.

²⁵⁰ Constitutional Court Decision 79/1995 (XII. 21.) AB.

²⁵¹ Constitutional Court Decision 28/2005 (VII. 14.) AB.

²⁵² Article XI (3) of the Fundamental Law.

²⁵³ Act LXIV of 1991 promulgating the Convention on the Rights of the Child adopted in New York on 20 November 1989.

Article 12 of the Convention declares that the states have to “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

It is very important for the child to have the right to influence not only private matters, but also community decisions affecting a larger group of children.

In Hungary, children participate in education from the age of 6 until the age of at least 16, but their majority completes secondary education by the age of 18 to 19.

In our country, the students’ freedom of expression is implemented at every level from primary school to higher education, regardless of whether the topic is of nation-wide importance or only affects a single class.

As regards topics of nation-wide importance, legislation directly or indirectly influencing the life of children and the youth needs to be mentioned. Naturally, everyone, including students, has the right to express his or her opinion on upcoming legislation. For participation to be relevant and for taking meaningful account of the opinion of children, legitimate procedures are required, in the course of which the opinion of the students can be developed.

The Act on national public upbringing provides for convening, every two years, the Student Parliament on a proposal from the students. The objective of the Student Parliament is to draw up a recommendation on implementing and improving the effectiveness of student rights for the decision makers in charge of education. In line with the objectives of the Convention on the Rights of the Child, this Student Parliament model provides an opportunity for ensuring meaningful participation in democratic decision making for children and for representing their opinions and interests. The publication titled *Diákönkormányzati Kisokos* (Guide to Student Parliament) was written and made publicly available on the website for students to better familiarise themselves with their rights and obligations relating to education and so they can effectively rely on these rights and obligations in the pursuit of their interests.²⁵⁴

²⁵⁴ https://www.oktatas.hu/koznevelés/orszagos_diaktanacs/kisokos

6.8 FREEDOM OF MOVEMENT AND RESIDENCE, RIGHT TO ASYLUM

Freedom of movement is a personal right and means free movement within the territory of the country, the freedom to choose residence or place of stay, the freedom of settlement, and the right to leave the territory of the country and to return to it. To the latter, only Hungarian citizens are entitled without restrictions.²⁵⁵ The implementation of these rights within one country is connected to the formation of modern nation states. Two of the important characteristics of such states are the registration of citizens and the regulation of their movement, especially with regard to crossing the newly established borders.²⁵⁶

The right of a citizen to leave and return to a country does not constitute a right to enter another country. This possibility is not part of the freedom of movement according to its constitutional approach.²⁵⁷ To allow or prohibit entry to the country is one of the most important aspects of state sovereignty.

For EU Member States, the Charter of Fundamental Rights provides for the freedom of movement and of residence within the chapter on citizens' rights. It states that every citizen of the Union has the right to move and reside freely within the territory of the Member States.²⁵⁸

To this, the Charter adds the possibility for Member States to grant, in accordance with EU Treaties, freedom of movement and residence to nationals of third countries legally resident in the territory of a Member State.²⁵⁹ Accordingly, under this provision, the freedom of movement and residence within the territory of Member States can be granted only to third-country nationals lawfully residing there, and only in line with the EU Treaties.

According to the generally accepted perception of the freedom of movement and of residence, they are linked to the citizenship of the person concerned. Thus, a citizen of a state has the right to enter the territory of the state of his or her citizenship without further conditions, and his or her stay there is considered lawful.

Hungary ensures, as a fundamental right, the right to move freely and the right to freely choose residence not only to its citizens, but to everyone residing lawfully in the territory of Hungary.²⁶⁰ In this context, "everyone" means that the Fundamental Law does not link the

²⁵⁵ PAP András László: *Mozgásszabadság*, in LAMM Vanda (ed.): *Emberi Jogi Enciklopédia*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 496.

²⁵⁶ PAP András László: *op. cit.*, p. 495-496.

²⁵⁷ PAP András László: *op. cit.*, p. 497.

²⁵⁸ Article 45 (1) of the Charter of Fundamental Rights.

²⁵⁹ Article 45 (2) of the Charter of Fundamental Rights.

²⁶⁰ Article XXVII (1) of the Fundamental Law.

freedom of movement to citizenship, or even “Union citizenship”. However, it requires that the person wishing to exercise the freedom of movement reside lawfully in the territory of the country. This provision is in line with the provisions of the Charter of Fundamental Rights, which set legality as a condition for exercising the right to move and reside freely.

The right to leaving the country also constitutes a part of the freedom of movement and of residence as a fundamental right. In this respect, the Fundamental Law declares that every Hungarian citizen has the right to enjoy the protection of Hungary during his or her stay abroad²⁶¹. Essentially, this provision ensures the right to consular protection and is to be interpreted in line with international law obligations.²⁶²

Thus, the unalienable right to the admission of foreign persons into the territory of the state constitutes an integral part of state sovereignty.²⁶³ The freedom of movement and of residence does not imply the right to enter or reside in the territory of a state. The questions of migration, migration law²⁶⁴ and, as a special area of the latter, refugee law are usually discussed in connection with this fundamental right. Even though migration affects every country in one way or another, the related international law regime is incomplete. There are no detailed rules on the entry, stay, legal status and expulsion of foreign persons.²⁶⁵

The rights of refugees and the fundamental international law rules of refugee law are laid down in the UN Convention relating to the Status of Refugees (hereinafter “the Geneva Convention”) and the Additional Protocol to it, which are part of also the Hungarian legal system.²⁶⁶

The importance of the right to asylum and the Geneva Convention are demonstrated by the fact that under Article 18 of the Charter of Fundamental Rights, the right to asylum has to be guaranteed with due respect for the Geneva Convention and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union. Hungary is a party to the Geneva Convention; therefore, the Seventh Amendment to the Fundamental Law set out the rights of refugees on the basis of the protection of national sovereignty.

²⁶¹ Article XXVII (2) of the Fundamental Law.

²⁶² Statement of reasons to the Fundamental Law.

²⁶³ Statement of reasons to Seventh Amendment to the Fundamental Law.

²⁶⁴ For the purpose of this and any subsequent parts, this word or phrase is to be construed to mean only movement between countries.

²⁶⁵ MOLNÁR Tamás: A migráció nemzetközi jogi szabályozása, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SULYOK Gábor (eds.): *Internetes Jogtudományi Enciklopédia* (section Nemzetközi jog, section editor: SULYOK Gábor) <http://ijoten.hu/szocikk/a-migracio-nemzetkozi-jogi-szabalyozasa> (2019). [7].

²⁶⁶ Law-Decree 15 of 1989 promulgating the convention relating to the status of refugees adopted on 28 July 1951 and the protocol relating to the status of refugees done on 31 January 1967.

Article XIV (1) of the Fundamental Law lays down the prohibition of settling a foreign population in the territory of Hungary; foreign national are allowed to live in the territory of Hungary only under an application individually examined by the Hungarian authorities. In doing so, Hungary grants constitutional protection to the principle recognised by customary international law and supported also by state practice, according to which setting out conditions for admission of aliens into the territory of a state falls under the sovereignty of the state concerned.²⁶⁷

In accordance with the Geneva Convention, the Fundamental Law grants asylum upon request to eligible foreign nationals. However, based on Article 31 (1) of the Geneva Convention, Article XIV (4) of the Fundamental Law makes it clear that only those who arrive into our country directly from a territory where they are persecuted within the meaning of the Geneva Convention, or their fear of such persecution is well-founded, are entitled to asylum as a fundamental right in Hungary. For every other person who arrives in the territory of Hungary through a country where he or she was not persecuted within the meaning of the Geneva Convention or was not directly threatened with such persecution, it is the discretionary right of the National Assembly to decide whether to grant them asylum or any other similar protection, and if yes, under what substantive law conditions and procedural rules. According to the reasoning of the Seventh Amendment to the Fundamental Law, the substantive law provisions on granting asylum have to be enshrined in a cardinal Act. However, this does not apply to the entirety of asylum and aliens policing legislation.

In line with Article 19 of the Charter of Fundamental Rights, the Fundamental Law prohibits collective expulsion and lays down that foreigners residing in the territory of Hungary can only be expelled under a lawful decision. In the context of expulsion, the Fundamental Law declares that Hungarian nationals are not to be expelled from the territory of Hungary and are allowed to return from abroad at any time.²⁶⁸

²⁶⁷ Statement of reasons to Article 5 of the Seventh Amendment to the Fundamental Law.

²⁶⁸ Article XIV (2) of the Fundamental Law.

6.9 FREEDOM OF ASSEMBLY AND OF ASSOCIATION

The transformations in politics, community life and society in the 19th century have created the conditions for the emergence of the rights to freedom of assembly and association as parts of political fundamental rights in the modern sense by being expressly enshrined in writing. In this regard, the Belgian Constitution of 1831 is worth mentioning as the first document to expressly mention and protect both the right of assembly and the right of association in Europe.²⁶⁹

The freedoms of assembly and the right of association have been elevated into the international human rights catalogue by the Universal Declaration of Human Rights, particularly dealt with in Article 20. This instrument, adopted in 1948, is not binding; however, as part of general customary law, most of its provisions became legally binding.²⁷⁰

The ECHR was adopted in 1950 under the auspices of the Council of Europe. According to Article 11 of the ECHR, everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Joint feature of the rights of assembly and association is that their holders are the individuals or natural persons (the holder of the right of association can be also a legal person and an association of persons or another organisation not having legal personality), and in fact, they are exercised jointly, collectively. This attribute does not, however, make these fundamental rights collective rights.

Essential elements for both fundamental rights are, on the one hand, the freedom to organise an assembly or an association, and, on the other hand, that joining or leaving an assembly or an association must be exclusively subject to the choice of the person who wishes to join or leave the assembly or association.

In the most general terms, the right to freedom of assembly basically refers to the right of individuals, that is, natural persons, to come together peacefully. The exercise of this right can be restricted only for reasons provided in the law. Restrictions are only allowed if they are justified on grounds of national security, public policy, public safety, public health, public morality, or the protection of the rights and freedoms of others.

²⁶⁹ HAJAS Barnabás: Egyesülési jog, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 109.

²⁷⁰ LAMM Vanda: Emberi Jogok Egyetemes Nyilatkozata, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 158.

It is a generally acknowledged requirement for the exercise of the right of assembly that essentially, it must be peaceful. An unpeaceful assembly or one that triggers violent acts cannot be given protection by law. In this context, the state and public bodies are responsible for not only “tolerating”, without interfering, the exercise of this right, but also actively providing assistance with a view to ensuring the peaceful nature of an assembly.²⁷¹

An important means to ensure the peaceful nature of an assembly are prior notification and, in relation to it, an agreement, entered into between the organisers and the competent authorities, on possible prior restrictions. Prior notification requirement does not constitute a restriction of the right of assembly. The lack of prior notification does not make an assembly unlawful, and must not be the sole reason for dispersal or for imposing sanctions on those who participate in the assembly.

The right to freedom of association is a first-generation fundamental right under which natural persons, legal persons and organisations not having legal personality may, by expressing their voluntary and concordant intention to that end, and to achieve their common objectives, establish an organisation which exists separately from its members and on a stable basis, and has its own organisation, representation and assets, which it can use in order to achieve its goals.²⁷²

Act CLXXV of 2011 on the freedom of association, on public-benefit status, and on the activities of and support for non-governmental organisations that entered into force in December 2011 consolidates the fundamental provisions on civil society. It established, among others, the national network of civil community service centres and the National Cooperation Fund, which supports the operation and professional activities of non-governmental organisations. Within the meaning of the Act, civil companies, associations registered in Hungary and foundations are non-governmental organisations.

The activities of an organisation established under the right of association must not be aimed at achieving an objective which adversely affects the rights and freedom of others. The rights protected by this restriction are, in essence, the same as those which constitute a limitation to the right of assembly. Another restriction is that it is forbidden for these organisations to carry

²⁷¹ SALÁT Orsolya: Gyülekezési jog, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 346.

²⁷² Act CLXXV of 2011 on the right of association, the public-benefit status and the operation of and support to non-governmental organisations.

out activities in the exercise of public authority and they cannot be intended to change the constitutional order.

It follows from the state's claim to a monopoly on violence and the fact that exclusively law enforcement bodies are authorised to use force, that the right of association does not extend to setting up an armed organisation.

Compliance with the rules on limitation of the right of association is monitored by the state and its competent bodies, both at the time of the establishment of the organisation concerned and during its operation. As regards the free choice of the association's objectives, such monitoring may relate only to compliance with the restrictions. If the restrictions are complied with and the objective conditions for foundation and, if required for the organisation's foundation, for registration are met, then it must be established, regardless of what the chosen objective is intended for, that the organisation is created. The state is entitled and obliged to monitor the operation of organisations created under the right of association, to avoid, in the first place, any impairment of the rights of others.

The right of association provides a sufficient basis for promoting the exercise of other political rights and the participation in political, public or social activities, and specific forms have been created to this end.

Association is the most often formed organisation under the right of association. In the Hungarian legal system, associations are governed by the rules of civil law.

A political party is an association formed with the particular aim of participating in political life and acquiring and exercising political power. Political parties may be subjected to specific rules in order to promote their participation in political life and elections.

The right of association extends to forming religious associations, thus, this right provides a framework for exercising the fundamental right to freedom of thought, conscience and religion.

Also trade unions, as specific organisations formed and operating for the purpose of interest representation, are established under the right of association.

Article VIII of the Fundamental Law contains the fundamental provisions on the rights of assembly and association.

As regards the right of assembly, the Fundamental Law provides that everyone has the right to peaceful assembly.

These basic provisions are fleshed out in the Act on the right of assembly, which contains detailed rules on the exercise and restriction of the right of assembly.

The Fundamental Law's provision declaring that everyone has the right to peaceful assembly appears in the Act on the right of assembly as the right to participate in a public assembly. As regards the organisers of an assembly, the Act introduced a restriction in as much as they must be Hungarian citizens, persons who have the right of free movement and residence, or who are granted an immigrant status, a permanent resident status or a residence permit, or legal persons or other organisations in Hungary, provided that their statutory representative meets these criteria.²⁷³

Maintaining the peaceful nature of an assembly is a shared responsibility and duty of the organiser, the stewards led by the organiser, and the police. The police are especially responsible for carrying out appropriate measures for the purpose of preventing third persons from disturbing the assembly. Based on experience with the exercise of the right of assembly, the Act expressly provides that in organising and holding an assembly, the organisers, the leader of the assembly, and the police are required to cooperate with each other and exercise their rights in good faith and appropriately.

With a view to maintaining its peaceful nature, attending an assembly is prohibited for persons carrying, for example, a firearm, ammunition, explosives, detonating equipment, an instrument capable of causing death, personal injury or serious material damage, or wearing paramilitary or similar clothing conveying violence or having an intimidating character.

Organisers of a public assembly to be held in public space are required to notify the holding of the assembly to the competent police headquarters not earlier than three months before holding it and not later than 48 hours before the announcement. The Act lays down detailed rules for the notification procedure, and lists the possible grounds for prohibiting an assembly, including those serving for the protection of the memory of the victims of national socialist and communist regimes.

The Act also provides for the rules on the dissolution of an assembly and, finally, lays down specific rules for the compensation of damage caused by the assembly.

According to the Fundamental Law, everyone has the right to establish and join organisations.²⁷⁴

Two types of organisations that can be formed on the basis of the right of association are specifically spelled out in the Fundamental Law, namely, on the one hand, political parties, and on the other hand, trade unions and other interest representation organisations. Political

²⁷³ Act LV of 2018 on the right of assembly.

²⁷⁴ Article VIII (2) of the Fundamental Law.

parties participate in the formation and expression of the will of the people, but they are not allowed to exercise public power. The detailed rules for their operation and management are laid down in a cardinal Act.

Two separate Acts regulate the rules governing the establishment, operation, management and financing of organisations that can be formed under the right of association, as well as their court registration.²⁷⁵

The way in which the right of association is regulated allows natural persons to establish a community that has no registered membership, does not operate regularly, and does not have an organisation separate from its members. Such an association of persons may also operate freely on the basis of the right of association provided for in the Fundamental Law. If the founders wish, however, to form an association in a manner regulated by the law, registration with the court cannot be dispensed with. Organisations established under the right of association come into existence and acquire legal personality by means of registration, an act of public authority, upon which their operation is conditional.²⁷⁶

Linked to the rights of assembly and association, the right of petition is the simplest means of asserting rights; however, it cannot be perceived as replacement for any other official way. The right of petition is meant to refer to a request or complaint that can be addressed to a public body or a municipality in the most common form, either on the basis of individual interests or of a violation of the public interest.²⁷⁷

In accordance with international law and practice, the Fundamental Law of Hungary guarantees the exercise of the right of petition at the level of fundamental rights and regulates it in detail. According to the Fundamental Law, everyone has the right, alone or jointly with others, to submit a request, complaint or proposal in writing to any organ exercising public authority.²⁷⁸ The rules on the exercise of the right of petition and the handling of such petitions are governed by a separate Act.²⁷⁹

²⁷⁵ Act CLXXV of 2011 on the freedom of association, on public-benefit status, and on the activities of and support for non-governmental organisations, and Act CLXXXI of 2011 on the court registration of non-governmental organisations and related procedural rules.

²⁷⁶ HAJAS Barnabás: Egyesülési jog, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 115.

²⁷⁷ BÓDI Stefánia: Petíciós jog, in JAKAB András – FEKETE Balázs (eds.) Internetes Jogtudományi Enciklopédia (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András). <http://ijoten.hu/szocikk/peticios-jog> (2018) [1]-[2]

²⁷⁸ Article XXV of the Fundamental Law.

²⁷⁹ Act CLXV of 2013 on complaints and public interest disclosures.

6.10 RIGHT TO A FAIR TRIAL

The right to a fair trial is enshrined in the Fundamental Law in line with human rights instruments and the former Hungarian Constitution, but the obligation to conduct administrative proceedings fairly and to pay compensation for unlawfully caused damages is laid down in a separate Article, in accordance with the Charter of Fundamental Rights. This right, as set out in the Charter of Fundamental Rights, includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, to have access to his or her file and the obligation of the administration to give reasons for its decisions. These principles are linked to the concept of good administration and to the common European principles of administrative procedure. The requirements related to the latter were laid down in the resolution adopted in 1977 by the Committee of Ministers of the Council of Europe, which explicitly specifies also the obligation of the administrative organ to provide a statement of reasons.²⁸⁰

The right to fair trial has to be interpreted broadly, since it is not only the trial that has to be fair, but the entire proceeding. “Fair trial” is a quality that can only be assessed taking account of the entirety and circumstances of the proceeding. A proceeding can be inequitable, unjust or unfair if some elements are missing, but even if all detailed rules are observed.²⁸¹ The right to fair trial is an absolute right, which means that it cannot be restricted based on any constitutional right or value.

An important part of the right to fair trial that is not specified in the Fundamental Law is the equality of arms, which is aimed at ensuring that both the prosecution and the defence have equal opportunities to influence the opinion on questions of both fact and law. Equality of arms does not mean that the prosecution and the defence have the exact same rights, but only that their rights have to be given the same weight. Equality of arms does not in all cases mean that the rights of the prosecution and the defence are completely identical; it however certainly requires that the rights of the defence are comparable to those of the prosecution. One of the conditions for equality of arms, and also its most well-developed aspect in the case law of international organisations, is that the parties are present in person during procedural acts and that neutrality of certain participants, such as experts, is maintained. The other

²⁸⁰ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

²⁸¹ Constitutional Court Decision 6/1998 (III. 11.) AB.

condition is that the prosecution, the defendant and the defence council have access to data relevant to the case in the same detail and depth.

This is where the principle of fair trial is linked to the requirements of the effectiveness of the right to defence and the need to allow adequate time and facilities for the preparation of the defence.²⁸²

The requirement of fair administration entails more than simple compliance with legislation, but the latter is necessarily a prerequisite for the former. But fair trial means even more than that, for example, in addition to following written procedural principles, it also extends to the provisions on courteous administration and is closely linked to the requirement of making a decision within a reasonable time. For administrative proceedings, the administrative time limits are laid down by law. However, according to the principle of fair administration, this is not the same as an obligation on the authority to wait, in all cases, until the time limit is reached, since the law provides for only an end date. It is important to note, that the majority of cases before international human rights organisations is launched on the basis of the requirement of the reasonable duration of proceedings. Another requirement is the obligation on authorities to state the reasons for their decisions, as a well-structured decision allows for the parties to a proceeding to learn about the reasons behind it. Specific rules on the obligation to state reasons are laid down in procedural Acts.²⁸³ The Constitutional Court holds that the right to fair administration and the right to fair court proceedings constitute the requirement for fair trial.²⁸⁴

The right to access to the court is based on Article XXVIII (1) of the Fundamental Law, which lays down an obligation on the state to ensure that judicial channels are available for the adjudication of legal disputes.²⁸⁵ However, this is not an absolute right any more, it can only be implemented within the limits set by the principle of legal certainty as an element of rule of law. “As regards the possibility for judicial review of company resolutions, the general requirement of legal certainty manifests itself in certain priority objectives of company law, such as trade security and creditor protection. And if in one of the key areas of economic law, rule of law is implemented through these two requirements, setting a time limit for the

²⁸² Constitutional Court Decision 6/1998 (III. 11.) AB.

²⁸³ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

²⁸⁴ Constitutional Court Decisions 3115/2013 (VI. 4), 7/2013 (III. 1.) AB and 22/2013 (VII. 19.) AB.

²⁸⁵ Constitutional Court Decision 59/1993 (XI. 29.) AB.

exercise of the right to bring legal action cannot be deemed unnecessary or disproportionate.”²⁸⁶

Pursuant to Article XXVIII (2), no one can be considered guilty until his or her criminal liability has been established by the final and binding decision of a court.

As to its origin, this provision, which provides for the presumption of innocence, was originally related to criminal proceedings, and more precisely, to their judicial phase. It included the right of defence and the right to choose defence counsel. At present, however, it has to be extended to other types of procedure, similarly to the requirement of fair trial. It follows from this principle that the authority proceeding in a criminal case is responsible for proving guilt.²⁸⁷

In relation to the above, the Fundamental Law specifies in paragraph (3) the right to defence, which is a classic fundamental right in criminal proceedings. The right to defence at all stages of the procedure includes the right of defence and the right to choose defence counsel. The conditions for its implementation and its compulsory cases are laid down by criminal procedure rules. The right to defence is realised in the rights of the person subject to criminal proceeding and the obligations of the authorities that ensure that the person subject to criminal proceeding can familiarise him- or herself with the claim for punishment brought against him or her, voice his or her opinion on it, present his or her arguments against such a claim, submit his or her observations and motions relating to the work of the authorities and enlist the services of a defence counsel. The procedural rights of the defence counsel and the obligations of the authorities that enable the defence counsel to act in the defence of another person constitute the substance of the right to defence.²⁸⁸

The principles of *nullum crimen sine lege* and *nulla poena sine lege* are enshrined in Article XXVIII (4) of the Fundamental Law. These rank among the probably most ancient principles of criminal law and lay down the prohibition of retroactive criminal legislation. Accordingly, only those acts are considered criminal offences that are prohibited in an Act by the state and are threatened by punishment under an Act. An act can constitute a criminal offence if it had been declared as such by an Act before it was committed. Furthermore, only a punishment that was prescribed by an Act at the time of commission can be imposed on the perpetrator of a criminal offence. In addition, these principles require that both establishing guilt and sentencing be lawful.

²⁸⁶ Constitutional Court Decision 935/B/1997 AB.

²⁸⁷ Constitutional Court Decision 793/B/1997 AB.

²⁸⁸ Constitutional Court Decision 11/2007 (III. 7.) AB, Reasoning [25]-[26]].

Paragraph (5) of the same Article grants exemption to crimes qualifying as such according to the generally recognised rules of international law. In the case of such offences, the generally recognised rules and principles of international law and the rules of humanity prevail over the law of the state.

The principle of *ne bis in idem* enshrined in Article XXVIII (6) of the Fundamental Law lays down the prohibition of double adjudication and double prosecution as regards both Hungarian and international law.

The Constitution did not specify as a constitutional rule the prohibition of double prosecution and double sanctioning, but the Constitutional Court held, as early as in Constitutional Court Decision 42/1993 (VI. 30.) AB, that the principle of *ne bis in idem* is of constitutional importance and limits the right of the state to punish criminal offences.²⁸⁹ Even following the entry into force of the Fundamental Law, the Constitutional Court maintained its interpretation and declared that the principle of *ne bis in idem* is “on the one hand, a fundamental right provision against the abuse of the right of the state to punish criminal offences and, on the other hand, a rule facilitating the implementation of rule of law, since it ensures that substantive court decisions are definitive.”²⁹⁰

The universal right to seek legal remedy²⁹¹ can take many forms. For substantive decisions, it means the possibility to turn to another organ or to a higher forum of the same organ. It does not necessarily entail the right to turn to a court.²⁹² Pursuant to the consistent practice of the Constitutional Court, the right to legal remedy includes the use of only ordinary legal remedies, but not extraordinary legal remedies.²⁹³

As a guarantee, the Fundamental Law imposes an obligation on courts to take decisions within a reasonable time. This rule makes the provisions of Article 6 ECHR and the earlier practice of the Constitutional Court part of the legislation. Time limits are elements of legally regulated procedures that generally require proceedings, and in particular, certain procedural acts, to be carried out and certain rights to be exercised and obligations to be performed within a reasonable time. They prevent the proceedings from being continued indefinitely, and ensure, *inter alia*, the possibility of exercising fundamental rights.²⁹⁴ Unfair

²⁸⁹ Constitutional Court Decision 42/2005 (XI. 14.) AB 306.

²⁹⁰ Constitutional Court Decision 33/2013 (XI: 22.) AB, Reasoning [19]].

²⁹¹ Article XXVIII (7) of the Fundamental Law.

²⁹² Constitutional Court Decision 5/1992 (I. 30.) AB.

²⁹³ Constitutional Court Decision 9/2013 (III: 6.) AB, Reasoning [28]; and Constitutional Court Decision 20/2015 (VI. 16.) AB, Reasoning [16]].

²⁹⁴ Constitutional Court Decision 23/2005 (VI. 17.) AB.

administration²⁹⁵ can even cause material damage to parties to a proceeding, for which the authority is liable to pay compensation. Detailed substantive law rules and conditions are laid down in the Civil Code pursuant to the provisions on compensation for damages caused by exercising public administrative powers or, for other authorities, along their lines. Providing for an obligation on the authorities to pay compensation for damages is a new element in Hungarian legal system.²⁹⁶

The requirement of adjudicating cases within a reasonable time is connected to efficiency requirements laid down in procedural codes²⁹⁷ that, however, cannot compromise the implementation of other fundamental rights or procedural principles.²⁹⁸

The digitalisation of justice

In 2012, the president of the National Office for the Judiciary put forward strategic objectives. Digitalisation and the development of the IT systems of courts were among their key priorities.²⁹⁹ This influenced numerous areas such as the modernisation of technical means and software development. The Hungarian legislator was prepared for this progress. It took account of the digitalisation of justice when codifying the procedural rules and aspired to lay the foundations for the widest possible use of IT means, but considered implementing to the full the right to fair trial an equally important goal.

The most comprehensive regulation can be found in Act CCXXII of 2015 on the general rules on electronic administration and trust services (hereinafter the “Electronic Administration Act”). In its preamble, it set the objectives of “facilitating the wide uptake of electronic administration, accelerating procedures, easing administrative burdens, facilitating the use of electronic means in private law relationships and legal relationships between the State and citizens, ensuring cooperation between electronic administration organs, and facilitating the provision of modern and more efficient public services to citizens”. More

²⁹⁵ Article XXIV (2) of the Fundamental Law.

²⁹⁶ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

²⁹⁷ Act CXXX of 2016 on the Code of Civil Procedure, Act I of 2017 on the Code of Administrative Court Procedure and Act XC of 2017 on the Code of Criminal Procedure.

²⁹⁸ For example the provision of Act CXXX of 2016 on the Code of Civil Procedure on the principle of concentration of proceedings (section 3), and for ensuring its implementation, the principle of the court’s duty to manage the case (section 6).

²⁹⁹ Annual report of the President of the National Office for the Judiciary 2012, p. 115-119, https://birosag.hu/sites/default/files/2018-09/2012_eves_beszamolo.pdf

detailed rules are laid down in the Electronic Administration Act, the individual procedural Acts, the rules on judicial case management and the relevant implementing decrees.³⁰⁰

The Act on the Code of Civil Procedure (hereinafter the “Code of Civil Procedure”),³⁰¹ which entered into force on 1 January 2018, contributed to adjudicating civil law disputes on the basis of the principle of fair trial. The divided structure of court actions introduced by the Code of Civil Procedure divides first-instance proceedings into two parts as regards both time and function, thus ensuring the parties that the proceedings advance in a more foreseeable, predictable and dependable manner.

The preparation of the court action and the definition of the scope of the legal dispute take place during the first phase of the proceeding, the so-called preparatory stage. After its completion, the taking of evidence continues in the defined scope during the main hearing stage. Dividing the court action into phases promotes the efficiency of court actions. The provisions of the Code of Civil Procedure foster the procedural responsibility of the parties, ensure the wide exercise of their right of disposal, and prescribe more active case management for the court when it comes to clarifying the scope of the legal dispute and also during the main hearing. For setting out the new rules on second-instance proceedings, significantly reducing the number of judgments set aside and establishing a regulation that encourages courts of appeal to decide on the merits of the case were key considerations. If certain conditions are met, the Code of Civil Procedure permits retrial on the basis of a judgment by the ECtHR a fundamental rights violation, while if a court dissented, concerning a question of law, from a published decision by the Curia aimed at promoting the uniformity of jurisprudence, a review procedure can be initiated.

One of the most important objectives of Act amending the Code of Civil Procedure, which entered into force on 1 January 2021 (hereinafter the “Amendment to the Code of Civil Procedure”),³⁰² was the enhanced protection of minors in family law actions. Actions for the dissolution of marriage or relating to the custody of the child or for contact with the child

³⁰⁰ KÉKEDI Szabolcs: Hogyan tovább bírósági digitalizáció avagy hogyan lett az elektronikus kapcsolattartás a veszélyhelyzetben az ítélkezés kulcsa?, in *Medias Res* 2020/2 7, p. 308–321, <https://media-tudomany.hu/wp-content/uploads/sites/13/2020/12/imr-2020-02-07.pdf>

³⁰¹ Act CXXX of 2016 on the Code of Civil Procedure.

³⁰² Act CXIX of 2020 amending Act CXXX of 2016 on the Code of Civil Procedure.

have a direct effect on minor children who are to be protected by special means during proceedings. On the one hand, the protraction of proceeding can negatively impact the child, as it is his or her status that is not resolved definitely and, on the other hand, the conflict between the parents can also have a seriously adverse effect on the child. For the protection of children's rights and for sparing children, the Amendment to the Code of Civil Procedure prohibits the use of party-appointed experts to produce evidence in family law actions. This can help avoid the child being heard multiple times by experts. The Amendment to the Code of Civil Procedure specifies, for all family law actions, the cases of applying provisional measures *ex officio* so that the courts utilise this legal instrument more often for the protection of minors. The Amendment to the Code of Civil Procedure facilitates taking decisions on measures that are necessary for the protection of minors by authorising courts to decide on the most important questions relating to a minor *ex officio*, even without a claim to that effect.

In line with international human rights documents, the Fundamental Law provides for the right to access to the court and the right to fair trial, including the right to adjudicating cases within a reasonable time, among the rights to access to justice. It specifically highlights certain fundamental criminal law and criminal procedure guarantees: it provides for the presumption of innocence; the right to defence of persons subject to criminal proceedings; the principle of the legality of criminal offences and punishments; and the prohibition of double prosecution and double sanctioning. No one can be held guilty of, or be punished for, an act which, at the time when it was committed, did not constitute a criminal offence under Hungarian law or under the law of another state. As a general rule, it requires the act to be declared a criminal offence under Hungarian law. The law of another state is only relevant for declaring an act a criminal offence if it is to be taken account of when establishing guilt, imposing punishment or in the course of a proceeding for doing so under an obligation imposed on Hungary by an international treaty or a legal act of the European Union. It refers to the law of any other state in a similarly narrow scope as regards the prohibition of double prosecution and double sanctioning. As accepted also by international conventions, it permits imposing a punishment on a person for an act qualifying as a criminal offence according to the generally recognised rules of international law, without regard to the internal legislation in force at the time of commission and the internal rules on

the statute of limitations. The Fundamental Law recognises the right of everyone to seek legal remedy against a court, administrative or other authority decision that is in violation of his or her rights or legitimate interests.³⁰³

³⁰³ Statement of reasons to the Fundamental Law.

6.11 RESPECT FOR PRIVATE LIFE, PROTECTION OF PERSONAL DATA

The right to respect for private and family life, home and communications stems from the inborn dignity of humans and everybody is entitled to it. The right to private life is indispensable for the fulfilment of human life and self-identity, since it delimits the untouchable realm of human personality. All humans are entitled to the right to private life.³⁰⁴ The former Constitution specified only certain elements of privacy and did not provide for complex protection. With the adoption of the Fundamental Law, private life has been granted protection at a new regulatory level in Hungary. In doing so, Hungary ascended to the ranks of those countries that provide general protection to private life at a constitutional level. By enshrining the general protection of private life in the Fundamental Law, it is provided the highest level of legal protection in line with the protection set out in Article 7 of the Charter of Fundamental Rights.³⁰⁵

Due to technological development, digitalisation and increasing media attention, the protection of the private sphere of individuals faces new challenges. In the digital age, protection of private life extends to not only the intimate sphere, but also to private sphere in a broader sense, the family life of individuals, their home and also their communications. The dignity and the right to private life of individuals have to be ensured also in the social media space, and the protection of privacy has to cover both physical and online harassment.³⁰⁶

Article VI (1) of the Fundamental Law provides for the right of everyone to have his or her private and family life respected. Protection of private life covers the protection of personal data, family life and home, and personal secrets, and the confidentiality of correspondence.

It was considered necessary to amend, as part of the Seventh Amendment to the Fundamental Law, Article VI of the Fundamental Law so that paragraphs (1) and (2) ensure an enhanced protection for private life.³⁰⁷

Due to the importance of collisions between privacy rights and other fundamental rights, it has been enshrined in the Fundamental Law that the right to respect for private and family life and home is among the external limits of the exercise of freedom of expression and right to

³⁰⁴ Preamble to Act LIII of 2018 on the protection of private life.

³⁰⁵ “Everyone shall have the right to have his or her private and family life, home, communications respected.”

³⁰⁶ Statement of reasons to the Fundamental Law.

³⁰⁷ Article VI of the Fundamental Law:

“(1) Everyone shall have the right to have his or her private and family life, home, communications and good reputation respected. Exercising the right to freedom of expression and assembly shall not impair the private and family life and home of others.

(2) The State shall provide legal protection for the tranquillity of homes.”

assembly. Should the aforementioned fundamental rights collide, the Amendment put particular emphasis on the enhanced protection of these elements of privacy rights, taking account of the general limits for fundamental rights restrictions under the Fundamental Law and the practice of the Constitutional Court.

The protection of privacy rights extends also to the physical sphere where private and family life takes place. In Constitutional Court Decision 13/2016 (VII. 18.) AB, the Constitutional Court stressed that according to the US Supreme Court, home is “the last citadel of the tired”, “the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits” {Carey v. Brown [447 US 455 (1980)] and Frisby v. Schultz [487 US 474 (1988)]}. In line with the above, the preservation of the tranquillity of homes was emphasised as a particularly important value meriting legal protection from the state.³⁰⁸

Taking account of the Seventh Amendment to the Fundamental Law, Act LIII of 2018 on the protection of private life elaborates on the right to the respect for private and family life, home and communications as enshrined in Article VI of the Fundamental Law.

The modern tools of infocommunications have changed the daily forms of keeping contacts; thus, the protection of private life is extended to harassments both in the physical world and on the internet. The dignity of the individual and his or her rights to private life should also be secured in the space of social media. Therefore, the intention of the lawmaker is to guarantee for the individual the security of privacy also with regard to the contents shared and disclosed privately.³⁰⁹

The Act declares that the state respects and protects the right of persons to private and family life, home and communications. At the core of the right to private life is the fact that, against the will of the person and subject to exceptions provided by an Act, it is not to be breached by others. The state promotes and supports the establishment and maintenance of an approach that concentrates on protecting privacy in all areas of public and economic life.

The right to private life of each individual is to be respected also during the free debating of public affairs. The preamble of the Act lays down also that, in line with the Fundamental Law, the public figures are also entitled to the protection of private life and the tranquillity of home. The Act provides that public figures are only bound to tolerate in relation to their public activity. The free debating of the issues of public life should not result in impairing private and family life or one's home. Additionally, relating to communications or acts that do not fit

³⁰⁸ Statement of reasons to the Seventh Amendment to the Fundamental Law.

³⁰⁹ Preamble to Act LIII of 2018 on the protection of private life.

into the category of the free debating of the issues of public life, public figures enjoy the same protection as attributed to persons who do not qualify as public figures.

Under the Act, in the case of violating one's right to private life, everyone has the right to turn to the authorities or to the court as laid down in a separate Act. With a view to offering efficient and comprehensive protection, the Act specifies the individual privacy rights in the following separate subtitles: the right to respect for private life, the right to respect for family life, the right to respect for home, the right to respect for communications.

Contrary to Article 59 (1) of the former Constitution, Article VI (1) of the Fundamental Law provides comprehensive protection for the private sphere, including the private and family life, home and good reputation of the individual. An essential conceptual element of privacy is that, against the will of the person concerned, its sphere is not to be breached, or looked into, by others.³¹⁰ There is a particularly strong relation between the right to privacy provided for under Article VI (1) of the Fundamental Law and the right to human dignity under Article II of the Fundamental Law. Article II of the Fundamental Law lays down the foundation for the untouchable area of privacy, which is entirely exempt from any form of state interference, as it is the basis for human dignity. However, under the Fundamental Law, privacy protection is not limited to only the internal or intimate sphere that is also protected by Article II of the Fundamental Law, but it covers also private sphere in a broader sense (communications) and the physical area, in which private and family life take place (home).³¹¹ In Constitutional Court Decision 11/2014 (IV. 4.) AB, the Constitutional Court also explained that respect for private and family life includes “the classical fundamental right of the inviolability of the home enshrined, under this specific name, in the Constitution, as home is where private life takes place.”³¹²

Protection of personal data

The protection of personal data developed from the protection of privacy and the right to respect for private and family life.

The Fundamental Law provides for the protection of personal data right after the protection of privacy³¹³, thus indicating the close connection between them. Detailed rules on data

³¹⁰ Constitutional Court Decision 36/2005 (X. 5.) AB.

³¹¹ Constitutional Court Decision 17/2014. (V. 30.) AB, Reasoning [29]].

³¹² Constitutional Court Decision 11/2014. (IV. 4.) AB.

³¹³ Article VI (2) of the Fundamental Law.

protection are found in the Act on the right to informational self-determination and on the freedom of information (hereinafter the “Freedom of Information Act”).³¹⁴

The Fundamental Law does not provide for a constitutional definition for the term “personal data”.³¹⁵ In Constitutional Court Decision 11/2014 (IV. 4.) AB, the Constitutional Court held, as regards the interpretation of Article VI of the Fundamental Law, that personal data is in all cases information on the private or family life of a person, and the person has to be in control of data on his or her private and family life. Consequently, restricting this right is only permitted in accordance with the provisions on fundamental rights restrictions. Constitutional Court Decision 3038/2014 (III. 13.) AB also confirms that even though the Fundamental Law does not define the term “personal data”, but the provisions on the right to the protection of personal data can be found among the rights to the protection of privacy (including private and family life, home and good reputation).

The Freedom of Information Act, on the one hand, directly implements the Fundamental Law, but, on the other hand, it compiles the data protection system of the former Act on the protection of personal data³¹⁶ and the related Constitutional Court practice. According to the regulation, a defining characteristic of personal data is that it has to be connected to the data subject, i.e. it has to be suitable for identifying him or her (and the same applies to conclusions to be drawn relating to an already identified person). In the light of these considerations, the definition of the term “personal data” has to be based on the Freedom of Information Act.³¹⁷

The Constitutional Court maintained and confirmed the interpretation of the right of informational self-determination elaborated in former Constitutional Court practice (as a general rule, everyone is entitled to freely decide on publishing and using his or her personal data, but in exceptional cases and for clearly defined purposes, an Act may prescribe the disclosure, or a manner of use of the personal data). At the same time, the Constitutional Court also highlighted that the Fundamental Law defines relation between the individual and the community by focusing on the individual being tied to the community, without, however, affecting his or her individual value. This follows from in particular Article O) and Article II of the Fundamental Law.

³¹⁴ Act CXII of 2011 on the right to informational self-determination and on the freedom of information.

³¹⁵ Constitutional Court Decision 2/2014 (I. 21.) AB.

³¹⁶ Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest.

³¹⁷ Constitutional Court Decision 3062/2017 AB.

The right of informational self-determination is closely connected to the right to private sphere and it covers decisions on when and under what limitations does an individual disclose data relating to his or her person.³¹⁸

The right of informational self-determination is not one of the unrestricted fundamental rights. Even after the entry into force of the Fundamental Law, the Constitutional Court has still considered determinative its previous practice as regards restrictions on the right of informational self-determination. The Constitutional Court highlighted also that “due to social embeddedness, an individual, as a social creature, has to, to a certain extent, [...] tolerate the compulsory disclosure and use by the state of his or her data.”³¹⁹

In the context of data protection, the General Data Protection Regulation of the European Union³²⁰ (hereinafter the “GDPR”), which was adopted in 2016 and is to apply from 25 May 2018, needs to be highlighted. The GDPR reacted to the challenges of the 21st century, adapted to information technology and incorporated provisions also on cross-border data processing. The GDPR applies uniformly to all Member States, and also to non-EU companies, provided that they process data of EU citizens or companies.

Already from the time of the regime change, Hungary has paid special attention to the protection of personal data. The Constitution, Act LXIII of 1992 on the protection of personal data and the publicity of data of public interest and the Constitutional Court practice that followed from those provided for a high level of protection for personal data even compared to other European countries. The Fundamental Law and the Freedom of Information Act not only maintained this high level of personal data protection, but also established, as an autonomous state administration organ, the National Authority for Data Protection and Freedom of Information to supervise and promote the implementation of the right to the protection of personal data. Based on the legislative framework in force, it can be established that the level of personal data protection provided in Hungary is one of the highest among the Member States of the European Union.

³¹⁸ Constitutional Court Decision 32/2013 (XI. 22.) AB.

³¹⁹ Constitutional Court Decision 2/2014 (I. 21.) AB, 32/2013 (XI. 22.) AB.

³²⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)).

6.12 RIGHT TO PROPERTY

In the context of human rights, the right to property can be considered a first-generation right that belongs to the most fundamental human rights. According to the view generally accepted by legal literature, it is among the first to appear in a chronological order, as already in the Virginia Declaration of Rights, which is the first written human rights document, the right to acquiring and possessing property is listed among the rights inherent to all men. This original, natural law approach to the right to property originated from the philosophy of the 17th-century, which marks the end of feudalism and the beginnings of absolutism and is the age of discoveries and colonisation. One of the philosophers typical of that period was the Dutch Hugo Grotius (1583-1645) who held that the right to property is not only a fundamental right of human beings, but also the foundation of natural law, and the state only protects and ensures this right.³²¹

In Europe, the Declaration of the Rights of the Man and the Citizen was the first to provide for the right to property, declaring that since property is an “inviolable and sacred” right, no one can be deprived thereof except where “public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified”.³²²

The Universal Declaration of Human Rights is a fundamental document of the international protection of the right to property. Under Article 17 thereof, “everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

For well-known historical reasons, in Hungary, for the first time, the right to property has been set out at a constitutional level as a human right when the Constitution of 1949 was amended in 1989. This provisional Constitution has been replaced by the Fundamental Law, which assigns to the right to property also a social responsibility.

Under the Fundamental Law, everyone has the right to property and inheritance. Property entails social responsibility. Property may only be expropriated exceptionally, in the public interest and in those cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.³²³

³²¹ NYÍRI Tamás: A filozófiai gondolkodás fejlődése, Szent István Társulat, Budapest, 1977.

³²² ANDORKÓ Imre: Tulajdonhoz való jog, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 709.

³²³ Article XIII of the Fundamental Law.

According to the legislative proposal on the Fundamental Law of Hungary, unlike numerous other fundamental rights, the right to property does not relate to a natural state, it exists only under specific societal circumstance, within, and presupposing, a legislative framework provided by the state.³²⁴ By relying on this justification, the Fundamental Law is distanced from the natural law approach to the right to property and brought closer to defining the right to property as a second-generation right. This progression is in line with the development of international and European law. Pursuant to this approach, the state is not only an inactive duty bearer any more, whose duty is to respect lawfully acquired property, but it has to ensure also protection for the property and lay down the statutory conditions for taking property away, which requires the establishment and operation of an appropriate institutional system. The Fundamental Law sets out only the basic elements of these requirements, further institutions are provided for by other parts of the legal system observing the fundamental nature of the right to property.

Protection of property in a constitutional sense cannot be identified with the protection of civil law property or its substance and definition as a negative absolute right. Constitutional property protection provides protection for the right to property as the classical foundation of individual autonomy; what it primarily protects is not the integrity of property, but the value of the property. This interpretation is supported also by the Fundamental Law itself, which enables expropriation. This shows that constitutional guarantee for property covers not only its integrity, but in the end it also ensures the value of property. Additionally, in this sense, the protection covers not only the classical foundations of individual autonomy, but also economic rights taking over, in this capacity, the role of property and public-law-based rights, such as social security needs.³²⁵

Restriction of property and social responsibility³²⁶

The local government of Göd (a town near Budapest) filed a constitutional complaint with the Constitutional Court, in which it asked for establishing the inconsistency with the Fundamental Law, and the annulment, of the government decree on certain measures required for the stability of national economy in connection with the state of danger and the government decree designating a special economic zone within the administrative area of the town of Göd.

³²⁴ Statement of reasons to the Fundamental Law.

³²⁵ Constitutional Court Decision 64/1993 (XII. 22.) AB.

³²⁶ Constitutional Court Decision 8/2021 (III. 2.) AB.

In April 2020, the Government designated a special economic zone within the territory of Göd Local Government and provided that the right to property over public roads, public spaces and public parks within the designated special economic zone is transferred to the county local government. For other real estate within the scope of the regulation, it is the county local government who is authorised to impose and collect local taxes.

The complainant stated that the regulation unnecessarily and disproportionately restricted the right to property of the Local Government of the Town of Göd; thus, it constitutes discrimination, which conflicts with the prohibition enshrined also in the Fundamental Law. The complaint explained also that the regulation is in conflict with the Fundamental Law also because of its failure to ensure adequate time for preparation and its non-compliance with the prohibition of retroactive legislation.

In its decision, the Constitutional Court held that, pursuant to the provisions of the Fundamental Law, property entails also social responsibilities. Accordingly, the local government also has to bear this responsibility in the exercise of its proprietary rights. Consequently, it has to *ab ovo* take account of the social constraints arising from the public property nature of its real estate, including for example changes to the relevant legislative framework. If the state entrusts another local government, or in this case, the county, with a public duty to be carried out, doing so might entail transferring, free of charge, the ownership of real estate connected to the performance of the public duty. This cannot be construed as expropriation.

The Constitutional Court held that the conflict with the Fundamental Law of the ownership restriction that does not qualify as expropriation cannot be established in the case concerned, and it is necessary and proportionate. The Constitutional Court emphasised that the right to property is not to be considered an unrestricted fundamental right: state intervention is not excluded, provided that the appropriate guarantees enshrined in the Fundamental Law are observed. In its decision, the body pointed out that in a state of danger, immediate measures are required, for which preparation is not possible. The economic and social effects of the pandemic extend beyond the period of state of danger.

The Constitutional Court highlighted that the regulation does not constitute any discrimination among the subjects of law concerned. In the case under examination, forbidden retroactive legislation cannot be established.

The most powerful instrument for restricting the right to property is expropriation, which means completely removal of property. This possibility was addressed already in documents

from the time when the right to property was first set in writing, by prohibiting deprivation and arbitrary deprivation of property. Be it by a specific authority decision or an Act, property may only be removed subject to full, unconditional and immediate compensation.³²⁷ Even if these conditions are met, property can only be expropriated if a public interest objective cannot be reached by any other means, only by the removal of property.³²⁸ Possible objectives, conditions and the way of expropriation are laid down in a separate Act.³²⁹

Article 17 of the Charter of Fundamental Rights provides for the right to property in line with the international rules established by the end of the 20th century. Pursuant to the Charter, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.³³⁰

Hungary protects property in both the Fundamental Law and at a statutory level. The Act on copyright provides statutory protection for intellectual property, which is specifically mentioned in the Charter of Fundamental Rights, and lays down detailed rules on it.³³¹

Hungary is at the forefront of copyright legislation. During the week of the World Intellectual Property Day, the National Assembly took the final vote on three legislative proposals relating to copyright that had been prepared by the Ministry of Justice.

Hungary is the second among EU Member States to implement the copyright directives responding to the challenges of a digital market. Drafted as a result of a two-year consultation process with the professional and civil society organisations concerned and with market operators and close cooperation with the Hungarian Intellectual Property Office, the amended Act ensures that tech giants are involved in bearing public burdens and that copyright holders receive appropriate share of the revenue generated by using content created by them. The amendment to the Copyright Act enables the promotion of a more effective copyright market and the adaptation of the balance between right holders and users to meet the needs of the digital age. The promulgation of the Geneva Act of the Lisbon Agreement and the related amendment to the Trade Mark Act ensured the lasting and effective

³²⁷ Article XIII (2) of the Fundamental Law and Constitutional Court Decision 21/1990 (X. 4.) AB.

³²⁸ Constitutional Court Decision 479/B/1993 AB.

³²⁹ Act CXXXIII of 2007 on expropriation.

³³⁰ Charter of Fundamental Rights.

³³¹ Act LXXVI of 1999 on copyright.

international protection of Hungarian geographical indications, such as Herend porcelain, Halas lace, Szeged paprika, Gyula sausage, Makó onion or Tokaj wine. The adoption of these laws not only establishes the legal framework for the international recognition of these priceless Hungarian indications, but also protects them from uncertainty arising from internal legal disputes between EU institutions.

6.13 RIGHT TO SOCIAL SECURITY

Social rights belong to the second generation of human rights. In academic literature the scope, and even the fundamental-right nature, of these rights are debated.³³² International regulation shows that even though social rights are usually defined by international conventions as rights, the undertakings of state parties are set out using words such as “recognise” or “gradually ensure”. Based on legal practice, guarantees for social rights depend primarily on the level of development of the state concerned. However, to fulfil their international obligations, states also have to meet certain minimum standards by adequate legislation and its enforcement.³³³

For the development of the right to social security, the adoption of the International Convention on Human Rights played a crucial role. It provided for the right to social security in Article 22. The International Labour Organisation (hereinafter “ILO”) also contributed eminently to the evolution of social rights by drawing up multiple conventions to improve certain aspects of social security (e.g., ILO Convention No. 183 on Maternity Protection or ILO Convention No. 155 on Occupational Safety and Health).

The interpretation by the Hungarian Constitutional Court of social rights, and among them, the right to social security, have gone through various stages. At the beginning of the nineties, this body interpreted the provision on social security enshrined in the Constitution to impose an obligation on the state, thus obliging it to provide benefits to its citizens.³³⁴ In 1995, the Constitutional Court adopted multiple decisions that relied, in the context of social security, on the principle of legal certainty to offer effective protection without granting subjective rights.

At the third stage, the Constitutional Court linked the right to social security to the right to human dignity stating that it requires that the state ensure, through the totality of social benefits provided by it, the minimum benefits absolutely necessary for the implementation of the right to human dignity.³³⁵

³³² HALMAI Gábor – TÓTH Gábor Attila: Az emberi jogok rendszere, in HALMAI Gábor – TÓTH Gábor Attila (eds.): *Emberi jogok*, Budapest, Osiris, 2008.

³³³ DRINÓCZI Tímea: Szociális jogok, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SÜLYÖK Gábor (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András).

³³⁴ Constitutional Court Decision 32/1991 (VI. 6.) AB.

³³⁵ DRINÓCZI Tímea: Szociális jogok, in JAKAB András – KÖNCZÖL Miklós – MENYHÁRD Attila – SÜLYÖK Gábor (eds.): *Internetes Jogtudományi Enciklopédia* (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András).

Pursuant to the Fundamental Law, the right to social security provide guidance for the state, i.e. it is set as a state objective. Accordingly, no subjective rights follow from it directly. Article XIX of the Fundamental Law enshrines the will of the state to provide social security for all Hungarian citizens.

In order to achieve this, in situations where a person is unable to acquire the goods necessary for living, such as after giving birth to a child or due to a temporary or permanent deterioration of health or a loss of a relative or a job, all Hungarian citizens are entitled to apply for statutory state assistance.³³⁶ The Constitutional Court declared that, even though this Article is not about fundamental rights, it does grant constitutional authorisation for legislation concerning the listed situations. Accordingly, in the specified situations, Hungarian citizens are entitled to state assistance, but the detailed provisions of such support are laid down not in the Fundamental Law, but in applicable Acts.³³⁷ Not only persons in the listed situations, but everyone in need is given entitlement to make use of the state's social institutions and measures.³³⁸

The Fourth Amendment to the Fundamental Law supplemented the regulation by benefits to persons with a disability.³³⁹ Having regard to the fact that the Fundamental Law uses the word "disability" without an adjective, the Constitutional Court holds that the legislator has a large discretion in determining the point of view (e.g. social or medical) from which the concept is to be defined. From the provision of the Fundamental Law, the conditions for the qualification of disability do not follow directly. At the same time, the Constitutional Court declared that "the legislator may not choose a solution that is in absolute conceptual contradiction not leaving room for any exception or deliberation with the wording of the Fundamental Law if interpreted in accordance with the generally accepted meaning of the words." According to the Constitutional Court's interpretation, a definition of the concept of disability is not contrary to the Fundamental Law as long as it is not arbitrary.³⁴⁰

The Fundamental Law allows the legislator to take certain measures depending on whether the beneficiaries' activities are useful to the community.³⁴¹ The reason for this is that the need for assistance can only be eliminated by a combined effort of the individual and the state.

³³⁶ Statement of reasons to the Fundamental Law.

³³⁷ Constitutional Court Decision 2/2018 (IV. 6.) AB.

³³⁸ Statement of reasons to the Fundamental Law.

³³⁹ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

³⁴⁰ Constitutional Court Decision 1/2018 (IV. 6.) AB, Reasoning [18]].

³⁴¹ Article XIX (3) of the Fundamental Law: "The nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary's activity."

Pursuant to the constitutional regulation, the legislator can align the nature and extent of social benefits with the efforts of the beneficiary to overcome his need for assistance.³⁴² Detailed rules on this are laid down in the Act on community employment and amending Acts concerning community employment and other Acts³⁴³ and in the Act on social administration and social benefits³⁴⁴.³⁴⁵ The Constitutional Court emphasised that the wide discretion of the legislator as regards social measures can only be exercised within the limits set by the Fundamental Law. The legislator, therefore, cannot just set any requirement it wishes. The prohibition of setting conditions that would “render meaningless the freedom of individuals by referring to a presumed or actual public interest or the obligation of the state to ensure social security by setting impossible requirements” can be regarded as a minimum limit. The Constitutional Court interpreted community employment relationship as a particular and atypical form of employment relationship based on its substance, but its function connects it to the social care system.³⁴⁶

Within Article XIX on social security, the Fundamental Law mentions also the general state pension system and the system of social institutions.³⁴⁷ To the state pension system it attaches the operation of voluntarily established social institutions thus enshrining in the Fundamental Law a two-pillar pension system consisting of state pension and voluntary pension funds. According to Article 40 of the Fundamental Law, “in the interests of satisfying common needs in a predictable manner and of the secure livelihood of the elderly, basic rules [...] for the pension system”³⁴⁸ are to be laid down in a cardinal Act³⁴⁹.

In the context of securing livelihood of the elderly, the cooperation between the individual and the state takes the form of the state maintaining a pension system from contributions required for its operation and promoting self-reliance by regulating the voluntary social institutions serving as its framework. In addition to securing livelihood of the elderly (retirement pension), the state pension system offers benefits for the surviving relatives, and

³⁴² Statement of reasons to the Fundamental Law.

³⁴³ Act CVI of 2011 on community employment and amending Acts concerning community employment and other Acts.

³⁴⁴ Act III of 1993 Act on social administration and social benefits.

³⁴⁵ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

³⁴⁶ Constitutional Court Decision 30/2017 (XI. 14.) AB, Reasoning [60]].

³⁴⁷ Article XIX (4) of the Fundamental Law: “Hungary shall contribute to ensuring a life of dignity for the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women.”

³⁴⁸ Article 40 of the Fundamental Law.

³⁴⁹ Act CXCIV of 2011 on the economic stability of Hungary.

in particular, to widows and orphans, even after the death of the pension recipient (survivor pension).³⁵⁰

According to the Constitutional Court practice, pension insurance is a mixed system, which consists of elements of primarily insurance and secondarily solidarity. As for elements of insurance: pension entitlement can be acquired by contribution payment.³⁵¹ Therefore, if a certain age is reached or a relative with the necessary pension input dies, the state has to perform its obligation based on prior payments, i.e. pay pension. The benefit amount depends on the contribution base income. As for elements of solidarity: they are based on social risk pooling. Thus, the pension system consciously ignores risk differences between individuals to promote social fairness (for example, in the case of difference in life expectancy between men and women) or for the simpler operation of the system, and provides for a certain equalisation in certain situations (for example, the amount of low-amount social transfers subject to contribution is regarded as if it were higher when calculating pension, lower pensions are supplemented to reach the minimum pension level). The Constitutional Court highlighted that the state pension system operates based on the principle of solidarity. Accordingly, it is governed not only by insurance principles, since financial coverage is created in a pay-as-you-go system.³⁵²

Under the Fundamental Law, when establishing the state pension system, the particular situation of women can also be taken into account, and the rules of pension entitlement can be laid down in a way that takes account of also the requirement for stronger protection for women.³⁵³

The state has broad powers to provide for changes, transfers, or even reforms within the system of social benefits in response to the economic environment. But even the state's power to change the system has its limits. The Constitutional Court holds that as regards the concept of social security, economic circumstance, the state of public finances and gradually deteriorating demographic indicators are factors that can justify both the amendment of Acts and a reform of the constitutional framework.³⁵⁴

Support to families

With a view to protecting families and facilitating having and raising children, the

³⁵⁰ Section 40 (1) and section 41 (1) of Act CXCV of 2011 on the economic stability of Hungary.

³⁵¹ Section 40 (2) of Act CXCV of 2011 on the economic stability of Hungary.

³⁵² Constitutional Court Decision 3238/2017 AB, Reasoning [66]].

³⁵³ Statement of reasons to the Fundamental Law.

³⁵⁴ Constitutional Court Decision 23/2013. (IX. 25.) AB, Reasoning [45]-[47]].

Government has established, in the last years, a very complex system to support families. For the protection of families and family policy to be even more prominently represented at Government level, in 2020, responsibility for the related tasks got elevated to a ministerial level from a state-secretary level.

Life-starting support

A key element of self-reliance is ensuring the future of children. Parents are assisted in that by young people's life-starting support provided by the state and the so-called "baby bond" (Start securities account) introduced in 2013. The essence of baby bond is that the amount accumulated on the Start securities account opened for the newborn, the life-starting support provided by the state and any deposits by the parents or the relatives are invested in state securities. The child may dispose of the thus accumulated savings once he or she reaches the age of 18.

From 1 January 2018, within the framework of the so-called Umbilical Cord Programme (Köldökzsinór Program), also families living abroad are eligible, after their children, to young people's life starting support (and baby bonds) and to a one-time maternity allowance.

GYED Extra package

Thanks to the GYED Extra package introduced from 1 January 2014, parents can make use of childcare benefits after multiple children at the same time. In addition to the disbursement of GYED (childcare fee) and GYES (child home care allowance), the hours parents are allowed to work are not limited after the child reaches the age of six months.

As part of the GYED Extra package, from 1 January 2014 the Government introduced for higher education students and entry-level graduates the so-called "graduate GYED", which is a benefit paid from birth until the child reached the age of two years.

Tax allowance

The family tax allowance introduced in 2011 can be applied, to not only personal income tax, but also to contributions from 2014. The amount of allowance for parents of two had gradually doubled from 2016 to 2019. From July 2020, the allowance can be applied to the entire 18.5 per cent employee social security contribution.

Part-time employment and additional annual leave for employees with children

From 1 January 2020, parents with small children are entitled to work part-time at their workplace until their child reaches the age of 4 years. For parents of at least three children can make use of this possible until the youngest child becomes 6 years old. (Previously, the age limit for part-time employment was the child reaching the age of 3 or, for parents of

three or more children, the youngest child reaching the age of 5.)

From 2012, not just one of the parents, but both of them are entitled to additional annual leave for employees with children (2 days per child, but no more than 7 days in total).

From 2019, newly married couples working in central administration receive 5 days additional annual leave, while grandparents are entitled to 5 days additional annual leave each time a grandchild is born. Additional annual leave for employees with children is doubled: employees are granted, after one child, 4 days, after two children, 8 days and after three children, 14 days of annual leave. The number of days of paternity leave for fathers working in public administration increased from 5 to 8 and, in the case of twins, from 7 to 10.

Home creation

As a first step, in 2012, the Government introduced, as a non-repayable grant, a house building support (LÉT) that has been replaced, from 1 July 2015, by the Family Housing Support Programme (CSOK). Families are entitled to CSOK allowance if they have children and couples if they are planning to have children and it can be used to buy a new or used home or to expand an existing one. In the past years, the CSOK has been offering continuously expanding opportunities for families so they can create appropriate housing conditions.

The greatest home creation programme of all times launched on 1 January 2021. We reduced the VAT for newly built real estates, or real estates built with a general contractor, from 27 per cent to 5 per cent. Additionally, if a family uses CSOK allowance to buy (or build) a new home, the state takes over the payment of even that 5 per cent VAT. Families who are building on their own property using their own resources can apply for the reimbursement of the 27 per cent VAT on building and land price bills already paid, up to 5 million forints in total. Furthermore, from January 2021, families who have bought their new or used residential real estate using CSOK allowance are fully exempt from the 4 per cent duty on reciprocal transfer of ownership, regardless of the price of the real estate. When developing the home creation programme, the Government took account of all possible circumstances. Accordingly, it offers an opportunity for also families who imagine their lives living under the same roof supporting each other, but living in separate rooms nonetheless. The higher CSOK allowance available for loft conversion or building a new floor for creating multi-generation homes serves this exact purpose. One notable new possibility is the home renovation allowance which provides assistance for families with or expecting children for

redecorating or modernising the home they already own. This means a non-repayable grant of up to 3 million forints, which can be used to pay for half of the costs of the works. Associated with this is a home renovation loan with preferential interest rate of no more than 6 million forint, which may be applied for by families without the financial means required for advancing home renovation costs.

Family Protection Action Plan

From 1 July 2019: The baby expecting support aimed at assisting young people in starting their life was introduced. This entitles all married couples where the wife is between 18 and 41 years of age and at least one of them has an insurance relationship of more than 3 years to apply for an interest-free, untied loan of up to 10 million forints at a bank branch.

The interest-subsidised home loan has been extended to also buyers of used homes and the mortgage loan support for having children has been broadened. The Government made Rural CSOK available in almost 2700 settlements. Its objective is to stop population decrease in villages and to assist young couples in settling down in a rural environment.

Large families are eligible for car purchase subsidy: families with 3 or more children may apply for a subsidy of 2.5 million forints (but no more than 50 per cent of the purchase price) for buying a new car with at least 7 seats.

From 1 January 2020: Mothers of four or more are exempt from the obligation to pay personal income tax.

GYED for grandparents has been introduced entitling grandparents not yet in retirement to GYED, provided that they undertake to take care and provide for the upbringing of their grandchild in their home instead of the working parent(s).

CSED 100

From 1 July 2021, the rate of infant care allowance (CSED) is raised from the current 70 per cent to 100 per cent. This means that the income of insured mothers will not decrease during maternity leave; in fact, the allowance they receive will exceed their previous net earnings.

6.14 RIGHT TO HEALTH

Ensuring the right to health, in the form of public health, gained recognition as a state responsibility during the time of enlightened absolutism for the prevention of epidemics. Subsequently, in modern times, the obligation to protect health at the highest level emerged. Numerous international treaties enshrined the obligation of states to recognise the importance of physical and mental health and, accordingly, to operate a healthcare system that is suitable for disease prevention and for providing medical care for the population.

The World Health Organisation (WHO) defined health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.³⁵⁵

The right to health is enshrined in Article XX of the Fundamental Law. Under paragraph (1), everyone shall have the right to physical and mental health. The right to health is associated with second generation social rights, which presupposes state action and is supported by institutional guarantees. As regards the implementation of the right, it can be noted the right to physical and mental health does not give rise to a subjective right, but the state has the power to set out subjective rights in certain fields of the right to health.³⁵⁶

In line with the Constitution of the World Health Organization,³⁵⁷ the Constitutional Court held that health is not the opposite of sickness; it is not part of the health/sickness paradigm. Instead, it is broader than that: a physical and mental state that enables living free of any physical and mental problems for as long as possible.³⁵⁸ On this basis, the subjective side of the right is closely connected to the right to physical and mental integrity of a person, which can be traced back to the fundamental right to human dignity.³⁵⁹

The previous Constitution referred to the right to health still in the words of the International Covenant on Economic, Social and Cultural Rights, as “the highest attainable standard of physical and mental health”.

Article XX (2) of the Fundamental Law expands previous institutional guarantees: Hungary promotes the right to health through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by protecting workplace health and safety and organising healthcare provision and by supporting sports and regular physical exercise as

³⁵⁵ Preamble to the Constitution of the World Health Organization, promulgated by Act XII of 1948.

³⁵⁶ Constitutional Court Decision 54/1996 (XI. 30.) AB.

³⁵⁷ Act XII of 1948 promulgating the Constitution of the World Health Organisation.

³⁵⁸ Constitutional Court Decision 3292/2017 (XI. 20.) AB.

³⁵⁹ Constitutional Court Decision 16/2015 (VI. 5.) AB.

well as by ensuring the protection of the environment. Even though it is listed here, the latter constitutes a separate fundamental right under Article XXI.

According to the Fundamental Law, the content and scope of the right to physical and mental health is necessarily aligned with the level of medical science, the resilience of national economy and the possibilities of the state and the society.³⁶⁰

Implementing the right to health is one of the social responsibilities of the state. State or local government presence and support is required for guaranteeing wide access to healthcare services. This state and local government obligation requires in part the establishment and operation of an institutional system and in part the development of a legal and institutional environment for the prevention of diseases.³⁶¹

Additionally, the Constitutional Court determined the necessary minimum level of the performance of the state responsibility: “only a complete lack of certain healthcare services, or a complete lack of services in a certain area results in a lack of conformity with the Fundamental Law.”³⁶² According to Constitutional Court interpretation, the legislation has to provide for standards for the services. The high level of these standards does not follow from the Fundamental Law.

However, the right to healthcare services within the framework of compulsory social security is an actual subjective right. Under the former Constitution, social security is a means to the implementation the right to healthcare services. Therefore, the social security has to ensure the exercise of acquired rights having regard to the implementation of the constitutional right to healthcare services.³⁶³ At the same time, the Constitutional Court stated that social security operates only partially on the basis of the principle of “purchased rights” as its operation is also based on social considerations. According to the Constitutional Court, in this hybrid social security system, the elements of insurance and solidarity cannot be separated completely.³⁶⁴

Early diagnosis of illnesses – screening tests

In accordance with the current state of medical science, for the reduction of disease burden, the best long-term strategy is disease prevention, while for the reduction of mortality, the best medium- and short-term strategy is screening testing.

³⁶⁰ Constitutional Court Decision 3132/2013 (VII. 2.) AB.

³⁶¹ Constitutional Court Decision 3292/2017 (XI. 20.) AB.

³⁶² Constitutional Court Decision 3292/2017 (XI. 20.) AB.

³⁶³ Constitutional Court Decision 26/1993 (II. 29.) AB.

³⁶⁴ Constitutional Court Decision 29/2017 (X. 31.) AB.

The objective of screening tests is to protect the health of the population and to increase the quality of life and life expectancy of individuals by actively detecting and diagnosing hidden diseases, predisease medical conditions and predisposing risk factors in an early and, if possible, asymptomatic stage.

Pursuant to Decree 51/1997 (18 December) NM on healthcare services available under social security for the prevention and early diagnosis of diseases and screening test certificates, from age-dependent screening tests, screening of minors between the age of 0 and 18 is compulsory; in other cases, such as in the case of occasional age-dependent and public health screening tests, participation is voluntary.

In Hungary, a targeted public health (hereinafter “organised”) screening system was established for reducing cancer mortality by involving, to the greatest extent possible, the targeted population that qualifies as being at risk due to age [Annex 3 to Decree 51/1997 (18 December) NM: biennial breast-screening (mammography) for women between the age of 45 and 65, cervical screening of women between the age of 25 and 65 every 3 years, following a first negative screening (cytology)].

In order to broaden the scope of organised screenings, in 2018, organised colorectal screening was expanded nation-wide to a target population of 50 to 70 years of age.

The “Tests are taken to you” (Helybe visszük a vizsgálatokat) programme is aimed at increasing participation rate in screening tests. As part of this programme, 10 health promotion buses assist in ensuring equal access as a proximity service, covering, primarily, settlements specified in the “Catching-up settlements” (Felzárkózó települések) long-term programme.

Epidemiological measures for the prevention of the development of cervical cancer and other benign or malignant diseases caused by HPV infection; introduction of vaccination against human papillomavirus (hereinafter “HPV”)

The results of the compulsory vaccination system in Hungary are exceptional even on a global scale. Due to extremely high vaccination coverage, the system contributes to the containment of infectious diseases and the maintenance of epidemiological safety in Hungary.

Additionally, in order to further fortify the Hungarian vaccination scheme, the Government introduced, from September 2014, as a vaccination to be offered compulsorily and free of charge, the vaccination for the prevention of lesions caused by cervical cancer and HPV.

This measure is aimed at gradually vaccinating more and more young people so that in years and decades, the occurrence of malignant lesions caused by cervical cancer and HPV and the number of related deaths are reduced in Hungary.

Pursuant to section 7 of Decree 18/1998 (3 June) NM on epidemiological measures for the prevention of infectious diseases and epidemics, female children in the 7th grade of primary school who have reached the age of 12 years may receive vaccination against HPV free of charge, as part of a school vaccination campaign.

Both men and women are affected by HPV-infection-related cancer. Thus, extending free vaccination against HPV to male children is supported by both medical and public health reasons. This took place in October 2020.

For the protection of the health of families, the containment of HPV infection is of utmost importance as in Hungary, the relative risk of mortality due to cervical cancer and malignant lesions caused by high-risk HPV strains is high, almost three times higher than the EU Member State average, which means more than 400 deaths a year.

Mental health

The Government considers human beings and human health a key value. Good health is an important personal and social value and resource, the preservation and improvement of which is a national interest. Led by a feeling of responsibility for the health of the people, in Government decision 1722/2018 (18 December), the Government adopted, for the comprehensive reform of healthcare and for the mitigation of extreme health losses, the National Healthcare Programme 2019-2030, which includes also the National Mental Health Programme.

The objective of the development of the National Mental Health Programme was to enable Hungary to ensure that its citizens are mentally healthy with broad governmental support, in cooperation with professional, religious and non-governmental organisations and with the involvement of the widest range of the population possible; and to improve, as a result of multidirectional intervention, the mental competitiveness of the population; and to bring about a certain mental change so that Hungarians can live a fuller, healthier and longer life.

In this process, children and young people are priority target groups. Interventions supporting the mental health of children have to be implemented more intensely than at present by aligning the related efforts of various sectors. This is the foundation for the success, productivity and increasing reproductive capacity of future generations.

6.15 RIGHT TO A HEALTHY ENVIRONMENT

The foundations of international environmental law have been laid down in the Stockholm Declaration adopted on the 1972 UN Conference on the Environment declaring that every "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being".³⁶⁵ The Declaration also stated that all men bear a responsibility to protect and improve the environment for the next generation. About the right to a healthy environment it can be said that it originates from linking human rights and environmental protection. The protection of the environment is a necessary condition for the implementation of the rights to health and to life.³⁶⁶

The right to a healthy environment is a third-generation right. What can generally be stated as regards third-generation rights is that they are of a global nature as they require more than the efforts of a single state, and the effect of their violation cannot be detected directly and immediately; thus, there is no compulsion to remedy such violations straight away.

The foundation for a healthy human environment is a healthy natural environment. The totality, diversity and variety of living beings and habitat and the ecosystem provide the so-called "ecological services": these are both tangible and indirect benefits for the society (e.g. climate regulation, clear air and water, food, genetic resources). The regulation of ecological services is related to numerous legal areas and sectors (such as energy, transportation, air quality management, water protection and management, agriculture and forestry, land law, soil conservation, nature conservation, food safety, disaster management, public health).

The obligation to protect the environment is enshrined in Article P) of the Fundamental Law. Pursuant to Article P) (1), natural resources and cultural artefacts, that form the common heritage of the nation, are to be protected, maintained and preserved for future generations by the state and everyone else. The state of the nature and the environment determines significantly the quality of life, and thus, the "healthy environment" as referred to in Article XXI of the Fundamental Law. Article XXI (1) provides for the right of everyone to a healthy environment.³⁶⁷ As the Constitutional Court put it, the right to a healthy environment is not a subjective fundamental right; still, it is more than just a state objective as "it is part of the objective and institutionalised protection side of the right to life, specifying the State's

³⁶⁵ Stockholm Declaration, 16 June 1972, 1st principle.

³⁶⁶ MARINKÁS, György: Az egészséges környezethez való jog, mint alapvető emberi jog – Lehetséges megközelítések az egyes emberi jogvédelmi mechanizmusok gyakorlata alapján, különös tekintettel az őslakos népeket érintő kérdésekre, *Agrár- és Környezetjog*, 2020, No. 29.

³⁶⁷ Article XXI (1) of the Fundamental Law.

obligation to maintain the natural foundations of human life as an independent constitutional right".³⁶⁸

As regards the obligation for environmental legislation arising from Article P) (1) and Article XXI (1) of the Fundamental Law, the Constitutional Court emphasised that the specific laws adopted for the protection of the environment have to be accessible, clear and legally enforceable for the effective protection of the values specified in Article P) (1) of the Fundamental Law. From a substantive aspect, the responsibility towards future generations to protect natural and cultural resources, which exists also in itself pursuant to the Fundamental Law, requires the legislator to evaluate and assess, on the basis of scientific knowledge and observing the precautionary principle and the principle of preventive action, the foreseeable effects of the measures taken by it³⁶⁹.

Based on the precautionary principle and the principle of preventive action, which follow directly from Article P) (1) and Article XXI (1) of the Fundamental Law, the state has to ensure that the state of the environment does not deteriorate as a result of the measure concerned.³⁷⁰

With Article P) (1) and Article XXI (1) of the Fundamental Law, the non-derogation principle is also closely associated, as it is directly derived from them. The non-derogation principle applies to substantive, procedural and institutional regulations on the protection of the nature and the environment for only they together can ensure the complete implementation of the principle as follows from the Fundamental Law. The principle has to be observed also by those who apply the law to individual cases in doing so.³⁷¹ However, the nature of the rule of non-derogation is not absolute as it follows from the object and the dogmatic characteristics of the right to environment, the level of nature conservation ensured by law cannot be decreased by the state, unless doing so is absolutely necessary for the implementation of another constitutional right or value. And even in such a case, the extent of decrease in conservation level should not be disproportionate to the objective pursued.³⁷²

The Fundamental Law elevates to a constitutional level the rule according to which anyone who causes damage to the environment is obliged to restore it.³⁷³ The “polluter pays” principle laid down in this provision has particular importance in not only the Hungarian, but

³⁶⁸ Constitutional Court Decision 48/1998 (XI. 23.) AB.

³⁶⁹ Constitutional Court Decision 17/2018 (X. 10.) AB, Reasoning [13]].

³⁷⁰ Constitutional Court Decision 27/2017 (X. 25.) AB, Reasoning [49]].

³⁷¹ Constitutional Court Decision 3223/2017 (IX. 25.) AB, Reasoning [28] to [29]].

³⁷² Constitutional Court Decision 16/2015 (VI. 5.) AB, Reasoning [80]].

³⁷³ Article XXI (2) of the Fundamental Law.

also in international and EU law. It is closely associated with preserving, protecting and improving the quality of the environment, protecting the human health and using and preserving, in a prudent manner, the natural resources that constitute a part of the common heritage of the nation.

Accordingly, as it is manifest in Constitutional Court practice, the “polluter pays” principle, in connection with, and as a part expressly specified in the Fundamental Law of, the right to a healthy environment and Article P) (1), which is not considered a right enshrined in the Fundamental Law in the context of the adjudication of constitutional complaints, not only restricts the content of legislation, but is also to be observed at all times by those who apply the law to individual cases in doing so³⁷⁴.

Article XXI (3) of the Fundamental Law also lays down an element of the protection of the environment that goes beyond the declaration. Thus, the Fundamental Law sets out a constitutional prohibition of transporting pollutant waste into the territory of Hungary for the purpose of disposal.³⁷⁵ However, this does not prevent transportation into the territory of Hungary for the purpose of, for example, recovery, which can be carried out in accordance with environmental protection regulations.³⁷⁶

At a strategic level in the Hungarian regulatory framework, the right to a healthy environment appears in the National Environmental Protection Programme, which is adopted for 6-year periods by the National Assembly since 1997 pursuant to Act LIII of 1995 laying down general rules on the protection of environment. (The 5th National Environmental Protection Programme for the period 2021 to 2026 will be debated by the National Assembly in the 2nd half of 2021.) The National Environmental Protection Programme, which is a comprehensive strategic environmental planning document, determines the environmental objectives of the country and the tasks and means required for reaching them, taking account of the conditions of the country, the long-term interests and future development goals of the society and the obligations arising from global responsibility, international cooperation and EU membership. The objective of the Programme is to contribute to ensuring the environmental conditions for sustainable development. The Programme is based on the fundamental realisation that without the protection and preservation of the natural foundations of life, prosperity and development cannot be achieved in Hungary. The

³⁷⁴ Constitutional Court Order 3162/2019 (VII. 10.) AB, Reasoning [18]].

³⁷⁵ Article XXI (3) of the Fundamental Law.

³⁷⁶ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

questions of environment and socio-economic development are inseparable. The measures in the Programme promote that environmental considerations be incorporated into decisions at all levels and motivate members of society to economise resources, protect the values of nature and landscape, prevent or reduce environmental impacts, eliminate harmful emissions while also adapting to the challenges of climate change. It is key for environmentally aware thinking and action to become a virtue and an advantage which is supported by the complete social and economic system so that sustainable production and consumption habits can become dominant. All this contributes to improving the health and quality of life of the people and the implementation of the right to a healthy environment.

The National Nature Conservation Master Plan, prepared on the basis of Act LIII of 1996 on nature conservation, is also part of the National Environmental Protection Programme. Additionally, pursuant to the provisions of the UN Convention on Biological Diversity, all parties to the Convention, Hungary included, have to prepare a national strategy for the preservation and sustainable use of biological diversity. The national strategy for the preservation of biological diversity for the period of 2014 to 2020 was completed in 2020; its renewal is on the way.

Climate and Nature Conservation Action Plan

The Climate and Nature Conservation Action Plan launched by the Government in February 2020 sets a substantial framework for the tasks of the waste management sector.

The Action Plan sets out, within the framework of government objectives for the protection of the environment, the tasks relating to the reduction of waste generation, the eradication of illegal waste in the country, sustainability, the production, and broader use, of renewable energy and climate protection.

As part of the implementation of the provisions of the Action Plan, Act CLXXXV of 2012 on waste (hereinafter “Waste Act”) has been amended. In section 3, the following paragraphs (3) and (4) have been added:

“(3) In the application of the provisions of this Act, the principles of waste management shall be observed in line with the objective of transition to circular economy so that the products, raw materials and resources retain their economic value for as long as possible and the volume of waste generated be minimised.

(4) In accordance with Article P) of the Fundamental Law, everybody shall strive to make every reasonable effort to prevent the generation, and reduce the volume, of discarded

waste, and in accordance with Article XXI of the Fundamental Law, in order to ensure the right to a healthy environment, everybody shall bear enhanced responsibility for preventing and eliminating illegal dumping of waste in reporting such activities and cooperating in related authority proceedings.”

With the amendment, everyone’s responsibility for ensuring the right to a healthy environment has been enshrined at a statutory level.

Certain new related provisions and implementing measures also serve the right to a healthy environment. What needs to be highlighted is the structural strengthening of the system of administrative institutions, the significant increase in the number of those performing administrative activities and the reform of the system of sanctions.

The system of administrative sanctions is based on strictly sanctioning littering behaviour and imposing (spot) fines and other related measures (such as confiscation) if caught in the act.

As regards the elimination of discarded waste and as a result of the amendment, the Waste Act motivates real estate owners to do everything in their power for the protection of their real estate since, in accordance with Article P) of the Fundamental Law, it is the obligation of the state and everybody else to make every reasonable efforts to prevent the generation, and significantly reduce the amount, of discarded waste, and in accordance with Article XXI of the Fundamental Law, in order to ensure the right to a healthy environment, everybody bears enhanced responsibility for preventing and eliminating illegal dumping of waste in reporting such activities and cooperating in related authority proceedings. From this follows also the fact that the elimination of illegal dumping of waste, or in legal terms, littering, is not only the state’s responsibility and task.

Emphasising prevention, the amendment transformed the regulation on financial security.

The Fundamental Law sets out a prohibition of transporting pollutant waste into the territory of Hungary for the purpose of disposal. What needs to be mentioned in this context is that, in order to comply with the right to a healthy environment, the National Waste Management Plan also prohibits or restricts transporting into the territory of Hungary certain wastes for recovery.

The above-specified measures serve the most efficient implementation of the right to a healthy environment possible.

Implementation of circular economy in Hungary

The European Union measures facilitating transition to a circular economy model enable realising numerous EU and national benefits: used products and raw materials retain their value for as long as possible; the level of waste production and resource use is minimal; resources used in products that reached the end of their lifespan remain a part of the economy, generating additional value by being re-used.

By transitioning to a circular economy model, we can keep natural resources and materials in circulation for as long as possible and minimise the volume of material becoming waste and leaving the cycle. The circular economy attitude requires a new approach from all social actors; it necessitates significant changes to economy, product design, production process and consumer attitude. Pursuant to this approach, producers eliminate waste at the design stage, and instead of relying on solutions used at the end of a product's life cycle, they usually innovate through the entire value chain. Furthermore, the development of recycling technologies plays a key role.

Economically exploitable raw material reserves have diminished drastically. For certain materials, this even fell to a critical level. The recirculation of raw materials into production, the minimising of waste generation and the reduction of resource dependence helps also to boost competitiveness.

As part of the transition to circular economy in Hungary, for the prevention of waste generation, from July 2021, marketing certain disposable plastic products will be prohibited. The establishment of a national system for the redemption of certain beverage containers, which allows for the highest recycling rate possible, has been launched. In the short, medium and long term, this change of attitude will have an ever-increasing contribution to environmental impact reduction by regarding waste as value, thus reducing the volume of discarded waste and the damage to the environment and health caused by littering. Also, secondary raw materials gained from waste reduce primary resource demand.

6.16 FREE CHOICE OF WORK AND OCCUPATION, RIGHT TO WORK, WORKERS' RIGHTS

The concept of the right to work appeared at the end of the 18th century as the demand for free choice of occupation. In the 19th century, the *Rerum Novarum* encyclical issued by Pope Leo XIII contributed greatly to the recognition of social rights as human rights. The encyclical addresses work-related conditions as requirements and declares that in a society, the conditions for honest labour have to be ensured, just like the social care necessary for a tolerable human existence.³⁷⁷

The right to work as one of the economic, social and cultural rights appears in several international documents.

Article 23 of the Universal Declaration of Human Rights sets out that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. The International Covenant on Economic, Social and Cultural Rights also adopts a dual approach as regards the right to work when it declares that as a social right, it “includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” Article 1 (2) of Convention No. 122 of the ILO provides that each Member is obliged to ensure that “there is work for all who are available for and seeking work.”

The EU law contains numerous provisions on the right to work. The importance of the Charter of Fundamental Rights needs to be highlighted in this regard. At an international level, also the Social Charter needs to be mentioned, even though it does not set out a subjective right to work for all people. It does, however, oblige participating Member States to comply with undertakings that can lead to job creation. The right to work as a second-generation right is included in Title II of the Charter of Fundamental Rights among “freedoms”, underlining its dual nature. The Charter of Fundamental Rights declares that everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. The EU law also provides that every citizen of the Union has the freedom to seek employment and to work in any Member State.

³⁷⁷ RÁCZ Zoltán: A munkához való jog tartalmának változása, különös tekintettel a mesterséges intelligencia alkalmazásának hatására. *Miskolci Jogi Szemle*, vol. 15 (2020), special issue 3, p. 140-150.

It is enshrined in the National Avowal of the Fundamental Law that “We hold that the strength of a community and the honour of each person are based on labour and the achievement of the human mind.”

In Article M) (1) of the Foundation, the Fundamental Law declares that the economy rests on two fundamental values: “The economy of Hungary shall be based on work which creates value, and on freedom of enterprise.”

According to Article XII (1) of the Fundamental Law, “Everyone shall have the right to choose his or her work, and employment freely and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.” And according to paragraph (2), “Hungary shall strive to create the conditions that ensure that everyone who is able and willing to work has the opportunity to do so.”

By laying down the right to choose work and employment freely, the Fundamental Law provides not only for the right to work, but also the right to engage in entrepreneurial activities that is closely connected to it. The importance of this right lies in the fact that in a modern market economy, the income and livelihood of the majority of the society originates from the exercise of this right.³⁷⁸

In its decision 21/1994 (IV. 16.), the Constitutional Court came to the conclusion that “the right to work (occupation, enterprise) received the same protection from state intervention and restriction as afforded to other freedoms.” Based on its subjective aspect, all individuals are entitled to the right to work. This means primarily that individuals have the right to participate in society’s productive and service activities and to realise profits from such activities for ensuring a standard of living that is appropriate for them.³⁷⁹ As regards the activity ensuring his or her livelihood, the person employed has the right to choose, i.e. the right to choose employment freely. However, free choice of occupation cannot be narrowed down to simply work in an employment relationship. It includes all forms of legal relationships aimed at the performance of work. The Constitutional Court established also that the right to engage in entrepreneurial activities is an aspect, a specific case, of the fundamental right to choose occupation freely. The right to entrepreneurship means that it is the constitutional right of all people to engage in entrepreneurship, i.e. to carry out business activities.³⁸⁰ Even though the

³⁷⁸ Constitutional Court Decision 32/2012 (VII. 4.) AB.

³⁷⁹ RÁCZ Zoltán: A munkához való jog, in *Emberi Jogi Enciklopédia*, ed. LAMM Vanda, HVG-ORAC, Budapest, 2018, p. 504.

³⁸⁰ Constitutional Court Decision 54/1993 (X. 13.) AB.

right to work covers all forms of work, occupation and enterprise, it does not guarantee a subjective right to engage in a specific occupation or activity.

The right to freely choose work and occupation does not mean that the legislation cannot prescribe, on the basis of the general requirement of rule of law, special requirements for certain occupations.

In its decision cited above³⁸¹, the Constitutional Court differentiates between the subjective aspect and the social right aspect of the right to work. The social aspect means the state's obligation to ensure institutional conditions (job creation, employment policy) for the exercise of the right to work.³⁸²

The right to work as a fundamental right is afforded the same protection against state interference and restrictions as freedoms. The Constitutional Court holds that these restrictions are to be held to different standards based on whether the free choice or the pursuit of the occupation is restricted by the state. A distinction has to be made between measures restricting the free choice of occupation based also on whether the restriction concerned is subjective or objective.

The Constitutional Court expressed clearly that the right to work is in the most danger if the individual is blocked from engaging in an activity, cannot choose it freely. Thus, it declared the prohibition of making becoming an entrepreneur impossible by the state a constitutional requirement.³⁸³ A restriction introduced based on material criteria and its constitutionality have to be scrutinised strictly: primarily whether the restriction is necessary, inevitable and the least drastic means of achieving the objective concerned.³⁸⁴ Setting subjective requirements also limits the freedom of choice; however, meeting these requirements is possible for all. Restricting the practice of an occupation is justified by professional and practical considerations, regarding which the legislator has wider discretion. Accordingly, engaging in certain activities can be made subject to meeting special conditions and requirements by legislation.

The free choice of work and occupation requires not only inactivity from the state, but also activity as regards the implementation of the right. In this context, it is the state's obligation to

³⁸¹ Constitutional Court Decision 21/1994 (IV. 16.) AB.

³⁸² FÁBIÁN Ferenc: A vállalkozáshoz és a foglalkozás szabad megválasztásához való jogról.

³⁸³ Constitutional Court Decision 21/1994 (IV. 16.) AB.

³⁸⁴ Constitutional Court Decision 21/1994 (IV. 16.) AB.

establish the conditions and the institutional framework required for the exercise of the right to work, occupation and entrepreneurial activities.³⁸⁵

The state has wide discretion in determining these specific conditions. The right to work is not enshrined in the wording of the Fundamental Law. This also means that the creation of job opportunities appears as a state objective. According to this state objective, state subsystems have to strive for ensuring work opportunities and job creation. They have to develop and maintain a regulatory and economic environment in which the lack of job opportunities constitutes an objective obstacle to right to work only to the least extent possible.

In the context of the right to engage in entrepreneurial activities, the state's task is to ensure and maintain the conditions for market economy and the freedom of economic competition. The economic policy discretion of the state as regards laying down these conditions in turn affects the subjective right itself, as the conditions and any changes to them fundamentally affect becoming an entrepreneur. Suffice to say that an entrepreneur enters into a framework of economic conditions set by the state (tax, social security), and he or she can exercise his or her right within the boundaries of this framework. The right to engage in entrepreneurial activities cannot be construed to mean the right to engage in entrepreneurial activities in a specific entrepreneurial form.

Article O) of the Fundamental Law states that everyone is obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities. This expresses the objective to set value-creating work as one of the foundations for Hungarian economy. Associated to this is the provision under Article XII, according to which everyone is obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.

The ensuring of employees' rights and appropriate working conditions started to develop as second-generation right in the 19th century. The ILO has been established in 1919 as a specialised UN agency, in which workers, employers and member state governments are all represented. At an international level, the Universal Declaration of Human Rights, the ILO Constitution and its international labour law conventions set out the rules that guarantee honest work and adequate working conditions, including, among others, the right to adequate rest periods and paid leave, the rule on the minimum level of wage, the requirement of

³⁸⁵ RÁCZ Zoltán: A munkához való jog tartalmának változása, különös tekintettel a mesterséges intelligencia alkalmazásának hatására.

ensuring workplace health and safety, the prohibition of discrimination in respect of employment, and the relevant rules on the freedom of organisation and collective bargaining.

At a European level, both the Social Charter and the Charter of Fundamental Rights provide similarly for minimum requirements for working conditions: including, among others, the right of all workers to working conditions which respect their health, safety and dignity; to daily and weekly rest periods; and to paid leave. Workers and employers have the right to conduct collective negotiations, conclude collective agreements and, in cases of conflict of interests, to take collective action to defend their interests (including strike action).

Already in the National Avowal, the Fundamental Law declares that labour has exceptional value. It is defined as the base of the strength of a community and the honour of each person. Having regard to the fact that the Fundamental Law puts special emphasis on labour as an important part of human life, it is important to also enshrine the related rights at a constitutional level. Therefore, the Fundamental Law provides for the right to choose work and it also specifies certain aspects of labour relations. Even though these provisions apply to employees in accordance with the text of the Fundamental Law, this term has to be used in a broad sense covering all persons in an occupation-related relationship.

Article XVII of the Fundamental Law obliges employees, employers and the organisations representing their interests to cooperate. According to the Fundamental Law, in the context of this cooperation, ensuring jobs, the sustainability of the national economy, and other community goals are of key importance.

Article XVII (2) guarantees that employees, employers and their organisations have the right to take collective action to defend their interests, to negotiate with each other and conclude collective agreements, and to exercise the right to strike.³⁸⁶ They can exercise these rights as provided for by an Act. Collective action and the freedom to establish trade unions and other interest representation organisations are supported by Article VIII of the Fundamental Law.

The right to strike is a second-generation right; however, due to its characteristics, it can be considered a freedom. The detailed rules on this right are laid down in Act VII of 1989 on strike, including, among others, the provision stating that participation in a strike is voluntary and no one can be forced to participate in it or stay at its location.

From among employee rights, the right to working conditions which ensure respect for the employee's health, safety and dignity, the right to daily and weekly rest periods and the right

³⁸⁶ Statement of reasons to the Fundamental Law.

to a period of paid annual leave are laid down at a constitutional level.³⁸⁷ The rights to rest, leisure and regular paid leave are constitutional rights which do not qualify as fundamental rights. Detailed rules on these rights are set out in the Labour Code.³⁸⁸

Protection of working women during pregnancy and motherhood

Families are protected also by labour law legislation. To this end, the Labour Code contains numerous specific provisions for the protection of pregnant women and women raising children. Atypical forms of employment promote the alignment of family duties and work.

In this context, the Act provides that at the proposal by an employee raising a child on his or her own, employers have to amend the employment contract to part-time work covering half of the general daily working time until the child reaches the age of four (or for employees raising three or more children, the age of six). For the period of maternity leave, a working woman is also entitled to paid leave.

The Labour Code lays down rules prohibiting and restricting termination of the employment regarding parents raising children. The prohibition of the termination of employment applies to the period of pregnancy, maternity leave, leave of absence taken without pay for caring for a child, and treatment of a woman related to a human reproduction procedure as specified in the relevant legislation (but only for a period no longer than six months from the commencement of such a procedure). Additionally, the termination of employment is restricted as regards mothers and fathers raising their child on their own until the child reaches the age of three. In such a situation, the employment relationship can only be terminated by stating reasons. The provisions restricting the termination of employment oblige, in all cases, the employer to ensure the continuation of employment primarily by creating opportunities, to evaluate, and offer to the employee, positions appropriate for his or her competencies, qualification and experience.

As regards working time reduction for nursing mothers, the Labour Code provides that employees are exempted from their obligation to be ready for work and to work for one hour twice daily, or two hours twice daily in the case of twins, during the first six months of breastfeeding, and thereafter for one hour daily, or two hours daily in the case of twins, until the end of the 9th month; for this period, they are entitled to absence payment.

As regards rest time and night work, the Act provides that from diagnosing the pregnancy of

³⁸⁷ Article XVII (3) and (4) of the Fundamental Law.

³⁸⁸ Act I of 2012 on the Labour Code.

the employee until the child reaches the age of three, irregular work schedule may be used only upon the employee's consent, weekly rest days may not be allocated irregularly; and overtime work, stand-by duty and night work cannot be ordered.

For the protection of mothers caring for children, the Labour Code sets out that from the time her pregnancy is diagnosed until her child reaches three years of age, an employee may not be transferred to work at another location without the employee's consent.

Job protection measures during the coronavirus pandemic

During the first wave of the coronavirus pandemic, the Government of Hungary adopted numerous measures to address the state of danger. During the period of state of danger, temporary derogation from the provisions of the Labour Code became permitted to ensure to the greatest extent possible that the increased health-related challenges are met and to allow for a better alignment of work and private life.

These measures provided multiple solutions for the flexible employment of parents supervising children studying at home due to digital education arrangements. Among these changes is the provision on ordering work from home and remote work, and on establishing a longer reference period suitable for applying irregular work schedule and scheduling more rest time during the period of state of danger.

As a result of the amendment of the Act, agreements between an employee and the employer gained particular significance. This allowed the parties concerned to create at the workplace working conditions that are the most appropriate for them.

While education institutions were closed, children who could not stay at home could be cared for in a duty system during the day. However, having regard to the risk of infection, the provisions by the Government motivate the actors of the world of work to adapt to the challenges relying on primarily the flexible employment possibilities.

During the second phase of the coronavirus pandemic, the Government permitted a flexible application of the rules on remote work.

The main goal of the measures for the protection of jobs was to ensure that employees get to keep their jobs. The Government provides support to those employers who are searching for solutions during the period of state of danger and together with the employees if possible, which, instead of downsizing, enable the preservation of existing workforce.

6.17 ENSURING DECENT HOUSING CONDITIONS AND THE RIGHT TO ACCESS TO PUBLIC SERVICES

The ensuring of decent housing conditions and the right to access to public services have been included in the Fundamental Law as new provisions. We consider housing to be essential for life, since it is a natural need for human beings living in a society to possess a physically separate living space for living private and family life. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights identify the right of everyone to housing as a prerequisite to the actual exercise of the right to an adequate standard of living.

As it was highlighted also by the Constitutional Court,³⁸⁹ the state objectives laid down in the Fundamental Law including the social state objectives under this provision are binding on the legislator only in so far as it cannot adopt a regulation that expressly prohibits or obstructs reaching a given state objective.

Under Article XXII (1) of the Fundamental Law, “The State shall provide legal protection for homes. Hungary shall strive to ensure decent housing conditions and access to public services for everyone.”

As regards housing conditions, in Hungary, as well as in other countries, we can find numerous problems including, among others, homelessness, defaulted home loans and the housing mafia. In these cases, the state can remedy the situation primarily by developing an appropriate regulatory environment and, in certain situations, by establishing an institutional system. But the regulation is programmatic in nature; its implementation depends on the economic performance of the state in all cases.

The other objective is ensuring access to public services. Its guarantees are also laid down in other pieces of legislation such as the Act on local governments (hereinafter the “Local Government Act”),³⁹⁰ which includes separate guarantees for situations where a local government fails to perform its duties and to provide the public service.³⁹¹

Public services are market and non-market services that are declared by state authorities to be of public interest and subject to a special public service obligation. With a view to promoting and facilitating the public interest role, state authorities may impose special public service obligations on the organ providing a service. Additionally, by way of legislation, they can

³⁸⁹ Constitutional Court Decision 24/2019 (VII. 23.) AB, Reasoning [65]].

³⁹⁰ Act CLXXXIX of 2011 on the local governments of Hungary.

³⁹¹ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

establish organs with adequate competence to check compliance with these rules, for example concerning air or rail transport or the energy industry. Public service providers offer some form of service to a wide range of people. It is chiefly the responsibility of the state or the local governments to organise public services. Typical public services are public space maintenance, drinking water supply, sewerage, public roads, health and social care provision, etc.

Former Constitutional Court practice required the state to ensure, by way of the totality of social benefits, a certain minimum subsistence level rooted in the right to social security. However, according to the latest Constitutional Court decisions, guaranteeing a minimum subsistence level does not give rise to any partial rights, including the right to housing.³⁹² The Constitutional Court held that the state's obligation to provide benefits in the case of homelessness covers the provision of accommodation only in a situation directly threatening human life. Thus, the state has to intervene if a person lives below a minimum financial subsistence level and cannot provide, from a material aspect, a life of dignity for him- or herself.³⁹³ Based on this interpretation, the Fundamental Law does not set out the right to housing as a subjective right. It provides for striving to ensuring decent housing conditions only as a state objective.

In addition to setting a state objective, Article XXII (2) of the Fundamental Law places the use of public space for public purposes under constitutional protection. This protection is in close connection with the constitutional prohibition set out in paragraph (3).

Paragraphs (2) and (3) are to be interpreted jointly and in conjunction with each other:³⁹⁴ the constitutional prohibition set out in paragraph (3) ensures the protection of using public spaces for public purposes. This interpretation is supported by also the statement of reasons to the Fundamental Law that declares that using a public space as a habitual dwelling violates the constitutionally protected use of public spaces for public purposes. Accordingly, the aforementioned paragraph (3) is a prohibition enshrined in the Fundamental Law that applies to everyone. The constitutional protection of the use of public spaces for public purposes is justified by the fact that public space is finite and that public purposes use means use

³⁹² Constitutional Court Decision 42/2000 (XI. 8.) AB.

³⁹³ Constitutional Court Decision 37/2011 (V. 10.) AB.

³⁹⁴ Article XXII of the Fundamental Law:

“(2) The State and local governments shall also contribute to creating decent housing conditions and to protecting the use of public space for public purposes by striving to ensure accommodation for all persons without a dwelling.

(3) Using a public space as a habitual dwelling shall be prohibited.”

available to the entire community (to anyone) in the interest of the entire community. Only in exceptional cases, and subject to legislative conditions, can public space be used differently. Consequently, the obligation to respect the rights of others limits also anyone's public purpose use of a public space.³⁹⁵

Measures for solving homelessness

Homelessness is not the same as flatlessness or housing poverty. It is a much more compound and complex problem. It means a complex situation resulting from losing housing that affects every aspect of a human being, including his or her social, mental and health conditions.

For establishing and preserving social security, Act on social administration and social benefits (hereinafter the "Social Administration Act")³⁹⁶ provides for the forms and organisational framework of, the conditions for eligibility to, and the guarantees for the implementation of specific social security benefits provided by the state.

The Social Administration Act specifies the street social work service, the daytime shelter, the regional dispatch service, the night-time shelter, the temporary accommodation, the rehabilitation institution for the homeless and the accommodation for the homeless. From 2017, as part of external accommodation services connected to temporary accommodations, and in certain cases, to daytime shelters, the ways of leaving the system are also ensured. Alongside this, Housing First programmes have also been continuously running in the last years.

Furthermore, soup kitchen services are available to all citizens in need and the Support for People in Need Operational Programme provides a hot meal for 4000 homeless persons every weekday.

For homeless people, primary healthcare services are provided, without territorial service obligation, by general practitioner practices open 24 hours a day in 6 major cities of the country, with the implementation of the service being on its way in two further major cities. 5 of these healthcare centres are located in Budapest. In county capitals and major cities, general practitioner practices without territorial service obligation are open 8 hours a day to persons in need.

Benefits provided by street social work services, daytime and night-time shelters and healthcare services are available to beneficiaries free of charge. To access the services of

³⁹⁵ Constitutional Court Decision 19/2019 (VI. 18.) AB, Reasoning [56]].

³⁹⁶ Act III of 1993 on social administration and social benefits.

temporary accommodations, a small fee has to be paid. For the use of institutions providing permanent residence and complete care with higher levels of comfort, a higher usage fee is charged.

Pursuant to Article 6 of the Seventh Amendment to the Fundamental Law, it is forbidden to use public spaces as a habitual dwelling after 15 October 2018. The statutory elements of the infraction of "violation of the rules on using public spaces as a habitual dwelling" in Act II of 2012 on infractions, infraction procedure and the infraction records system have been amended accordingly. The objective of the amendment is not to criminalise homelessness, but to organise and ensure decent housing conditions for citizens in need. No one has to spend their nights on the street or in public spaces.

In Hungary night-time shelters and temporary accommodations with a capacity of more than 10 000 people are available to homeless persons. Moreover, in the wintertime, this capacity is increased by 1600. In addition to that, nationwide, there is a daytime shelter capacity of more than 7600 people. For persons requiring longer care, a rehabilitation institution for homeless persons with a capacity of 199 and an accommodation for the homeless with a capacity of 456 are also in operation.

Throughout the past years, the Government spent more than 9.4 billion HUF on providing benefits to the homeless. In 2019 this amount, which includes additional support and wage compensation, but does not include resources provided by the European Union, reached 12 billion HUF. In 2020 and 2021 the Government spends a similar amount on providing benefits to this target group.

This clearly shows that the Government uses its best endeavours to provide the highest level of benefits possible to the homeless and to eliminate homelessness altogether, if possible.

Stay of homeless persons in public spaces

In its decision 19/2019 (VI. 18.) AB, the Constitutional Court explained that Article XXII (1) of the Fundamental Law is in complete conformity with the system of values enshrined in the Fundamental Law. In the centre of this system of values stands human dignity. Human dignity, as the basis of all human freedom, can only unfold in the human society, in the course of living together as humans; according to the Fundamental Law, human dignity is the dignity of the individual living in the society and bearing the responsibility of living together in the society. The Constitutional Court held that in line with the values of the Fundamental Law, no one shall have the right to be destitute or homeless; this state is not part of the right to human dignity. To the contrary, this situation is the result of the interrelated dysfunctions of living together in the society and of individual life that need to be treated – and preferably eliminated – by the society on the basis of its fundamental principles of loyalty, faith and love. In this process, the aims of the individual and of the state representing the interests of the society are the same. The body highlighted that the right to human dignity is seriously violated due to the marginalisation of humans to the periphery of the society; nevertheless, the injury of human dignity would actually result from a situation where the individual is left alone by the state in his or her vulnerable and socially marginalised position. The state that represents the values laid down in the Fundamental Law should never leave alone a helpless, vulnerable person incapable of caring for himself or herself; the state's institutional protection obligation follows from the values of the Fundamental Law, the state's obligation to protect the poor and the vulnerable.

6.18 CHILDREN’S RIGHTS, PROHIBITION OF CHILD LABOUR

The first children’s rights instrument to thoroughly cover children’s rights and to identify obligations on the part of states, is the Convention on the Rights of the Child (hereinafter the “CRC”), adopted in New York on 20 November 1989 and promulgated in Hungary by Act LXIV of 1991.³⁹⁷ Within the meaning of the Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier (Article 1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child are the primary consideration (Article 3 (1)).

Under Article XVI of the Fundamental Law, every child has the right to the protection and care necessary for his or her proper physical, mental and moral development.

This provision of the Fundamental Law sets out, in accordance with fundamental rights terminology, children’s rights that are to be respected by all. There is no generally accepted position in legal theory or literature on whether children’s rights belong to the second or third generation of human rights. According to the majority standpoint, children’s rights, in their broadest sense currently accepted, can be viewed as second-generation rights due to their nature and the necessity of active (state) action in close connection with them. However, based on the fact that they were recognised as rights giving rise to obligations at the end of the second part of the 20th century, and that they are regarded as group rights, children’s rights can also be considered third-generation rights.³⁹⁸

Parents have joint responsibility for the upbringing and development of the child, and in this regard, when taking action, “the best interests of the child will be their basic concern” (Article 18 (1) of the CRC).

At the same time, the CRC imposes the obligation on the states to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of institutions, facilities and services for the care of children (Article 18 (2)). The states have to take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible (Article 18 (3)). Thanks to government measures, early

³⁹⁷ SZEIBERT Orsolya: Gyermeki jogok, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018, p. 336.

³⁹⁸ LUX Ágnes: A gyermekek jogai, in JAKAB András – FEKETE Balázs (eds.): Internetes Jogtudományi Enciklopédia (section Alkotmányjog, section editors: BODNÁR Eszter, JAKAB András) <https://ijoten.hu/szocikk/a-gyermekek-jogai> (2018) [11] [12].

childhood care opportunities are better adapted to the expectations and needs of families with small children at the local level; thus, reconciling family and work life. In order to further encourage demographic processes, in addition to achieving a higher birth rate, care must be taken to improve the quality of life, to ensure that potential disadvantages are not carried on from one generation to the next. Nursery care also plays a major role in the development of disadvantaged children. The participation of young children in high-quality early childhood services contributes to the general improvement of the outcomes of disadvantaged children.³⁹⁹ In accordance with the CRC (see Article 27), the Fundamental Law lists the right to protection and care necessary for the child's proper physical, mental and moral development amongst the best interests of the child. This standpoint is also supported by a Constitutional Court decision, according to which a child means a human being who is entitled to all constitutional basic rights, just like everybody else, but for the child to be able to exercise the totality of these rights, he or she has to be ensured all age-appropriate conditions for becoming an adult.⁴⁰⁰ This reference to "all age-appropriate conditions" constitutes the difference between general human rights and children's rights.

The Ninth Amendment to the Fundamental Law in force from 23 December 2020 supplemented the fundamental rights provisions laying down that Hungary protects the right of children to a self-identity corresponding to their sex at birth, and ensures an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country. This amendment prescribes a further institutional protection obligation for the state, i.e. the legislator has to lay down rules establishing a legislative environment and institutional framework guaranteeing the preservation and protection of the self-identity of a child that is unchangeable from birth.⁴⁰¹ This provision expresses the view that sex at birth is an unchangeable characteristic: human beings are born either a man or a woman. The right of all children to a self-identity corresponding to their sex at birth constitutes a part of their human dignity, which also includes protection against mental or biological interference with their physical and psychological integrity.⁴⁰²

Pursuant to the Fundamental Law, parents have the right to choose the upbringing to be given to their children, and they are obliged to take care of their minor children, including the

³⁹⁹ Olivier Thévenon – Chris Clarke – Gráinne Dirwan (March 2021): Measuring what matters to child well-being and policies, Well-being, Inclusion, Sustainability and Equal Opportunity Centre, OECD.

⁴⁰⁰ Constitutional Court Decision 995/B/1990 AB.

⁴⁰¹ Statement of reasons to the Fundamental Law.

⁴⁰² Statement of reasons to the Fundamental Law.

provision of schooling for their children.⁴⁰³ The right to choose upbringing presupposes the existence of options to choose from, the conditions for which are to be ensured by the state.

Article XVI (4) of the Fundamental Law provides not for a right, but for an obligation for adult children to take care of their parents if they are in need.

This provision is in line with the “National Avowal”, and fits in the chapter “Freedom and Responsibility, of the Fundamental Law.

Pursuant to Article XV (5) of the Fundamental Law, Hungary protects by means of separate measures not only families, women, the elderly and those living with disabilities, but also children. This protection, the provision of which is an obligation of the state, strengthens children’s rights.

Article XVIII of the Fundamental Law also protects children’s rights by prohibiting the employment of children, except in those cases specified in an Act where there is no risk to their physical, mental or moral development.⁴⁰⁴ This protection is in line with the provisions of the CRC and the relevant international instruments, in particular ILO Convention No. 182 on the worst forms of child labour and the Social Charter. Exceptions and the conditions for children’s participation in work are laid down in the Labour Code. The Act differentiates between children whose employment it prohibits (with exceptional and narrow options for derogation) and young workers who reached the age of sixteen, but did not yet reach the age of eighteen and can be employees pursuant to the Act.

Prohibition of child labour and protection of young workers

Hungary is committed to the prohibition of child labour, and guarantees the protection of young workers by way of separate provisions. Pursuant to the provisions of the Labour Code, only persons who are at least sixteen years of age, or students who are at least fifteen years of age if entering into an employment relationship during school holidays, may be employees. After the guardianship authority is notified accordingly, for the purposes of performance in cultural, artistic, sports or advertising activities, also young persons under sixteen years of age may be employed. Persons with limited capacity to act may enter into an employment relationship only with consent from their statutory representative. The amendment and termination of the employment contract and any juridical act to undertake an obligation also require consent from the statutory representative. In accordance with civil law rules, a person is considered to have limited capacity to act if he or she is between

⁴⁰³ Article XVI (2) and (3) of the Fundamental Law.

⁴⁰⁴ Article XVIII (1) of the Fundamental Law.

the age of 14 and 18 and does not lack the capacity to act.

For the protection of juveniles, the Act prescribes that the provisions on young workers of the Labour Code also apply to the employment under a relationship other than an employment relationship of persons who have not reached the age of 18. One of the general provisions of the Labour Code declares that employees may be employed only for work that is not harmful to them, taking account of their physique and development.

The Labour Code lays down specific provisions for young workers, including a prohibition of work at night and of ordering overtime work. As a general rule, the Labour Code provides that a young worker is prohibited from working at night (between 10 p.m. and 6 a.m.).

The daily working time of young workers is limited to 8 hours, and the number of working hours performed under different employment relationships is to be added up. Young workers are entitled to longer rest breaks, more daily rest and 5 days of additional annual leave.

The labour authority monitors compliance with the prohibition of child labour and with rules providing guarantees for young workers, and applies sanctions for violations detected.

6.19 RIGHT TO VOTE

The Fundamental Law specifies political participation rights, such as the right to vote and the right to participate in national or local referendums, on the basis of the principle of popular sovereignty.⁴⁰⁵ A stable electoral system that works lawfully and predictably is an essential requirement of any political system based on the principle of democracy.⁴⁰⁶

The right to vote is a classic fundamental right, and as a subjective right, it can be enforced against the state by legal means through judicial channels. In the context of the right to vote as a subjective right, the state's obligation is to respect the right to vote of voters. It has to develop the appropriate legal instruments to ensure this. For example, if a person is obstructed in the exercise of his or her right to vote or is left out of the electoral register, he or she must be granted access to an appropriate forum of legal remedy.

However, the objective, institutional protection side of the right to vote is significantly more dominant than its subjective right character. While from a subjective right aspect, the state is required to exercise self-restraint and to protect the right to vote, from an objective aspect, the primary duty of the state is to ensure the conditions for the right to vote, i.e. that elections are held.

According to Constitutional Court interpretation, the right to vote is a fundamental right the conditions for which are to be ensured by the state: as regards the institutional protection side of the right to vote, the state must create and enforce the regulations allowing and facilitating the exercise of the right to vote. It follows from the state's obligation to protect the institution that it may not hinder the exercising of the right to vote in a manner restricting participation at the elections contrary to the Fundamental Law. Thus, the enforceability of the right to vote as a subjective right depends on the precondition of the state guaranteeing its exercise and providing adequate guarantees to it.⁴⁰⁷

Part of the objective institutional protection side is that in order to ensure the exercise of the right to vote, the state has to enact regulations including substantive, institutional and procedural rules which have to cover everything from fundamental principles to the technical details of implementation. Additionally, the state has to provide for also criminal rules that protect the right to vote. The obligation to guarantee the budgetary resources for the seamless conduct of the elections is also not to be neglected.

⁴⁰⁵ Statement of reasons to the Fundamental Law.

⁴⁰⁶ Constitutional Court Decision 3171/2018 (V. 22.) AB.

⁴⁰⁷ Constitutional Court Decision 1/2013 (I. 7.) AB.

The Constitutional Court stressed that the National Assembly has wide discretion in choosing an electoral system and laying down the rules of electoral procedure. The legislator is free to determine the system of constituencies and the order of nominating candidates, voting and winning mandates. When enacting the rules on the right to vote, the National Assembly may exercise this freedom of choice within the boundaries set by the Constitution. The adopted rules must not be in conflict with constitutional provisions and must not unconstitutionally restrict fundamental rights regulated by the Constitution.⁴⁰⁸ According to the interpretation of the Constitutional Court, any restriction on the universality and equality of the right to vote is acceptable and constitutional only if it is for a very significant principled reason.⁴⁰⁹

It needs to be highlighted that the general system of forums available for fundamental rights protection is not sufficient in the case of the right to vote due to its special nature. When the right to vote is exercised, it is being exercised by millions of people at the same time. Thus, legal remedy proceedings must not take too long, so that the results of the election can be established. Accordingly, the right to vote requires a special system of legal remedies and procedural rules for legal remedy applications to be adjudicated extremely fast. Without such a system, the right to vote is very vulnerable.

It follows from the above, that the state has to protect not only the right to vote as a subjective right, but also the institution itself within the framework of which the right to vote is implemented. The objective institutional protection obligation of the state is significantly broader than the protection of the subjective right, since procedural rules are prerequisites for the exercise of the right to vote.⁴¹⁰

Pursuant to Article XIII (1) of the Fundamental Law, both the right to vote and the right to stand for election are fundamental rights provided for by the Fundamental Law. This fundamental right sets the requirement for the state to ensure the conditions for the exercising of the right to vote.

Similarly to the former Constitution, the Fundamental Law regulates the right to participate in public affairs in the same Article as the right to vote. Thus, the Article includes the rules on both the entitlement to vote and the right to hold public office. However, it does not lay down such detailed rules as, for example, the one prescribing that only Hungarian citizens can be mayors, since it is the cardinal Act on elections that provides substance to its framework provisions.

⁴⁰⁸ Constitutional Court Decision 63/B/1995 AB.

⁴⁰⁹ Constitutional Court Decision 6/1991 (II. 28.) AB.

⁴¹⁰ Constitutional Court Decision 64/1991 (XII. 17.) AB.

The Article is closely related to the principles for the election of Members of the National Assembly, with special regard to the principle of the generality of elections.⁴¹¹

In accordance with paragraphs (1) to (3) of the same Article, every adult citizen of Hungary or another Member State of the European Union with domicile in Hungary and also adults recognised as a refugee, immigrant or resident in Hungary⁴¹² have the right to vote in elections of local government representatives and mayors. In elections of Members of the European Parliament, adult Hungarian citizens and adult citizens of another Member State of the European Union with domicile in Hungary may participate.⁴¹³ The active right to vote in local government elections is implied by exercise of the right of the community of voters to local self-governance.⁴¹⁴

Paragraph (4) provides that a cardinal Act may set the requirement of having a domicile in Hungary for participation. The exhaustive nature of the grounds for exclusion set out in Article XXIII of the Fundamental Law is reinforced by the wording of paragraph (4). The reason behind specifying the grounds for exclusion in the Fundamental Law is to provide guarantee that such a restriction of the right to vote can only take place in the possession of the power to adopt or amend the Fundamental Law, by way of consensus, included among the rules on election law.⁴¹⁵

The condition of having a Hungarian domicile can be prescribed for both the right to vote and the right to stand for election. For the election of Members of the European Parliament, this rule is laid down in section 2/A of Act CXIII of 2003 on the election of the Members of the European Parliament, which makes the right to stand for election conditional upon having a Hungarian domicile and prohibits the election of persons serving, based on a final and binding judgment, a sentence of imprisonment or compulsory psychiatric treatment in an institution imposed in a criminal proceeding.

Under Act L of 2010 on the election of local government representatives and mayors, a voter is entitled to vote at his or her domicile or registered place of residence, and persons serving, based on a final and binding judgment, a sentence of imprisonment or compulsory psychiatric treatment in an institution imposed in a criminal proceeding are excluded from voting in also such an election.

⁴¹¹ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

⁴¹² Article XXIII (1) to (3) of the Fundamental Law.

⁴¹³ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

⁴¹⁴ Constitutional Court Decision 63/B/1995 AB.

⁴¹⁵ Constitutional Court Decision 1/2013 (I. 7.) AB.

Persons serving, based on a final and binding judgment, a sentence of imprisonment or compulsory psychiatric treatment in an institution imposed in a criminal proceeding do not have the right to stand for election in the election of Members of the National Assembly either. Otherwise, voters registered in the electoral register are entitled to participate in elections.⁴¹⁶

The connection to the state of a voter with domicile in Hungary is more direct and stronger than that of voters without such a domicile. It can be expected from voters with domicile in Hungary to vote in person, even at diplomatic missions, having regard to the fact that their right to vote is full, i.e. they can vote for both party lists and individual constituency candidates, contrary to those who are allowed to vote by post but only for party lists.

Under paragraph (6), those disenfranchised by a court for a criminal offence or limited mental capacity do not have the right to vote and to be voted for. Citizens of another Member State of the European Union with domicile in Hungary do not have the right to be voted for if they have been excluded from the exercise of this right in their country pursuant to the law, a court decision or an authority decision of the state of their citizenship.

It is important to highlight the change according to which a person under guardianship is not generally and automatically excluded from the right to vote, but only if he or she is specifically deprived of it by a court. An adult person under guardianship is eligible to vote and to be voted for pursuant to Article XXIII of the Fundamental Law, provided that a court does not disenfranchise him or her.

The special rule on citizens of the European Union with domicile in Hungary, which applies also on the basis of the law of the state of his or her citizenship, is included due to the accession to the European Union.

Paragraph (7) of the same Article of the Fundamental Law specifies also who are eligible to participate in a national or local referendum.

The legislator links participation in national referendums to the right to vote in parliamentary elections, while in local referendums persons with the right to vote in elections of local government representatives and mayors may participate. The rule laid down in Article XXIII (7) of the Fundamental Law is a referential rule, which refers back to Article XXIII (1) and (5).

⁴¹⁶ Dr. ÁRVA Zsuzsanna: Commentary to the Fundamental Law, Wolters Kluwer Kft. (2013)).

Paragraph (8) entitles all Hungarian citizens to hold a public office according to their aptitude, qualifications and professional competence. Public offices that cannot be held by members or officers of a political party are specified in an Act.

All Hungarian citizens are entitled to the right to hold a public office, but not as a subjective right.⁴¹⁷ Even though the Fundamental Law does not define the term “public office”, it does specify the specific groups of conditions. It is worth noting that public offices are an exception to the possibility of employment under the free movement of persons. Accordingly, tying holding a public office to citizenship is also in line with European Union rules.

The right to vote plays a key role in the implementation of an actually functioning democracy. To guarantee that the legitimacy of the elected (legislative) power and the decisions adopted by it (Acts) are not put into question, general and equal right to vote has to be fully ensured. Generally, the state has wide discretion in determining specific regulation, but the requirements for exercising the right to vote cannot render expressing the will of the people more difficult and cannot obstruct the freedom of choice embodied in the right to vote. It is rare to be able to establish that a single electoral rule or legislative institution restricts free elections in itself. Electoral rules as a whole have to comply with the requirement of having to promote, above all, the free expression of the opinion of the voters.⁴¹⁸

⁴¹⁷ Constitutional Court Decision 638/B/1997 AB.

⁴¹⁸ Constitutional Court Decision 1/2013 (I. 7.) AB.

6.20 NATIONAL MINORITY RIGHTS

Belonging to a national minority is a fundamental human right. It can be conceived both as an individual and a collective right, and applies in both dimensions. From among the general fundamental rights, the principles of equality and non-discrimination have a particular importance as regards both individual and collective national minority rights. The concept “national minority”, together with the concept of “nation” as we understand it today, emerged as a result of the development of civil society in the 19th century. In this context, national minority means a community of persons who share a particular language, culture and traditions that are different from those of the majority of the state in the territory of which they live.⁴¹⁹

In public international law, it was the peace treaties bringing World War I to an end that first provided for the protection of national minorities. In the peace treaties guarantees have been provided to the Central Powers that suffered territorial losses that the successor states would protect minorities, and they have been granted the right to appeal to the League of Nations against any violation of these provisions.

The system had not been working satisfactorily, and since it related solely to Central and Eastern European states, it had not been taken over when the UN was established.

Not yet mentioned in the Universal Declaration of Human Rights, the rights of national (ethnic) minorities are first dealt with, as minority rights, in the International Covenant on Civil and Political Rights. This international legal instrument elevated the protection of national minorities and national minority rights to the status of human rights.

According to Article 27 of the International Covenant, persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The protection of these values can be the subject of other rights enshrined in the Covenant as well (such as the right to freedom of conscience and religion, the right to privacy or the right to freedom of expression). However, the values protected by Article 27 as minority rights can be distinguished from those with regard to their specific personal scope, their both individual and collective nature, and their purpose, also supported by the UN human rights bodies, to preserve minority culture, religion and language.

For the Member States of the European Union, the Charter of Fundamental Rights lays down the rules protecting national minorities. In addition to a general prohibition of discrimination, Article 21 specifically provides for a prohibition of discrimination based on, among others, the ground of membership of a national minority. This is underpinned by Article 22 that prescribes, as a positive obligation, that Union respects cultural, religious and linguistic diversity.⁴²⁰

⁴¹⁹ SZALAI Anikó: Nemzeti kisebbségek védelme, in LAMM Vanda (ed.): Emberi Jogi Enciklopédia, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018.

⁴²⁰ Article 21 (1) and Article 22 of the Charter of Fundamental Rights.

According to the Fundamental Law of Hungary, national minorities living in Hungary are constituent parts of the state. Every Hungarian citizen belonging to a national minority is granted the right to freely express and preserve his or her identity. National minorities living in Hungary have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, to receive education in their mother tongues, as well as to establish their self-government at both local and national level.⁴²¹

The Fundamental Law leaves it to a cardinal Act to establish the detailed rules governing national minority rights, determine national minorities, set the conditions for their recognition, and lay down the rules for the election of their local and national self-governments. According to the definition provided in the Act on the rights of national minorities,⁴²² ethnic groups resident in the territory of Hungary for at least one century, who are in a numerical minority amongst the population of the state, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities are considered national minorities. The national minorities are listed in the Annex to the Act. These are the following: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Rusyn, Serbian, Slovak, Slovene and Ukrainian.⁴²³ The list does not preclude the possibility of it being supplemented by additional national minorities, provided that the statutory conditions are met.

Every national minority has the right to exist and survive as a national minority community. Moreover, national minority communities and individuals belonging to a national minority have the right to prosperity in their land of birth and to the freedom and protection of adherence to the culture and traditions of their own or their parents' and ancestors' birth place or domicile, as well as to maintain undisturbed contact with their ancestral homeland. Individuals belonging to a national minority have the right to maintain contact with the state and communal institutions of their respective ancestral homelands and with national minorities living in other countries. Individual national minority rights ensure that persons belonging to a national minority can freely use their mother tongue orally and in writing, learn, foster, enrich and pass on their history, culture and traditions; learn their mother tongue, attend public upbringing, education and cultural education in their mother tongue, and have equal opportunities in education and access to cultural services. Persons belonging to a national minority have the right to respect for the national minority traditions pertaining to the family, to nurture their family relationships, to observe their family celebrations in their mother tongue and to have the rites of a religious community related thereto performed in their mother tongue.

Moreover, individuals belonging to a national minority can use their family names and given names in their mother tongue and can have their family names and given names officially recognised. They can, furthermore, choose their own and their children's given names from those of their national minority, and have them registered in accordance with the rules of the language of their national minority.

The collective national minority rights encompass preserving, fostering, strengthening and passing on identity, preserving and developing the historical traditions and mother tongue, as well as fostering and enriching tangible and intangible culture. In exercising their rights

⁴²¹ Article XXIX (1) and (2) of the Fundamental Law.

⁴²² Act CLXXIX of 2011 on the rights of national minorities.

⁴²³ Annex 1 to Act CLXXIX of 2011 on the rights of national minorities.

pertaining to the collective use of names, national minorities have the right to use historically established settlement names, street names and other geographical designations intended to be used by the community. They can establish and operate institutions, and have the right to kindergarten and primary school upbringing and education, nationality minority dormitory services and secondary school upbringing and education for those belonging to the national minority.

Besides, the Act on the rights of national minorities declares that Hungary guarantees for national minority communities to conduct their events and ceremonies seamlessly, preserve, foster and pass on their architectural, cultural, funeral and religious monuments and traditions and use their symbols.

National minority organisations have the right to establish and maintain broad and direct international relations. National minorities are granted the collective right to set up and operate national minority self-governments, and to participate in the work of the National Assembly.

The Deputy Commissioner for Fundamental Rights is responsible for monitoring the enforcement of the rights of national minorities living in Hungary and taking the necessary measures as required in a separate Act.

In Hungary, the state provides subsidies, in the amount set out in the Act on the central budget, for national minority self-governments to fulfil national minority public affairs, for activities and projects pursued and implemented as part of the educational and cultural self-administration of national minorities and national minority cultural autonomy, and for national minority organisations falling within and outside of state finances, for developing the cultural autonomy of national minorities.⁴²⁴

⁴²⁴ Section 126 (2) of Act CLXXIX of 2011 on the rights of national minorities.

6.21 SPECIAL LEGAL ORDER

Special legal order presupposes the operation of a society under extraordinary conditions. The legal systems of democratic states can be considered consistent in that regard that there are exceptional situations where it is necessary for the state to introduce a special legal order. However, in this democratic framework, there is not uniform standpoint as regards the regulation of special legal order.⁴²⁵

Article 15 of the ECHR contains provisions on the possibility of the suspension of the Convention in time of emergency. Pursuant to these, a High Contracting Party may take measures derogating from specific obligations to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. Even in these situations, the ECHR protects a certain scope of fundamental rights and allows for derogations only under strict conditions.⁴²⁶ The Secretary General of the Council of Europe has to be fully informed of such derogations.

In accordance with Article 4 (1) of the International Covenant on Civil and Political Rights adopted within the framework of the United Nations, in time of public emergency, the States Parties to the Covenant may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. The Covenant also prohibits the restriction of certain fundamental rights and as a guarantee, it permits derogation only subject to strict conditions.

The reason why extraordinary situations are regulated at the constitutional level is because these provisions allow derogations from the Fundamental Law itself. Therefore, the declaration of a special legal order requires a two-thirds majority of the Members of the National Assembly.⁴²⁷

The primary objective of the special legal order regulation is to maintain the state's effectiveness with a view to eliminating the danger or threat as soon as possible and to establish a safety and defence system ensuring that the tasks related to extraordinary situations are handled. To facilitate a solution, a necessary and temporary shift occurs in the structure of power.

⁴²⁵CSINK Lóránt: Mikor legyen a jogrend különleges?, in *Iustum Aequum salutare*, 2017. 4.

⁴²⁶ Article 15 of the ECHR.

⁴²⁷ Statement of reasons to Article 48 of the Fundamental Law.

The power of the executive expands in certain policy areas, and the control function of the Constitutional Court strengthens. The provisions of the Fundamental Law guarantee that the Fundamental Law's application is not suspended and the operation of the Constitutional Court is not restricted during a period of special legal order.⁴²⁸

A common condition for applying special legal order regulations is that the event that occurred has to harm or endanger a right protected under the Fundamental Law, such as life, assets, constitutional order, public order, public safety and public health.

In accordance with the principle of proportionality, in the current Hungarian legal system, there are certain stages and forms of special legal order depending on whether they are triggered by external or internal factors, catastrophes or social reasons. In the Fundamental Law, a separate chapter is dedicated to special legal order. Its forms are: state of national crisis, state of emergency, state of preventive defence, unexpected attack and state of danger. The Sixth Amendment to the Fundamental Law supplemented these five cases with a so-called "state of terrorist threat" in 2016, taking account of the tragic events in Europe and the permanent migration situation relating to a massive influx of migrants.⁴²⁹ (The Ninth Amendment to the Fundamental Law adopted in 2020 amends the cases of special legal order specified in Article 48 with effect from 1 July 2023: state of war, state of emergency and state of danger.⁴³⁰)

At present, pursuant to Articles 53 and 54 of the Fundamental Law, the detailed rules have to be laid down in a cardinal Act, such as the Act on national defence, the Hungarian Defence Forces and measures applicable during special legal order (hereinafter the "National Defence Act") and the Act on disaster management and amending certain related Acts (hereinafter the "Disaster Management Act").⁴³¹

⁴²⁸ Article 54 (2) of the Fundamental Law.

⁴²⁹ Article 48 to 54 of the Fundamental Law.

⁴³⁰ The provision of the Ninth Amendment to the Fundamental Law relating to special legal order enters into force on 1 July 2023. According to the Statement of reasons to the Ninth Amendment to the Fundamental Law, this provision comprehensively amends the provisions of the Fundamental Law on special legal order. The systemic objective of the Proposal is to make special legal order regulation more transparent and to adapt it to the rules on operation under normal legal order and on crisis management in order for it to conform to the principle of gradual approach so it can focus on the most severe challenges and threats in a modern way that responds to a changing security environment and by implementing further guarantees taking account of the regulation in force at the time. One of the main directions of the Proposal is that it designates, taking account of the numerous international examples also, the Government to be responsible for adopting decrees in all cases of special legal order. The reason for this is that following the declaration of special legal order, ensuring fast, operational and both politically and legally responsible decision making is necessary, for which the Government seems to be the most appropriate actor in the Hungarian constitutional system.

⁴³¹ Act CXIII of 2011 on national defence, the Hungarian Defence Forces and measures applicable during special legal order and Act CXXVIII of 2011 on disaster management and amending certain related Acts.

When setting out the fundamental right requirements for each case of special legal order, the Fundamental Law prohibits the restriction of certain fundamental rights that are considered absolute rights, such as the right to human dignity, and also torture, inhuman or degrading treatment or punishment, servitude, trafficking in human beings, experiments on human beings without consent, and practices of eugenics, trade in human organs and human cloning. As regards criminal law and procedural law principles, it upholds the presumption of innocence, the right to defence in all stages of criminal proceeding, the principle of *nullum crimen sine lege* as it is clarified by international and Union law, having regard to also the general principles of international law, and the prohibition of double conviction for the same offence.⁴³²

Pursuant to the common rules of special legal order, the exercise of certain fundamental rights can be suspended or restricted even beyond the extent set out in Article I (3). The rights that can be suspended or restricted are specified also in the National Defence Act. Under the relevant regulation, this means curfew, travel restrictions, restrictions on assemblies, permitting body search, and mail traffic control.⁴³³

During a period of special legal order, the necessity and proportionality test is not to be applied generally, because the entirety of fundamental rights only prevails in a time of peace.⁴³⁴

Since during a period of special legal order, the adoption of laws and the exercise of rights in a special way may be permitted, the extraordinary official authority powers may leave room for abuse. The Fundamental Law lays down a provision to ensure that this does not happen.

Pursuant to this rule, a special legal order is to be terminated by the organ entitled to introduce the special legal order if the conditions for its declaration no longer exist. This provision guarantees that the regulation is proportional to what is absolutely necessary for handling the danger concerned.⁴³⁵

The state of danger is the only form of special legal order that is not aimed at the armed protection of the state. The main rules on a period of state of danger are included in Article 53 of the Fundamental Law, while its detailed rules are set out in a cardinal Act, the Disaster Management Act.

⁴³² Article 54 (1) of the Fundamental Law.

⁴³³ Sections 70 and 79 of the National Defence Act.

⁴³⁴ Statement of reasons to Article 54 of the Fundamental Law.

⁴³⁵ Article 54 (3) of the Fundamental Law.

What makes this topic sadly relevant is that the Act adopted for the elimination of the consequences of the coronavirus epidemic causing massive disease outbreaks and for the protection of the health and lives of Hungarian citizens lays down special rules relating to the state of danger.⁴³⁶

Based on the relevant provision of the Fundamental Law, the Government is authorised to declare a state of danger in the event of a natural disaster or industrial accident endangering life and property. These are specified in the Disaster Management Act. Their list includes floods, inland water, extreme weather conditions, consequences of industrial accidents, and also human epidemics causing massive disease outbreaks, risks of an epidemic and epizootics.⁴³⁷

Pursuant to Article 53 (2) of the Fundamental Law, in a state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. Decrees adopted this way remain in force for fifteen days, unless the Government, on the basis of authorisation by the National Assembly, extends those decrees. However, upon the termination of the state of danger, such decrees cease to have effect.⁴³⁸

In our days, the tension that generally exists between the right to security and the right to liberty is even higher as security is under exceptionally serious threats (see influx of migrants⁴³⁹, pandemic⁴⁴⁰). The different legal systems are consistent in that regard that in time of special legal order, whatever its designation might be (depending on language, translation), it is not only the powers of certain bodies that changes, but also the principle of the division of powers itself.⁴⁴¹ As Hungary is a democracy, the main actor in this decision is the Government, i.e. the executive organ empowered by a parliamentary majority, and thus the citizens. Special legal order encompasses all the rules that temporarily regulate, as a special part of the Fundamental Law, the operation of the state in extraordinary, unusual periods. However, the grounds for special legal order cannot be precisely and definitively established among the rules, because both the circumstances and their social significance are constantly changing. Hungarian legislation is flexibly adapted, supported by continuous

⁴³⁶ Article 1 of Act I of 2021 on the containment of the coronavirus pandemic.

⁴³⁷ Article 53 (1) of the Fundamental Law and Article 44 of Act CXXVIII of 2011 on disaster management and amending certain related Acts.

⁴³⁸ Article 53 (3) and (4) of the Fundamental Law.

⁴³⁹Section 80/A of Act LXXX of 2007 on asylum regulating the “crisis caused by mass migration”.

⁴⁴⁰ Act I of 2021 on the containment of the coronavirus pandemic.

⁴⁴¹ CSINK Lóránt: Mikor legyen a jogrend különleges?, in *Iustum Aequum Salutare* XIII.2017.4. [7]-[16].

consultation, to events that would endanger the fundamental rights of citizens.

From 11 March 2020 3 p.m., the Government of Hungary declared, in Government Decree 40/2020 (11 March), a state of danger in the entire territory of Hungary for the elimination of the consequences of the human epidemic endangering life and property and causing massive disease outbreaks (SARS-CoV-2 coronavirus pandemic), and for the protection of the health and lives of Hungarian citizens. The Prime Minister, as the responsible Member of the Government designated by the decree, is assisted in the performance of his tasks by the “Operational Corps Responsible for the Containment of the Coronavirus Epidemic”. Government Decision 1101/2020 (14 March) set up a Special Legal Order Regulation Action Group headed by the Minister in charge of the Prime Minister’s Office. Its task is to adopt state-of-danger legislation necessary for taking effective action against the coronavirus pandemic and its adverse effects. The Action Group started its work on 16 March 2020. With the end of the first wave of the pandemic, the state of danger terminated on 18 June 2020 and a so-called “state of epidemiological preparedness” has been introduced. The containment of the pandemic is a multi-front battle: in addition to the protection of health, the protection of Hungarian families, the economy and jobs are also of key importance. Based on experience gained from the first wave, the Government prepared the healthcare system and asked for the opinion of the people, in the form of a national consultation, on means of containment of coronavirus. In the national consultation, the people spoke clearly for maintaining the functioning of the country for as long as possible, and also indicated the means they support. The highest percentage of Hungarian people supported wearing masks, followed by closing the borders and restricting events, and then by social distancing, restricting the export of means necessary for containment, reserving a shopping period for the elderly, free parking and introducing a curfew period. The second wave of the pandemic reached Europe and Hungary in autumn. Based on authorisation by the National Assembly, the Government reintroduced the special legal order and declared a state of danger again from 4 November 2020, which was then extended by the National Assembly. Thus, just like during the first wave, the special legal order enabled the Government to act quickly. The Government extended the period of application of protective measures introduced under the state of danger first until 1 February 2021 and then until 15 March. The National Assembly voted for an extension by 90 days of the state of danger on 22 February 2021. This gave the Government the legal opportunity for the further

effective protection of health and economy for the period of the third wave of the coronavirus pandemic. Hungary fights the coronavirus pandemic with one of the most successful vaccination programmes in Europe. However, new virus variants are spreading all over Europe and they are present also in Hungary; therefore, enhanced defence is crucial. Consequently, the National Assembly authorised, by extending the temporal scope of the Act on the containment of the coronavirus pandemic, the Government to take action for the containment until the 15th day following the first sitting day of the autumn session of the National Assembly. The calendar day when this happens will be established, after it becomes known, by the Minister responsible for Justice in a specific decision. The law also declares that the Government is authorised to terminate the state of danger even before this date. Pursuant to the preamble of the Act, the top priority is for Hungary to leave behind the period of the coronavirus pandemic, but the exact date for this cannot be predicted at the moment.⁴⁴²

⁴⁴² Act I of 2021 on the containment of the coronavirus pandemic.

7. NOTES

8. INTERNATIONAL ORGANISATIONS AND INSTRUMENTS

UN programmes and International Organisations

United Nations

<http://www.un.org/en/>

United Nations High Commissioner for Human Rights

<http://www.ohchr.org/EN/Pages/home.aspx>

United Nations High Commissioner for Refugees

<http://www.unhcr.org/cgi-bin/texis/vtx/home>

United Nations Children's Fund

<http://www.unicef.org/>

World Health Organization

<http://www.who.int/en/>

International Labour Organization

<http://www.ilo.org/global/lang--en/index.htm>

International Court of Justice

<http://www.icj-cij.org/homepage/index.php?lang=en>

International Criminal Court

<http://www.icc-cpi.int/Pages/Main.aspx>

United Nations Sustainable Development Group

<https://unsdg.un.org/>

United Nations Development Group

<http://www.undg.org/>

International Telecommunications Union (ITU)

<http://www.itu.int/en/Pages/default.aspx>

United Nations Educational, Scientific and Cultural Organization

<http://en.unesco.org/>

United Nations Environment Programme

<http://www.unep.org/>

International Instruments

Universal Declaration of Human Rights

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

International Convention against All Forms of Racial Discrimination

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

International Covenant on Economic, Social and Cultural Rights

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

International Covenant on Civil and Political Rights

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Convention on the Rights of the Child

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Convention on the Rights of Persons with Disabilities

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

Convention relating to the Status of Refugees

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

Employment Policy Convention, 1964 (No. 122)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/EmploymentPolicy.aspx>

Worst Forms of Child Labour Convention, 1999 (No. 182)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/ChildLabour.aspx>

Convention on Biological Diversity

https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Environment/Biodiversity/CBD.doc&action=default&DefaultItemOpen=1

Council of Europe

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<http://www.coe.int/en/web/portal/home>

European Court of Human Rights

<http://www.echr.coe.int/Pages/home.aspx?p=home>

Commissioner for Human Rights of the Council of Europe

<https://www.coe.int/en/web/commissioner/home>

European Convention on Human Rights

http://www.echr.coe.int/Documents/Convention_ENG.pdf

European Social Charter

<http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168006b642>

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

<https://rm.coe.int/16806dbaa3>

Convention on Human Rights and Biomedicine

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf98>

European Union

European Union

http://europa.eu/index_en.htm

European Union Agency for Fundamental Rights

<http://fra.europa.eu/en>

Charter of Fundamental Rights of the European Union

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=HU>

EUR-Lex (official website of European Union law)

<http://eur-lex.europa.eu/homepage.html?locale=en>

Eurostat

<https://ec.europa.eu/eurostat/web/main/home>