



Hungarian Helsinki Committee



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HUNGARIAN CIVIL LIBERTIES UNION

Provisions of the Fourth Amendment to the Fundamental Law of Hungary contradicting decisions of the Constitutional Court

As presented in the table below, several key articles of the Fourth Amendment to the Fundamental Law of Hungary either insert provisions into the Fundamental Law which had previously been found unconstitutional by the Constitutional Court (CC), or provisions which clearly contradict CC decisions delivered in 2012 and 2013. Quotes from CC decisions and related articles of the Fourth Amendment presented below refute the arguments presented by representatives of the Hungarian governing majority, some of whom suggest that the majority of the changes introduced by the Fourth Amendment were prescribed by a decision of the CC and that the Fourth Amendment is merely a technical means of inserting former rules of the Transitional Provisions into the Fundamental Law. In fact, the Fourth Amendment introduces a series of provisions into the Fundamental Law which, taking into account the decisions of the CC, violate fundamental rights and the principle of the rule of law. Furthermore, overruling the CC by amending the constitution contributes to dismantling the system of checks and balances and undermines the stability of the Fundamental Law.

For a detailed assessment of the Fourth Amendment to the Fundamental Law of Hungary, visit:

<https://sites.google.com/site/ruleoflawinhungary/>.

CC decision	Quotation from CC decision	Article of the Fourth Amendment	Text of the Fourth Amendment
Declaring void CC decisions adopted prior to the Fundamental Law			
22/2012. (V. 11.) Reasoning [40]-[41] reiterated by: 30/2012. (VI. 27.) 34/2012. (VII. 17.) 4/2013. (II. 21.)	“In the new cases the Constitutional Court may use the arguments included in its previous decision adopted before the Fundamental Law came into force in relation to the constitutional question ruled upon in the given decision, provided that this is possible on the basis of the concrete provisions and interpretation rules of the Fundamental Law, having the same or similar content as the provisions included in the previous Constitution. [...] The conclusions of the Constitutional Court pertaining to those basic values, human rights and freedoms, and constitutional institutions, which have not been altered in the Fundamental Law, remain valid.”	Article 19	“Decisions of the Constitutional Court delivered prior to the entering into force of the Fundamental Law become void. This provision does not concern the legal effects achieved by the preceding decisions.”
Prohibiting the CC from examining the substantive constitutionality of proposed amendments to the Fundamental Law			
45/2012. (XII. 29.) Reasoning [117]-[118]	“In certain cases the Constitutional Court may also examine the undiminished predominance of the content-related constitutional requirements, guarantees and values of the democratic state based on the rule of law, and their inclusion in the constitution.”	Article 12	“The Constitutional Court may only review the compliance of the Fundamental Law and an amendment to the Fundamental Law with the procedural requirements included in the Fundamental Law pertaining to the adoption and the promulgation of the Fundamental Law or its amendments.”

Narrowing the notion of family			
43/2012. (XII. 20.) Reasoning [43]	“It does not follow from Article L) of the Fundamental Law that e.g. those in a partnership who take care of and raise each other’s children, different-sex couples who do not want a child or who cannot have a common child due to different reasons, [...] widows, [...] grandparents raising their grandchildren, [...] and many other forms of long-standing emotional and economic cohabitations, which are based on mutual care and fall within the wider, more dynamic, sociological notion of a family would not be covered by the state’s objective positive obligation [to provide constitutional protection for families].”	Article 1	“Marriage and the parent-child relationships are the basis of the family.”
Banning political advertisements in the commercial media			
1/2013. (I. 7.) Reasoning [93]-[100]	“According to Article 151 (1) of the law, in the campaign period, political advertisements may be published exclusively in public media outlets. This provision bans this kind of political communication in every other media outlet [...], which results that the possibility of publishing political advertisements ceases exactly regarding in the media reaching society to the widest extent. Thus, the ban is a considerable restriction on political speech as performed in the course of the election campaign. [...] Article 151 (1) of the law does not serve the aim of balanced information, and even may lead to an opposite result. [...] Therefore, the CC rules that the ban of publishing political advertisements in the campaign in [non-public] media outlets is contrary to the Fundamental Law.”	Article 5	“In order to guarantee adequate information necessary for the formation of a democratic public opinion and in order to guarantee equal opportunities, political advertisements may be published in the media exclusively free of charge. Before the election of Members of Parliament and Members of the European Parliament, in the campaign period, political advertisements may be published by and in the interest of those organisations nominating candidates which set up a national list of candidates for the general elections of Members of Parliament or setting up a list of candidates for the election of Members of the European Parliament – as defined in a Cardinal Act – exclusively via public media outlets, under equal conditions.”
Providing a constitutional basis for criminalizing homelessness			
38/2012. (XI. 14.) Reasoning [53]	“Homelessness is a social problem, which shall be dealt with by the state with the means of social administration and social maintenance instead of punishment. It is incompatible with the protection of human dignity as enshrined in Article II of the Fundamental Law to declare [homeless persons] dangerous to the society and punish [them].”	Article 8	“An Act of Parliament or local government decree may outlaw the use of certain public space for habitation in order to preserve the public order, public safety, public health and cultural values.”
Recognition of churches by the Parliament			
6/2013. (III. 1.) Reasoning [205]	“Recognizing the status as a church by a parliamentary vote [...] may lead to decisions reached on political grounds. [...] vesting this kind of a decision exclusively in the Parliament, being essentially of political character, is not in compliance with the requirements included in the Fundamental Law [...]”	Article 4	“Parliament may recognize, in a cardinal Act, certain organizations that serve a religious mission as a church. With them the State collaborates for the public interest. Against the provisions of the cardinal Act concerning the recognition of churches a constitutional complaint may be filed.”