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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GOVERNMENT OF HUNGARY

BILL NO. T/10593.

**ON THE AMENDMENT OF CERTAIN LAWS RELATED TO THE
FOURTH AMENDMENT TO THE FUNDAMENTAL LAW**

Presented by

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Budapest, March 2013

After the proposed provisions of the Bill, demonstration of result of amendment in frame (wherever result does not clearly follow from the proposed amendment itself).

Act ... of 2013
on the Amendment of Certain Laws Related to the Fourth Amendment to the
Fundamental Law

1. Amendment of Act III of 1952 on Civil Proceedings

1. §

Section 47 of Act III of 1952 on Civil Proceedings shall be replaced with the following provision.

„47. § In addition to the provisions set forth in Sections 45 and 46, the proceeding court may also be appointed in accordance with the provisions of the Act on the Organisation and Administration of Courts based on Article 27(4) of the Fundamental Law. Such appointment may only be made in non-litigious proceedings regulated in separate laws if such separate laws so provide.”

2. Amendment of Act XIX of 1998 on Criminal Proceedings

2. §

Section 20/A of Act XIX of 1998 on Criminal Proceedings shall be replaced with the following provision.

„20/A. § In addition to the provisions set forth in Section 20, the proceeding court may also be appointed in accordance with the provisions of the Act on the Organisation and Administration of Courts based on Article 27(4) of the Fundamental Law.”

3. Amendment of Act C of 2003 on Electronic Infocommunication

3. §

In Section 186/A of Act C of 2003 on Electronic Infocommunication, the text part “Article IX(3) of the Fundamental Law” shall be replaced with the text “Article IX(6) of the Fundamental Law”.

186/A. § Based on Article IX(3) of the Fundamental Law <u>Article IX(6) of the Fundamental Law</u> , Chapter III qualifies as cardinal.
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4. Amendment of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

4. §

(1) Section 3, point e) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities shall be replaced with the following provision.
(*For the purposes of this Act*)

„e) *civil organisation*: a civil organisation as defined in the Act on the Right of Association, the Non-Profit Status and the Operation and Subsidisation of Civil Organisations whose statutes or deed of foundation feature, among the goals of the organisation, the promotion of the equal social opportunities and the social integration of disadvantaged groups described by virtue of the precise definition of the features or attributes to be protected or the protection of human and civic rights described by virtue of the precise definition of the features or attributes to be protected, and a minority local government in respect of the given national or ethnic minority and a trade union in affairs related to the financial, social, cultural, living and working conditions of workers,”

(2) In Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities,
a) in the Preamble, the text part “equal opportunities” shall be replaced with the text “equal opportunities and social integration”,

b)

(Preamble) In recognition of every human being’s right to live as a person with equal dignity, driven by the desire to provide effective legal protection for those who may sustain discrimination, declaring that the promotion of ~~equal opportunities~~ equal opportunities and social integration is primarily a duty of the State, with regard to Articles II and XV of the Fundamental Law, the international commitments of the Republic and the achievements of Community law, Parliament hereby creates the following Act.

c) in Section 6(1), point d), the text part “social organisations” shall be replaced with the text “associations”,

(The effect of this Act shall not extend)

6(1)d) for the purposes of Section 4 of this Act, unless a rule of law provides otherwise, to legal relationships between the members of ~~social organisations~~ associations, legal entities and unincorporated organisations related to membership.

d) in the opening part of Section 11(1), the text part “for the elimination of the inequality of opportunities” shall be replaced with the text “for the elimination of the inequality of opportunities and for the promotion of social integration as necessary based on objective evaluation”.

e)

11(1) A provision that is aimed at promoting ~~the elimination of the inequality of opportunities~~ the elimination of the inequality of opportunities and social integration as necessary based on the objective evaluation of a specifically identified social group shall not constitute the violation of the requirement of equal treatment if it

f) in Section 14(1), point f), the text part “with social and interest representation organisations” shall be replaced with the text “with civil organisations”,

g)

[The Equal Treatment Authority (hereinafter referred to as the “Authority”)]

14(1)f) shall cooperate in the course of the fulfilment of its responsibilities ~~with social and interest representation organisations~~ with civil organisations and the state organs concerned;

h) in Section 18(1), the text part “social and interest representation organisations” shall be replaced with the text “civil organisations”,

i)

18(1) In proceedings instituted due to the violation of the requirement of equal treatment, in particular, in the course of privacy lawsuits and labour lawsuits, ~~social and interest representation organisations~~ civil organisations and the authority may proceed as representative based on the authorisation of the injured party, unless a rule of law provides otherwise.

j) in Section 20(1), point c), the text part “social and interest representation organisations” shall be replaced with the text “civil organisations”.

k)

(On account of the violation of the requirement of equal treatment, privacy lawsuits or labour lawsuits may be instituted before a court of law by)

20(1)c) ~~social and interest representation organisations~~ civil organisations,
(if the violation of the requirement of equal treatment or the direct threat thereof was based on a characteristic or attribute that is a material feature of the individual's personality and the breach or the direct threat thereof concerns a larger group of individuals that cannot be precisely identified.)

5. Amendment of Act CXXXVII of 2004 on the National Audiovisual Archive

5. §

In Section 22 of Act CXXXVII of 2004 on the National Audiovisual Archive, the text part "Article IX(3) of the Fundamental Law" shall be replaced with the text "Article IX(6) of the Fundamental Law".

22. § ~~Based on Article IX(3) of the Fundamental Law~~ Article IX(6) of the Fundamental Law, the Sub-Title Tasks of the Media Council of Chapter III of this Act qualifies as cardinal.

6. Amendment of Act CXL of 2004 on the General Rules of Official Public Administration Proceedings and Public Administration Services

6. §

In Act CXL of 2004 on the General Rules of Official Public Administration Proceedings and Public Administration Services,

a) in Section 12(3), point *d*), the text part "(hereinafter collectively referred to as "clerk") shall be replaced with the text part "(hereinafter collectively referred to as "clerk"), the administrator of the mayor's office and the joint local government office",

[For the purposes of this Act, a public administration authority (hereinafter referred to as "authority") is one of the following persons with competence to administer official cases brought before an authority:]

12(3)*d*) the chief clerk, the clerk ~~(hereinafter collectively referred to as "clerk")~~ (hereinafter collectively referred to as "clerk") and the administrator of the mayor's office and the joint local government office,

b) in Section 107(2), the text part "the clerk" shall be replaced with the text "the authority determined in Section 12(3), point *d*)".

107(2) Unless a law or government decree provides otherwise, the metropolitan and county government office shall be entitled to assess the appeal if the district (metropolitan district) office, the mayor or ~~the clerk~~ the authority determined in Section 12(3), point *d*) proceeded in the official state administration case at first instance.

7. Amendment of Act XVIII of 2010 on the Register of Individuals in Guardianship Care

7. §

In Section 19(1) of Act XVIII of 2010 on the Register of Individuals in Guardianship Care, the text part "the Transitional Provisions of the Fundamental Law of Hungary" shall be replaced with the text "point 24 of the Closing and Miscellaneous Provisions of the Fundamental Law".

19(1) In the case of a person under the effect of placement under guardianship care at the time of the entry into force of Act CCI of 2011 on the Amendment of Certain Laws Related to the Fundamental Law, the fact that the person under the effect of placement under guardianship care is precluded from franchise on the basis of ~~the Transitional Provisions of the Fundamental Law of Hungary~~ point 24 of the Closing and Miscellaneous Provisions of the Fundamental Law shall be entered in the register ex officio as data under Section 2(2), point *g*) of this Act established by virtue of Act CCI of 2011 on the Amendment of Certain Laws Related to the Fundamental Law.

8. Amendment of Act CIV of 2010 on the Fundamental Rules of the Freedom of the Press and Media Contents

8. §

In Section 23/A of Act CIV of 2010 on the Fundamental Rules of the Freedom of the Press and Media Contents, the text part “Article IX(3) of the Fundamental Law” shall be replaced with the text “Article IX(6) of the Fundamental Law”.

23/A. § Based on ~~Article IX(3) of the Fundamental Law~~ Article IX(6) of the Fundamental Law, Sections 1 to 9 and Sections 12 to 21 of this Act qualify as cardinal.

9. Amendment of Act CLXXXV of 2010 on Media Services and Mass Communication

9. §

In Act CLXXXV of 2010 on Media Services and Mass Communication,

a) in Section 203, point 55, the text part “published against or without a consideration” shall be replaced with the text “published without a consideration”,

55. *Political advertising*: a programme ~~published or broadcast against or without a consideration~~ published or broadcast without a consideration in a manner similar to advertising that serves to popularise or to encourage support for a political party, political movement or the government or to popularise their names, goals, activities, slogans or emblems.

b) in Section 229, the text part “Article IX(3) of the Fundamental Law” shall be replaced with the text “Article IX(6) of the Fundamental Law”.

229. § Based on ~~Article IX(3)~~ Article IX(6) and Article 23 of the Fundamental Law, Sections 1 to 203, Sections 206 to 218 of and Appendices Nos. 1 and 4 to this Act qualify as cardinal.

10. Amendment of Act CXI of 2011 on the Commissioner for Fundamental Rights

10. §

Section 2(3) of Act CXI of 2011 on the Commissioner for Fundamental Rights shall be replaced with the following provision.

„(3) The commissioner for fundamental rights may initiate a review with the Constitutional Court regarding the compatibility of legal rules with the Fundamental Law and may, within thirty days of promulgation, initiate a review with the Constitutional Court for the purpose of determining whether the procedural requirements set forth in the Fundamental Law with respect to the creation and promulgation of the Fundamental Law and the amendments to the Fundamental Law were observed.”

11. Amendment of Act CLI of 2011 on the Constitutional Court

11. §

(1) Section 23(2) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

(2)

„(2) Based on the motion, the President shall provide for placing the case on the agenda within a time limit that serves to observe the deadlines set forth in Article 6(6) and (8) of the Fundamental Law.”

(3) Sub-Title 6 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following Section 23/A.

„23/A. § (1) The Constitutional Court shall review the observance of the procedural requirements set forth in the Fundamental Law with respect to the creation of the passed but not yet promulgated Fundamental Law or such an amendment to the Fundamental Law on the basis of Article S(3) and Article 24(5) of the Fundamental Law in response to a motion containing a specific request submitted by a person entitled to submit motions, as defined in Article S(3) and Article 24(5), point a) of the Fundamental Law.

(2) Based on the motion, the President shall provide for placing the case on the agenda within a time limit that serves to observe the deadline set forth in Article 24(6) of the Fundamental Law.”

(4) Section 24(2) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

„(2) The Constitutional Court shall review the compatibility of a legal rule with the Fundamental Law on the basis of the motion containing a specific request of the President of the Curia, the chief prosecutor or the commissioner for fundamental rights if the legal rule stands in violation of the Fundamental Law in the reasonable opinion of the person submitting the motion.”

(5) Sub-Title 7 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following Section 24/A:

„24/A. § (1) Based on Article 24(5) of the Fundamental Law, in response to a motion containing a specific request submitted by a person entitled to submit motions as defined in Article 24(5), point b), the Constitutional Court shall review the Fundamental Law or the amendment to the Fundamental Law for observance of the procedural rules set forth in the Fundamental Law with respect to the creation and promulgation of the Fundamental Law and amendments to the Fundamental Law.

(2) Based on the motion, the President shall provide for placing the case on the agenda within a time limit that serves to observe the deadline set forth in Article 24(6) of the Fundamental Law.”

(6) Section 25 of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

(7)

„25. § (1) If a judge is to apply a legal rule in the course of the assessment of a pending individual case before him/her which he/she finds unconstitutional or whose unconstitutionality has already been established by the Constitutional Court, subject to the suspension of the court proceedings, based on Article 24(2), point b) of the Fundamental Law, the judge shall initiate with the Constitutional Court the establishment of the unconstitutionality of the legal rule or statutory provision or the exclusion of the application of the unconstitutional legal rule.

(2) Based on the motion, the President shall provide for placing the case on the agenda within a time limit that serves to observe the deadline set forth in Article 24(2), point b) of the Fundamental Law.”

(8) Section 26(2) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

„(2) In departure from paragraph (1), the proceedings of the Constitutional Court may, as an exception to the rule, also be initiated on the basis of Article 24(2), point c) of the Fundamental Law or Article VII(2) of the Fundamental Law if

a) the violation set in by virtue of the application or entry into force of the provision of the unconstitutional legal rule directly, without a judicial decision, and

b) there is no appeal procedure for remedying the violation or the person who submitted the motion has already exhausted the available legal remedy options.”

(9) Section 40 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following paragraph (4).

„(4) The Fundamental Law or the amendment to the Fundamental Law may not be promulgated if the Constitutional Court concludes in its proceedings defined in Section 23/A that the requirements set forth in the Fundamental Law with respect to the creation thereof were not observed.”

(10) Section 41 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following paragraph (1a).

„(1a) If the Constitutional Court concludes in its proceedings defined in Section 24/A that the Fundamental Law or the amendment to the Fundamental Law fails to satisfy the requirements set forth in the Fundamental Law with respect to its creation and promulgation, the Constitutional Court shall annul the Fundamental Law or the amendment to the Fundamental Law.”

(11) Section 45 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following paragraph (1a).

„(1a) The Constitutional Court may annul the Fundamental Law, the amendment to the Fundamental Law or a provision of the Fundamental Law retroactive to the date of its promulgation.”

(12) Section 50(2), point a) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

(The Constitutional Court shall decide in a plenary session on)

„a) the proceedings defined in Sections 23, 23/A, 24/A, 35 and 38,”

(13) Section 52(1) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

„(1) The motion shall contain a specific request.”

(14) Section 52 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following paragraphs (1a) and (1b):

„(1a) A request stated in a motion that is aimed at the exercise of the powers under Sections 23/A and 24/A is specific if it clearly identifies

a) the constitutional or statutory provision which determines the competence of the Constitutional Court for the assessment of the motion and further gives rise to the entitlement of the person submitting the motion,

b) the procedural requirements set forth in the Fundamental Law with respect to the creation and promulgation of the Fundamental Law or the amendment to the Fundamental Law which are violated by the Fundamental Law or the amendment to the Fundamental Law,

c) reasoning as to why the Fundamental Law or the amendment to the Fundamental Law is contrary to the procedural requirements set forth in the Fundamental Law with respect to its creation and promulgation,

d) a specific request for the annulment of the Fundamental Law or the amendment to the Fundamental Law or regarding the content of the decision of the Constitutional Court.

(1b) In addition to the cases set forth in paragraph (1a), a request is specific if it clearly identifies

a) the constitutional or statutory provision which determines the competence of the Constitutional Court for the assessment of the motion and further gives rise to the entitlement of the person submitting the motion,

b) the reasons for the institution of the proceedings; in the case of a complaint under constitutional law, the essence of the violation of the right guaranteed in the Fundamental Law,

c) not including the proceedings defined in Section 38, the statutory provision or judicial decision to be reviewed by the Constitutional Court; in the event of the institution of the proceedings defined in Section 33, the resolution of Parliament; in the event of the institution of the proceedings defined in Sections 34 to 36, the unconstitutional operation, practice or exercise of power,

d) the violated provisions of the Fundamental Law or international treaty,

e) reasoning as to why the legal rule, statutory provision, judicial decision or, in the event of the institution of the proceedings defined in Section 33, the resolution of Parliament objected to is contrary to the cited provision of the Fundamental Law or the international treaty, and in the event of the institution of the proceedings defined in Sections 34 to 36, detailed reasoning of the request set forth in the motion, and

f) a specific request for the annulment of the legal rule, statutory provision or judicial decision or regarding the content of the decision of the Constitutional Court.”

(15) Section 52(2) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

„(2) The review conducted by the Constitutional Court shall be confined to the stated constitutional request. This provision shall not affect the powers and competence of the Constitutional Court regarding the findings that it may reach ex officio as defined in Section 28(1), Section 32(1), Section 38(1) and Section 46(1) and (3) and shall not affect the provisions set forth in Article 24(4) of the Fundamental Law.”

(16) Section 57(1) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

(17)

„(1) The Constitutional Court shall decide on the merits of a motion on the basis of the available documents and, as set forth in paragraphs (1a) to (1c), if the case concerns a wide group of individuals, after hearing or requesting the position of the authors of the legal rule, the initiators of the law or their representatives.”

(18) Section 57 of Act CLI of 2011 on the Constitutional Court shall be supplemented with the following paragraphs (1a) to (1e).

„(1a) The Constitutional Court shall inform the author of the legal rule and the initiator of the law of the proceedings instituted within its competence set forth in Sections 23 to 26 or Section 32 and shall simultaneously send the motion.

(1b) If the author of the legal rule or the initiator of the law wishes to inform the Constitutional Court of his/her position on the case, also with regard to whether the case concerns a wide group of individuals, he/she shall send his/her position to the Constitutional Court within 30 days of the notification under paragraph (1a), or in the case of urgent proceedings, within 15 days, while in the proceedings referred to in Article 6(8) of the Fundamental Law, within 5 days. Based on agreement, the author of the legal rule and the initiator of the law may also issue a joint position.

(1c) Simultaneously with sending his/her position, the author of the legal rule or the initiator of the law may request the Constitutional Court to conduct a public hearing. In this case, the Constitutional Court shall hear the author of the legal rule or the initiator of the law or their representative in a plenary session within 15 days, or in the case of urgent proceedings, within 8 days, while in the proceedings referred to in Article 6(8) of the Fundamental Law, within 3 days. Based on agreement, the author of the legal rule and the initiator of the law may also appoint a joint representative for the hearing.

(1d) The position of the author of the legal rule or the initiator of the law under paragraph (1b) shall be published on the website of the Constitutional Court.

(1e) The hearing under paragraph (1c) shall be conducted in a public session. Members of the public may attend the public session in the numbers and in the area designated by the President of the Constitutional Court and shall abstain from any form of expression. If the order of the session is disturbed, the President of the Constitutional Court may order the audience or a part of the audience to leave the room. If necessary for the protection of qualified data, personal data, business secrets or any other data protected by law, the relevant section of the session shall be conducted as a closed session. The person heard or the President of the Constitutional Court may request the conducting of a closed session and the entire session shall decide thereon. The minutes of the hearing shall be published on the website of the Constitutional Court.”

(19) Section 66(1) of Act CLI of 2011 on the Constitutional Court shall be replaced with the following provision.

„(1) The Constitutional Court shall inform the person submitting the motion, the author of the legal rule and the initiator of the law, if these stated their positions on the basis of Section 57(1b), the court forwarding the constitutional complaint and any other person concerned whom the Constitutional Court may deem necessary to inform, of its decision by way of service.”

12. §

In Act CLI of 2011 on the Constitutional Court,

a) in the Preamble and in Section 69(2), the text part „Article 24(5)” shall be replaced with the text „Article 24(9)”,

(Preamble) The Parliament of Hungary, with a view to protecting democratic government, the rule of law, constitutional order and the rights laid down in the Fundamental Law and to safeguard the internal coherence of the legal system, and respect of the principle of the separation of powers – implementing the provisions of the Fundamental Law, pursuant to ~~Article 24 (5)~~ Article 24 (9), thereof – has adopted the following Act on the regulation of the

powers, organization and operation of the Constitutional Court as the principal guardian of the Fundamental Law:

69(2) This Act shall be considered a cardinal Act pursuant to ~~Article 24(5)~~ Article 24(9) of the Fundamental Law.

b) in Section 15(2), point d), the text part „if” shall be replaced with the text „if a member of the Constitutional Court”,

(Furthermore, membership in the Constitutional Court shall terminate)

15(2)d) ~~if the Member~~ if a member of the Constitutional Court becomes ineligible to stand for election to the Parliament,

c) in Section 41(1), the text part „Sections 24 to 26” shall be replaced with the text “Section 24 or Sections 25 and 26”,

41(1) If the Constitutional Court, within the framework of proceedings defined in ~~Sections 24-26~~ Section 24 or Sections 25 and 26 establishes the unconstitutionality of any rule of law or any provision thereof, it shall annul the rule of law or provision in whole or in part.

d) in Section 41(2), the text part „(4)” shall be replaced with the text „(4) and (5)”,

41(2) Section (1) shall be applied in accordance with the exceptions and conditions set forth in Article 37 ~~(4)~~ (4) and (5) of the Fundamental Law.

e) in Section 41(4), the text part “in Section 33” shall be replaced with the text „in Section 33 and in Section 33/A”,

41(4) The Constitutional Court, in its competence defined in ~~Section 33~~ in Section 33 and in Section 33/A, shall uphold the Parliament’s decision or, annulling the Parliament’s decision, shall invite the Parliament to adopt a new decision.

f) in Section 44(1), the text part “The Constitutional Court’s decision on the annulment of” shall be replaced with the text “The Constitutional Court’s decision on the annulment of the Fundamental Law, any amendment to the Fundamental Law and”, and the text part “other decisions” shall be replaced with the text “other decisions or rulings”,

44(1) ~~The Constitutional Court’s decision on the annulment of~~ The Constitutional Court’s decision on the annulment of the Fundamental Law, any amendment to the Fundamental Law and a rule of law, on the temporary suspension of a rule of law’s entry into force, on the examination of the Parliament’s decision to call a referendum, on the removal from office of the President of the Republic and on its decision on the interpretation of the Fundamental Law shall be published in the Hungarian Official Gazette. The Constitutional Court may order the publication of its ~~other decisions~~ other decisions and rulings in the Hungarian Official Gazette.

g) in Section 45(4), the text part „(1) to (3)” shall be replaced with the text „(1), (2) and (3)”,

45(4) The Constitutional Court may depart from Paragraphs ~~(1)-(3)~~ (1), (2) and (3) when deciding on the annulment of an unconstitutional rule of law or on the inapplicability of the annulled rule of law in general or particular cases, if this is justified by the protection of the Fundamental Law, by the interest in legal certainty or by a particularly important interest of the entity initiating the proceedings.

h) in Section 57(2), the text part “may order” shall be replaced with the text „may also order, regardless of the application of paragraphs (1a) to (1c),”

57(2) The Constitutional Court ~~may order~~ may also order, regardless of the application of paragraphs (1a) to (1c), the personal hearing of the submitter of the motion or a third person, or may invite them to make a declaration. The Constitutional Court may invite bodies and authorities involved in the motion, and courts, authorities, other public bodies, institutions of the European Union or international bodies that must be contacted for the adjudication of the motion to make a declaration, send documents or share an opinion.

i) in Section 57(4), the text part “personal hearing” shall be replaced with the text “personal hearing, as set forth in paragraph (2),”

57(4) Persons invited for a ~~personal hearing~~ personal hearing, as set forth in paragraph (2), are obliged to attend.

j) in Section 57(5), the text part “invited to make declarations” shall be replaced with the text “invited to make declarations as set forth in paragraph (2)”.

57(5) Bodies, authorities and courts ~~invited to make declarations~~ invited to make declarations, as set forth in paragraph (2), or send documents are obliged to cooperate.

13. §

Section 51(2) and (3) and Section 52(3) of Act CLI of 2011 on the Constitutional Court shall cease to have effect.

~~51(2) During constitutional complaint proceedings, legal representation is mandatory. The certification of the power of representation is mandatory.~~

~~51(3) Lawyers (law firms) or representatives of rights defender social organisations who have passed the bar examination. The legal advisor of a legal person or of other business organisations shall enjoy a lawyer's legal status. A person who has passed the bar examination may act in their own case without legal representatives.~~

~~52(3) The Constitutional Court may examine and annul other provisions of the rule of law specified in the motion if the contents of these provisions are closely related and if failure to examine or annul the given provisions were to entail infringement of legal certainty.~~

12. Amendment of Act CLXI of 2011 on the Organisation and Administration of Courts

14. §

(1) Chapter V of Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter referred to as the “Courts Act”) shall be replaced with the following provision.

„Chapter V

Appointment of proceeding court in the interest of the assessment of cases within a reasonable time and the balanced distribution of cases among courts

17. Appointment of proceeding court

62. § (1) The President of the NJO may, as an exception to the rule, appoint a court with the same competence instead of the court with jurisdiction for the assessment of a case if the

assessment of a specific group of cases filed with the court during the given period cannot otherwise be guaranteed within a reasonable time due to the extreme and disproportionately large workload of the court and the appointment does not result in a disproportionately large workload for the court so appointed.

(2) A motion for the application of paragraph (1) may be submitted by the chair of a court of appeal, the chair of a tribunal and the chief prosecutor to the President of the NJO. The President of the NJO may grant the motion if the workload of the court in the given phase of cases exceeds the national average on the last day of the calendar six-month period preceding the submission of the motion (31 December or 30 June).

(3) The motion shall state why the assessment within a reasonable time of the specific group of cases filed with the court cannot be guaranteed and shall further state relevant case, personnel and other data which serve to verify the extreme and disproportionately large workload of the court.

(4) If the President of the NJO grants the motion under paragraph (2), he/she shall appoint the court or courts which shall proceed in place of the court covered by the motion for a fixed term but for maximum one year in a resolution adopted in agreement with the NJC (hereinafter referred to as „resolution of appointment“). The chair of the court affected by the appointment shall be consulted. The President of the NJO may only appoint a court where the workload in the given phase of cases did not reach the national average on the last day of the calendar six-month period preceding the submission of the motion (31 December or 30 June). The President of the NJO shall determine the period of the appointment in his/her resolution of appointment in such a way that the initial date thereof shall not fall earlier than the 90th day following the adoption of the resolution. The NJC shall exercise its right of agreement related to the resolution of appointment at its meeting held after the adoption thereof.

(5) The President of the NJO shall adopt the resolution of appointment within 8 days of the receipt of the motion. In his/her resolution, the President of the NJO shall identify the group or groups of cases, from among the cases determined in paragraphs (6) and (7), in which another court shall proceed, and shall identify the appointed court or courts which shall assess the cases concerned. If the President of the NJO appoints more than one court in his/her resolution, he/she shall state which court is to proceed during which period.

(6) A proceeding court may be appointed in civil cases

a) in lawsuits instituted for the enforcement of claims where the value of litigation exceeds HUF 400 million,

b) in lawsuits aimed at the establishment of the facts of the case where the value of litigation would exceed HUF 400 million if a negative ruling were sought, and

c) in lawsuits instituted by a government control organ

ca) on behalf and in place of the beneficiary for the enforcement of rights, claims or other demands under civil law arising from a civil law relationship or in the interest of the repayment of fiscal aid that may be due to a centrally financed institution forming part of the central sub-system of state finances or any business association forming part of national assets of particular significance for the national economy, or in state ownership or under majority state control, monitored by the government control organ, in connection with the findings of its audits and inspections,

cb) on its own behalf for the establishment of the nullity of any contract that comes to its attention in proceedings falling within its competence or certain provisions of the contract without the verification of the existence of a direct legal interest.

(7) A proceeding court may be appointed in the following penal cases if an order has been issued for the placement in custody of the accused:

a) acts of misconduct committed by office holders [Chapter XV, Title IV of Act IV of 1978 on the Criminal Code (hereinafter referred to as the „Criminal Code“)],

b) criminal offences committed against the fairness of public life [Section 250(2), point a) and paragraph (3), Sections 255/B and 256 of the Criminal Code] if

ba) there are strong grounds for suspecting that the criminal offence was committed by a member of the representative body of a local government, mayor, deputy mayor, senior worker of the office of the representative body, Member of Parliament or state leader or only one of the persons listed in this point may be considered as perpetrator, or a criminal offence of this nature was committed in respect of any of these persons,

bb) there are strong grounds for suspecting that the criminal offence was committed by a senior worker of a centrally financed institution, a central state administration organ or the regional agencies of these or only one of the persons listed in this point may be considered as perpetrator, or a criminal offence of this nature was committed in respect of any of these persons,

c) criminal offences committed against the fairness of international public life (Chapter XV, Title VIII of the Criminal Code),

d) involvement in organised crime (Section 263/C of the Civil Code) and

e) any criminal offence committed in an organised fashion (Section 137, point 8 of the Criminal Code).

(8) After the NJC has granted its agreement, the President of the NJO shall forthwith provide for the publication of the resolution of appointment on the central website and for notifying the courts affected by the appointment and, if the appointment concerns a criminal case, the chief prosecutor.

(9) If the court receives a case falling into the case group determined in the resolution during the period stated in the resolution of appointment, the court shall forthwith forward the documents of the case to the court appointed in the resolution. The official communication regarding the forwarding of documents shall be published on the central website.

18. Legal remedies

63. § (1) An appeal may be submitted against the resolution of appointment by a person who substantiates his/her legal interest within 30 days of the publication of the resolution on the central website. In the event of failure to observe this time limit, no excuse request lies. The appeal shall be submitted to the President of the NJO in writing. If an appeal is submitted, the President of the NJO shall provide for the notification of the courts concerned and, if the appointment concerns a criminal case, the chief prosecutor.

(2) The appeal shall be assessed by the Curia within 15 days in non-litigious proceedings. If the appeal is submitted belatedly, the Curia shall refuse the appeal without an investigation. The Curia shall review the resolution of appointment inasmuch as whether the President of the NJO violated the legal rules governing its adoption.

(3) If the Curia concludes in the course of its review that the resolution of appointment complies with the rules of this law concerning the appointment of the proceeding court, it shall sustain the resolution of appointment. If the resolution of appointment does not comply with the rules of this

law concerning the appointment of the proceeding court, the Curia shall repeal the resolution. The Curia may not alter the resolution of appointment.

(4) The Curia shall serve its decision upon the appellant via the President of the NJO and shall simultaneously provide for the publication of the decision on the central website. The President of the NJO shall forthwith notify the courts concerned and, if the appointment concerns a criminal case, the chief prosecutor of the decision of the Curia. The service or failed service of the decision of the Curia upon the appellant shall not affect the appointment of the proceeding court.

64. § (1) The party concerned to a lawsuit may file a complaint against the official communication under Section 62(9) within 8 days of the publication thereof on the central website. In the event of failure to observe this time limit, no excuse request lies. The complaint shall be filed with the Curia in writing in one copy more than the number of parties to the lawsuit.

(2) The complaint filed by the party concerned to a lawsuit as set forth in paragraph (1) shall be assessed by the Curia within 8 days in non-litigious proceedings. If the complaint is submitted belatedly, the Curia shall refuse the complaint without an investigation. The Curia shall review the forwarding of documents under the official communication inasmuch as whether it complies with the resolution of appointment.

(3) If the Curia concludes that the forwarding of documents under the official communication complies with the resolution of appointment, it shall refuse the complaint. If the forwarding of documents under the official communication does not comply with the resolution of appointment, the Curia shall provide for the forwarding of documents to the court stated in the resolution of appointment.

(4) The Curia shall serve its decision upon the parties and the courts concerned and shall simultaneously provide for the publication of the decision on the central website. The service or failed service of the decision of the Curia upon the parties shall not affect the obligations of the appointed court to take action.”

(2)

(3) Section 66 of the Courts Act shall be replaced with the following provision.

„66. § Parliament shall select the President of the NJO from among judges appointed for an indefinite term and with a minimum judicial service of 5 years as set forth in Article 25(6) of the Fundamental Law. The President of the NJO may not be re-elected.”

(4) Section 70(1) and (2) of the Courts Act shall be replaced with the following provisions.

„(1) The mandate of the President of the NJO shall cease

- a) upon the expiry of the term of his/her mandate,
- b) upon the cessation of his/her judicial service,
- c) through resignation,
- d) upon the declaration of a conflict of interests,
- e) through exemption or
- f) through removal from his/her office.

(2) In the cases referred to in paragraph (1), points a)-c), the Speaker of the House shall establish the cessation of the mandate of the President of the NJO. In the cases referred to in paragraph (1), points d)-f), Parliament shall decide on the issue of the cessation of the mandate. The votes of two thirds of Members of Parliament shall be required for declaring the cessation of the mandate.”

(5) Section 117(1), point s) of the Courts Act shall be replaced with the following provision.
(*The President of the Curia*)

„s) may initiate a review with the Constitutional Court regarding the compatibility of legal rules with the Fundamental Law and may, within thirty days of promulgation, initiate a review with the Constitutional Court for the purpose of determining whether the procedural requirements set forth in the Fundamental Law with respect to the creation and promulgation of the Fundamental Law and the amendments to the Fundamental Law were observed,”

(6) Section 117(1) of the Courts Act shall be supplemented with the following point *t*):
(*The President of the Curia*)

„*t*) shall fulfil any other duties which are referred to his/her competence by law, the rules of the President of the NJO or the resolution of the President of the NJO.”

15. §

Section 62(7) of the Courts Act shall be replaced with the following provision:

„(7) A proceeding court may be appointed in the following penal cases if an order has been issued for the placement in custody of the accused:

a) acts of misconduct committed by office holders [Chapter XXVIII of Act C of 2012 on the Criminal Code (hereinafter referred to as the „Criminal Code“)],

b) criminal offences of corruption [Section 294(2) and (3), Section 297 and Sections 299 and 300 of the Criminal Code] if

ba) there are strong grounds for suspecting that the criminal offence was committed by a member of the representative body of a local government, mayor, deputy mayor, senior worker of the office of the representative body, Member of Parliament, nationality spokesperson or state leader, or only one of the persons listed in this point may be considered as perpetrator, or a criminal offence of this nature was committed in respect of any of these persons,

bb) there are strong grounds for suspecting that the criminal offence was committed by a senior worker of a centrally financed institution, a central state administration organ or the regional agencies of these, or only one of the persons listed in this point may be considered as perpetrator, or a criminal offence of this nature was committed in respect of any of these persons,

c) bribery committed in connection with a person engaged in activities for or in the interest of a foreign business organisation [Section 290(4) of the Criminal Code], acceptance of a bribe given by a person engaged in activities for or in the interest of a foreign business organisation [Section 291(4) of the Criminal Code], bribery in an official capacity committed in connection with the functioning of a foreign official [Section 293(3) of the Criminal Code], acceptance of a bribe given by a foreign official [Section 294(4) of the Criminal Code], purchase of influence committed in connection with a person engaged in activities for or in the interest of a foreign business organisation [Section 298(2) of the Criminal Code], purchase of influence committed in connection with a foreign official [Section 298(3) of the Criminal Code], influence peddling committed in connection with a foreign official [Section 299(3) of the Criminal Code],

d) involvement in organised crime (Section 321 of the Criminal Code) and

e) any criminal offence committed in an organised fashion (Section 459, point 1 of the Criminal Code).”

16. §

In the Courts Act,

a) in Section 67(2), the text part „ in points b) to i)” shall be replaced with the text „in points b)–f)”,

67(2) If the term of office of the President of the NJO has expired for any of the reasons listed under Section 70 (1) ~~b)–i)~~ b)–f), the President of the Republic shall nominate a person for the position of the President of the NJO within 30 days.

b) in Section 103(2a), point b), the text part “shall define the principles to be taken into consideration upon the appointment of the proceeding court in respect of the competence of the President of the NJO” shall be replaced with the text “shall exercise a right of agreement in respect of the resolution of the President of the NJO”,

(In the area of statistical data gathering, case distribution and workload assessment, the NJC)
103(2a)b) shall ~~define the principles to be taken into consideration upon the appointment of the proceeding court in respect of the competence of the President of the NJO~~ shall exercise a right of agreement in respect of the resolution of the President of the NJO, on the basis of which he/she appoints another court, instead of the presiding court, in the interest of the assessment of cases within a reasonable time.

c) in Section 166(2), point d), the text part “social organisation” shall be replaced with the text “association”,

(Unless a rule of law provides otherwise, the following need not be deleted from the published decision)

166(2)d) name, head office and name of representative of ~~social organisation~~ association or foundation,

d) in Section 175, the text part „Article 25(7)” shall be replaced with the text Article 25(8)”.

175. § Based on ~~Article 25(7)~~ Article 25(8) of the Fundamental Law, Sections 1 to 8, Sections 12 to 15, Chapter II, Chapter III, Section 45, Chapter V, Parts Three and Four, Chapters X, XI and XIII/A, Sections 177 to 195, Section 197, Section 207 and Section 209 of this Act qualify as cardinal.

17. §

The following provisions of the Courts Act shall cease to have effect:

a) in Section 69(2), the text part „without prejudice to his/her position as President”,

69(2) Provisions in Paragraph (1) shall be applicable if the judicial service of the President of the NJO ceases to exist ~~without prejudice to his/her position as President~~.

b) in 75(1) and (2), the text part “and his/her judicial service was not terminated beforehand”,

75(1) If the term of office of the President of the NJO is terminated upon the expiry of the fixed period ~~and his/her judicial service was not terminated beforehand~~, he/she shall be appointed to a court at least equivalent with the court he/she used to work for before his/her term as a President, or if he/she was a judge at a district court or the administrative and labour court, he/she shall be appointed as head of chamber at a tribunal without a call for the submission of applications.

75(2) If the term of office of the President of the NJO is terminated before the expiry of the fixed period ~~and his/her judicial service was not terminated beforehand~~, he/she shall be appointed without a call for the submission of applications, preferably to his/her previous court and in a position which is at least equivalent to the previous one.

c) in Section 76(4), point *b*), the text part “with regard to the principles determined by the NJC”,

(As part of his/her responsibilities related to statistical data gathering, case distribution and workload assessment, the President of the NJO shall)

76(4)*b*) designate another court to proceed instead of the presiding court, if so necessitated by the objective of adjudicating cases within a reasonable period of time, ~~with regard to the principles determined by the NJC~~,

d) in Section 77(3) and in Section 117(2), the text part “on the official website of courts and”.

77(3) The rules of the President of the NJO shall be published in the Hungarian Official Journal and the recommendations and decisions – with the exception of those listed in Paragraph (5) – shall be published ~~on the official website of courts and~~ on the central website, furthermore in the official journal of courts.

117(2) Reports and information stipulated in Paragraph (1) *b*) and *c*) shall be published ~~on the official website of courts and~~ on the central website, furthermore in the official journal of courts.

13. Amendment of Act CLXII of 2011 on the Legal Status and Remuneration of Judges

18. §

Section 10(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter referred to as the “Judges Act”) shall be replaced with the following provision.

„(3) The vacancy notice shall be published in the official gazette of courts and on the central Internet website of courts (hereinafter referred to as the “central website”) in a way that is accessible to all.”

19. §

In the Judges Act,

a) in Section 104/A(3), the text part “on the central Internet website of courts” shall be replaced with the text “on the central website”,

104/A (3) The NJC shall publish the procedural rules of the service court ~~on the central Internet website of courts~~ on the central website.

b) in Section 213(1), the text part “social organisations” shall be replaced with the text “associations”,

213(1) Lay judges shall be nominated by Hungarian citizens of age with residence in the territory of the jurisdiction of the court and the local governments and ~~social organisations~~ associations operating in the territory of the jurisdiction of the court, not including parties.

c) in Section 237(1), the text part „Article 25(7)” shall be replaced with the text „Article 25(8)”.

237(1) Based on ~~Article 25(7)~~ Article 25(8) and Article 26(1) and (2) of the Fundamental Law, Sub-Titles 1 to 4, Chapter III, Sub-Titles 19 to 22, Sub-Titles 25 to 30, Chapters V to X, Chapter XII, Chapter XIII, Section 223, Section 224, Sections 226 to 233 and Section 236 of this Act qualify as cardinal.

20. §

(1) Section 161 of the Judges Act shall cease to have effect.

~~161. § If the office of the President of the NJO as a judge ceases without prejudice to his/her position as President of the NJO, the remuneration of the President of the NJO shall be duly governed by the rules relating to the benefits provided for Ministers of the Government Decree on the remuneration and benefits of Ministers, the benefits provided for state leaders and the public servants of state administration organs and the conditions thereof under the Act on Central State Administration Organs and the Status of the Members of the Government and State Secretaries. His/her legal status shall otherwise be governed by the Act on the Legal Status and Remuneration of Judges, with the proviso that if the President of the NJO receives an old-age pension, the net amount of his/her remuneration shall be reduced by the monthly net amount of his/her old-age pension.~~

(2) The text part “on the official website of courts and” in Section 21(3) of the Judges Act shall cease to have effect.

21(3) The President of the NJO shall publish his/her resolutions regarding the transfer of judges ~~on the official website of courts and~~ on the central website as well as in the official gazette of courts.

14. Amendment of Act CLXIII of 2011 on the Prosecution Service of Hungary

21. §

Section 11(2), point h) of Act CLXIII of 2011 on the Prosecution Service of Hungary shall be replaced with the following provision.

(The chief prosecutor

„h) may initiate a review with the Constitutional Court regarding the compatibility of legal rules with the Fundamental Law and may, within thirty days of promulgation, initiate a review with the Constitutional Court for the purpose of determining whether the procedural requirements set forth in the Fundamental Law with respect to the creation and promulgation of the Fundamental Law and the amendments to the Fundamental Law were observed;”

15. Amendment of Act CLXXXIX of 2011 on the Local Governments of Hungary

22. §

In Act CLXXXIX of 2011 on the Local Governments of Hungary,

a) in Section 18(1), the text part “and clerks” shall be replaced with the text “clerks and administrators of mayor’s offices and joint local government offices”,

18(1) The central budget shall provide the budgetary support mayors, the Mayor of Budapest, presidents of county assemblies, ~~and clerks~~ clerks and administrators of mayor’s offices and joint local government offices need

a) to perform a duty or to exercise a right, or
b) to participate in the local direction or execution of national public administration tasks in matters related to national defence, civil defence and disaster prevention, as prescribed by an act or a government decree authorised by an act.

b) in Section 18(2), the text part “clerks ... specified in paragraph (1)” shall be replaced with the text “clerks and administrators of mayor’s offices and joint local government offices”.

18(2) No body of representatives or assemblies may give instructions to or override the decisions of mayors, the Mayor of Budapest, presidents of county assemblies, ~~and clerks~~ clerks and administrators of mayor’s offices and joint local government offices who act in a capacity arising from the public administration duties or powers ~~specified in paragraph (1)~~.

16. Amendment of Act CXCV of 2011 on the Economic Stability of Hungary

23. §

In Act CXCV of 2011 on the Economic Stability of Hungary,

a) in the Preamble, the text part „Article 37(5)” shall be replaced with the text “Article 37(7)”,

(Preamble) In order to ensure the country’s financial stability and budgetary sustainability, and to promote the independent review of the foundation of the State Budget Act and state debt reduction, with a view to enforcing the Fundamental Law, by virtue of Article XXX, Article 34(5), ~~Article 37(5)~~ Article 37(7) Article 40 and Article 44(5) of the Fundamental Law, Parliament hereby passes the following Act:

b) in Section 34, point b), the text part “in Article 29(1) of the Transitional Provisions of the Fundamental Law of Hungary” shall be replaced with the text “in Article 37(6) of the Fundamental Law”.

(Sections 32 and 33 shall not apply if)

34b) the Act of Parliament which expands the scope of persons obliged to payment, increases the amount of the payment obligation, terminates or restricts a discount or exemption, and determines the new payment obligation is passed for any of the reasons laid down ~~in Article 29(1) of the Transitional Provisions of the Fundamental Law of Hungary~~ in Article 37(6) of the Fundamental Law.

17. Amendment of Act CCX of 2011 on the Punishment and the Exclusion of the Limitation of Crimes Against Humanity and the Prosecution of Certain Crimes Committed During the Communist Dictatorship

24. §

In Act CCX of 2011 on the Punishment and the Exclusion of the Limitation of Crimes Against Humanity and the Prosecution of Certain Crimes Committed During the Communist Dictatorship,

a) in Section 4, the text part “in Article 2(2) and (3) of the Transitional Provisions of the Fundamental Law” shall be replaced with the text “in Article U)(7) and (8) of the Fundamental Law”,

4(1) The limitation of communist crimes shall be governed by the provisions set forth ~~in Article 2(2) and (3) of the Transitional Provisions of the Fundamental Law~~ in Article U)(7) and (8) of the Fundamental Law.

b) in Section 7, the text part “in Article 2(2) and (3) of the Transitional Provisions of the Fundamental Law” shall be replaced with the text “in Article U)(7) and (8) of the Fundamental Law”.

7. § The period of limitation of communist crimes as set forth in ~~Article 2(2) and (3) of the Transitional Provisions of the Fundamental Law~~ in Article U)(7) and (8) of the Fundamental Law shall be interrupted by any act of criminal proceedings taken against the perpetrator on account of the criminal offence subsequent to 31 December 2011. On the day of such interruption, the period of limitation as set forth in ~~Article 2(2) and (3) of the Transitional Provisions of the Fundamental Law~~ in Article U)(7) and (8) of the Fundamental Law shall recommence.

18. Amendment of Act XXXVI of 2012 on Parliament

25. §

(1) Section 2(2), points *p*) and *q*) of Act XXXVI of 2012 on Parliament shall be replaced with the following provisions.

(2)

(The Speaker of the House)

„*p*) shall exercise his/her order enforcement and disciplinary powers in the cases determined in this Act,

q) shall issue the Rules of Organisation and Operation of the Parliamentary Guards in connection with the overseeing of the Parliamentary Guards.”.

(3) Section 53(1) of Act XXXVI of 2012 on Parliament shall be replaced with the following provision:

(4)

„(1) The Speaker of the House shall exercise his/her order enforcement powers as set forth in this Act and in the Fundamental Law. In the interest of maintaining order during debates and votes, the deputy speaker chairing the session, too, shall exercise order enforcement powers as set forth in this Act and in the Fundamental Law.

(5) In Section 142(3) of Act XXXVI of 2012 on Parliament, the text part “social organisation” shall be replaced with the text “civil organisation”.

142(3) In the cases determined in paragraph (1), the statutory representative shall proceed on behalf of a person with no acting capacity, while persons with limited acting capacity may be represented by their statutory representatives or authorised representatives. A complaint may also be presented by way of an authorised representative or legal counsel. ~~Social organisations~~ Civil organisations or foundations engaged in the protection of human rights, the local governments of national minorities and university instructors of universities teaching law with a doctoral degree in constitutional studies and law may also proceed as legal counsel.

(6) The text part “under the supervision of the Speaker of the House” in Section 127(1) of Act XXXVI of 2012 on Parliament shall cease to have effect.

127(1) The Parliamentary Guards are an armed force ~~under the supervision of the Speaker of the House~~. The Parliamentary Guards are an independently operating centrally financed institution whose duties related to finances and operations shall be fulfilled by the Office of Parliament. The Parliamentary Guards shall constitute a separate title in the fiscal chapter of Parliament.

19. Repeal of Certain Provisions of Resolution No. 46/1994. (IX. 30.) of Parliament on Certain House Rule Provisions

26. §

Section 109 of Resolution No. 46/1994. (IX. 30.) of Parliament on certain house rule provisions shall cease to have effect.

~~109. § The Speaker of the House shall sign and forward the Fundamental Law or the amendment to the Fundamental Law to the President of the Republic within five days.~~

20. Closing Provisions

27. §

(1) This Act shall enter into force on the first day of the month following its promulgation, except as set forth in paragraph (2).

(2) Section 15 shall enter into force on 1 July 2013.

28. §

(1) Based on Article IX(6) of the Fundamental Law, Sub-Title 9 qualifies as cardinal.

(2) Based on Article 24(9) of the Fundamental Law, Sub-Title 11 qualifies as cardinal.

(3) Based on Article 25(8) of the Fundamental Law, Sub-Title 12 qualifies as cardinal.

(4) Based on Article 25(8) and Article 26(1) and (2) of the Fundamental Law, Section 19, point a) and Section 20(1) qualify as cardinal.

(5) Based on Article 29(7) of the Fundamental Law, Sub-Title 14 qualifies as cardinal.

(6) Based on Article 31(3) of the Fundamental Law, Sub-Title 15 qualifies as cardinal.

(7) Based on Article 40 of the Fundamental Law, Sub-Title 16 qualifies as cardinal.

(8) Based on Article 5(4) and (7) of the Fundamental Law, Section 25(1), (2) and (4) and Sub-Title 19 qualify as house rule provisions to be passed with the two-third majority vote of the attending Members of Parliament.

REASONING

GENERAL REASONING

Parliament passed the fourth amendment to the Fundamental Law on 11 March (hereinafter referred to as the „Fourth Amendment“) which entered into force on 1 April. The Government reviewed the legislative tasks arising from the changes and, with regard to the fact that, based on paragraph 4 of the Closing Provisions of the Fundamental Law, the Government presents to Parliament the bills necessary for the implementation of the Fundamental Law, the Government presented to Parliament Bill T/10593. on the amendment of certain laws related to the fourth amendment to the Fundamental Law (hereinafter referred to as the „Bill“).

The Bill, on the one hand, significantly alters the provisions relating to the transfer of cases between courts set forth in the Act on the Organisation and Administration of Courts and, on the other hand, supplements the Act on the Constitutional Court with certain new features that arise from the Fourth Amendment.

Both above-mentioned amendments result in changes conveying substantial guarantees as follows.

The chief prosecutor will not be entitled to „transfer cases“, and based on the Bill, the President of the National Judicial Office will only have the authority to appoint the proceeding court in respect of specific case groups pre-defined in a cardinal law, against the availability of reinforced guarantees. The Bill now confirms the new powers of the President of the Curia and the chief prosecutor, stemming from the Fourth Amendment, to initiate subsequent norm reviews with the Constitutional Court also on a statutory level, which powers also extend to the institution of formal reviews related to the Fundamental Law or the amendments to the Fundamental Law before the Constitutional Court. It is another important feature of the Bill that it precludes the re-election of the President of the National Judicial Office.

In the case of the Constitutional Court, the Bill lays down the changes arising from the new powers on statutory grounds, including the possible prior and subsequent norm review of the Fundamental Law and the amendments to the Fundamental Law before the Constitutional Court, and, in the interest of rendering the proceedings of this body more transparent, defines the details of the procedure reinforced by the Fourth Amendment for the hearing of the parties and public access to the proceedings. Additionally, the Bill does away with mandatory legal representation in constitutional complaint proceedings in the interest of broadening the scope for the enforcement of rights. In this context, the Bill also paid due regard to Decision No. 42/2012. (XII. 20.) AB of the Constitutional Court.

In addition to the above, following from the Fourth Amendment, the Bill supplements the Act on Equal Treatment and the Promotion of Equal Opportunities with references to the goal of social integration, implements the necessary changes arising from specific reference in the Fundamental Law to the Parliamentary Guards in the Act on Parliament and further carries out the required technical corrections which primarily emerge from the changes in the references to the provisions of the Fundamental Law.

The Bill does not cover the provisions related to the National Memory Committee, the publication of political advertising in the media, the regulations concerning the use of public premises and the rules related to churches; with regard to the other aspects of the legislation, these will be dealt with in separate bills.

DETAILED REASONING

After the explanations attached to the individual provisions, please find relevant provisions of the Fourth Amendment in frames.

Regarding Sections 1 and 2

With regard to the Fourth Amendment, it was necessary to comprehensively amend the rules relating to the appointment of the proceeding court in the Act on the Organisation and Administration of Courts. The re-regulation simultaneously requires the correction of reference to this legal institution in the Act on Civil Proceedings and the Act on Criminal Proceedings, with special regard to the fact that the President of the National Judicial Office will in the future not be entitled to appoint the proceeding court in individual cases but only in respect of specific case groups pre-defined in a cardinal law.

Article 14 of the Fourth Amendment

Article 27 of the Fundamental Law shall be supplemented by the following Paragraph (4):

“(4) To give effect to the fundamental right to a court decision taken within a reasonable time and to balance the workload across courts, the President of the National Office for the Judiciary may appoint, in the way defined by cardinal Act, a court other than a court of general competence but with the same powers to hear particular cases defined by cardinal Act.”

Regarding Sections 3, 5, 8 and 23

With regard to the changes in the numbering of the provisions of the Fundamental Law that were brought about by the Fourth Amendment, the Bill accordingly alters references to the provisions of the Fundamental Law in Act C of 2003 on Electronic Infocommunication, Act CXXXVII of 2004 on the National Audiovisual Archive, Act CIV of 2010 on the Fundamental Rules of the Freedom of the Press and Media Contents and Act CXCV of 2011 on the Economic Stability of Hungary.

Regarding Section 4

Pursuant to the Fourth Amendment, Article XV(4) of the Fundamental Law makes specific mention of the promotion of social integration, in addition to the promotion of the availability of equal opportunities. In harmony with the Fourth Amendment, the Bill now also cites the promotion of social integration in conjunction with certain provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. The Bill additionally introduces the term „civil organisation” instead of the term „social and interest representation organisation” in Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities in harmony with the terms used in the Act on the Right of Association, the Non-Profit Status and the Operation and Subsidisation of Civil Organisations.

Article 22 of the Fourth Amendment

(1) In the Fundamental Law,

e) in Article XV(4), the text “legal equality” shall be replaced by the text “equality of opportunity and social inclusion”,

Regarding Section 6

In line with the actual practice, the Amendment supplemented the Fundamental Law inasmuch as a law or a government decree passed on the basis of statutory authorisation may, as an exception to the rule, also determine state administration responsibilities and powers for the

administrators of the representative body (e.g. registrar), in addition to the previously designated local government officials. The Bill introduces this change in Act CXL of 2004 on the General Rules of Official Public Administration Proceedings and Services.

Article 15 of the Fourth Amendment

Article 34(3) of the Fundamental Law shall be replaced by the following provision:

“(3) An Act or a government decree authorised by Act may exceptionally specify duties and powers relating to public administration for mayors, presidents of county representative bodies and for heads or clerks of offices of representative bodies.”

Regarding Sections 7 and 24

The Bill changes the references set forth in Act XVIII of 2010 on the Register of Individuals in Guardianship Care and Act CCX of 2011 on the Punishment and the Exclusion of the Limitation of Crimes Against Humanity and the Prosecution of Certain Crimes Committed During the Communist Dictatorship with regard to the repeal, by virtue of the Fourth Amendment, of the Transitional Provisions of Hungary's Fundamental Law.

Regarding Section 9

The Bill changes the definition of Act CLXXXV of 2010 on Media Services and Mass Communication (hereinafter referred to as the „Media Law”) relating to political advertising with regard to the fact that, based on the Fourth Amendment, political advertisements may in the future be broadcast in television and radio programmes under equal conditions, free of charge, without a consideration. The Bill additionally also corrects the relevant references in the Media Law to the provisions of the Fundamental Law, the numbering of which was changed by virtue of the Fourth Amendment.

Article 5 of the Fourth Amendment

Article IX(3) of the Fundamental Law shall be replaced by the following provision:

“(3) For the dissemination of appropriate information required for the formation of democratic public opinion and to ensure the equality of opportunity, political advertisements shall be published in media services, exclusively free of charge. In the campaign period prior to the election of Members of Parliament and of Members of the European Parliament, political advertisements published by and in the interest of nominating organisations setting up country-wide candidacy lists for the general election of Members of Parliament or candidacy lists for the election of Members of the European Parliament shall exclusively be published by way of public media services and under equal conditions, as determined by cardinal Act.”

Regarding Section 10

As the Fourth Amendment specifically cited the review by the Constitutional Court of compliance of the Fundamental Law and its amendments with the procedural requirements regarding their passage and promulgation and as the Fourth Amendment also vested the Commissioner for Fundamental Rights with the right to initiate such reviews in subsequent proceedings, the Bill accordingly supplements the Act on the Commissioner for Fundamental Rights with the specification of this power.

Article 12 of the Fourth Amendment

(3) Article 24 (5) of the Fundamental Law shall be replaced by the following provisions:

“(5) The Constitutional Court may only review the Fundamental Law and the amendment thereof for conformity with the procedural requirements laid down in the Fundamental Law with respect to its adoption and promulgation. Such a review may be initiated by:

a) the President of the Republic in respect of the Fundamental Law and the amendment thereof, if adopted but not yet published,

b) the Government, a quarter of the Members of Parliament, the President of the Curia, the Supreme Prosecutor or the Commissioner for Fundamental Rights within thirty days of publication.”

Regarding Sections 11 to 13

Following from Articles 11 and 12 of the Fourth Amendment, the Bill covers and supplements Act CLI of 2011 on the Constitutional Court (hereinafter referred to as „CCA”) on a number of points. In harmony with the practice of the Constitutional Court that was based on the former Constitution, the Fourth Amendment made way, as a new power, for the prior and, subject to a deadline, subsequent, review of the Fundamental Law and any amendment to the Fundamental Law by the Constitutional Court for compliance with the procedural rules that govern the creation of the Fundamental Law and any amendment thereto. The Bill accordingly supplements CAA with rules relating to the new procedure, defines the relevant legal consequences and also contains rules with respect to the specific nature of the motion.

The element of the Fourth Amendment which sets a thirty-day time limit for the Constitutional Court for the event of a norm review initiated by a judge, with a view to preventing the protraction of lawsuits and with regard to the right to a fair trial, is being introduced into CCA by virtue of the Bill, as is the option for the submission of a complaint under constitutional law specifically cited in the Fourth Amendment in the context of the recognition of churches.

The Bill implements and elaborates on the provision of the Fourth Amendment regarding the hearing of the parties and public access to the proceedings. Pursuant to the Bill, the Constitutional Court informs the author of the legal rule and the initiator of the law of the institution of any norm review or constitutional complaint proceedings and sends the relevant motion. Following this, if the author of the legal rule or the initiator of the law wishes to inform the Constitutional Court of his/her position on the case, also with regard to whether the case concerns a wide group of individuals or not, the author of the legal rule or the initiator of the law is given the option to send his/her position to the Constitutional Court within 30 days of the above-mentioned notification [in the case of urgent proceedings, within 15 days, while in the proceedings under Article 6(8) of the Fundamental Law, within 5 days]. The author of the legal rule and the initiator of the law may also agree on a joint position.

Additionally, based on the Bill, the author of the legal rule or the initiator of the law may, simultaneously with submitting his/her position, request the Constitutional Court to conduct a public hearing. In this case, the Constitutional Court hears the author of the legal rule or the initiator of the law or their representative in a plenary session within 15 days [within 8 days in the case of urgent proceedings and within 3 days in the proceedings under Article 6(8) of the Fundamental Law]. In this case, too, the author of the legal rule and the initiator of the law may proceed jointly: they may appoint a joint representative for the hearing. This phase of the proceedings creates an opportunity for the legislator to cast light for the body on the goal intended to be attained through the given legal rule and the motivations behind the individual regulatory solutions.

The Bill also provides public access to this phase of the proceedings by imposing the obligation of publishing the positions on the website and requiring a public hearing.

Also with regard to Decision No. 42/2012. (XII. 20.) AB of the Constitutional Court, the Bill does away with mandatory legal representation in the constitutional complaint proceedings. The Constitutional Court laid down in its cited decision: „a constitutional complaint, as a tool designed to protect fundamental rights, comes under the same consideration as fundamental rights, and it is therefore unconstitutional to exclude the constitutional complaint from the legal assistance provided for the socially disadvantaged”. In appreciation of this decision, by abolishing mandatory legal representation, the Bill makes this forum for the enforcement of rights available to wider groups.

The Bill additionally repeals the rule elevated to the level of the Fundamental Law in connection with the Constitutional Court being tied to the motion.

Article 12 of the Fourth Amendment

Article 24(2) b) of the Fundamental Law shall be replaced by the following provision:

(The Constitutional Court shall:)

“b) review immediately but no later than thirty days any legal regulation applicable in a particular case for conformity with the Fundamental Law upon the proposal of any judge;”

Article 24(2) e) of the Fundamental Law shall be replaced by the following provision:

(The Constitutional Court shall:)

“e) review any legal regulation for conformity with the Fundamental Law upon an initiative to that effect by the Government, one-fourth of the Members of Parliament, the President of the Curia, the Supreme Prosecutor or the Commissioner for Fundamental Rights;”

Article 24(4) and (5) of the Fundamental Law shall be replaced by the following provisions:

“(4) The Constitutional Court may only review or annul a legal provision not submitted to it for a review if its substance is closely related to a legal provision submitted to it for a review.

(5) The Constitutional Court may only review the Fundamental Law and the amendment thereof for conformity with the procedural requirements laid down in the Fundamental Law with respect to its adoption and promulgation. Such a review may be initiated by:

- a) the President of the Republic in respect of the Fundamental Law and the amendment thereof, if adopted but not yet published,
- b) the Government, a quarter of the Members of Parliament, the President of the Curia, the Supreme Prosecutor or the Commissioner for Fundamental Rights within thirty days of publication.”

Article 24 of the Fundamental Law shall be supplemented by the following Paragraphs (6)–(9):

“(6) The Constitutional Court shall decide on the motion pursuant to Paragraph (5) out of turn, but within thirty days at the latest. If the Constitutional Court finds that the Fundamental Law or any amendment thereof does not comply with the procedural requirements defined in Paragraph (5), the Fundamental Law or the amendment thereof shall be:

- a) renegotiated by Parliament in the case laid down in Paragraph (5) a),

b) annulled by the Constitutional Court in the case laid down in Paragraph (5) b).

(7) The Constitutional Court shall hear the legislator, the initiator of the Act or their representative and shall obtain their opinions during its procedure defined by cardinal Act if the matter affects a wide range of persons. This stage of the procedure shall be open to the public.

(8) The Constitutional Court shall be a body of fifteen members, each elected for twelve years by a two-third majority of the Members of Parliament. Parliament shall elect, with a majority of two-thirds of the votes of all Members of Parliament, a member of the Constitutional Court to serve as its President until the expiry of President's mandate as a constitutional judge. Members of the Constitutional Court may not be members of a political party or engage in any political activity.

(9) The detailed rules for the competence, organisation and operation of the Constitutional Court shall be laid down in a cardinal Act."

Regarding Section 14

The Fourth Amendment necessitates the amendment of the provisions of the Act on the Organisation and Administration of Courts regarding the appointment of the proceeding court. The purpose of the amendment is to ensure that the proceeding court is appointed on the basis of a pre-determined, fast and effective procedure, within the boundaries of the law, which also guarantees the assessment of cases within a reasonable time and a more balanced distribution of case loads among courts.

Pursuant to the Bill, the President of the National Judicial Office (NJO) adopts a decision, based on the motion of the chair of a tribunal or court of appeal or the chief prosecutor, that another court or other courts will proceed, instead of a given court, in cases falling into a specific case group that are filed with the given court during a fixed period. This is possible if, based on the case statistics of six months, the given court is required to cope with a case load that exceeds the national average. The President of the NJO appoints courts as proceeding courts whose case loads do not reach the national average based on the case statistics of a period of six months. The law defines the case groups, in respect of which another court may be appointed on the basis of the rule of law to proceed instead of the court with jurisdiction.

The Bill creates an arrangement which, instead of an individualised system for the appointment of the proceeding court, introduces a procedure with respect to cases filed in the future that is based on objective criteria and is free from case-to-case deliberation in the interest of the assessment of cases within a reasonable time and the more balanced distribution of cases among courts.

The above measure of the President of the NJO is under the supervision of the National Judicial Council (NJC) inasmuch as the President of the NJO may adopt his/her resolution of appointment with the agreement of the NJC. Additionally, the Bill provides adequate legal remedies both against the resolution of the President of the NJO and the measure taken on the basis thereof.

In response to an appeal, the Curia reviews the resolution of the President of the NJO. The appellant is required to substantiate his/her legal interest for the submission of an appeal. The Curia's review extends to the investigation of formal and procedural issues. Based on this, the Curia sustains or repeals the resolution; however, the Curia may not alter the resolution.

The Bill defines the role of the Curia in the scheme of legal remedies for the event of any irregularities that may emerge in the actual forwarding of cases, and guarantees the right of the parties concerned to the lawsuit to lodge a complaint. In this case, the Curia investigates whether the individual cases were forwarded to the appointed court in accordance with the resolution of appointment of the President of the NJO.

As part of the amendment of the Act on the Organisation and Administration of Courts, in addition to reforming the mechanism of the appointment of the proceeding court, the Bill also contains further changes; for instance, it excludes the re-election of the President of the NJO. With regard to the fact that the Fourth Amendment grants the President of the NJO the same status as the President of the Curia, the Bill harmonises the circumstances giving rise to the cessation of the mandate of the President of the NJO with the solution resorted to with respect to the President of the Curia. As the Fourth Amendment also vests the President of the Curia with the right of initiating proceedings before the Constitutional Court in connection with the unconstitutionality of a legal rule or for reviewing the observance of the procedural requirements relating to the passage and promulgation of the Fundamental Law and its amendments, this new element of the amendment inserts these new powers into the provisions determining the responsibilities of the President of the Curia.

Article 14 of the Fourth Amendment (see above)

Article 12 of the Fourth Amendment

(2) Article 24(2) e) of the Fundamental Law shall be replaced by the following provision:

(The Constitutional Court shall:)

“e) review any legal regulation for conformity with the Fundamental Law upon an initiative to that effect by the Government, one-fourth of the Members of Parliament, the President of the Curia, the Supreme Prosecutor or the Commissioner for Fundamental Rights;”

Regarding Section 15

With regard to the fact that the new Act C of 2012 on the Criminal Code will enter into force on 1 July 2013, the rules determining the individual case groups for the purposes of the appointment of the proceeding court must be harmonised with the new legislation. Therefore, effective as of 1 July 2013, the provisions summarising the criminal case groups will be replaced with new references that reflect the changing statutory factual scenarios.

Article 14 of the Fourth Amendment (see above)

Regarding Sections 16 and 17

The Bill effects text swap amendments in order to ensure that the rest of the provisions of the Act on the Organisation and Administration of Courts are in harmony with the rules of the legislation described above that change on account of the Fourth Amendment, and repeals certain text parts of some provisions of the law with a view to the same purpose.

Regarding Sections 18 to 20

The Bill also amends the Act on the Legal Status and Remuneration of Judges. This partly covers the amendments necessitated by the Fourth Amendment (such as the correction of the rigid reference to the Fundamental Law and the repeal of one of the rules concerning the remuneration and benefits of the President of the NJO) and partly clarifies the provisions that relate to the central website.

Regarding Section 21

As the Fourth Amendment also vests the chief prosecutor with the right of initiating proceedings before the Constitutional Court in connection with the unconstitutionality of a legal rule or for reviewing the observance of the procedural requirements relating to the passage and promulgation of the Fundamental Law and its amendments, this new element of the amendment inserts these new powers into the provisions determining the responsibilities of the chief prosecutor.

Article 12 of the Fourth Amendment

(2) Article 24(2) e) of the Fundamental Law shall be replaced by the following provision:

(The Constitutional Court shall:)

“e) review any legal regulation for conformity with the Fundamental Law upon an initiative to that effect by the Government, one-fourth of the Members of Parliament, the President of the Curia, the Supreme Prosecutor or the Commissioner for Fundamental Rights;”

Regarding Section 22

The amendment of Article 34(3) of the Fundamental Law extends the range of persons that may be vested with state administration responsibilities in the local government sector to the head of the office of the representative body (clerk, chief clerk) and the administrators of the office (e.g. registrar) in addition to the mayor and the president of the county representative body.

The Bill also introduces this change in Act CLXXXIX of 2011 on the Local Governments of Hungary.

Article 15 of the Fourth Amendment (see above)

Regarding Section 25

With regard to the specific mention made in the Fundamental Law of the Parliamentary Guards, the Bill makes technical amendments to Act XXXVI of 2012 on Parliament as the powers relating to the guards and the disciplinary and order enforcement powers of the Speaker of the House no longer stem from this legislation directly but from the Fundamental Law. The Bill additionally clarifies the usage of the term relating to social organisations in the law, thereby harmonising it with the terms used in the Act on the Right of Association, the Non-Profit Status and the Operation and Subsidisation of Civil Organisations.

Article 10 of the Fourth Amendment

(1) Article 5(7) of the Fundamental Law shall be replaced by the following provision:

“(7) Parliament shall determine its rules of operation and the order of its debates in its Rules of Procedure adopted by a majority of two-thirds of the votes of the Members of Parliament present. In order to ensure the undisturbed operation of Parliament and to preserve its dignity, the Speaker of the House shall have law and order and disciplinary powers as defined by the Rules of Procedure.”

(2) Article 5 of the Fundamental Law shall be extended by the following Paragraph (9):

“(9) Parliament’s security shall be ensured by the Parliament Guard. The operation of the Parliament Guard shall be directed by the Speaker of the House.”

Regarding Section 26

The Bill repeals the rule of Resolution No. 46/1994. (IX.30.) of Parliament on Certain House Rule Provisions regarding the deadline for signing by the Speaker of Parliament which has since been elevated to a constitutional level.

Article 2 of the Fourth Amendment

Article S(3) of the Fundamental Law shall be replaced by the following provision:

“(3) The Speaker of the House shall sign the adopted Fundamental Law or the adopted amendment thereof within five days and shall send it to the President of the Republic. The President of the Republic shall sign the Fundamental Law or the amendment thereof sent to him within five days of receipt and shall order its publication in the Official Gazette. If the President of the Republic finds a departure from any procedural requirement laid down in the Fundamental Law with respect to adoption of the Fundamental Law or any amendment thereof, the President of the Republic refers such departure to the Constitutional Court for a revision. Should the revision by the Constitutional Court not verify the departure from the requirements, the President of the Republic shall immediately sign the Fundamental Law or the amendment thereof, and shall order its publication in the Official Gazette.”

Regarding Sections 27 and 28

These contain the closing provisions of the Bill regarding entry into force and information on cardinal legislation.