

Recent development/climate litigation – Hungary

Gyula Bándi

1. Climate litigation and its consequences

The 5/2025. decision of the Hungarian Court have already been circulated last year, but I attach the summary again. Without going into the details of the climate issues, I only refer to point 120. of the decision, as a new and promising aspect of non-retrogression principle. This principle could emerge already in the first HCC decision on environmental rights, in 1994. Since that time, it is a flagship of constitutional jurisprudence. Still, it has always been taken as a minimum standard, a static concept, comparing the present with the past. The HCC with this judgment has substantially changed the content, the message, creating a dynamic interpretation – it is also a new kind of non-retrogression if the legislation does not follow the changing conditions, so does not step forward.

What happened since the judgment? According to the verdict, the specific paragraph have to be amended till the end of June this year. Still, nothing happened on the Government side, they did not come forward with any proposal. Of course, the HCC decisions may not be enforced, consequently the only outcome is that the short paragraph shall be deleted from the act.

At the end of last summer, a coalition of – mostly environmental – NGOs was formed, led by the Friends of Earth Hungary (National Society of Conservationists), covering more than 180 organizations to come up with a new concept of a Climate Act (unfortunately the website is only Hungarian - <https://ujklimatorveny.hu/>). As an ombudsman for future generations, I also comment on the concept. Now, this concept is under formulation – many partners believe that it should cover most of the sustainability issues, from forests to energy, thus the channeling of the many ideas is on the way. The drafters utilize those available European legislations which are climate oriented.

2. Legislation and regulatory practice

The past year was far from positive from the point of view of environmental legislation. What significant happened was the converting the anti-environment content of several ‘emergency’ government decrees into the different acts (mining, forestry, nature conservation), stabilizing the economic interests against environmental interests. As OFG I suggested twice to the Commissioner of Fundamental Rights to turn to the Constitutional Court against such legislation – up till now without any success.

Also, the extensive use of ‘investments of priority interests’, overruling local development regulations and limiting the time and chance for environmental procedures continued. As well as the number of exceptions under the general rules.

3. A new Government

After the ‘landslide’ election results, what we know today is that a Ministry of the Living Environment shall be set up and environmental issues might have better treatment. We are waiting for what happens next.

CONSTITUTIONAL COURT

5/2025. (VI. 30.) AB

EXTRACT AND UNOFFICIAL TRANSLATION. ONLY THE FULL HUNGARIAN VERSION OF THE DECISION CAN BE CONSIDERED AS THE OFFICIAL STANDPOINT OF THE CONSTITUTIONAL COURT.

The Constitutional Court sitting in plenary session,, in the ex post examination of the conformity of the law with the Fundamental Law and its conflict with an international treaty, with the concurrent reasoning of *Dr András Patyi* and *Dr Réka Varga*, Judges of the Constitutional Court, and the dissenting opinions of *Dr Tünde Handó*, *Dr Mária Haszonics Ádám* and *Dr Zoltán Márki*, Judges of the Constitutional Court, has ruled as follows

decision:

1. The Constitutional Court finds that Section 3(1) of Act XLIV of 2020 on Climate Protection is unconstitutional on the grounds of infringement of the principles of intergenerational justice, precaution and prevention arising from Articles P(1), XX(1) and XXI(1) of the Fundamental Law, and therefore annuls it with effect from 30 June 2026.

2. The Constitutional Court, acting of its own motion, finds that the National Assembly has infringed Articles P(1), XX(1) and XXI. (1) of the Constitution by failing to regulate comprehensively and expressly, in accordance with the specific characteristics of the Carpathian Basin and Hungary, the means of reducing greenhouse gases that cause climate change beyond the regulation of conventional emissions (mitigation), the means of adapting to the consequences of climate change (adaptation) and the means of increasing resilience to the consequences of climate change (resilience). The Constitutional Court calls on Parliament to fulfil its legislative task by 30 June 2026.

[...]

II.

[18] 1. Provisions of the Fundamental Law affected by the petition:

"Article P(1) Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, and cultural artefacts shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."

"Article XX (1) Everyone shall have the right to physical and mental health.

(2) Hungary shall promote the effective application of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision, and by

supporting sports and regular physical exercise as well as by ensuring the protection of the environment."

"Article XXI (1) Hungary shall recognize and endorse the right of everyone to a healthy environment."

[...]

[22] 5. Provisions of the Climate Protection Act affected by the motion:

Section 3 (1) Hungary shall reduce its greenhouse gas emissions by at least 40% by 2030 compared to 1990.

(2) After 2030, if final energy consumption in Hungary increases above 2005 levels, the increase shall be met exclusively from carbon neutral energy sources.

(3) Hungary shall achieve a share of renewable energy sources in gross final energy consumption of at least 21% by 2030.

[...]

[36] The Constitutional Court has already stated in its Decision No. 14/2020. (VII. 6.) AB on the protection of forests (hereinafter: Abh1.) that "the obligation to protect state and privately owned forests is considered an achievement of our historical constitution which must be taken into account in the interpretation of the Fundamental Law in accordance with Article R (3)." (Abh1, Reasoning [29]).

[37] Considering that the subject of the examination of the Abh1. was explicitly and exclusively forests, the Constitutional Court first of all examined whether, in connection with the natural resources mentioned in Article P(1) of the Fundamental Law, which are part of the common heritage of the nation, further statements that can be considered as achievements of our historic constitution can be identified.

[42] In the light of the above, the Constitutional Court considers the findings of Abh1 to be applicable to all natural resources within the meaning of Article P(1), and considers the obligation to protect the natural resources of the Carpathian Basin, to preserve them for present and future generations, and to use and exploit them in a sustainable manner in the long term to be an achievement of the historic constitution, which must be taken into account in the interpretation of Article P(1) of the Fundamental Law in accordance with Article R(3).

[58] In reaching its decision, the Constitutional Court could not ignore the fact that the (constitutional) legal problems identified in the petition are inseparable from the scientific aspects behind them, and therefore summarised the findings of the Ministry of Innovation and Technology, the Hungarian Academy of Sciences, the Deputy Commissioner for Fundamental Rights and Ombudsman for Future Generations and the national park directorates, which are particularly relevant to the present decision. In addition to the above, the Constitutional Court has taken into account the findings of the *amicus curiae*

submissions to the Constitutional Court, the findings of the National Council for Sustainable Development (the national strategic environmental advisory council of the Hungarian Parliament, hereinafter: NCSD), and the Ministry's "Report on the Scientific Assessment of the Potential Impacts of Climate Change on the Carpathian Basin" (hereinafter: "the ITM Report").

[86] 1. According to Section 3 (1) of the Climate Protection Act, which is challenged by the petitioners and which, according to the petition, is also suitable for a substantive constitutional review, "Hungary shall reduce its greenhouse gas emissions by at least 40% by 2030 compared to 1990."

[87] 2. Article P(1), Article XX(1) and Article XXI(1) of the Fundamental Law impose a threefold obligation on the present generation, covering the entire spectrum of both law-making and law enforcement: (i) towards members of the present generation [the constitutional basis for which is primarily the right to physical and mental health under Article XX(1) of the Fundamental Law and the right to a healthy environment under Article XXI(1) of the Fundamental Law (ii) towards members of future generations [the constitutional basis for which is, in particular, the National Avowal of the Fundamental Law, Article P(1) and Article 38(1)]; and (iii) towards the natural, environmental and cultural resources that constitute the common heritage of the nation [the constitutional basis for which is Article P(1)]. The Constitutional Court therefore had to examine, first and foremost, whether the obligation to protect the climate could be derived from Article P(1) of the Fundamental Law.

[88] [...] The achievement of the constitutional objectives of Article P(1) is therefore only possible if the scope of protection of Article P(1) also extends to the climate as an environmental element indispensable for the conservation of natural (and cultural) resources, since changes in the climate directly and fundamentally affect the state and preservation of the natural values forming part of the common heritage of the nation. [...] However, the Constitutional Court also points out that the obligations relating to climate protection cannot be identified as the independent obligation of a single State: the principle of common but differentiated responsibility, as it is also known in public international law, implies a 'common' responsibility precisely because, inter alia, it requires a joint effort by all States and all persons ('everyone') under their jurisdiction. It is for this reason that the Constitutional Court could not ignore the obligations under public international law (and EU law) relating to climate protection when considering the petition.

[89] In the context of the above, the Constitutional Court also refers to the fact that Pope Francis, in his encyclical *Laudato si'*, formulates a similar wording as the one in Article P(1) of the Fundamental Law, which lays down the obligation of "the State and everyone": "The climate is a common good, belonging to all and meant for all." (23), and "we must continue to be aware that, regarding climate change, there are differentiated responsibilities" (52).

[92] As the Constitutional Court has already pointed out: 'The wording "common heritage of the nation" in Article P(1) can be seen as a concretisation of the concept of "common heritage of mankind" under the Convention on Biological Diversity, or of the concept of

"heritage of the European peoples" under the EU Birds Directive and of "natural heritage" under the EU Habitats Directive. Accordingly, the Hungarian citizens and the Hungarian State undertake that the institutional system of the State will ensure the protection of the values set out in Article P(1) in a non-taxative manner for future generations. This can be considered as a concrete commitment in relation to the "common concern of humankind" existing in international law." (Decision No. 28/2017. (X. 25.) AB on Natura 2000 grasslands and biodiversity, Reasoning [31], hereinafter: Abh2.).

[93] [...] Accordingly, the obligation to protect the common heritage of the nation, which is an inescapable task of the Hungarian state and the Hungarian legal system, as stipulated in Article P(1) of the Fundamental Law, is not only a priority rule of the Fundamental Law, but also Hungary's contribution to the achievement of the goal of "sustainable development of mankind", as part of the *common concern of humankind* and the *common heritage of mankind*, in accordance with the principle of common but differentiated responsibility. Indeed, for the international community as a whole to successfully address threats to the Earth, its resources and humanity, such as climate change itself, it is essential that individual states fulfil their responsibilities based on their geographic location, population, economic resources and other characteristics, and protect the individual mosaic pieces of their national heritage that together make up the common heritage of mankind and the common concern of mankind. [...]

[94] 3. Article P(1) of the Fundamental Law also implies the concept of *intergenerational equity* (Abh2, Reasoning [33]). The idea of intergenerational equity is defined in the 1992 Rio Declaration on Environment and Development as "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." The Fundamental Law adds to the concept of intergenerational equity by stating that, in addition to the equal importance of the interests of present and future generations, special attention must also be paid to the obligation to preserve natural resources for their own sake, aspects which must be taken into account simultaneously by the legislator and the lawmaker {Decision No. 9/2024 (IV. 30.) AB on firewood, Reasoning [42]}. The *public trust* doctrine is a means of giving effect to the principle of intergenerational equity: the *public trust* doctrine entails the responsible management of the values of the common heritage of the nation by the present generation in accordance with the requirement of fiduciary trust, while *intergenerational equity* defines the framework for the use and exploitation of these values, in such a way that equal and equal account must be taken of the protection of natural, environmental and cultural values for their own sake, and of the interests of the present and future generations. In this context, the Constitutional Court refers to the fact that the members of the youth programme of the National Society of Conservationists (as representatives of the future generation living in the present) referred to the same obligation as a generational injustice in their *amicus curiae* brief.

[115] The petitioners allege a violation of Article 8 ECHR specifically with regard to the reasoning of the ECtHR's decision in *KlimaSeniorinnen*. In that judgment, the Grand Chamber of the ECtHR set out the criteria to be taken into account in determining whether each State Party acted within the margin of appreciation conferred by the ECHR in enacting

its legislation on GHG emissions and climate change (see in particular paragraph 550 of the ECtHR judgment). However, the Constitutional Court, acting on the basis of Section 32(2) of the Act on the Constitutional Court, never examines the Hungarian legal system as a whole, but always only a specific provision of the Hungarian legal system challenged by the petitioners (in this case, the Climate Protection Act). [...] The ECtHR itself has pointed out that, when it assesses the commitments of individual States Parties, it does so in a comprehensive manner, and that a shortcoming, as referred to in paragraph 550 of the judgment, does not necessarily lead to a finding that the State has exceeded its discretion and violated the provisions of the ECHR (*KlimaSeniorinnen*, paragraph 551).

[116] Taking into account that the ECtHR itself has imposed the requirement of a comprehensive assessment of the state measures taken to combat climate change, and taking into account the principle of the procedurally binding character of the petition (on the basis of which the Constitutional Court could only examine the international treaty violation of the challenged provision of the Climate Protection Act), and taking into account the fact that the provisions of the Climate Protection Act, which are in line with the provisions of the present decision, are not in line with the provisions of the present decision VII.4.and, finally, in the light of the aforementioned differences between the procedure of the Constitutional Court and that of the ECtHR, the Constitutional Court dismissed the application for a declaration that the contested provision of the Climate Protection Act was incompatible with the international treaty, as set out in the operative part.

[117] 7. The European Council of 21-22 March 2019 adopted by consensus Conclusions calling on Member States to finalise national long-term strategies in a timely manner and stressing the need to achieve the objectives of the Paris Agreement in a way that is "fair and socially equitable for all". The conclusions adopted by the European Council on 12 December 2019 call for the European Union to become climate neutral by 2050. This obligation is also laid down in Section 3(4) of the Climate Protection Act.

[118] In line with the conclusions of the European Council, the European Parliament and the Council amended Regulation 2018/842 on the determination of annual GHG emission reductions to be achieved by Member States from 2021 to 2030 to meet commitments under the Paris Agreement to contribute to climate action (the Effort Sharing Regulation). Under Article 4(1) of and Annex I to the Effort Sharing Regulation, Hungary increased its initial 7% emission reduction commitment from the 2005 base year to 18.7% in 2023, as amended by the Regulation. According to Green Policy Center calculations, this commitment (due to the different base year calculation) is essentially the same as the 50% reduction commitment compared to the 1990 base year.

[119] 8. According to Section 3(1) of the Climate Protection Act, "Hungary shall reduce its greenhouse gas emissions by at least 40% by 2030 compared to 1990."

[120] As the Constitutional Court has already pointed out, the principle of *non-derogation* (*non-regression*) imposes a constitutional requirement on the legislator in relation to the possibility of limiting the level of protection already granted by the legislation (Decision No. 17/2018. (X. 10.) AB on the noisy pollution caused by Hungaroring racetrack, Reasoning

[93]). Although the principle of non-regression cannot be applied conceptually when determining the level of protection for the first time, the legislature's freedom is not unlimited in this case either: the general requirements arising from Articles P(1) and XXI(1) of the Fundamental Law, in particular the principles of precaution and prevention, apply. The principle on non-regression and the principles of precaution and prevention are interrelated in terms of content and apply jointly: a regulation only fully complies with the requirements arising from Article P) and Article XXI(1) of the Fundamental Law if, on the one hand, it does not entail a reduction in the level of protection already achieved and, on the other hand, it also meets the requirements arising from the principles of precaution and prevention in accordance with the state of scientific and technical knowledge. While the principle of non-regression is static in nature, the precautionary and preventive principles are dynamic requirements for legislators and law enforcement authorities, requiring a continuous review of the legislation on the protection of the environment and nature and, where necessary, a tightening of the legislation (the level of protection provided by the legislation). The fact that a legal regulation remains unchanged over a long period of time does not therefore formally violate the principle of non-regression (in the absence of formal regression), but in terms of content it is still possible that a regulation which previously (due to a change in the level of scientific certainty at the time of its creation) fulfilled the requirements of the precautionary principle and the principle of prevention may later become not only obsolete but also contrary to Fundamental Law. The actual protection of our natural resources and of the living conditions of future generations cannot be identified with the merely formal, one-off fulfilment of a momentary legislative obligation: this obligation of protection is 'always' (i.e. continuously) incumbent on 'the State and everyone' in accordance with the wording of Article P).

[121] The commitment under Section 3(1) of the Climate Protection Act can be considered as the first designation of the level of protection, which the legislator has not changed since the adoption of the Climate Protection Act. This also means that the contested provision of the Climate Protection Act cannot conceptually infringe the principle of *non-regression*.

[122] However, the Constitutional Court also found the following in connection with Section 3(1) of the Climate Protection Act. On the one hand, according to the official statement of the Minister of Energy published on the Government's website, Hungary has already met its 2030 target under the Climate Protection Act by 2023, i.e. Section 3(1) of the Climate Protection Act does not in fact contain any further commitments for the period 2023-2030, which is contrary to the requirement of *intergenerational equity* (i.e. the fair distribution of burdens between present and future generations). Section 3(1) of the Climate Protection Act is not necessarily grammatically in conflict with the emission reduction obligation (according to its wording, Hungary shall achieve 'at least' 40% reduction) imposed on Hungary by the Effort Sharing Regulation, and the obligation in the National Energy and Climate Plan (hereinafter: NEKT) is essentially equivalent in content to the requirements of the Effort Sharing Regulation. However, (as previously noted by the Constitutional Court) the Climate Protection Act is a legal document of symbolic significance in the fight against climate change, which sets out the tasks and obligations of 'the state and everyone', while the applicability of individual strategies (such as the

NEKT) is necessarily limited due to their legal nature. Thirdly, the International Court of Justice itself stated in its judgment in the *Gabcikovo-Nagymaros Project Case* (ICJ, Hungary v. Slovakia, 1997 ICJ Reports 7, para. 136) that in some cases certain commitments previously entered into 'have been overtaken by events. It would be an administration of the law altogether out of touch with reality if the Court' were to base its judgment on these obligations under the international treaty concluded between Hungary and Czechoslovakia in 1977. The same is true of the obligation laid down in Section 3(1) of the Climate Protection Act: Section 3(1) 'have been overtaken by events'. Fourthly, the Constitutional Court has already stated in its Decision No 2/2019 (III. 5.) AB on the interpretation of the Fundamental Law that "in interpreting the Fundamental Law, the Constitutional Court shall have regard to the obligations inherent in membership of the European Union and the obligations incumbent on Hungary under international treaties", while Article Q(2) of the Fundamental Law provides as a constitutional imperative for the fulfilment of obligations under international law that international law and Hungarian law must be in conformity.

[123] Articles P(1), XX(1) and XXI of the Fundamental Law impose not only an obligation to designate a level of protection for the first time and to maintain this obligation unchanged in accordance with the prohibition of retrogression, but also a continuing obligation to protect, in accordance with the precautionary principle and the principle of prevention, which takes into account both the principle of *intergenerational equity* in determining the burden-sharing between present and future generations and the latest (legal) developments in science, technology and the fight against climate change. In this context, the Constitutional Court also points out that, in accordance with Section 31(1) of the Act on the Constitutional Court, in the event of a fundamental change of circumstances, the Constitutional Court may re-examine the compatibility of a legislative act with the Fundamental Law, even if the Constitutional Court has already ruled on this issue. In accordance with the precautionary and preventive principle, the state must expressly "ensure" that the deterioration of the state of the environment does not occur as a consequence of a given measure {Decision No. 27/2017 (X. 25.) AB on the Land for Farmers program of the Government, Reasoning [49]}, which obligation is not fulfilled by Section 3(1) of the Climate Protection Act. In this context, the Constitutional Court also points out that, according to its consistent practice, the failure or disregard of the obligation to assess the risk of deterioration is sufficient to establish a violation of Article P(1) and Article XXI(1) of the Fundamental Law (Abh1., Reasoning [37]).

[124] In the light of all these reasons, the Constitutional Court held that Section 3(1) of the Climate Protection Act is unconstitutional. [...] In the present case, the Constitutional Court, taking into account the symbolic importance of the Climate Protection Act and the fact that the principles of *public trust*, *intergenerational equity*, precaution and prevention require not only the well-founded definition of climate protection objectives, but also the regular professional review and updating of those objectives, decided to annul Section 3(1) of the Climate Protection Act *pro futuro*, with effect from 30 June 2026, as set out in the operative part of the decision.

[125] 9. The three priority areas of the fight against climate change are mitigation, adaptation and resilience, which can only be combined to ensure the preservation of the assets of the common heritage of the nation, which are covered by Article P) of the

Fundamental Law, and the full implementation of the requirements of Articles P(1) , XX(1) and XXI(1) of the Fundamental Law.

[127] The Climate Protection Act only contains an explicit provision on the GHG emission element of the mitigation obligation, and does not address the issue of carbon dioxide absorption capacity or adaptation flexibility, whereas these are legal instruments of equal importance and can only be used together to effectively provide the legal framework for action against climate change, thus enforcing the requirements of Articles P, XX and XXI of the Fundamental Law. [...]

[128] As the Constitutional Court has already pointed out, the present generation has a threefold obligation under the Fundamental Law, covering the entire spectrum of both legislation and law enforcement: towards present generations, future generations and the resources that constitute the common heritage of the nation. The present generations may themselves assert their rights guaranteed by law under the Fundamental Law and may also take direct action (by initiating official and judicial proceedings and, where appropriate, by lodging a constitutional complaint) in the event of the infringement of their fundamental rights. The interests of future generations are protected by the Deputy Commissioner for Fundamental Rights and Ombudsman for Future Generations, in accordance with Article 30(3) of the Fundamental Law, whose constitutional duty it is to act in the interests of future generations, including, where appropriate, the obligation to take action by legal means in all cases where this is not expressly excluded by law. The protection and conservation of natural resources is primarily the responsibility of the national parks and the national park directorates, in accordance with Article 28(2) of Act LIII of 1996 on the Protection of Nature and with Government Decree 625/2022 (XII. 30.) (see in particular Section 19 of the Government Decree). The Constitutional Court also emphasises that, in reaching its decision, it obtained and took into account the professional opinions of both the Deputy Commissioner and all ten national park directorates. However, neither the members of the present generation, nor the Deputy Commissioner, nor the national park directorates can fulfil their obligations and exercise their rights under the Fundamental Law if certain issues relating to mitigation, adaptation and resilience are not laid down in a legal form that is binding for all, notwithstanding the fact that, as explained above, the importance of the strategies adopted by the Parliament and the Government cannot be ignored and their content cannot be disregarded.

[130] The Constitutional Court has therefore applied the provisions of Section 46(2)(c) of the Act on the Constitutional Court, and, acting ex officio, finds that the Parliament has caused a violation of the Fundamental Law by failing to regulate comprehensively and explicitly, in accordance with the specific characteristics of the Carpathian Basin and Hungary, the means of reducing climate change-inducing GHGs beyond the traditional regulation of emissions (mitigation), means of adaptation to the consequences of climate change (adaptation), and means of increasing resilience to the consequences of climate change (resilience). The Constitutional Court calls on Parliament to fulfil its legislative task by 30 June 2026 at the latest.

