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Constitutionality of the Early Retirement for Women With 40 Years of Service Period in Hungary

1. The brief outline of the Hungarian mandatory pension scheme

Basically, there is a multipillar mandatory pension scheme in Hungary.¹ The 1st pillar is the mandatory, social insurance type pension pillar², which is a uniform, defined-benefit pay-as-you-go system with an earnings-related public pension combined with a minimum pension.³ As for the qualifying conditions, the standard retirement age is currently 62 years and six months for both men and women. However, it is currently increasing as from 2010 until reaching 65 by 2022.⁴ In addition, 20 years' service is required for both the earnings-related pension⁵ and the minimum pension.⁶ Retirement is not necessary after reaching retirement age.⁷

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¹ CZÚCZ OTTÓ – HAJDÚ JÓZSEF – POGÁNY MAGDOLNA: *Szociális Jog II.* [Social Law II.], Unió Kiadó, Budapest, 2005. pp. 165–167.

² The mandatory social insurance pension scheme (organized and guaranteed by the State) has been in operation since 1 January 1929.

³ There is a minimum pension, which equals HUF 28,500 per month (around 12% of average earnings). The amount has remained unchanged since 2009.

⁴ On 1 January 2012, the mandatory social insurance pension system was reformed. From this date and onwards the formerly early retirement pensions will not be paid as pensions, and a pension can only be awarded after reaching the standard retirement age.

⁵ The earnings-related pension is calculated as 33% of average earnings for the first ten years of coverage, adding 2% for each additional year from 11 to 25 years of coverage. For each additional year between 26 and 36 years of coverage each year adds an additional 1% and for between 36 to 40 years of coverage each year adds 1.5%. For each year of coverage above 40 years of coverage each year adds an additional 2%. The earnings base used to be net-gross pay in all years since 1988, moving towards the full lifetime. This was changed into net pay from 2008. Earlier years' earnings were valorised with economy-wide average earnings to a point two years before retirement in 2006. The last three years' earnings prior to retirement were entirely unvalorised. This was changed from 1 January 2008 to full valorisation. Annual adjustment rules are changed in effect from 1 January 2010. From 1 January 2012, pensions in payment are adjusted to changes in consumer prices, thus the indexation is inflation-based. Until 2012 there was a ceiling of HUF 21,000 per day of pensionable earnings, but from 1 January 2013 the ceiling has been abolished.

⁶ 15 years' service is required to receive a partial pension.

⁷ It is possible to defer the earnings-related pension. The pension is increased by 0.5% for each month of deferral. Since 1 January 2008, adjustment is provided for gainfully employed pensioners after completing 365 days service period. As of 1 January 2011, adjustment equals 0.5% per month as a percentage of the annual income gained divided by 12.

The 2nd pillar pension is the mandatory private pension⁸ scheme, which was introduced in 1998. However, from 1 November 2010 to 31 December 2011 all payments to the mandatory funded defined-contribution scheme were suspended, and all contributions were redirected to the public pension scheme. Members of the defined-contribution scheme had to decide by 31 January 2011 whether to remain in the scheme or transfer back to the pay-as-you-go public pension system.⁹ From 31 December 2011 all of the social security contributions (employee's and employer's contribution) go to the Pension Insurance Fund. The private pension fund members have had the possibility of doing voluntary contributions to their personal accounts. Members who previously opted out also had the possibility of returning to the public earnings-related pension (until 31 March 2012). The accumulated amount in the defined-contribution private pension scheme must be converted¹⁰ into an annuity on retirement.¹¹

2. The provisions on early retirement between 1997-2011

In Hungary, the retirement age had remained unchanged for a long period of time, fixed at 60 years for men and 55 years for women. In order to adjust to the long term demographic changes and to sustain the continuous financing capacity of the pension system, in the first half of the 1990s a decision to gradually increase the retirement age and to harmonize the retirement age of both sexes was adopted.

First step. Accordingly, the retirement age for men increased by one year both in 1998 and 1999, thus reaching 62 years by 2000. The retirement age of women increased by one year every second year until 2008 to reach 62 years.¹²

Second step. At the same time, in addition to the increase in the retirement age, so-called flexible retirement was introduced and an *advanced pension* or *advanced pension with reduced sum* was accessible for those who had completed a long service time. In order to be eligible for early retirement, men had to be 60 years old. Until 2000 inclusively, the age criterion for advanced pension was 55 years of age for women, which increased by one year in every two years.

Third step. As of 2008, another eligibility criterion for advanced pension and advanced pension with reduced sum was defined: claimants must terminate their legal relationship serving as the basis for insurance.¹³ Since 1 January 2010, terminating the legal relationship as a precondition for pension benefit is not only the eligibility criterion regarding those who

⁸ Based on the Chilean model of the World Bank.

⁹ Before the reversal approximately 3.1 million people (more than 70% of the labour force) were members of the mixed system (end of 2010). After the reversal only 102,000 scheme members have decided to remain in the defined-contribution scheme.

¹⁰ This step is still to be implemented.

¹¹ EMBER ALEX – HAJDÚ JÓZSEF – KUN ATTILA – LAJKÓ DÓRA – RÚZS MOLNÁR KRISZTINA – WALDMANN GÁBOR: *Munkajog és társadalombiztosítási jog*. [Labour Law and Social Insurance Law] (Jogi Szakvizsga Könyvek) Pécs: Dialóg-Campus Kiadó, 2013. pp. 264–268.

¹² For example, women born in 1942 could retire at the age of 57, those born in 1943 at 58, and those born in 1944 at the age of 59. The progress of increasing the retirement age for women continued accordingly: the retirement age of 62 first applies to those born in 1947.

¹³ Nevertheless, they could establish a new legal relationship as pensioners.

would claim advanced pension, but also in cases of old-age pension claimed upon reaching retirement age or above.¹⁴

Fourth step. In the first half of 2009, the Hungarian Parliament adopted an act on the gradual increase of the retirement age from 62 to 65 years of age¹⁵ and that of the same eligibility criterion of advanced pension up to 63 years of age with a commencement in 2012. As a main rule, increase refers to an increase by half a year for every birth year group.¹⁶

3. Provisions on early retirement from 2012

The statutory amendment adopted by the Parliament at the end of 2011 with effect from 2012 did not affect the increase in retirement age, but fundamentally altered the eligibility criteria of pensions prior to retirement age.¹⁷ As it offered the award of old-age pensions only for those above the retirement age, it seriously 'overwrote' the formerly projected mechanism of gradual aggravation of early retirement.¹⁸ In lieu of aggravation a set of regulations was established by which early retirement was almost utterly eliminated.

The theoretical starting point of the changes of 2012 was that pensions prior to retirement age cannot be claimed as of 2012 onwards. The only permanently existing, systematic exception has been the award of old-age pension regardless of any age criteria for women with an eligibility period of at least 40 years, which was introduced in 2011. (See details later.)

Early retirement pensions awarded before 2012 for those under the retirement age on 1 January 2012 were transformed into social benefits – for a transitional period until reaching the retirement age. Their amounts were not altered and they remained under the scope of regular annual pension increase. However, they cannot be deemed as pensioners until reaching the retirement age, i.e. they are not entitled to certain pensioners' privileges.

Under a determined and increasingly reduced scope and with transitional effect, the new regulation enables the people involved to claim for these newly established social benefits

¹⁴ Basically, the same rules apply to those who have a legal relationship in an EEA State or in a country under the jurisdiction of a bilateral social security agreement.

¹⁵ The respective age groups are affected by the increase in the retirement age as follows. The retirement age of those born in 1952 is 62 years and 183 days, 63 years for those born in 1953, 63 years and 183 days for those born in 1954, 64 years for those born in 1955, 64 years and 183 days for those born in 1956, and 65 years for those born in 1957 or later. This applies to both genders.

¹⁶ The reason for adopting additional, transitional provisions was that the women's advanced retirement age had not reached 60 years of age (it was raised from 57 to 59 years of age in 2009).

¹⁷ Early retirement pensions had been awarded in the form of a) advanced pensions, b) early retirement pensions, c) early retirement pensions due to hazardous working conditions, d) miners' pensions, e) artists' pensions and f) some other special early retirement benefits prior to 2012.

¹⁸ Before 1 January 2012, several generous early retirement options were available within the public pension system. Individuals with long service periods could claim *advanced pension* or *advanced pension with reduced benefit*. Persons working in jobs arduous to health could claim *early retirement due to hazardous working conditions*. Moreover, early retirement pensions could be claimed by artists or miners regardless of age and if the person had at least 25 years of service in the profession specified in the legislation. Special pension rules applied also to personnel in the armed forces, who could retire very early, while generous rules applied to former mayors and members of the parliament. A special (labour market or employment policy based) early retirement pension – based on tripartite negotiation among employer, employee and state pension fund management – was also abolished. However, transitional rules apply to those persons who currently are in receipt of the former early retirement options.

from 2012 as well. (Thus, these benefits may not only be awarded as those transformed from benefits awarded before 2012, but also as newly awarded benefits.) In the future, two special types of benefits, i.e. temporary miners' annuity and life annuity for ballet dancers, which involve only a small number of people, may be awarded without time restrictions.

The changes of 2012 – except for the special alternative retirement for women – guarantee that the age centre (i.e. the exact age reached at retirement) of old-age retirement approaches or even meets the retirement age. In essence, this age centre had been equivalent to the age criterion of advanced pension so far. As a result, measures facilitate the long-term sustainability of the pension system to a great extent and, at the same time, terminate the diverse former varieties of early retirement alternatives.¹⁹

4. The women-40 programme

Young career-starters and those above the age of 50 years – among these especially women – have poor prospects on the labour market in Hungary as well. That is why the Hungarian Government decided that as of 1 January 2011 women with 40 years of service have been allowed to retire²⁰ without an age limit.²¹ The government's original plan was to allow women who had worked for forty years to retire with full old-age pension benefits, regardless of age.²²

One of the incentives was to avoid the demographic disaster and to put the pension fund into order, which in any case would become unfinanceable sooner or later. The plan was that if the 40+ grandma can stay at home, young people will be more willing to have children as there are few crèches, and the early institutionalization of children is an unpopular idea in Hungary anyway. Grandma is cheap and Grandma will make a good full-time babysitter.²³

The second reason is that the women mainly affected are elderly women facing retirement, with no higher qualification than a secondary school-leaving examination (vocational schools and the years spent in higher education are not included in the 40 years), who look forward to retiring very much as they are tired and worn out. While working, they brought up their children, learnt, took care of their husband and the household, and if their parents are still alive, these women are often responsible for their care, too. They are at a disadvantage on the labour market since a 55-year-old woman has hardly any chance to find a new job.

The third reason is that a great number of women work in the public sector, and because of the wage scale, they have quite high salaries towards the end of their many-decade-long career. If they retire, young people who are cheaper, can speak foreign languages and have a

¹⁹ <http://www.onyf.hu/hu/cimlap/244-providing-system/old-age/832-eligibility-criterion-retirement-age,-service-time-and-calculation-of-the-pension-amount.html> (10.12.2015).

²⁰ More than 105 thousand women have hitherto used this option.

²¹ http://www.xpatloop.com/news/new_contracts_signed_in_hungary_under_the_women_40_programme (07.12.2015).

²² That would mean that a woman who quit school after eight grades and who began working immediately afterwards would be only 55-56 years old when she became eligible to retire.

²³ It was a popular and rational decision of the first Orbán government to make it possible for grandparents to claim child home care allowance after their grandchild. While the grandmother stays at home, the parents can be at ease and work in their workplace before the birth.

degree can be employed in their place, and in addition, the unemployment of young people can also be reduced.²⁴ Public sector layoffs could be made relatively painless in the new system as in this way older women – with the recognition of the value of motherhood and child raising – can be pensioned for HUF 115,000 on average.²⁵

Women-40 is available for those women, regardless of age, who have gained at least 40 years of eligibility (period of service) and ceased gainful activity. The eligibility period includes: period gained with gainful activity or pregnancy-confinement benefit, child care fee, child home care allowance, and child raising support or nursing fee. At least 32 years of gainful activity is needed besides these periods due to child care, or 30 years of gainful activity in case of nursing fee. The eligibility period is decreased by one year for each child in households with five or more children; altogether a maximum of seven years is possible.

This was the original plan of the government, but pension contributions had to be raised by 0.5% even for this, as instead of the planned 18-24 thousand women more than 48 thousand retired with Women-40 already in the first year.

The president of the supervisory body of the pension system expressed her misgivings. She warned that such a decision would transform the whole structure of the system and would also go against the recommendations of the European Union.

Another problem is that less educated women opting for Women-40 retire with low pensions, thereby increasing the probability of poverty in old age.²⁶

The original plan of the government was implemented – even in the Fundamental Law, which is the Constitution of Hungary – but soon came the cold shower, because the government underestimated the number of women who would be eligible and who would take advantage of the offer. The underestimation was substantial. The planners thought that no more than 4,000-6,000 women would be eligible, but shortly after the bill was passed the Ministry of National Economy calculated that about 24,000 women would be added to the pool of retirees, costing the state 30-35 billion forints. Furthermore, by 2013 almost 100,000 women had retired early, which resulted in an 80% growth in pension fund expenses. By 2014 135,000 women applied for women-40. In 2015 the early retirement madness cost the taxpayers 600 billion forints, and according to some calculations this amount may increase to as much as 800 billion forints by the end of 2016.

It was apparent from the very beginning that the new law was discriminatory.²⁷ According to the Hungarian Fundamental Law (Constitution), men and women have equal rights and yet men with a 40-year employment record could not retire with full benefits.

In November 2010 the new law was enacted without any objections.²⁸ Five years later, Hungarian trade unions „suddenly” discovered that the law that allowed women to retire earlier than men is discriminatory. In the procedure a private citizen, acting on behalf of the trade unions, asked the National Election Committee to allow a referendum on the

²⁴ This was partly the reason for prohibiting the employment of pensioners in public institutions, too.

²⁵ <http://www.piacutatasok.hu/2014/11/ksh-az-oregsegi-nyugdij-atlagos-osszege.html> (10.12.2015).

²⁶ <http://feminfo.444.hu/2015/09/13/nok-40-ferfiak-40-mi-ez-az-egesz> (04.12.2015.).

²⁷ No one stood up in 2010 and insisted on taking the issue to the Constitutional Court for review, although at that time it would still have been possible because the new Fidesz law on the Constitutional Court had not yet been passed.

²⁸ However, one of the critics of the original 2010 bill called it a ticking time bomb. Well, the bomb is now close to going off. The Ministry of National Economy, which so misjudged the numbers in the case of women, is now talking about 150,000 men who might take advantage of early retirement.

issue. His claim was rejected. The next forum – the Kúria²⁹ –, implicitly acknowledged the discriminatory nature of the law, and approved the referendum question.³⁰

Finally, the decision of the Kúria case was challenged at the Hungarian Constitutional Court.³¹

5. The decision of the Constitutional Court

According to the constitutional law complaints against the decision of the Kúria, submitted to the Constitutional Court at the end of the August 2015, the decision of the Kúria conflicts with constitutional fundamental rights. The motions refer, among others, to the provisions of the Fundamental Law, according to which "Hungary shall adopt special measures to promote the implementation of legal equality"; "Hungary shall adopt special measures to protect children, women, the elderly and persons living with disabilities" as well as "eligibility for a state pension may include statutory criteria in consideration of the requirement for special protection to women". The legal representative for the submitter of one of the constitutional law complaints held the view that the equal rights of women are actually realized by means of positive discrimination. And if uniform retirement rules apply to women and men, the positive discrimination of women ceases, and moreover, if this is done with the same budget, pensions will obviously decrease.³²

The Constitutional Court on 15 September 2015 ruled that a decision by the Kúria approving a referendum initiative on allowing men to retire after 40 years of work is unconstitutional.³³ The ruling means that a referendum cannot be held on the issue. The Kúria's ruling overrode a decision by the National Election Committee that rejected the referendum question on equal early retirement rights for women and men. Following the Kúria's ruling, trade unions began collecting the 200,000 signatures required by law for calling a referendum, but several individuals and lobby groups submitted complaints to the Constitutional Court.

The decision of the Constitutional Court is based on the following two legal arguments:

According to the first argument, pursuant to the Fundamental Law women are entitled to more favourable subjective rights than men, this is why the decision made by the Kúria at the end of June, allowing the referendum initiative on men's retirement after 40 years of employment, was unconstitutional. In relation to the equal rights of women and men, the

²⁹ The name of the Hungarian Supreme Court.

³⁰ Activists immediately began collecting signatures, and the signature campaign was going splendidly.

³¹ <http://hungarianspectrum.org/2015/08/11/a-discriminatory-law-from-2010-is-haunting-the-orban-government-today/> (04.12.2015).

³² If, similarly to women, men also had the possibility to retire after 40 years, according to calculations so many working men would leave the system that the pension fund is estimated to decrease by approximately 200 billion forints.

³³ Kúria Order No. Knk. IV.37.467/ 2015/2 on the subject of the referendum initiative concerning equal retirement age for men and women.

Constitutional Court established that – pursuant to Paragraph (5) of Article XV³⁴ and the second sentence of Paragraph (4) of Article XIX³⁵ of the Fundamental Law – women are eligible for special protection, and their eligibility for retirement may be different also in respect to the requirement of enhanced protection. According to the Constitutional Court, it follows from this that – compared to men – women can claim more favourable subjective rights, in particular regarding eligibility for state pension.³⁶ The successful referendum would deprive women of the possibility of more favorable pension scheme regulations.

The second argument of the decision states that a referendum cannot be held on this issue also because it concerns a forbidden subject matter, namely the budgetary act.³⁷ In case of a successful referendum, the question asked would entail the mandatory raising of the sum prescribed for pension benefits in the budgetary act, thus it would directly and substantially affect the act on the annual budget of the country.

Why the decision of the Constitutional Court is not thorough:

1. Dissenting Constitutional Court judges³⁸ were of the opinion that the body was not even supposed to deal with the subject of the referendum. Having done so, it violated the law.

³⁴ Par. (5) of Art. XV of the Fundamental Law: „Hungary shall adopt special measures to protect children, women, the elderly and persons living with disabilities.”

³⁵ Par. (4) of Art. XIX of the Fundamental Law: „...Eligibility for a state pension may include statutory criteria in consideration of the requirement for special protection to women.”

³⁶ Reflecting the arguments of the Hungarian Constitutional Court decision, a positive (affirmative) action can be taken if it prevents, or compensates for, disadvantages linked to gender. It must be based on objective justification which must prove that the practice, selection criteria or provisions are a ‘proportionate’ means of achieving a ‘legitimate aim’. To prove the proportionality, the relevant measures must be able to show that: a) it will actually contribute towards the achievement of a ‘legitimate aim’, b) the benefits are sufficient to justify the amount of discriminative action and c) there is no more discrimination than is strictly necessary. Furthermore, a ‘legitimate aim’ which may justify to treat people differently on grounds of age and gender must be a real need to do so, and there is no reasonable alternative: for example: a) business needs, b) efficiency, c) health, welfare and safety, d) facilitation of employment planning (e.g. so employers can plan staff structure, make provision for wages and pensions and plan recruitment, training and staff development, and employees can plan their careers and for retirement), e) encouraging and rewarding loyalty, etc. Basically, the interested entity (namely the government) needs to be able to prove that: a) they have such a need, or b) the form of age-gender discrimination that they are practising is necessary to resolve it, or c) the benefits of resolving it outweigh the disadvantages of practising age-gender discrimination, and d) they cannot achieve such resolution from any lesser form of discrimination. According to my evaluation, unfortunately, the provisions of women 40 plus retirement benefit do not fulfil any of the above mentioned preconditions of positive (affirmative) action procedure, therefore I cannot share the opinion of the Constitutional Court delivered on positive action issue.

³⁷ Article 37 (4) of the Fundamental Law: “As long as the state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its powers set out in Article 24(2)b) to e), review the Acts on the central bud get, the implementation of the central budget, central taxes, duties and contributions, customs duties and the central conditions for local taxes for conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or the rights related to Hungarian citizenship, and it may annul these Acts only for the violation of these rights. The Constitutional Court shall have the unrestricted right to annul also Acts having the above subject matters, if the procedural requirements laid down in the Fundamental Law for the making and promulgation of those Acts have not been met.”

³⁸ Namely: LÁSZLÓ KISS, MIKLÓS LÉVAY, ISTVÁN STUMPF and PÉTER SZALAY.

2. According to the practice to date, the decision of the court (Kúria) could be appealed in the Constitutional Court only in case of personal involvement. However, those who sought legal remedy in their motion now had no personal involvement.

3. Pursuant to the Fundamental Law, women and men have equal rights; consequently, to no avail is it added that eligibility for a state pension may include statutory criteria in consideration of the requirement for special protection to women. It does not follow from this that it would not be constitutional if the possibility of early retirement were available to men, too.³⁹

Following the decision of the Constitutional Court, the Kuria will have to issue a new ruling on the matter, taking into account the Constitutional Court's decision. The National Election Committee will then have to decide, based on the Kuria's ruling, whether or not to certify the referendum questions.⁴⁰

Summary

The Government has (had) every reason to be afraid of a referendum allowing early retirement for men. Several Hungarian pension experts believe that the entire society would have supported the initiative. In fact, a significant proportion of men around 60 years of age have very poor health today. Recent statistics show that only a third of pensioners are men, their average age being approximately five years less than that of women. So while men have less time to enjoy the years of retirement, on average their service time is much longer and they pay much higher pension contributions. All this is quite unfair.

Another shocking fact: there are 976 thousand widows and widowers living in Hungary, of whom there are 152 thousand widowers at most. This dramatic situation was created partly by the government by doing away with the possibility of early retirement even in occupations hazardous to health. This happened in spite of the fact that its costs had been paid by the employer, so in this case the government or the pension fund did not suffer any losses.⁴¹

Currently, the withdrawal of the possibility of early retirement for women after 40 years would equal political downfall, while its introduction for men would certainly entail the collapse of the pension fund. This is why the Minister of National Economy argues that if early retirement for men had to be introduced forcibly because of the referendum, the sum of pensions would have to be reduced in Hungary.⁴²

In my opinion, the introduction of women's 40+ retirement itself was a flawed decision in 2010 fundamentally for two reasons. On the one hand, the pension fund is on the brink of

³⁹ <http://www.hrportal.hu/hr/a-ferfi-es-a-no-egylenlo-a-torveny-is-ezt-mondja-20150806.html> (10.12.2015.).

⁴⁰ <http://mtva.hu/hu/hungary-matters> (07.12.2015.).

⁴¹ In my view, it would still be necessary to improve the life expectancy of older men as well, one means of which could be to bring back early retirement pension, which was abolished in 2012. If today a 60-year-old or older person becomes unemployed, he has practically no hope of finding a job, and it is hopeless to start a new business at this age. After the exhaustion of job-seekers' allowance paid for three months, men can find themselves scraping by on social assistance, waiting to reach the age entitling them to old-age pension, that is 65 years. This is an unworthy situation.

⁴² <http://ifi.hu/430-elkaszalva-sallert-osztanak-a-nepnek> (07.12.2015.).

collapse, and on the other hand, although the Constitutional Court supported the positive (affirmative) action for women in the provisions of the Fundamental Law, in my view a wrong decision was made, as the clear legal basis and justification of the applicability of the positive (affirmative) action are not clearly stated in the reasoning. In my opinion, women's 40+ still represents immediate and direct discrimination against men in a similar life situation.

HAJDÚ JÓZSEF

A NŐK 40 ÉV UTÁNI NYUGDÍJAZÁSÁNAK ALKOTMÁNYOSSÁGI VIZSGÁLATA MAGYARORSZÁGON

(Összefoglalás)

Magyarországon a nőket az Alaptörvény XV. cikk (5) bekezdése és a XIX. cikk (4) bekezdése második mondata alapján külön védelem illeti meg, és a fokozott védelem követelményére tekintettel is nyugdíjra való jogosultságuk más lehet, mint a férfiaknak. Mindkét szabályból az következik, hogy a nők – a férfiakhoz képest – kedvezőbb (nem azonos) alanyi jogokra tarthatnak igényt, a XIX. cikk (4) bekezdése második mondata alapján különösen az állami nyugdíjra jogosultság (a törvényben szabályozott jogosultsági feltételek meghatározása) területén. Ennek ez egyik legpregnansabb megnyilvánulása a nők 40+ nyugdíjazására vonatkozó szabályozás. Az Alaptörvény XIX. cikk (4) bekezdésének feltételes megfogalmazásából szövegszerűen az következhetne, hogy a nők előnyben részesítése egyes nyugdíjszabályok vonatkozásában a törvényalkotó számára biztosított lehetőség csupán. Azt azonban feltétlenül meg lehet állapítani, hogy e rövid tanulmányban vizsgált alkotmányjogi panaszok⁴³ szempontjából annak van jelentősége, hogy az Alaptörvény valamennyi, a „Szabadság és felelősség” című részben szereplő szabálya, így XV. cikk (5) bekezdése és a XIX. cikk (4) bekezdése második mondata is, érvényesülhessen a törvényhozó belátása szerint. E cikkben ennek a szabályozásnak a jogszerűségét vizsgáltuk meg a 28/2015. (IX. 24.) Alkotmánybírósági határozat tükrében. A jogi kérdéseken túlmenően röviden foglalkoztunk az új jogintézmény nyugdíjrendszert torzító hatásával is. Ennek értelmében, 2010-ben a nők és a férfiak is átlagosan 60,2 évesen mentek el nyugdíjba. A nyugdíjrendszer fentebb említett változásai azt eredményezték, hogy 2013-ra a nők átlagos nyugdíjba vonulási kora lecsökkent 58,5 évre, míg a férfiaké 62,1 évre növekedett. Így 2013-ban a nők már átlagosan 3,6 évvel korábban mentek nyugdíjba, mint a férfiak. A téma kapcsán a jövőben a diszkriminációs jogkérdés mellett az öregségi nyugdíjrendszer fenntarthatóságára gyakorolt hatását is vizsgálni kell.

⁴³ These are: No. IV/2774/2015., No. IV/2779/2015. and No. IV/2822/2015.