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Social Security in Hungary Before and After the Fundamental Law of 2012 in Light of the Jurisprudence of the Constitutional Court

I. Introduction

This paper explores and compares the jurisprudence of the Hungarian Constitutional Court (Alkotmánybíróság, henceforth abbreviated: CC) regarding social security before and after the new Constitution entered into force in 2012. The wording of the new Fundamental Law of Hungary – signed on April 25, 2011 and effective as of January 1, 2012 – was said to be more restrained and modest regarding social rights, as it does not explicitly stipulate such rights. In this paper I try to come up with a conclusion as to whether the level of protection of social security in the case law of the Hungarian Constitutional Court also became lower after 2012. With this comparison I focus on the following three topics:

- the general CC interpretation of social security in the Constitution and in the Fundamental Law;
- the constitutional protection of certain elements of social insurance as property;
- constitutional protection of homeless people.

This paper does not intend to cover the whole field of the constitutional protection of social rights.[1] I selected only these three topics because I considered them to have be-

1 In this topic, see among others: *Berki Gabriella,* Mire jogosít az egészségügyi ellátáshoz való jog? Egy alapjog betegjogi megközelítése, in: Balogh Elemér (ed.): Számadás az Alaptörvényről: tanulmányok a Szegedi Tudományegyetem Állam- és Jogtudományi Kar oktatóinak tollából. Magyar Közlöny Lap- és Könyvkiadó, Szeged, pp. 21-30; *Drinóczi Tímea*, Gazdasági alkotmány és gazdasági alapjogok. Budapest-Pécs, Dialóg Campus, 2007; *Hajdú, József,* The right to social security in the Hungarian fundamental Law (Constitution). In The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice. ILO Global Study, Volume 1: Europe. International Labour Organization, Geneva, 2016, pp. 89-106; *Homicskó Árpád Olivér*, Társadalombiztosítási és szociálpolitikai alapismeretek, Budapest, 2015, Patrocinium Kiadó; *Jakab Nóra*, A szociális jogok és szociális biztonság, in: Jakab Nóra/Mélypataki Gábor/ Szekeres Bernadett, A szociális biztonság nemzetközi kérdései. Miskolc, 2016, Bíbor Kiadó, pp. 9-12; *Juhász Gábor*, Államcélok, paradigmaváltás és aktuálpolitikai alkotmányozás. A szociális jogok védelme az Alaptörvényben. Esély 26. évf. 1. sz. pp. 3-31; *Kardos Gábor*, Üres kagylóhéj? – A szociális jogok nemzetközi jogi védelmének egyes kérdései. Gondolat Kiadói Kör, 2003; *Kiss György*, Alapjogok kollíziója a munkajogban. Pécs 2010; *Kristó Katalin*, A pénzbeli családtámogatási ellátások változásai 2010 és 2014 között, a kormányprogram célkitűzései tükrében. Acta Humana 2015/2. pp. 97-122; *Kun Attila*, Családi támogatások, in: Hajdú József, Homicskó Árpád Olivér (ed.): Szociális jog II. különös rész. Budapest, 2010, Patrocinium Kiadó, pp. 255-276; *Lajkó Dóra*, Az Alaptörvény szociális védelmi rendelkezései. A rászorultság védel-

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en the most disputable questions in the last few years among scholars, politicians and in the media as well.

II. The CC's interpretation of social security on the basis of the previous Constitution

Hungary's previous Constitution from 1989[2] included many social rights.[3] The primary social rights provisions in Hungary's Constitution could be found in Article 70/E which stated that:

> *"Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in the case of sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own. The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions."*

1. The interpretation of Art. 70/E about the right to social security

The interpretation of the right to social security by the CC was quite controversial.[4] The meaning and understanding of the social security rights divided the Court.[5] In the early nineties, the CC ruled with only a one person majority that social rights were not real subjective rights, but rather served as State-goals.[6] The minority of the Judges

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me, in: Balogh Elemér (ed.): Számadás az Alaptörvényről: tanulmányok a Szegedi Tudományegyetem Állam- és Jogtudományi Kar oktatóinak tollából. Magyar Közlöny Lap- és Könyvkiadó, Szeged 2016, pp. 105-119.

2 This constitution was originally adopted in 1949, during the Soviet occupation of Hungary. In 1989, during the change of the political system, the legislature approved a total amendment of the constitution. However, formally (*de iure*) Hungary was the only of the post-socialist countries that did not adopt a new constitution after the fall of Communism, at least until 2011. In spite of this, I refer to the Hungarian Constitution since 1989 as a new one, because in the sense of its *content,* it became a "*rule of law constitution"*.

3 While some commentators have asserted that these were "leftovers" from Hungary's Soviet-era constitution, it turned out that many of the social rights provisions were new. Lawyers working on the constitutional subcommittee of the Roundtable process in 1989 had copied provisions from international human rights documents into the Hungarian Constitution, particularly the International Covenant on Economic, Social and Cultural Rights. *Kim Lane Scheppele*, Democracy by Judiciary. Or, why Courts Can be More Democratic than Parliaments, in: Adam Czarnota/Martin Krygier/Wojciech Sadurski, Rethinking the Rule of Law after Communism. CEU Press Budapest, New York, 2005. p. 45.

4 *Patyi András,* Protecting the Constitution (The Characteristics of *Constitutional* and Judicial Review in Hungary 1990-2010), Passau 2011, p. 45.

5 Id., p. 45.

6 For the first interpretation of social rights see: 32/1991. (VI. 6.) AB, the one-person majority decision: 26/1993. (IV. 29.) AB. The basis of this decision was that Parliament decided to increase the amount of old-age pensions and other allowances, but fixed the maximum of the increase both in percent and in the nominal sum. The petitioners claimed that this violated

maintained that they were real subjective rights. The CC pointed out that the State was deemed to have met its obligation under Article 70/E by organising and operating a system of social institutions including welfare benefits.[7]

The legislature could itself determine the means whereby it wished to achieve its social policy objectives.[8] The obligations of the State concerning the social security of its citizens were defined in a general manner by the provision of Article 70/E para (1) of the Constitution.[9] According to that reasoning, the legislature had relatively great liberty in determining the methods and degrees by which it wanted to enforce the state goals and social rights. [10] It also meant that the State had a wide margin of appreciation with respect to changes, regroupings and transformations within welfare benefits depending on economic conditions. [11] However, according to the Court, the State did not have an unlimited power to change social rights.[12]

This interpretation remained the basis of the jurisdiction of the CC from 1990 to 2011, i.e. Article 70/E did not provide a substantive right to any person for social security,[13] the right to social security did not entitle any citizen to any specific benefit; social security means neither guaranteed income, nor that the achieved living standard could not deteriorate.[14]

As one Hungarian constitutional expert commented on the decision,

> *"The interpretation of Chief Justice Sólyom clearly states that social and economic rights are not raised to the rank of subjective rights that can be enforced by the judiciary against the state." [15]*

In fact, the Court effectively converted the "rights" provision into targets for the state to pursue.[16] According to *Sadurski*, there appears to be a conflict between the "minimum level" standard (as determined by the Court) and the view of social rights as merely determining the goals to be pursued by the state.[17] This is true in the sense that according to the CC an individual social right existed which may be undoubtedly de-

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their right to social assistance provided by the Constitution. The Constitutional Court's ruling pointed out that social insurance – in part inherited from socialism – still has a mixed character: it is partly a type of insurance and partly a social benefit. The CC also declared that no one has a constitutional right to the protection of the same living standard. The Court was split on the issue of social rights; in this case four justices out of ten wrote dissenting opinions.

7 *Patyi*, fn. 4, p. 45.
8 Id., p. 45.
9 32/1991. (VI. 6.) AB.
10 *Patyi*, fn. 4, p. 45.
11 Id., p. 45.
12 Dec. 26/1993. (IV. 29.) AB.
13 *Kriszta Kovács/Gábor Attila Tóth/László Trócsányi*, Fundamental Rights in the jurisprudence of the Constitutional Court, in: Péter Paczolay (ed.): Twenty Years of the Hungarian Constitutional Court. Constitutional Court of the Republic of Hungary, Budapest, 2009. P. 94.
14 *Wojciech Sadurski,* Rights Before Courts – A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe. Netherlands 2005, p. 181.
15 *Péter Paczolay*: Human Rights and Minorities in Hungary. J. of Const. L. in E. and Cent. Eur. 3 (1996): pp. 111-26 at 121.
16 *Sadurski*, fn. 14., p. 181.
17 Id., p. 181.

rived from the Constitution and this was the right to such support as was necessary for living.[18] This requirement appeared first in the CC case law in year 1995, with the opening of the row of the so called "minimum-decisions".[19]

In 1995 the CC established the following:

> *"in determining which of the benefits actually enjoyed and how these benefits can be constitutionally withdrawn, social rights have a role insofar that, as a result of such withdrawal, the extent of welfare benefits as a whole may not be reduced to below a minimum level which may be required according to Article 70/E."*

In this decision, the Court also established – as a general constitutional requirement – that the right to social security entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits necessary for the realisation of the right to human dignity.[20] In a later decision the CC not only repeated this opinion, but also established it as a constitutional requirement, binding both the government and the Parliament. [21]

The ruling on this Decision (no. 32/1998.) declared the following:

> *"the right social security contained in Article 70/E of the Constitution entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits necessary for the realisation of the right to human dignity."*[22]

The state obligation to secure the minimum livelihood was also confirmed in a decision interpreting Article 70/E of the Constitution. Beyond this no other subjective social rights derived from the social rights catalogue of the Constitution.[23]

In decision no. 42/2000 the CC expressed that

> *"guaranteeing the minimum livelihood shall not result in concretely defining specific rights – such as the 'right to have a place of residence' – as constitutional fundamental rights. In this respect, no obligation, and hence no responsibility of the State, may be established."*[24]

The Court explained its self-restrain by referring to two constitutional principles.[25] First, if the Constitutional Court established certain partial rights (e.g. the right to

18 *Kovács/Tóth/Trócsányi*, fn. 13, p. 94.
19 *Patyi*, fn. 4, p. 46.
20 43/1995. (VI. 30.) AB.
21 *Patyi*, fn. 4, p. 46.
22 According to *Imre Vörös*, former justice of the Constitutional Court, (now a member of the Hungarian Academy) the right to human dignity in this context refers to the method (way) of providing benefits and not the measure (amount) of benefits. In other words, the measure of the benefits provided by the State has to reach the minimum livelihood, furthermore this minimum has to be provided by the State under such circumstances so that it should not violate the right to human dignity. *Vörös Imre,* A szociális biztonsághoz való jog az Alkotmánybíróság gyakorlatában. Világosság 2001/1. p. 63.
23 *Kovács/Tóth/Trócsányi*, fn. 13, p. 94.
24 42/2000. (XI. 8.) AB.
25 *Patyi*, fn. 4, p. 46.

have a place of residence, the rights to proper nutrition,[26] cleaning or dressing) and enforced such rights with the strictness of fundamental constitutional rights, this would lead to the acknowledgement of more and more new elements of social benefits as fundamental constitutional rights. Such an interpretation would not take into account the right of the constitution-making authority to define fundamental constitutional rights. Second, it would also neglect the constitutional requirement that the legislature should enjoy a high degree of liberty in defining the actual tools of guaranteeing social security. This way, the Constitutional Court would compel the legislature to guarantee certain concrete forms of benefits without due account to the prevailing capacities of the national economy.[27]

By interpreting the right to social security the CC also took into consideration Article 17 which declared that the Republic of Hungary shall provide for those in need through a wide range of welfare measures. The Constitutional Court – examining jointly Article 70/E of the Constitution with Article 17 – stated that social rights were not about a substantive right but about state obligation, as the Constitution defined neither the degree nor characteristics of social care.[28] The definition of these terms and their implementation through policy was the responsibility and obligation of legislators and the Government.[29] Therefore the CC interpreted the right to social security, guaranteed by Article 70/E para (1) of the Constitution, using the same approach as the German Bundesverfassungsgericht's interpretation of the clause of social state: the provisions of the Constitution about social fundamental rights shall not be considered merely a declarative statement.[30] Obligations derive from these provisions for the state; for example, the obligation to organize and operate the institutions of social security and social support as guarantees of social care.[31] The Constitutional Court of Hungary also stressed that social security did not include a granted income, and that, in the case of an economic downturn, the state was not obliged to maintain a certain level of quality of life that individuals had already achieved.[32]

26 About the human right to food see: *T. Kovács Júlia,* Refugee crisis in the aspect of the human right to food. In: Rixer Ádám (ed.): Migrants and Refugees in Hungary: a legal perspective. Budapest, Károli Gáspár Református Egyetem, 2016. pp. 139-148.; cf. *Móré Sándor – Szilvásy György Péter,* The Official Forum System of the Asylum Administration, in: Rixer Ádám (ed.): Migrants and Refugees in Hungary: a legal perspective. Budapest, Károli Gáspár Református Egyetem, 2016. pp. 79–81.

27 See further details about Decision 42/2000. in the following Chapter "The protection of homeless people".

28 *Kovács/Tóth/Trócsányi*, fn. 13, p. 94.

29 32/1991. AB.

30 *Kovács/Tóth/Trócsányi*, fn. 13, p. 94.

31 Id., p. 94.

32 *Rab Henriett,* Changes in the Fundamental Rights Aspects of the New Hungarian Fundamental Law in the Light of the Retirement Pension System. Journal on Legal and Economic Issues of Central Europe. 2014/1. p. 80.

2. The protection of social security benefits as property

In the practice of the CC, constitutional property protection covered rights acquired against consideration based on contribution payment obligation (e.g. pension).[33] However, in the first three years of its operation the CC refused to recognize the correlation between the right to social security and the right to property.[34] With Decision 64/1993. (XII. 22.) AB, the CC separated the civil law notion of property from property as a constitutional right. The CC established that when the protection of individual autonomy is at stake, the constitutional protection of property extends to rights with an economic value, which today performs this former role of ownership. This category includes public law entitlements, for instance, to entitlements from the social insurance.[35] The Constitutional Court founded this broad protection on the function of property.[36] The functional notion of property played a decisive role later on, as the Court based the protection for social security benefits or entitlements on this definition of property.[37] However, this extended notion of property does not lead automatically to constitutional protection of all entitlements.

The most strikingly relevant case law is to be found in a series of decisions of the Hungarian Constitutional Court, which, in 1995, unanimously struck down 26 provisions of an austerity package of social security reforms.[38] In 1995 the government passed through the Parliament a so-called austerity package (named after the finance minister "Bokros-package"). The CC (following its earlier jurisprudence) struck down several elements of the package not on the basis of the social security rights, but on the fundamental principles of the rule of law and the applicability of the right to property to certain social security benefits.[39] This approach was partially justified on the grounds that individuals invest their income in a collective system, as opposed to a private or asset-based one, in order to allay future risks and contingencies.[40] However, the Court acknowledged that the traditional approach to the justiciability of property rights could not be strictly applied since there was not an exact match between contributions and benefits. [41] The system contained no individual accounts or capitalisation, there was some element of redistribution across beneficiaries, and contributors accep-

33 *Kovács/Tóth/Trócsányi*, fn. 13, p. 94.
34 Decision 26/1993. (IV. 28.) AB.
35 This latter reference to „entitlements from the social insurance" appeared in the text of the reasoning only in brackets. However, later this became the basis of expanding the right to property to include these kinds of social entitlement.
36 *László Sólyom and Georg Brunner*, Constitutional Judiciary in a New Democracy. The Hungarian Constitutional Court, Michigan, 2000, pp. 286–291; *András Téglási,* The Constitutional Aspects of Ownership, in: Sándor István (ed.)Business Law in Hungary. Budapest 2016, pp. 168-184.
37 Constitutional Court Decision 43/1995. (VI. 30.) AB, ABH 1995, 188.
38 *Anna Tsetoura*, Property protection as a limit to deteriorating social security protection. European Journal of Social Security, Volume 15 (2013), No. 1, p. 68.
39 *Patyi*, fn. 4, p. 45-46.
40 *Malcolm Langford*, Hungary. In: Malcolm Langford (ed.): Social Rights Jurisprudence: Emerging Trends in International and Comparative Law. Cambridge University Press 2008, p. 258.
41 Id., p. 258.

ted some long-term risks as to payment of the benefits. [42] The Court's answer to this dilemma was to simply focus on the proportionality analysis and determine whether the changes were justified in the public interest, but the Court noted that "the protection of expectations and benefits is stronger depending on whether or not they are provided on the basis of financial contribution".[43]

3. The protection of homeless people

After the collapse of Communism, the right to adequate housing became one of the most important social issues in Hungary. Although the CC dealt in several decisions with housing rights,[44] the most important decision was no. 42/2000, which is also called the "Housing case" in legal literature.[45]

a) No "right to have a place of residence"

In Decision 42/2000. by interpreting Article 70/E of the Constitution, the Constitutional Court established that according to Article 70/E para. (1) of the Constitution, the right to social security entails the obligation of the state to secure a minimum livelihood for individuals through all of the welfare benefits. Guaranteeing the minimum livelihood shall not result in concretely defining specific rights – such as the "right to have a place of residence" – as constitutional fundamental rights. In this respect, no obligation, and hence no responsibility of the State, may be established. This meant that in 2000 the CC found that the right to social security did not establish subjective rights and therefore a fundamental constitutional right to housing could not be derived from it.[46] However the State was obliged to secure the fundamental conditions of human life. In the case of the homeless, this means the securing of a shelter to offer protection from dangers directly threatening human life.

42 Id., p. 258.
43 43/1995. (VI. 30.) AB.
44 The initial foray of the Court into the area of housing concerned competing rights over 'local governments,' or 'social tenancies'. See: Decision 28/1991. AB. *Langford,* fn. 40, p. 261.
45 *Anne Hughes*, Human dignity and fundamental rights in South Africa and Ireland. Pretoria University Law Press 2014, p. 342.
46 The decision has been criticised because the Court did not delve into international jurisprudence to determine the content of social right and failed to note that an independent right to housing had been repeatedly recognised at the international level. A second criticism was levelled at the decision because the Court failed to develop a more robust jurisprudence for evaluating whether the state was meeting its constitutional obligations by simply meeting the demand of the minimum level. *M. Langford*, Hungary. Social rights or market redivivus?, in: M. Langford (ed): Social rights jurisprudence: emerging trends in international and comparative law. Cambridge University Press, 2009, p. 263; cited by: Anne Hughes: Human dignity and fundamental rights in South Africa and Ireland. Pretoria University Law Press 2014, p. 342, fn. 91.

b) Dustbin scavenging

Another important decision of the Constitutional Court was pronounced right before the Constitution became ineffective at the end of the year 2011. In this decision, the Constitutional Court underlined the fact that dustbin scavenging is an activity that does not violate the rights of others, nor can it be established that it is dangerous for society. [47] In addition, the decision emphasised that by making dustbin scavenging a regulatory offence, the local government stigmatised homeless and other marginalised people, which was against the prohibition of discrimination.

III. The jurisprudence of the Constitutional Court regarding social security after 2012

On January 1st, 2012, the new Constitution of Hungary entered into force as the "Fundamental Law" or "Basic Law".[48] The Fundamental Law – among other changes – changed the constitutional provisions of social rights.[49] In the section that follows, I focus only on the article regulating social security, the constitutional protection of certain elements of social insurance as property, and the constitutional protection of homeless people according to the Fundamental Law. Article XIX para (1) of the new Fundamental Law stipulates the following: Hungary shall strive to provide social security to all of its citizens. According to legal literature, Article XIX does not specify any definite obligation on this respect, as the word "strive" demotes the right to social security to a goal of the state.[50] However, according to others, the provisions of the Fundamental Law pertaining to social rights results in no dramatic change with respect to the protection of these rights, mainly because – as I have also indicated in the previous chapter – under the 1989 Constitution the Constitutional Court did not recognise the fundamental-right status of social provisions.[51] Article XIX of the Fundamental Law reflects the spirit of the Constitutional Court's judicial practice to date,

47 Decision 176/2011. (XII. 29.) AB.

48 The nomination of the „Basic Law" or „Fundamental Law" is the same as the nomination of the German "Grundgesetz".

49 On these changes, see *Rab*, fn. 32., pp. 78-83; *András Zs.Varga/András Patyi/Balázs Schanda* (eds.), The Basic (Fundamental) Law of Hungary: A Commentary of the New Hungarian Constitution. Clarus Press 2015, p. 80.

50 *Rab,* fn. 32, p. 79.

51 Opinion on the Fundamental Law of Hungary. Authors: Zoltán Fleck, Gábor Gadó, Gábor Halmai, Szabolcs Hegyi, Gábor Juhász, János Kis, Zsolt Körtvélyesi, Balázs Majtényi, Gábor Attila Tóth. Edited by: Professor Andrew Arato, New School for Social Research, New York, Professor Gábor Halmai, Eötvös Loránd Tudományegyetem, Budapest, Professor János Kis, Central European University, Budapest, p. 19. (http://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf); See: Constitution for a Disunited Nation On Hungary's 2011 Fundamental Law. Edited by Gábor Attila Tóth. Central European University Press Budapest/New York, 2012, p. 472-473.

and makes this even clearer than the previous text.[52] The Fundamental Law, in keeping with the spirit of the Constitutional Court precedents, treats the creation of social security not as a right, but as a state goal. [53]

Article XIX para (1) of the Fundamental Law – after declaring social security as an aim of the state – specifies that every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act. According to legal literature, the direct reference to the management of the old-age risk is a lacking element which, however, can be eliminated by interpreting para (4) of the same Article which specifies the "insurance of the livelihood of the elderly" as part of providing social security. Phrasing this in a separate paragraph might also be understood as accentuation of this element and not as depreciation.[54] This has been confirmed by the CC in 28/2015. (IX. 24.) AB establishing that the Fundamental Law in para (4) of Art. XIX mentions "the right to state pension,"[55] the conditions of which shall be established by statute.

1. The interpretation of the right to social security

In case of social security, – as I have already indicated – the previous Constitution provided social security as the fundamental right of every Hungarian citizen.[56] However, according to the interpretation of this regulation by the CC, social security had been interpreted only as a state objective.[57] This interpretation was codified in the Fundamental Law, saying that Hungary only "strives" to provide social security to all of its citizens.[58]

The Constitutional Court in 2013 – in the reasoning of its decision about the pensions of servicemen who retire early – established that

> *"the sustainable development and the gradually worsening demographic situation lead to the new phrasing of social security in the Fundamental Law.[59] The*

52 Opinion on the Fundamental Law of Hungary. Authors: Zoltán Fleck, Gábor Gadó, Gábor Halmai, Szabolcs Hegyi, Gábor Juhász, János Kis, Zsolt Körtvélyesi, Balázs Majtényi, Gábor Attila Tóth, Edited by: Professor Andrew Arato, New School for Social Research, New York, Professor Gábor Halmai, Eötvös Loránd Tudományegyetem, Budapest, Professor János Kis, Central European University, Budapest, p. 19.

53 Id., p. 19.

54 *Rab*, fn. 32, p. 81.

55 According to Art. XIX para (4) of the Fundamental Law: statutes may determine the conditions of the right to state pension with regard to the requirement of the increased protection of women; in other words: the conditions of entitlement to state pension may be specified by an Act also in view of the requirement for increased protection for women.

56 Art. 70/E of the former Constitution.

57 *Jakab, András,* Az új Alaptörvény keletkezése és gyakorlati következményei. HVG-Orac, Budapest 2011. p. 221; *Juhász, Gábor*, 70/E. § [A szociális biztonsághoz való jog], in: Jakab, András (ed.): Az Alkotmány kommentárja. Századvég. Budapest 2009, pp. 2586-2587.

58 Art. XIX., para. 1.: Hungary shall strive to provide social security to all of its citizens.

59 See the details of the case later in Chapter „Termination of early retirement servicemen's pension".

benefits regulated in the article 70/E of the previous Constitution were considered by some people a "citizens' right" which could be provided by the State on a lower and lower level. These paying for these benefits presented problems once the State went into debt. Therefore, the new Fundamental Law adjusted the provision of social security to match changing circumstances. The changing economic circumstances resulted in a new situation and new constitutional provisions regarding the main principles of the state budget. In an emergency situation deepened by the economic circumstances and the fiscal and economic crises, it became unavoidable to announce the reduction of the state debt as a short term state goal, to which many claims (which could be considered equitable and just under normal circumstances) had to be subordinated."[60]

The Constitutional Court here referred to Article N) of the Fundamental Law – which is a new provision, absent from the old Constitution – which stipulates the following:

"Hungary shall enforce the principle of balanced, transparent and sustainable budget management."

According to the CC, this Article N) emphasized the inevitable paradigm-change which affected primarily the pension system, and which had substantially increased state expenditures.[61]

In Decision 4/2016. (III. 1.) AB, the Constitutional Court declared that in the present case Article XIII (right to property) had to be interpreted in conjunction with Article XIX para (1). The Court established that Article XIX provides a constitutional background to statutory rights for those living with certain conditions (such as maternity, illness, disability, handicap, widowhood, orphanage and unemployment). In the present case, the authorities refused to grant child care assistance to the applicant, because she had already received another type of social allowance (rehabilitation annuity). [62] The Constitutional Court considered this legal rule to be unconstitutional, as the maternity benefit was considered a contributory benefit and connected to the birth

60 Decision 23/2013. (IX. 25.) AB.

61 It is interesting to mention that in the case of social security, decision 23/2013. (IX. 25.) AB did not consider the new regulation as the codification of previous CC case law but rather as a new provision resulting from the condition of sustainable economic growth and the gradually decreasing demographic situation in Hungary such that the State is decreasingly able to fund social security. However, in the case of the regulation of some other fundamental rights, one of the reasons for the CC to reinforce its former decision was that it considered the textual differences to be the codification of its previous decision in the new Fundamental Law. (See: *András Téglási,* The Protection of Fundamental Rights in the Jurisprudence of the Constitutional Court of Hungary After the New Fundamental Law Entered into Force in 2012, in: Zoltán Szente/Fanni Mandák/Zsuzsanna Fejes (eds.): Challenges and Pitfalls in the Recent Hungarian Constitutional Development: Discussing the New Fundamental Law of Hungary. Paris 2015. pp. 82-84.) In the case of social security, the CC could have also referred to the fact that the new provision was only the codification of the Court's previous case law, but it did not. Rather, it gave the economic and fiscal background as reasons for the changing constitutional provisions.

62 The parent considered as entitled under the health insurance scheme – either the mother or the father – may be entitled to a child care fee until the child has reached the age of two. This benefit is paid to one of the parents after expiry of the pregnancy-confinement benefit period

of a child. Accordingly, this allowance was traditionally provided for "in the case of maternity" (as regulated in Article XIX para 1). According to the Court this did not mean that the legislature should not have the competence to regulate the simultaneous provision of more assistance in a way that, at one time, only one type of assistance shall be provided for ensuring the livelihood of the applicant. However, in the present case the child care fee was a contributory social benefit, i.e. a social insurance benefit based on the previous payment of a contribution.)

In decision no. 9/2016. (IV. 6.) AB the Constitutional Court established that although Article XIX. of the Fundamental Law defines primarily a state goal, the courts and authorities when applying the law are bound to this provision – especially with respect to the personal scope defined in the second sentence of para (1)[63] – in such a way that the law shall be interpreted in order to serve the realization of this target. On this basis, the Constitutional Court annulled a judicial decision which refused the child care fee for the applicant. However, in the three dissenting opinions, the judges made the critique that the Constitutional Court established the unconstitutionality of a court decision on the basis of Article XIX, which establishes only a state goal and not a right guaranteed in the Fundamental Law.[64]

From this decision we can see that, despite the fact that the Fundamental Law regulated social security only as a target of the state, the Constitutional Court made it one of the bases of a constitutional complaint, and even annulled a judicial decision on the basis of XIX. However, we have to admit that the Constitutional Court supervised this court decision primarily on the basis of the requirement of "equality before law", but according to the CC equality before law is in conjunction – at least indirectly – with the right to property and the right to maternity benefit defined in Article XIX para (1) of the Fundamental Law.

It is also important to note that the Hungarian Fundamental Law from 2012 modified the competencies of the Constitutional Court and the role of the different constitutional institutions in constitutional adjudication.[65] Constitutional complaint under former jurisdiction was to be lodged only in case of personal injury caused by the application of an unconstitutional norm during the ordinary judicial process.[66] Since 2012, a person or organisation affected by judicial decisions contrary to the Fundamental Law may submit a constitutional complaint to the Constitutional Court if the decision made regarding the merits of the case or other decision terminating the judicial proceedings violates their rights laid down in the Fundamental Law, and the pos-

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or after a period of the same length. The amount of the child care fee is 70% of the average daily pay, capped at 70% of twice the statutory minimum wage.

63 Every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage, or unemployment for reasons outside of his or her control, as provided for by the act.

64 According to the Act on the Constitutional Court, a constitutional complaint may be submitted to the Constitutional Court only if the judicial decision violates any of *„the rights laid down in the Fundamental Law"* of a person or organisation.

65 *Gárdos-Orosz Fruzsina*, Judicial Review of Constitutional Amendments – the Hungarian Case in Context, in: Zoltán Szente/Fanni Mandák/Zsuzsanna Fejes (eds.): Challenges and Pitfalls in the Recent Hungarian Constitutional Development: Discussing the New Fundamental Law of Hungary. Paris 2015, p. 102.

66 Id., p. 102.

sibilities for legal remedy have already been exhausted by the petitioner or no possibility for legal remedy is available for him or her. As *Gárdos-Orosz* highlights, the solemn aim of the new constitutional complaint mechanisms was to protect individuals against personal injuries caused by ordinary courts and to also provide a possibility for constitutional review in cases where the complainant cannot turn to the ordinary court.[67] According to Article 28 of the Fundamental Law, in the course of the application of law courts shall interpret the text of rules of law primarily in accordance with the Fundamental Law. In the process of this new constitutional complaint,[68] which is also referred to as „real" or „genuine" constitutional complaint (Urteilsverfassungsbeschwerde); the CC can control whether the courts apply the law in harmony with the Fundamental Law (as prescribed in Article 28). This means that even if the social provisions of the new Constitution can be considered more restrained, the introduction of the new constitutional complaint provides the CC a more effective means of compelling the courts to apply the law in accordance with the social provisions of the constitution. As we can see, the CC established that the social provisions of law shall always be interpreted to serve the realization of the state goal in Article XIX.[69]

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67 Id., p. 102.

68 There is a huge amount of legal literature on the theory and the practice of the new constitutional complaint in Hungary, see e.g.: *Cservák Csaba,* A régi alkotmányjogi panasz hiányosságainak szemléltetése. Jogelméleti Szemle. 2016/4. pp. 11-20; *Czine Ágnes*, Az alkotmányjogi panaszok szerepe a büntető ügyekben. Acta Juridica et Politica, Szeged 2015/2, pp. 7-16; *Gárdos-Orosz Fruzsina*, A bírói döntések ellen benyújtott alkotmányjogi panaszok befogadhatósága I.: Az Abtv. 26. § (1) bekezdése. Alkotmánybírósági Szemle. 2013/4, pp. 74-81.; *Gárdos-Orosz Fruzsina*, A bírói döntések ellen benyújtott alkotmányjogi panaszok befogadhatósága II.: Az Abtv. 27. §-a. Alkotmánybírósági Szemle. 2013/4, pp. 82-89.; *Gárdos-Orosz Fruzsina,* Alkotmánybíróság 2010-2015, in: Jakab András, Gajduschek György (eds.): A magyar jogrendszer állapota. Budapest, MTA Társadalomtudományi Kutatóközpont, Jogtudományi Intézet. pp. 454-463.; *Sulyok, Tamás,* Constitutional review on the basis of the new Fundamental Law of Hungary. Jogelméleti Szemle 2016/3. pp. 146-148. (http://jesz.ajk.elte.hu/2016_3.pdf); *Tóth J. Zoltán*, Actio popularis vagy valódi alkotmányjogi panasz?, in: Balogh Elemér/Cserny Ákos/Patyi András/Téglási András (eds.): Változások a magyar alkotmányjogban. Tanulmányok az Alaptörvényről. Budapest, 2012, Nemzeti Közszolgálati és Tankönyv Kiadó. pp. 273-284.; *Tóth J. Zoltán*, Az alkotmánybírósági egyéni alapjogvédelem eszközei és gyakorlata – egykor és most, in: Rixer Ádám (ed.): Állam és közösség. Válogatott közjogi tanulmányok Magyarország Alaptörvénye tiszteletére. Budapest 2012, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, pp. 344-372.; *Tóth J. Zoltán*, A „valódi" alkotmányjogi panasz használatba vétele: az Abtv. 27. §-a szerinti panasz első két éve az Alkotmánybíróság gyakorlatában. Jogtudományi Közlöny, 2014/5. pp. 224–238.; *Tóth J. Zoltán,* Az egyéni (alap)jogvédelem az Alkotmányban és az Alaptörvényben (I. rész). Közjogi Szemle, 2012/3. pp. 11-19.; *Tóth J. Zoltán,* Az egyéni (alap)jogvédelem az Alkotmányban és az Alaptörvényben (II. rész). Közjogi Szemle, 2012/4. pp. 29-37.; *Varga Zs. András*, Mit ér a panasz, ha alkotmányjogi? Acta Juridica et Politica, Szeged 2015/2. pp. 137-148.; *Zakariás Kinga*: Az alkotmányjogi panasz objektív és szubjektív funkciója. Acta Juridica et Politica, Szeged 2015/2, pp. 149-162.

69 We have to note that before 2012, the CC could also established constitutional requirements – as we could see in decisions 32/1998 and 42/2000 – but the CC did not have the competence to annul the judicial decisions in case they ignored these requirements. The CC could annul only the legal provision applied by the ordinary court if it was found to be unconstitutional.

In decision 25/2016. (XII. 21.) AB, the Constitutional Court pointed out the fact that the economic, social and cultural rights (and among them social security) are distinct from classical liberties because they depend on the state's economic capacity.[70] In the case of social rights, "non-derogation" (i.e. the prohibition to decrease the level of already achieved constitutional protection) does not prevail, and the state's obligation is restricted to establishing the institutional system which provides the enforceability of constitutional rights and determining the legal titles regarding the use of the institutional system. Article XIX para (1) of the Fundamental Law regulates social security differently from the Constitution, and the reason for this change is that the capacity of the state is limited. The previous welfare system cannot be sustained anymore.

The Constitutional Court established already in Decision 40/2012. (XII. 6.) AB that Article XIX contains two types of entitlement: one in para (4), which prescribes the right to state pensions; the other in the second sentence of para (1). Decision 28/2015. (IX. 24.) AB added that under those living conditions listed in para (1), statute of Parliament shall introduce or maintain subjective rights.[71] The constitutional background means that the specific detailed rules do not derive from the Fundamental Law, but the abstract entitlements do.[72]

2. Securing of a minimum livelihood

There were some doubts about a new provision of the Fundamental Law which – similarly to the Croatian[73] and Lithuanian Constitutions – declared the children's duty to look after their parents.[74] There were some fears that this provision would envisage the withdrawal of the state from guaranteeing social security and would put the burden on adult children to guarantee the livelihood of their parents. However, the Constitutional Court decision 27/2013 (X. 9.) provided an interpretation of this article. The Court established that the maintenance obligation of adult children towards their parents stated in the Fundamental Law shall be interpreted in harmony with the National Avowal (i.e. the Preamble of the Fundamental Law). Article XVI para 4 of the Fundamental Law reads "Adult children shall be obliged to look after their parents if they are in need." According to the National Avowal: "We hold that we have a general duty to help the vulnerable and the poor. " Furthermore, "We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-

70 This interpretation is the same as it was in the Court's previous case law based on the former Constitution.

71 I. e. case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control.

72 Reasoning [34].

73 Art. 63. para 4) of the Constitution of Croatia: Children shall be bound to take care of their old and helpless parents.

74 Art. 38 of the Constitution of Lithuania: The duty of children shall be to respect their parents, to take care of them in their old age, and to preserve their heritage; Art. XVI para (4) of the Hungarian Fundamental Law: Adult children shall take care of their parents if they are in need.

being…" In the National Avowal, a duty towards descendants is also included ("We bear responsibility for our descendants"). According to the Constitutional Court:

> *"The duty to look after a parent as stated in the Article XVI, point 4 of the Fundamental Law – according to the Constitutional Court – is in agreement with the (above cited) principles outlined in the National Avowal only if the duty thrust upon descendants does not impose upon them burdens that are disproportionate and beyond their capabilities."*[75]

This means that the Constitutional Court still protects and guarantees a minimum standard of living for everyone. Even in the case that one has to take care of his or her parents, he or she should not be burdened in a way that it would endanger his or her own living.

3. The protection of social benefits as property – Termination of early retirement servicemen's pension (End of the constitutional protection of pensions?)

In 2011 Parliament enacted a new Act, according to which service pensions were transformed into a "service allowance" subject to personal income tax (at the material time, 16% flat rate).[76]

Even before the new Fundamental Law became effective, the parliament amended the previous Constitution to establish the constitutional basis for the conversion of service pensions into an allowance.[77] This amendment was to remain in force even after the Fundamental Law entered into force.[78] With this amendment, the constitution-forming body would have liked to avoid the constitutional review of this provision by the CC. In decision 23/2013, the Constitutional Court established that the Court was not authorized to examine this act in the light of other constitutional provisions

75 *László Trócsányi*, The Dilemmas of Drafting the Hungarian Fundamental Law – Constitutional identity and European integration. Passau 2016, p. 63.

76 This legislation, which concerned all ex-members of the law enforcement agencies, fire brigades and defence forces entails that beneficiaries of the service pension are no longer "pensioners" for the purposes of the law, but become entitled to receive the service allowance – that is, a certain social allowance subject to personal income tax, unlike pensions. Moreover, the disbursement of the allowance would be interrupted if the applicant was convicted or prosecuted for an offence which had been committed during the service period. Furthermore, it appears that should the beneficiary acquire income other than the allowance, the entitlement may be suspended or even discontinued in certain circumstances. Lastly, as opposed to old-age pensioners, the recipients of the allowance are no longer entitled to various miscellaneous benefits in kind, the availability of which is dependent on the status of pensioner.

77 Act XX of 1949 on The Constitution of the Republic of Hungary, art. 70/E, para. (3) third sentence.

78 According to point 19. (5) of the Closing and Miscellaneous Provisions of the Fundamental Law: „The third sentence of Section 70/E (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force as of 31 December 2011 shall be applicable to the benefits which qualify as pension until 31 December 2012 under the rules in force as of 31 December 2011 with respect to any change in their conditions, nature and amount, and to their transformation to other benefits or to their termination.".

(especially the right to property and the rule of law) since the Parliament enacted the transformation of the current pension system in the Constitution. The CC declared that – following the Closing and Miscellaneous Provisions of the Fundamental Law – section 3 of Article 70/E of the former Constitution authorized the law maker to reduce the sum of the pension before reaching the general retirement age, to change it into a social allowance, or to terminate the payment of the pension in case of ability to work. Due to the express constitutional authorisation, the violation of acquired rights, right to property and right to social security has not been determined. In connection with the acquired rights the Constitutional Court took into consideration that the "expectations" did not cease to exist, as a new type of benefit was established by law with respect to the previous contributions. Furthermore, this "expectation" would be realized after the entitled persons reach the average retirement age.[79]

Later the decision of the European Court of Human Rights in Strasbourg found the reduction of these benefits to respect a reasonable relation of proportionality between the aim pursued (that is, rationalization of the pension system) and the means employed (a commensurate reduction of benefits).[80]

After this decision of the CC there was some fear among scholars[81] that the Fundamental Law did not provide any constitutional protection for pensions because the State had the competence to withdraw pensions in the future, similarly to servicemen's pensions. However, the Constitutional Court confirmed in its additional decisions that benefits in connection social insurance are still protected by the constitutional right to property.[82] The Constitutional Court also confirmed its former practice that the compulsory contributory social benefits also enjoy the constitutional protection of right to property.[83] Decisions No. 20/2014. (VII. 3.) AB reaffirmed the basic decision of the right to property issued in 1993:

> *"According to the case law of the CC the scope of the constitutional protection of property may not be identified with the protection of the abstract civil law property. (...) Property is afforded constitutional protection in its capacity as the traditional means of securing an economic basis for the autonomy of individual action. The constitutional protection must track the changing social role of property so as to fulfil the same task. (...) Thus, when the protection of individual autonomy is at stake, the constitutional protection of property extends to rights with an economic value, which today performs this former role of ownership, including public law entitlements (for instance, to entitlements from the social insurance)."*[84]

79 Decision 23/2013. (IX. 25.) AB.

80 *Case of Markovics v. Hungary, Béres v. Hungary and Augusztin v. Hungary (Application Nos. 77575/11., 19828/13. and 19829/13.)* Judgment of the ECHR on 24 June 2014.

81 See e. g. *Kovács Ágnes*, A passzív nem puha, avagy miért nem igazolható az Alkotmánybíróság gyakorlata a politikai konstitucionalizmus alapján?, in: Gárdos-Orosz Fruzsina/Szente Zoltán (eds.): Jog és politika határán. Alkotmánybíráskodás Magyarországon 2010 után. HVG Orac, Budapest 2015, p. 246.

82 Decision No. 3048/2013. (II. 28.) AB, Reasoning [39], 9/2016. (IV. 6.) AB, Reasoning [22].

83 4/2016. (III. 1.) AB.

84 Constitutional Court decision no. 20/2014. (VII. 3.) AB, Reasoning [189] citing decision no. 64/1993. (XII. 22.) AB.

In Decision 4/2016. (III. 1.) AB, the Constitutional Court reiterated its decision from 1995[85] in which the Court annulled a law which prescribed to pay contribution without becoming insured in the social insurance system.

In the already mentioned Decision 28/2015. (IX. 24.) AB the CC established that the Fundamental Law in para (4) of Art. XIX mentions „the right to public pension",[86] the conditions of which shall be established by statute.[87]

In the above mentioned decisions we can conclude that the interpretation of the Constitutional Court regarding the constitutional protection of pensions has not changed after the entry into force of the Fundamental Law.

4. The protection of homeless people

The new Fundamental Law added "decent housing conditions" to the list of state objectives,[88] a provision that did not exist in the former Constitution, and – as we could see in 42/2000. (XI. 8.) AB – nor was it derived by Constitutional Court.[89] Even the

85 45/1995. (VI. 30.) AB.

86 Certainly the "right to pension" does not mean a subjective right to everyone to a pension of a certain amount. The Fundamental Law itself declares that the conditions of the right to pension shall be stipulated by law, which means that it is not unconstitutional if the right to pension is connected to the payment of a certain contribution. (This is why the Hungarian Constitutional Court called the right to pension a "bought right". See: *Danny Pieters/ Bernhard Zaglmayer,* Social Security Cases in Europe: National Courts. Intersentia Antwerpen-Oxford 2006, p. 14.).

87 In this decision the Constitutional Court overturned the Curia's decision on a referendum on equal rules of early retirement for men and women. The Court examined whether the question was to be held against the principle of equality. Article XV para (2) of the Fundamental Law stipulates that Hungary shall guarantee the fundamental rights to everyone without any discrimination, in particular on grounds of sex. Women entitled to special protection in accordance with Article XV para (5) and Article XIX para (4). Under provision Article XV para 5 of the Fundamental Law, Hungary shall take special measures to protect, among others, women. Article XIX para (4) reads that "Hungary shall contribute to ensuring a livelihood for the elderly by maintaining a unified state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. The conditions of entitlement to state pension may be specified by an Act also in view of the requirement for increased protection for women". As a result, the CC established that *women have the right to preferential treatment, especially in the field of the right to a pension, and this right follows from the Fundamental Law.* According to the CC this constitutional right would have been violated in the case of a successful referendum. The CC further added to the reasoning that a successful referendum would prevent (exclude) the enforcement of articles XV para (5) and Art. XIX para (4), that said, with a successful referendum, these rules of the Constitution would become *empty*.

88 Article XXII para (1) and (2) of the Fundamental Law reads.
(1) Hungary shall strive to ensure decent housing conditions and access to public services for everyone.
(2) The State and local governments shall also contribute to creating decent housing conditions by striving to ensure accommodation for people without a dwelling.

89 3rd Congress of the World Conference on Constitutional Justice 'Constitutional Justice and Social Integration' 28 September – 1 October 2014 Seoul, Republic of Korea Questionnaire Reply by the Constitutional Court of Hungary, p. 5.

Venice Commission welcomed that paragraphs (1) and (2) of Article XXII introduced an obligation of the State and local governments to strive for the protection of homeless persons.[90]

5. Criminalizing people living in public areas permanently

In 2010 the Parliament modified the law, and the new Act qualified living in public areas as inappropriate use of public places and declared it as contravention. However, the CC, in decision 38/2012. (XI. 14.) AB, held unconstitutional certain provisions of the Act on Contraventions criminalizing people living in public areas permanently. The CC noted that the legislative body criminalized living in public areas (namely homelessness, itself). According to the reasoning of the decision, the Constitutional Court has declared that neither the removal of homeless people from public areas nor the incentive to avail themselves of the social care system shall be considered as a constitutional reason that could be the basis of the criminalization of homeless people's living in public areas. The CC pointed out the fact that homelessness is a social problem which the state must handle in the framework of the social administration and social care instead of punishment, and if the state punishes the necessity of living in public areas, the regulation fails meeting the requirement of protection of human dignity. The CC noted that the Act on Contravention already contained several independent cases sanctioning the violation of the rights of others and public policy (e.g. vagrancy, the ban of alcohol consumption, illegal gambling, violation of public morality).

As a reaction to this decision of the Constitutional Court, the Parliament introduced a new regulation into the Constitution as follows: in order to protect public order, public security, public health and cultural values, an act or a local government decree may, with respect to a specific part of public space, provide that living in public space as a habitual dwelling shall be illegal.[91] From the point of view of the Venice Commission in the framework of this opinion, important issues are the vagueness of the criteria as well as the level of regulation. Article XXII para 3 of the Fundamental Law is one of the provisions of the Fourth Amendment that contains detailed rules which are usually regulated by law and should not be part of a constitution. Raising such provisions to the level of the Constitution has the effect of preventing review by the Constitutional Court.[92]

However after this constitutional amendment, the Supreme Court of Hungary (Curia) supervised and annulled many regulations of local governments[93] as they fail

90 Opinion On The Fourth Amendment To The Fundamental Law Of Hungary, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), CDL-AD (2013)012, para 63.

91 Article XXII para (3).

92 Opinion On The Fourth Amendment To The Fundamental Law Of Hungary, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), CDL-AD (2013)012, para 65.

93 In Hungary the Supreme Court shall decide on whether a local government decree is contrary to another legal rule and on its annulment. See Art. 25 of the Fundamental Law.

meeting the constitutional requirements established by the Constitutional Courts in decisions 42/2000. (XI. 8.) AB (minimum livelihood), 176/2011. (XII. 29.) AB (Dustbin scavenging) and 38/2012. (XI. 14.) AB (criminalizing people living at public areas permanently).[94] The Curia emphasized that homeless people cannot be excluded from the whole part of a town or city, and not even from consecutive parts of a city, but only from "a specific part of public space" (as regulated in the Fundamental Law). If an order of a local government prohibits living in certain parts of public areas, the local government has to prove there is a valid reason. That said, local governments always have to prove that the prohibition and sanction of permanent living on public areas serves the aims of protecting public order, public security, public health or cultural values.[95]

Later a local government's decree prohibited the storage of belongings in public areas. However, the CC declared that although this legal provision, in itself, is not unconstitutional, it is a constitutional requirement that this prohibition shall not be applied to homeless people.[96]

From these decisions we can conclude that despite the fear about the Fourth Amendment of the Fundamental Law (which authorised the lawmaker to provide that staying in public space as a habitual dwelling is illegal), the Supreme Court of Hungary could maintain the level of protection of homeless people established by the Constitutional Court before the Fourth Amendment.

IV. Conclusions

Since the new Hungarian Fundamental Law became effective from the first of January 2012, there have been many doubts about the constitutional protection of social rights, especially in the field of social security, the constitutional protection of social insurance elements as property and homeless people.

The former Constitution (in force until 2012) used the word 'right' in connection with social security [Article 70/E. para (1)], while the new Fundamental Law refers to it only as a state objective (Art. XIX). From our analysis of the practice of the Constitutional Court we can conclude that despite the fact that the wording of the new Constitution seemed to be more restrained and modest regarding social security, the constitutional protection of social security has not declined drastically in the jurisdiction of the Constitutional Court. It is true that if we compare the wording of the Constitution and of the Fundamental Law, we can observe that social security used to be regulated as a citizens' right and now it is only regulated as a state goal. However, as we could also see, the Constitutional Court did not interpret the right to social security as a real constitutional right before 2012, but only as a state obligation. That said, already before 2012 the jurisdiction of the Constitutional Court made it clear that social security could not be considered as a fundamental right, but is instead a right that pla-

94 Decision of the Curia no. Köf.5.055/2014/2. para 13.
95 Decision of Curia no. Köf.5.055/2014/2. par. 14-16.
96 3/2016. (II. 22.) AB.

ces an obligation on the state to provide social allowances.[97] The Constitutional Court stated that the state fulfils its duties as defined in Article 70/E when it organizes and operates the system of social insurance and welfare benefits.[98] That said, the state can meet its obligations emanating from social rights by constructing and operating a social insurance system and a social support scheme. A right to a concrete income or benefit may not be deduced from the right to social security. [99] Neither does it follow that the standard of living may not decrease as a consequence of adverse economic conditions. [100] The size of the totality of welfare benefits may not decrease beyond the minimum standard of support for livelihood as guaranteed by the constitution, as that ensures the implementation of the right to human dignity. [101] The state had the duty to provide for the basic conditions of human existence. [102] Social rights depended on the capacities of the budget and the economy. The Constitutional Court's decision no. 26/1993. underlined the obligation of the state to set up and run a social insurance system. We could see that this interpretation of social security has not really changed after 2012. This means that the level of the constitutional protection of social security has not decreased after 2012 in practice. The Constitutional Court even maintained the requirement of the State's obligation to guarantee minimum living standards (the right to have allowances required for living), which was implicitly confirmed in decision 27/2013 AB regarding the children's duty to take care of their parents in need.

Nevertheless, the introduction of the new ("real" or "genuine") constitutional complaint[103] also contributed to the maintaining the level of the protection of social security. As a result of this change even a constitutional complaint could be submitted to the CC on the basis of Article XIX on social security. The CC established that the social provisions of law shall always be interpreted in order to serve the realization of the state goal in Article XIX (although this has been heavily criticized in many dissenting opinions of constitutional justices, which indicate that the CC also became divided regarding the legal nature and interpretation of social security, just as in the 1990's).

In case of social security the CC reinforced most of its formerly established rationale for its holdings in this area. After the conversion of service pensions into an allowance, there had been a fear that according to the new constitution, the constitution would cease to protect pensions. However, the Constitutional Court confirmed – and reaffirmed – its former interpretation of the right to property; namely that the benefits

97 32/1998. (VI. 25.) AB Decision; 3rd Congress of the World Conference on Constitutional Justice 'Constitutional Justice and Social Integration' 28 September – 1 October 2014 Seoul, Republic of Korea Questionnaire Reply by the Constitutional Court of Hungary, p. 5. http://www.venice.coe.int/WCCJ/Seoul/docs/Hungary_CC_reply_questionnaire_3WCCJ-E.pdf.

98 *Márta Dezső/Bernadette Somody/Attila Vincze/Eszter Bodnár/Nóra Novoszádek/Beatrix Vissy,* Constitutional Law in Hungary. Kluwer Law International 2010, p. 296.

99 Id., p. 296.

100 Id., p. 296.

101 Id., p. 296.

102 Id., p. 296.

103 See: *Sulyok*, fn. 68, p. 146.

in connection with social insurance are still protected by the constitutional right to property.

The Fourth Amendment of the Fundamental Law which, among others, authorised the lawmaker to provide that staying in public space as a habitual dwelling was illegal, has also raised doubts. However the Supreme Court of Hungary was able to maintain the level of protection of homeless people established by the Constitutional Court before the Fourth Amendment. The Curia emphasized that homeless people cannot be excluded from the whole part of a town or city, not even from consecutive parts of a city, but only from "a specific part of public space" (as regulated in the Fundamental Law). If an order of a local government prohibits living in certain part of public areas, the local government has to prove the (public) reason for that.