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HUNGARY / HONGRIE

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I. INTRODUCTION

2020 was not only a special year in terms of Hungarian constitutional law because of the many challenges COVID-19 has brought about, but also due to the adoption of yet another Amendment to its Fundamental Law, on certain key points of value choices and special institutions considered important to have a constitutional footing. After introducing the provisions of this Ninth Amendment, we shall review a selection of cases from the 2020 practice of the Constitutional Court.

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II. The Ninth Amendment of the Fundamental Law of Hungary

The Ninth Amendment (hereinafter: the Amendment) of the Fundamental Law of Hungary (hereinafter: FL) was adopted by the National Assembly on 15 December 2020 and most of the provisions entered into force on 22 December 2020. In the following, we introduce the provisions of the Amendment that entered into force in 2020 separated from those that are set to enter into force in 2023. At the outset, it is worth noting that the provisions of the Amendment can be categorized under three main headings: (*i*) family and child protection, (*ii*) public funds and public asset management, (*iii*) special legal order.

II.1. Provisions in Force since 22 December 2020

II.1.1. Family Policy and Children's Rights

Article L), para. (1) of the FL shall from now read as follows[1]: "Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. *The mother shall be a woman, the father shall be a man.*"

The Amendment supplemented the previous provision of the FL with the last sentence of the previous quote, as emphasized. This new turn has generated extensive social and political debate both in Hungary and in Europe, as well as globally[2]. The ministerial reasoning of the Amendment is available only in Hungarian[3].

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[1] For all references to the text of the Amendment, please refer to the English text here: https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2021)045-e (We shall indicate where alterations or differences in terminology are necessary.)

[2] *E.g.* see: the Opinion of the Venice Commission on the Constitutional Amendment(s) adopted by the Hungarian Parliament in December 2020

The Amendment modified Article XVI, para. (1) of the FL as follows: "*Every child shall have the right to the protection and care necessary for his or her proper physical, intellectual and moral development. Hungary protects the right of children to be identified by their sex assigned to them at birth and provides for their education in accordance with the values based on Hungary's constitutional identity and Christian culture.*" (amended with the second sentence.)

II.1.2. Public Finances

Article 38 of the FL has been extended by the Amendment with a para. (6), which contains that "[t]*he establishment, operation and termination of, and the performance of public duty by, a public interest asset management foundation*[4] *performing public duty shall be regulated in a cardinal Act.*" In the context of this provision, Article 39 of the FL has been extended with a para. (3), which states that "*public funds shall constitute revenues, expenditures and claims of the State.*"

(online) https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)029-e

https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people/

https://constitutionnet.org/news/unbounding-hungarian-executive-and-cementing-illiberal-christian-identity-politics

https://ies.lublin.pl/en/comments/the-hungarian-government-amends-the-fundamental-law-for-the-ninth-time/

[3] https://www.parlament.hu/irom41/13647/13647.pdf. NB See the English text of the Amendment and Explanatory Memorandum provided for the perusal of the Venice Commission in their relevant proceedings referenced above (online) https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2021)045-e

[4] With a more suitable English term: public-benefit trust.

II.1.3. Armed Forces

The Amendment modified Article 47, para. (3) as follows: "*(3) The Government shall decide on the deployment of the Hungarian Defence Forces and foreign armed forces referred to in paragraph (2) based on a decision of the European Union, the North Atlantic Treaty Organization or an international organisation for defence and safety cooperation ratified by the National Assembly through the adoption of an Act, and on other troop movements by them.*"[5]

II.2. Provisions to Enter into Force on 1 July 2023 – on Special Legal Order:

Article T), paras. (1) and (2) have been modified as follows:

"*(1) Generally binding rules of conduct may be laid down in the Fundamental Law, or in laws adopted by an organ with legislative competence specified in the Fundamental Law, promulgated in the Official Gazette. A cardinal Act may lay down different rules for the promulgation of local government decrees, and of laws adopted after the Government initiating the declaration of state of war or state of emergency, and during the period of special legal order.*
(2) 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."[6]

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[5] The text before the Amendment: "*The Government shall decide on the use of the Hungarian Armed Forces and foreign armed units by decision of the European Union, or deployment of troops by decision of the North Atlantic Treaty Organization in accordance with Paragraph (2).*"

[6] The text before the Amendment: "*Generally binding rules of conduct shall be laid down in the Fundamental Law and in legal acts adopted by bodies vested with legislative power by the Fundamental Law, and published in the Official Gazette. Different rules for the promulgation of mu-*

The changes affected the promulgation of municipal decrees and laws adopted under a 'state of war and of emergency' insofar as they are 'initiated by the Government', while the original rules have been maintained for these sources of law adopted under a 'special legal order'. Also, legislative powers of the National Defense Council and the President of the Republic are to cease in a 'state of national crisis' and in a 'state of emergency', respectively.

Article XXXI, paras. (3) and (4) have been modified as follows: "*(3) During the period of state of war, adult male Hungarian citizens with domicile in Hungary shall perform military service. If military service involving the use of arms cannot be reconciled with the conscientious belief of the person obliged to perform military service, he shall perform unarmed service. The forms of, and the detailed rules for, the performance of military service shall be laid down in a cardinal Act. (4) For the period of state of war, adult Hungarian citizens with domicile in Hungary may be ordered to perform work for national defence purposes, as provided for in a cardinal Act.*[7]" Article 45, paras. (2) and (3) in relation to the above have been modified as follows: "*(2) Unless otherwise provided in an international treaty, and in accordance with the provisions of the Fundamental Law and a cardinal Act, the National Assembly, the President of the Republic, the Government and the minister vested with the relevant functions and powers shall have the right to*

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nicipal government decrees and laws adopted under special legal order may be provided for by an implementing act. Legal act having the force of law shall mean acts of Parliament, government decrees, decrees adopted by the Prime Minister and other ministers, decrees adopted by the Governor of the Hungarian National Bank, any decree of the head of an autonomous regulatory agency, as well as municipal decrees. Moreover, legal act shall also mean the decrees issued by the National Defense Council during a state of national crisis or by the President of the Republic in a state of emergency."

[7] Cardinal Acts shall be Acts, the adoption and amendment of which requires the votes of two thirds of the Members of the National Assembly present. *Cf.*: Article T, para. (4) FL.

direct the Hungarian Defence Forces. (3) The Hungarian Defence Forces shall operate under the direction of the Government."

Perhaps the most significant change, which is expected to enter into force in 2023, is that the Ninth Amendment will completely overhaul the provisions on special legal order (hereinafter: SLO)[8]. After the entry into force of the provisions of the Ninth Amendment, the concept of SLO covers three forms: (*i*) state of war, (*ii*) state of emergency and (*iii*) state of danger. This means that the Ninth Amendment will reduce the number of special situations from the current six to three from 2023 onwards.

(i) The National Assembly may declare a *State of War*: (*i*) in the event of proclamation of a military conflict or threat of war, (*ii*) in the event of armed aggression from abroad, an act equivalent to an external armed attack, and an imminent threat thereof, or (*iii*) for the purpose of fulfillment of an alliance treaty obligation of collective defense. A majority of two-thirds of the votes of all Members of the National Assembly shall be required for the declaration of state of war. During a state of war the Government shall exercise the rights delegated by Parliament and shall decide on the use of the Hungarian Armed Forces abroad or within

[8] A very interesting study (only available in Hungarian), set in an EU context, examines the response of the different EU MS to the pandemic, with special regard to their regulation of SLO situations: UNGVÁRI, ÁLMOS / HOJNYÁK, DÁVID: Az Európai Unió egyes tagállamainak koronavírus-járványra adott válasza, különös tekintettel a vizsgált államok által bevezetett különleges jogrendi szabályozásra. *Miskolci Jogi Szemle*, 15. (2020), 1. 122-138.

In order to understand what induced more intensive legislative "*force majeure*" thinking and contingency planning in terms reforming the SLO rules in the FL, it needs to be understood that the notion "state of danger" (as presented below) is not considered new in Hungary, only as to scale (given the events of 2020). Before 2020, there was never any national-scale state of danger, and the events of the recent past (and the experiences drawn from the practice of the SLO in Hungary) led the National Assembly to consider the Amendment.

Hungary, its participation in peacekeeping missions, including humanitarian operations in foreign theaters, foreign deployment, and on the use of foreign armed units within or staging operations from the territory of Hungary, or on the stationing of foreign armed forces in Hungary.

(ii) The National Assembly may declare a *State of Emergency:* (*i*) in the event of any action aimed at overthrowing, overturning the constitutional order or for seizing exclusive control of power; or (*ii*) in the event of a serious illegal activity that poses a massive threat to the safety of life and property on a massive scale. A majority of two-thirds of the votes of all Members of Parliament shall be required for the declaration of state of emergency. The state of emergency may be declared for thirty days. The National Assembly may extend the state of emergency by thirty days with the vote of two-thirds of all Members of the National Assembly, if the reasons giving rise to the declaration of the state of emergency persist.

(iii) In the event of a serious incident - in particular a natural or industrial disaster - endangering lives and property, or in order to mitigate the consequences thereof, the Government shall have authority to declare a *State of Danger*. The state of danger may be declared for thirty days, and the National Assembly may authorize its extension by thirty days, if the reasons giving rise to the declaration of the state of danger persist.

III. Selection from the Constitutional Court's 2020 Practice

III.1. Decision 15/2020 (VII. 8.) AB in Relation to COVID-19[9] *and Special Legal Order*[10]

Under Section 26(2) of Act CLI of 2011 on the Constitutional Court (hereinafter, "ACC"), the applicant lodged a constitutional complaint with the Constitutional Court, challenging the new Section 337(2) (on 'scaremongering', '*rémhírterjesztés*') of Act C of 2012 of the Criminal Code (hereinafter, "Criminal Code") claiming that it violated Articles B (rule of law, clarity of norms); I(3) (necessity – proportionality test); IX(1) (freedom of expression) and XXVIII(4) (*nullum crimen sine lege certa*) of the FL. It has been decided in expedited proceedings in line with the protocols of the Rules of Procedure [Art. 16(5)] for such urgent matters. Under the new Section of the Criminal Code, the uttering or publishing of a statement one knew to be false or with a reckless disregard for its truth or falsity under the regime of a special legal order, with the intent to obstruct or prevent the effectiveness of protective measures would be construed as a felony ('scaremongering'), attracting the sanction of a prison sentence of between one and five years.

The applicant attorney regularly and publicly expressed his opinion on issues of public interest, mainly on his social network site. He did so during the COVID-19 pandemic as well. In his view, the wording of the challenged Section was ambiguous; it did not make it clear which statements would be affected and which statements might obstruct or prevent the effectiveness of the applied measures, so that someone with the best intentions could be held liable. This

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[9] For a list of pending and decided cases before the Constitutional Court regarding the pandemic (as of July 2021), see (in Hungarian): https://alkotmanybirosag.hu/a-jarvanyugyi-veszelyhelyzettel-kapcsolatosan-indult-eloado-alkotmanybirora-szignalt-alkotmanybirosagi-ugyek

[10] For a summary: http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

left room, in the applicant's view, for arbitrary application and violated Articles B (rule of law, clarity of norms) and XXVIII(4) (*nullum crimen sine lege certa*) of the FL.

The applicant acknowledged that preventing panic under circumstances where the special legal order had been declared was a legitimate aim for the restriction of rights. However, he posited, when nobody had an undisputed solution for a new threat, a wide range of possible measures needed to be discussed through public debate. Therefore, in his view, sanctioning threatening statements at a time when nobody had the only right answer, violated Articles I(3) (necessity – proportionality test) and IX(1) (freedom of expression) of the Fundamental Law.

Firstly, the Constitutional Court, citing its case-law, stated that the wording of the norms would only violate the principle of the clarity of the norms if they were genuinely uninterpretable. Criminal laws, which carry sanctions, require precise definitions. The challenged new Section of the Criminal Code had not been applied by the courts in enough cases to establish whether its wording was genuinely unclear for purposes of interpretation and application of the law. It was within the ordinary courts' competence to interpret which statements fell within the scope of the regulation and which could obstruct or prevent the effectiveness of protective measures. Thus, neither the words "obstruct" or "prevent", nor "effectiveness" were genuinely unclear. No breach had occurred of Articles B (rule of law, clarity of norms) and XXVIII(4) (*nullum crimen sine lege certa*) of the Fundamental Law.

Secondly, such scaremongering could be committed only during the special legal order and only intentionally. A perpetrator would have to know that they had made a statement during such times when, at that point, it was capable of obstructing or preventing the effectiveness of protective measures. If any aforesaid elements were absent, liability could not be constituted. Thus, the challenged Section could only be applied to most public debates in a limited number of cases. The conduct of the public authorities could, in general, be criticized. Under the provisions of the FL, a SLO – such as the state of danger that was declared due to the COVID-19 pandemic

(Article 54 FL) – differed from the general constitutional order but public authorities were still required to comply with the law. These legal regimes were meant to be the last line of defense of the constitutional order and to provide means of deterrence in order to uphold the system as a whole. It could not be declared that the sanctioning statements described in the challenged Section were without a legitimate aim.

Thirdly, the Constitutional Court stressed that the Section was to apply only to statements, not opinions. Distinguishing between these categories could be problematic but, according to the case-law of the Constitutional Court, the truth of statements might be proven. The right of freedom of expression [Article IX(1) FL] protects statements that turn out to be false if the perpetrator had not known and should not have known about their falsity. The challenged Section did not contain restrictions for public debate and in general did not sanction opinions that were critical of the practice of the public authorities under the special legal order. The Constitutional Court rejected the applicant's constitutional complaint and concluded that it was not possible to find that the challenged regulation restricted the right of the freedom of expression unnecessarily and disproportionately. However, the Constitutional Court added that it might be able to review whether the application of the Section to a concrete case was constitutionally compliant through a genuine constitutional complaint procedure (in line with Section 27 of the ACC).

Finally, the Constitutional Court, having regard to the principle of legal certainty in line with Section 46(3) of the ACC, found it necessary to declare a constitutional requirement. It stated that, stemming from Articles IX(1) (freedom of expression) and XXVIII(4) (*nullum crimen sine lege certa*) of the FL, the challenged Section was to be applied only if the perpetrator knew or had to know at the relevant time that their statement was false, or they distorted the facts, and the statement was made during a SLO regime and had the potential to obstruct or prevent the effectiveness of protective measures. The Section would not be applied to statements which were being debated at the time they were made, or which later turned out to be false.

III.2. Decision 11/2020 (VI. 3.) AB in Relation to Land, Right of Use, Expired Right, Restoration and Retroactive Effect[11]

Under Article 24.2b of the Fundamental Law and Section 25 of Act CLI of 2011 on the Constitutional Court (hereinafter, "ACC"), a judge of the Győr Administrative and Labor Court, – while suspending its procedure – submitted a judicial initiative to the Constitutional Court, seeking the repeal of Section 108.5a of Act CCXII of 2013 on certain measures and transitional regulations related to Act CXXII of 2013 on the Agricultural and Forestry Land Trade (hereinafter, the "Act"). Under the challenged regulation and in line with Section 108 of the Act, contracts establishing beneficial interests and the right to use of the land were due to expire on 1 May 2014. If a judicial decision had been taken to restore these expired rights, but there had been no legal possibility to do so, by the time the contract was concluded, due to various formal errors, the land registry should, following the judicial decision, have notified the competent prosecutor and suspended its procedure. Under the challenged regulation, an example of such a formal error was where the party entitled to the use was a legal person.

In this case, a business association (hereinafter, the "company") had had various rights of use registered in respect of several parcels of real estate. In line with the Act, the land registry authority revoked its rights of use. The company challenged this decision seeking the restoration of its rights of use. The Győr Administrative and Labor Court – in other proceedings – ruled in the company's favor. The land registry authority – in line with Section 108.4 and 108.5a of the Act – suspended its proceedings and turned to the competent prosecutor. The company challenged the suspension, but the second instance court rejected its claim. The company then launched proceedings before the Győr Administrative and Labor Court. The judge suspended this case and turned to the Constitutional Court.

The judge began by observing that the company had been enjoying its rights of use over the land – as registered by the authorities –

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[11] For a summary: http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

lawfully. Citing judgments of the Court of Justice of the European Union, especially *SEGRO Kft*, Cases C-52/16 and C-113/16 of 6 March 2018, and of the European Court of Human Rights, the judge argued that the legislator had breached the requirement of legal certainty, the prohibition of legislation with retroactive effect and the right to property (Article XIII FL). It did so by resolving in the statutory provision under dispute an issue which had been subject to debate both in legal writings and in judicial case-law, by declaring the right of use constituted for the benefit of a legal person to be an error in conflict with the law.

Firstly, the Constitutional Court summarized its case-law concerning the interpretation of the right to property (Article XIII of the Fundamental Law). The question was whether the legal person's user status (and user rights) had been legally acknowledged by the authorities in the past and thus protected by the Fundamental Law. The Constitutional Court concluded that the relevant Acts on the use of the land never allowed for legal persons to obtain user rights. The challenged provision simply decided a question that had not been clear in legislation or in judicial practice. The Court also stressed that the challenged provision of the Act did not directly terminate any certain right. The right to property was therefore not infringed (Article XIII of the Fundamental Law).

Secondly, the Constitutional Court examined whether the Act violated the principle of the ban of retroactive effect. The Act simply declared that renewing the contracts of use was not possible if there had already been a substantial or formal error in the past. Thus, the right of use had been abolished by way of the Act for the future. It did not, therefore, violate the prohibition of retroactive effect.

Thirdly, the Constitutional Court acknowledged – based on the judicial initiative – that it was necessary to declare a constitutional requirement in line with Article 46 of the ACC. The reason was that the *Curia* of Hungary, based on the *SEGRO* judgment of the Court of Justice of the European Union, accepted two principled decisions. Accordingly, the *Curia* declared the non-application of Section 108.1 of the Act (that terminated the contracts of beneficial interest and uses on 1 May 2014) since it violated the law of the

European Union. Additionally, the *Curia* extended this interpretation to cases where the law of the European Union was not involved, claiming that otherwise it would have constituted reverse discrimination.

The Constitutional Court declared that, apart from an act by the legislator, only an annulment decision adopted by the Constitutional Court could terminate, with universal effect, the applicability of the Hungarian law in force. According to the Constitutional Court, in the absence of a specific legal act uniformly applicable in the Member States of the European Union, a court cannot ignore a law in force by way of the broad interpretation of the judgment of the Court of Justice of the European Union. On the contrary, the FL obliges all state bodies, including the courts, to defend the constitutional identity of Hungary. An unjustified failure to apply the existing domestic law violates the principle of the rule of law; therefore, the arbitrary non-application of a domestic law in force will clash with the FL. The Constitutional Court established as a constitutional requirement that the court might not dispense with the application of a Hungarian law, provided that the law of the European Union was not affected.

III.3. Decision 7/2020 (V. 13.) AB in Relation to the Freedom of Information[12]

In line with Article 24(2)b) of the Fundamental Law and with Section 25 of Act CLI of 2011 on the Constitutional Court (hereinafter, "ACC"), a chamber of the Budapest-Capital Regional Court of Appeal (hereinafter, "judicial chamber") – while suspending its procedure – submitted a judicial initiative to the Constitutional Court. The judicial chamber sought the repeal of Section 27(3)b) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (hereinafter: Information Act) since it violated Article VI(3) of the FL (right to have access to and dis-

[12] For a summary: http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm

seminate information of public interest). Under Section 27(3), any data that was related to the central budget, local government budget, the appropriation of European Union financial assistance and any subsidies and allowances in which the budget was involved, fell within the category of information of public interest. Under Section 27(3)a), any natural or legal person, or unincorporated business association entering into a financial or business relationship with a sub-system of the central budget, had to, upon request, supply such information. Under Section 27(3)b), if the information holder refused to comply with the request, the applicant could initiate proceedings with the relevant overseeing authority.

In this case, an individual (hereinafter, the "applicant") had asked a private business association (hereinafter, the "company") to provide him with information about its highway construction project, which was founded on European Union financial sources. The company had entered into a contract with a state-owned limited company to carry out the construction. It had also entered into other contracts with other business associations, ordering building materials from them. The applicant sought information regarding these agreements, but the company refused this request. The applicant responded with a lawsuit against the company.

The court of first instance ruled on the merits of the case. However, the court of second instance – the judicial chamber of the Budapest-Capital Regional Court – found that according to Section 27(3)b) of the Information Act, the applicant was not entitled to bring a case against the company. Instead, he should have initiated proceedings against the company's overseeing authority - the competent registry court. Under Section 31(3) of the Information Act, such cases were to be brought against bodies with public service functions which had refused such requests. In the judicial chamber's opinion, the private company should not have been considered as such. The judicial chamber argued that the applicant's request under Section 27(3)a) of the Information Act fell under the right to access information, enshrined in Article VI(3) of the Fundamental Law. Effective judicial review was to be considered as the guarantee of that fundamental right. However, in cases where the requested party did not have public service functions, the only op-

tion was to initiate proceedings against the overseeing authority, a far less adequate process which ruled out effective judicial remedy, violating the right to access to information [Article VI(3) of the Fundamental Law].

The Constitutional Court noted firstly that Article VI of the Fundamental Law granted access to information of public interest whilst the Information Act contained the details. Accordingly, there was public information [Section 3(5) of the Information Act] and information of public interest [Section 3(6) of the Information Act]. The latter covered any data other than public information that was prescribed by law to be published, made available or otherwise disclosed for the benefit of the general public. Section 27 of the Information Act was one such regulation. Section 28(1) of the Information Act also stated that regulations on accessing public information were to be applied in cases where information of public interest was at stake.

The Constitutional Court declared several times that the principle of openness had to be applied to public data. The Fundamental Law, in Article 39(2), explicitly stated that data relating to public funds or to national assets was to be recognized as data of public interest. In a previous decision, the Constitutional Court had concluded that providing public information was not dependent on the legal status of the information holder but determined by the fact that they held such data. After this decision, the Information Act was amended by Section 27(3)-27(3)a) which explicitly stated that even private actors were obliged to provide public data upon request; anybody could be an obliged party, not only bodies with public service functions.

If a request for public information and information of public interest was denied, the applicant was entitled to bring a suit against the information holder concerned. The wording of Section 31(3) and 31(5) explicitly referred to public service bodies, suggesting that private obliged parties could not be sued. However, the Constitutional Court stated that it was essential, in terms of granting the right of freedom of information, for an enforceable judicial decision to be made over such a request. A regime would only be in line with

Article 39(2) of the Fundamental Law and Section 27(3)-7(3)a) of the Information Act if it allowed such a judicial process in all cases. Without universally applicable regulations, enforceable through judicial proceedings, the obligatory regulations of the Fundamental Law and the Information Act would become *lex imperfecta*. The provisions presently in force did not deal adequately with the oversight of the procedures applicable to private actors.

In line with Section 46(1) of the ACC, the Constitutional Court declared a legislative omission, violating Article VI(3) and 39(2) of the Fundamental Law for not granting effective judicial remedy in all cases where the disclosure of public information was at stake.

The Constitutional Court rejected the judicial initiative seeking the annulment of Section 27(3)b of the Information Act as it did not, *per se*, violate the Fundamental Law, but annulling this provision would have made it impossible to apply the Information Act's regime on judicial review in cases where private actors were the "obligors". The violation of the Fundamental Law was not caused by the challenged regulation but the lack of proper ones – concluded the Constitutional Court in the end.

III.4. Decision 3/2020 AB in Relation to Posterior Norm Control aimed at establishing the Lack of Conformity with the Fundamental Law[13]

The subject of the case was a posterior norm control aimed at establishing the lack of conformity with the Fundamental Law and annulling Section 11(1) of the Fdtv. incorporated in Section 65 of the Act CCXXIV of 2015 on the amendment of certain Acts in the field of healthcare and health insurance – entering into force on 20 May 2016 and amending the Act CXXXIV of 2012 on repelling smoking among young people and on the retail trade of tobacco products (Fdtv.) – (restriction of the rules on purchasing tobacco products, purchase of electronic cigarette).

Acting *ex officio*, the Constitutional Court stated that the omission by the National Assembly had resulted in a situation in conflict with

[13] http://hunconcourt.hu/translations-summaries?ev=2020

the Fundamental Law, because together with restricting the retail trade of electronic cigarettes and the connected products to the tobacco shops with mandatory concession, it failed to provide appropriate compensation for those affected by the restriction of the right to enterprise, therefore, the Constitutional Court called upon the National Assembly to meet its obligation of legislation. The decision is based on the initiative of MPs for posterior norm control and the constitutional complaint submitted by a company trading with electronic cigarettes and its accessories, who challenged the provision in the Act on repelling smoking among young people and on the retail trade of tobacco products, restricting to tobacco shops the retail trade of certain products, such as electronic cigarette, refill cans and electronic devices imitating smoking. Since 2011, the petitioner company has been specialized in the retail trade of electronic cigarettes and their accessories through its webshop and its shops, however, due to the amendment of the law in 2016, it had to terminate its commercial activity related to the relevant products, it had to close its shops and to dismiss two thirds of its employees, and it could not sell the remaining stock of products. Due to the prohibition of online sales, the business activity of the petitioner company has become impossible, and the law-maker failed to provide for compensation and an opportunity to continue its operation by announcing new concessions. According to the petitioner, the regulation violated its right to property and the right to enterprise, and it is also against the prohibition of discrimination. In the context of the right to enterprise, the Constitutional Court pointed out in the decision that the scope of protection of this fundamental right covers both the market entry and the continuation of a commenced activity, although it underlined that the relevant fundamental right does not guarantee that no changes may take place in the legal environment. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose, *i.e.* the limitation should not exceed the level absolutely necessary for achieving the constitutionally justifiable objective. In the context of the restriction of the right to enterprise, the subject matter of the explicit concern is the manner of its practical realization:

the position of the enterprises engaged in the retail trade of electronic cigarettes already operating at the time of the entry into force of the amendment of the law was made less advantageous due to the fact that the law-maker did not pay any attention to their fundamental right to maintain their business activity, or to the actual damage incurred in the particular case, resulting from the statute under review. Based on the above, for the purpose of eliminating the situation being contrary to the Fundamental Law – also with due regard to the need to proceed by saving the law in force – the Constitutional Court stated that there has been a situation contrary to the Fundamental Law caused by an omission, as the provisions of the Act and of the Fundamental Law may be harmonized by way of finding a legislative omission and by calling upon the law-maker to remedy it in due course.

IV. Conclusion

The COVID-19 pandemic has posed and continues to pose a number of challenges to legislators around the world. In Hungary, perhaps the most significant conclusion from a constitutional law perspective has been the complexity of the Special Legal Order instruments. The provisions that will enter into force in 2023 aim to modernize this system with a view to making them more efficient in light of the relevant practice of these instances accumulated over the span of the past 15-20 years.

The Ninth Amendment to the Fundamental Law contains a number of provisions that have been criticized by the international and domestic academic and political community[14]. It is not the aim of this study to evaluate the provisions of the Ninth Amendment or the criticisms connected. The consequences of the Ninth Amendment of the Fundamental Law and the experience of the following years will be the decisive period on the basis of which it will be possible

[14] Among others, see *e.g.*: https://www.euractiv.com/section/politics/news/mother-woman-father-man-now-a-law-in-hungary/, or the blog posts of some authors on Verfassungsblog: https://verfassungsblog.de/so-it-goes-part-ii/

to draw correct professional conclusions, outside of the thematic frames of such chronicles.

ABSTRACTS / RÉSUMÉS

2020 could be considered as an eventful year for constitutional law in Hungary. Legislation and law enforcement, as well as almost all areas of social life, have been shaped by the need to reduce the devastation of the COVID-19 pandemic. This, among other things, as in most European countries, has necessitated the application of special legal instruments; in Hungary the introduction of the so-called emergency situation ('*veszélyhelyzet*'). However, partly as a result of the pandemic, the legislator considered that Hungary's Fundamental Law was not able to cope with the new challenges, and therefore several provisions needed to be amended. The Ninth Amendment of the Fundamental Law of Hungary was adopted by the National Assembly on 15 December 2020 and entered into force on 22 December 2020. Our presentation of Hungarian constitutional changes in 2020 focuses on the most important decisions of the Constitutional Court and a short introduction of the Ninth Amendment.

L'année 2020 pourrait être considérée comme une année riche en événements pour le droit constitutionnel de la Hongrie. La législation et l'application de la loi, ainsi que presque tous les domaines de la vie sociale, ont été façonnés par la nécessité de réduire la dévastation de la pandémie de COVID-19. Cela, entre autres, comme c'est le cas dans la plupart des pays européens, a rendu nécessaire l'application d'instruments juridiques spéciaux; notamment en Hongrie l'introduction de la situation dite d'urgence ('*veszélyhelyzet*'). Néanmoins, en partie en raison de la pandémie, le législateur a estimé que la Loi fondamentale hongroise n'était pas en mesure de faire face aux nouveaux défis, et que par conséquent plusieurs dispositions devraient être modifiées. Le Neuvième amendement de la Loi fondamentale de la Hongrie a été adopté par l'Assemblée Nationale le 15 décembre 2020 et est entré en vigueur le 22 décembre 2020. Notre présentation des changements constitutionnels hongrois en 2020 met l'accent sur les décisions les plus importantes de la Cour constitutionnelle et une brève introduction du Neuvième amendement.

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