DECISION 36/B/2000 AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition seeking a posterior review of the unconstitutionality of a statute, the Constitutional Court has adopted the following

decision:

1. The Constitutional Court rejects the petition seeking the establishment of the unconstitutionality and the annulment of the text "from organisations handling medical and related data" in Section 68 para. (1) of Act XXXIV of 1994 on the Police.

2. The Constitutional Court rejects the petition seeking the establishment of the unconstitutionality and the annulment of Section 23 para. (3) and Section 24 paras (1) and (4) of Act XLVII of 1997 on the Handling and Protection of Medical and Related Personal Data.

Reasoning

I

The Constitutional Court received a petition seeking the establishment of the unconstitutionality and the annulment of the text "from organisations handling medical and related data" in Section 68 para. (1) of Act XXXIV of 1994 on the Police (hereinafter: the AP) as well as of Section 23 para. (3) and Section 24 of Act XLVII of 1997 on the Handling and Protection of Medical and Related Personal Data (hereinafter: the AMD). According to the petitioner, the challenged statutory provisions violate the right to life granted under Article 54 para. (1), the right to the protection of privacy and personal data guaranteed in Article 59 para. (1), furthermore, the right to health enshrined in Article 70/D of the Constitution.

With regard to the challenged statutory provisions, the petitioner alleges that they require healthcare service providers to supply data unconstitutionally. The challenged provisions may result in the police handling, "with reference to investigating a crime, even before instituting

criminal proceedings", the medical and personal data of patients who are not subject to "a well-founded suspicion of having committed a criminal offence." Thus there are no guarantees ensuring that the police may only have access to the data indispensable for the proceedings.

The petitioner claims that at the same time, the provisions on forwarding data violate "the requirement of confidentiality of medical professionals" and are incompatible "with the medical profession" as they put physicians "in charge of criminal prosecution in addition to giving medical aid". As a result, patients "do not dare to visit a doctor" for fear that their data will be disclosed and criminal proceedings will be instituted. This way, the regulation makes patients "subject their lives to danger." Based on the above, the petitioner further claims that the challenged regulation violates the right to life granted under Article 54 as well as the right to health granted under Article 70/D of the Constitution.

It is also noted by the petitioner that Section 68 para. (1) of the AP is in conflict with Section 80 of the Act, and the challenged provisions are in conflict with several recommendations of the Ombudsman for Data Protection.

After the submission of the petition, Section 68 para. (1) of the AP was amended as from 1 January 2002 by Section 6 para. (1) item t) of Act XCIII of 2001 on the Elimination of Foreign Currency Restrictions and on the Amendment of Certain Related Acts. Furthermore, Section 24 of the AMD was amended as from 1 January 2003 by Section 43 of Act LVIII of 2002 on the Amendment of Certain Acts Related to Healthcare and Social Security. However, the original contents of the statutory provisions challenged by the petitioner remained in force after the amendments. As a result of the amendment, Section 24 of the AMD was supplemented with two new paragraphs not affected by the petition. At the same time, the provisions of Section 24 of the AMD as challenged by the petitioner were included in paras (1) and (4), and therefore the constitutional review has focused on those paragraphs. The Constitutional Court has examined the constitutionality of the normative text in force at the time of the review.

The Constitutional Court forwarded the petition to the Ministers of Interior, Healthcare and Justice, requesting their opinion.

II

1. The provisions of the Constitution relevant in respect of the petition are as follows:

“Article 54 para. (1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights.”

“Article 59 para. (1) In the Republic of Hungary everyone has the right to the good standing of his reputation, the privacy of his home and the protection of secrecy in private affairs and personal data.”

“Article 70/D para. (1) Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health.”

2. The provisions of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (hereinafter: the DPA) under review are as follows:

“Section 2 For the purposes of this Act:
1. Personal data: any information that can be brought into relation with a specific (identified or identifiable) natural person (hereinafter: ‘data subject’) and any inference drawn from such information. Such information shall be treated as personal data in the course of data handling as long as the data subject remains identifiable through it. A person shall be deemed identifiable in particular when he or she can be identified – directly or indirectly – on the basis of his or her name, identifying sign, or one or more factors of physical, physiological, mental, economic, cultural or social identity;
2. Special data are data related to:
a) racial origin, national and ethnic minority status, political opinion or party affiliation, religious or other conviction, or membership in an organisation for the representation of interests,
b) health condition, abnormal addiction, sexual life and criminal personal data;
3. Criminal personal data: personal data that can be related to an affected person and established in the course of criminal proceedings or before the criminal proceedings in connection with the criminal act or the criminal proceedings, at the organisations in charge of

conducting the criminal proceedings or investigating a criminal offence or at a penal organisation, and personal data related to criminal record;
(...).”

“Section 3 para. (3) In the case of mandatory data handling, the aim and the conditions of data handling, the scope of and access to the data to be handled, the term of data handling and the person handling the data shall be defined in the Act of Parliament or local government decree ordering the handling of data.”

“Section 5 para. (2) Only personal data indispensable and suitable for accomplishing the purpose of data handling may be handled, and only to the extent and for the time required for the accomplishment of that purpose.”

3. The relevant provisions of the AP:

“Section 68 para. (1) In order to investigate an intentional criminal offence punishable with two or more than two years of imprisonment, the head of the investigative organ of the police authorised for secret data collection may – with the consent of the prosecutor – request the provision of relevant data from the tax authority, telecommunication organisations providing services, organisations handling medical and related data, organisations handling data qualifying as banking secrets, securities secrets, cash fund secrets and other business secrets. The investigative organ may set a deadline for the provision of data. The data shall be provided free of charge, and the organ handling the data may not refuse to provide it. Information received in the above manner may only be used for the designated purpose. (2) If delay would entail danger and the case is in connection with trafficking in drugs, terrorism, illegal trafficking in weapons, money laundering or organised crime, the data may be requested in the form of immediate action without the prior consent of the prosecutor, and the requested data shall be provided immediately. In such cases the request shall be marked as “immediate action”. The consent of the prosecutor shall be requested simultaneously. If the prosecutor refuses to give his or her consent, the police shall immediately destroy the data obtained in this way.”

“Section 77 para. (2) For the purposes of performing its criminal law enforcement functions, the Police shall have access as determined by Acts of Parliament to personal data handled by

other organisations, and the Police may not use the data obtained in this way for purposes other than criminal law enforcement, and they may not forward such data."

"Section 79 para. (1) The organ handling police data shall handle the affected natural person's personal identification data – including citizenship in the case of foreign citizens –, address and, in data handling for the purposes of the enforcement of criminal law, the criminal data related to criminal offences. It may use identification codes on the basis of provisions of Acts of Parliament."

"Section 80 para. (1) The organ handling police data may only handle special data – with the exception of the data on one's criminal record and the data defined in a separate Act of Parliament which are related to the state administrative tasks of the Police regulated in the same Act – when the person concerned is suspected of the perpetration of a criminal offence listed in items i)-n) of Section 84. (2) Special data may only be handled in direct relation with the particular act."

"Section 84 In order to perform its tasks of criminal law enforcement specified by law, the Police may handle or take over from the records of other organs authorised to handle data
(...)
i) with the exception of those falling under the scope of Section 73 para. (3), the data on persons subject to secret collection of information – including persons cooperating with the police and undercover investigators – as well as the result of the collection of information, for up to 2 years following the termination of the secret data collection if no criminal proceedings have been instituted, until expiry of the period of limitation if criminal proceedings have been conducted, until relief from the consequences of having a criminal record in the case of conviction, but not longer than for 20 years, and in the case of persons cooperating with the police and undercover investigators, for up to 20 years following the termination of cooperation or undercover investigative activity;
j) in the case of a grave criminal offence or if the criminal offence
1. can be related to international crime,
2. is committed by sexual violence,
3. is aimed at a child,
4. is perpetrated in series or in an organised manner,
5. is related to drugs or other substances qualifying as such,

6. is related to the counterfeiting of banknotes or securities,
7. is perpetrated with arms,
8. seriously disturbs public security.
the data on persons suspected of the perpetration of a criminal offence and on their contacts, and their characteristics important from criminalistic aspects, for 20 years or for the period determined in international obligations;
k) on the basis of international obligations, the data on all persons – and on their acts and contacts – against whom measures of international criminal law enforcement must be taken, until the expiry of the period of limitation or for the period determined by the international obligation;
l) the data on and the characteristics important from criminalistic aspects of persons who are involved in criminal offences or acts giving rise to suspicions of organised crime and those of their contacts, for 20 years following the generation of the last data on the person concerned;
m) the data on persons placed under crime prevention control, the aspects of the control and its findings, for a period of 1 year from the date of release from imprisonment;
n) data on persons mentioned in the files generated in the course of the investigation of offences in connection with the investigation of the offence and collecting evidence, data on their contacts and on their procedural position, on the data of investigation relating to them, until the final judgement brought in the case, or, in the case of the termination of investigation, until expiry of the period of limitation of the offence;
(...)"
4. The relevant provisions of the AMD:

"Section 3 For the purposes of this Act:
a) medical data: data related to the data subject's physical, intellectual and mental state, abnormal addiction, and the circumstances of illness or decease, or data related to the cause of death, such data being communicated by the data subject or by another person about the data subject, or noted, examined, measured, mapped or derived by the healthcare service providing network, together with any other data that may be related to or influence the foregoing (e.g. behaviour, environment, occupation);
b) personal identification data: forename and surname, maiden name, sex, date and place of birth, mother's maiden forename and surname, place of residence, place of stay, social security identification number (hereinafter: "TAJ" number) altogether or any of them if it is / they are suitable or may be suitable for identifying the data subject;"

“Section 4 para. (1) The aim of handling medical and personal identification data:
a) to facilitate the preservation and maintenance of health,
b) to facilitate the successful medical treatment activities of the institution providing service to the patient,
c) to monitor the state of health of the data subject,
d) to take measures necessitated by interests of public health and epidemiology.”
(2) Beyond the scope specified in paragraph (1), medical and personal identification data may be handled for the following purposes, in the cases specified in Acts of Parliament:
(...)
g) prosecution of crime, and the prevention of crime within the scope of the authorisation received for the performance of tasks specified in Act XXXIV of 1994 on the Police,
(...).
(3) Medical and personal identification data may be handled for purposes other than specified in paragraphs (1)-(2), on the basis of the informed written consent of the data subject or his or her lawful or authorised representative (hereinafter jointly: “lawful representative”).
(4) For the data handling purposes specified in paragraphs (1)-(2), only medical or personal identification data of such types and quantity as is absolutely necessary for the achievement of the purpose of data handling may be handled.”

“Section 7 para. (1) The data handler – with the exception provided for in paragraph (2) – and the data processor shall keep secrets of medical nature.
(2) The data handler shall be relieved from the obligation of confidentiality if
a) the data subject or his or her lawful representative consents in writing to forwarding the medical or personal identification data, with the limitations contained therein, and
b) the forwarding of medical or personal identification data is mandatory under the provisions of an Act of Parliament.”

“Section 9 para. (1) The recording of medical data is part of the process of medical treatment. The attending physician or the medical officer is in charge of deciding, in line with the rules of the profession, what medical data should be recorded for the purpose specified in Section 4 paragraph (1), in addition to the data to be obligatorily recorded.”

“Section 12 para. (1) Supplying medical and personal identification data by the data subject is voluntary, with the exception of the mandatory personal identification data required for using health care services and the ones contained in Section 13.”

“Section 13 The data subject (his or her lawful representative) shall be obliged to supply the medical and personal identification data on request by the person attending him or her,
(...)
e) when the provision of data is required for the medical treatment or the preservation or protection of the health of a foetus or a minor,
f) when the authority in charge has ordered an examination for the purpose of the prosecution or prevention of crime, or in the course of proceedings by the public prosecutor, the court, or an authority dealing with administrative infractions or a public administration body,
(...).”

“Section 23 para. (1) Upon the written request of the following organs, the physician attending the patient shall supply to the requesting organ the medical and personal identification data of the data subject. The requested medical and personal identification data shall be indicated in the request in accordance with Section 4 para. (4):
a) the investigating authority, the public prosecutor’s office, the court, and the forensic specialist in a criminal matter, and the public prosecutor’s office, the court, and the forensic specialist in a civil or public administration matter,
b) the organs in charge of the proceedings in administrative infraction proceedings,
c) in the case of a person liable to military service, the competent notary, the draft agency, and the committee in charge of establishing medical aptness for military service,
d) the national security services for the purpose of performing the tasks specified in Act CXXV of 1995 on the National Security Services, within the scope of the authorisation given in that Act.
(2) The request shall contain the exact aim of the data supply and the scope of the data requested.
(3) The attending physician shall inform the investigating authority on the medical and personal identification data, related to the case in question, of a person attended by the physician if the request is marked ‘immediate action’, even if the public prosecutor’s consent required by a specific statute is not attached to the request.”

“Section 24 para. (1) When the patient visits the physician for the first time, and he or she has an injury the healing of which is expected to last for more than 8 days, and the injury is presumed to be the result of a criminal offence, the attending physician shall report without delay to the police the personal identification data of the person concerned.
(...)
(4) The forwarding of data in line with paras (1)-(3) may be performed without the consent of the data subject or the person otherwise entitled to dispose over the data.”

III

The petition is unfounded.

1. Based on the petition, the Constitutional Court first examined whether the provisions challenged provide for the supply of medical and other personal data contrarily to the fundamental right to the protection of privacy and personal data.

1.1. To start with, the Constitutional Court reviewed its judicial practice related to Article 59 para. (1) of the Constitution.

Article 59 para. (1) of the Constitution guarantees the right to the protection of privacy and personal data as a constitutional fundamental right. With regard to the right in question, Decision 56/2000 (XII. 19.) AB of the Constitutional Court pointed out the following:
“In the standing practice of the Constitutional Court, the content of the right to the protection of personal data is that everyone personally controls the disclosure and use of his or her personal data. Hence, approval by the person concerned is generally required to register and use personal data; the entire route of data processing and handling shall be made accessible to everyone, i.e. everyone has the right to know who, when, where and for what purpose uses his data. In exceptional cases, an Act may exceptionally require the compulsory supply of personal data and prescribe the manner in which these data may be used. Such a statute restricts the fundamental right to informational self-determination, and it is constitutional only if it is in accordance with the requirements specified in Article 8 of the Constitution. [Decision 15/1991 (IV. 13.) AB, ABH 1991, 40, 42, Decision 46/1995 (VI. 30.) AB, ABH 1995, 219, 221, Decision 24/1998 (VI. 9.) AB, ABH 1998, 191, 194]” (ABH 2000, 527, 531)

Constitutional fundamental rights may only be restricted in line with Section 8 para. (2) of the Constitution. According to that provision, in the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by Acts of Parliament; however, such Acts may not restrict the basic meaning and contents of fundamental rights.

On the basis of Article 8 para. (2) of the Constitution, the Constitutional Court applies the fundamental rights test (the so-called test of necessity and proportionality) to decide on the constitutionality of a restriction not affecting the essential content of a fundamental right. In the practice of the Constitutional Court, it was indeed Article 59 para. (1) of the Constitution in relation to which the fundamental rights test was used for the first time for judging the constitutionality of restricting a fundamental right. In that early decision, the Constitutional Court pointed out the following:
"The legislature (…) restricted without a forcing cause the rights granted in Article 59 of the Constitution, and this way it restricted the essential content of the fundamental right. Neither does the provision meet the proportionality requirements for norms limiting fundamental rights. This proportionality criterion requires an accord between the importance of the purpose to be achieved and the weight of the violation of the fundamental right in the interest of achieving the purpose. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose. If the limitation adopted is unsuitable to achieve the purpose, the violation of a fundamental right may be established." [Decision 20/1990 (X. 4.) AB, ABH 1990, 69, 71]

The Constitutional Court has applied in several of its decisions the fundamental rights test in relation to Article 59 para. (1) of the Constitution. In one of its subsequent decisions, the Constitutional Court established the following:
"Pursuant to Article 8 para. (2) of the Constitution, in the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by Acts of Parliament; however, even such Acts may not restrict the basic meaning and contents of fundamental rights. (…) They have to comply with the constitutional criteria of restricting a fundamental right, i.e. the requirements set out in Article 8 para. (2) of the Constitution. This implies that the right to informational self-determination, which is a fundamental right, i.e. a freedom guaranteed by Article 59 para. (1) of the Constitution, may only be restricted constitutionally if the limitation is unavoidably necessary and in proportion with the objective to be achieved." [Decision 46/1995 (VI. 30.) AB, ABH 1995, 219, 222-223]

In addition, the Constitutional Court stressed on the basis of the principle of 'adherence to the purpose to be achieved' that collecting and storing data 'without a specific goal, for the purpose of storage'[1], for unspecified future use are unconstitutional." [Decision 15/1991 (IV. 13.) AB, ABH 1991, 40, 42]

The detailed rules of protecting the fundamental right guaranteed under Article 59 para. (1) of the Constitution are laid down in the DPA adopted on the basis of the authorisation given in Article 59 para. (2) following Decision 15/1991 (IV. 13.) AB (ABH 1991, 40) of the Constitutional Court. According to Section 5 para. (2) of the DPA, only personal data indispensable and suitable for accomplishing the purpose of data handling may be handled, and only to the extent and for the time required for the accomplishment of that purpose. The constitutional requirements regarding the handling of data are reiterated by Section 4 para. (4) of the AMD.

Therefore, the legislature may only order the handling of personal data if, at the same time, it provides for the exact conditions of data handling, i.e. the concrete detailed rules of restricting the fundamental right to personal data guaranteed under Article 59 para. (1) of the Constitution.

1.2. Pursuant to Section 9 para. (1) of the AMD, the recording of medical data is part of the process of medical treatment. The attending physician or the medical officer, as appropriate, shall decide in accordance with the relevant professional rules what medical data should be recorded in addition to the mandatory ones. Although according to Section 12 para. (1) of the AMD the provision of data is basically voluntary, in the cases specified in Section 13 of the AMD, the data subject is obliged to disclose his or her medical data. This way, the data subject may not receive medical treatment without disclosing his or her data requested by the attending physician.

The special provisions of data protection related to the handling of medical data serve the purpose of enforcing the constitutional fundamental right to the protection of personal data. Among the above, Section 25 of Act CLIV of 1997 on Healthcare, entitled "The Right to

[1] Translator's remark: instead of "for the purpose of storage", a more accurate translation would be "for the purpose of stocking", i.e. "for the purpose of accumulating stocks of data", however, in texts quoted from earlier Decisions of the Constitutional Court, the original translation was left unchanged for the sake of consistency.

Physician's Confidentiality", is considered to be a fundamental rule. According to para. (1) of the above Section, "the patient has the right to have his or her medical and personal data obtained in the course of his or her treatment (hereinafter: "medical secrets") disclosed by the persons involved in his or her medical treatment only to authorised persons, and to have such data handled confidentially." There is a similar provision in Section 7 para. (1) of the AMD, also providing for an obligation of confidentiality for the physician. At the same time, Section 7 para. (2) of the AMD exceptionally allows the forwarding of medical and personal identification data disclosed by the data subject, even without his or her consent. Accordingly, the data handler is exempted from the obligation of confidentiality "if an Act of Parliament requires the forwarding of the medical and personal identification data."
The petitioner alleges the unconstitutionality of the statutory provisions giving exemptions from the physician's obligation of confidentiality, as according to the petition, those provisions require data supply violating the constitutional right to the protection of privacy and personal data.

The Constitutional Court performed the following review aimed at evaluating the constitutionality of the fundamental right restriction in relation to the statutory provisions restricting the physician's obligation of confidentiality as challenged by the petitioner.

1.2.1. The petitioner requests the establishment of the unconstitutionality of the text "from organisations handling medical and related data" in Section 68 para. (1) of the AP. According to the provision of the AP under review, in order to investigate an intentional criminal offence punishable with two or more than two years of imprisonment, the head of the investigative organ of the police authorised for secret data collection may – with the consent of the prosecutor – request the provision of relevant data from organisations handling medical and related data.

The challenged provision of the AP limits the handling of data by the police, i.e. the scope of requested data, to "data related to the case", but it does not specify what types of data the police may request from the data handling organisation. Therefore, for the purpose of investigating certain types of criminal offences, the police may request the supply of any data that are related to the case and are in the possession of the organisation handling medical and related data. By virtue of the above, the police may request from the organisation handling medical and related data the supply of medical data specified in Section 3 item a) of the AMD

and personal identification data specified in Section 3 item b) of the AMD. Medical data as per Section 3 item a) of the AMD qualify as special data under Section 2 item 2 b) of the DPA, and other data that can be related to natural persons qualify as personal data under Section 2 item 1 of the DPA. However, the appropriate provisions of Chapter VIII on "Handling data by the Police" in the AP are applicable to the handling of such data.

If the police request on the basis of Section 68 para. (1) of the AP the supply of medical data qualifying as special data, then Section 80 of the AP shall also apply to the handling of data. Section 80 para. (1) of the AP provides that the police may only handle medical data qualifying as special data "when the person concerned is suspected of the perpetration of a criminal offence listed in items i)-n) of Section 84." According to Section 68 para. (1) of the AP, only "data related to the case" may be handled. Furthermore, Section 80 para. (2) of the AP provides that special data may only be handled in direct relation to the particular act. Section 84 defines the aim of data handling: the police may handle data "to perform its tasks of criminal law enforcement specified by law", more specifically, "in order to investigate an intentional criminal offence punishable with two or more than two years of imprisonment", as defined in Section 68 para. (1) of the AP. The term of data handling is also defined by Section 84 items i)-n) of the AP. Thus, medical or special data may only be handled on the basis of Section 68 para. (1) of the AP in compliance with the requirements set out in the Act, in strict adherence to the desired objective.

If the police request on the basis of Section 68 para. (1) of the AP from the organisation handling medical data the supply of personal data not qualifying as special data, then Section 77 para. (2) and Section 79 para. (1) of the AP shall also apply to the handling of data. Section 68 para. (1) of the AP defines the aim of data handling: data may be supplied "in order to investigate an intentional criminal offence punishable with two or more than two years of imprisonment." Section 79 para. (1) of the AP defines the scope of personal data that may be handled by the police. According to Section 79 para. (1) and Section 68 para. (1) of the AP, the supply of data may only cover personal data "related to the case". Personal data obtained this way, pursuant to Section 68 para. (1) of the AP, may only be "used for the designated purpose", and the police – according to Section 77 para. (2) of the AP – "may not use the obtained data for purposes other than criminal law enforcement, and they may not forward such data." Thus, Section 68 para. (1) of the AP defines in detail the conditions and the aim of

data supply even for the supply of personal data not qualifying as special data, stating that the police may only use personal data in adherence to the purpose set out in the Act.

Consequently, Section 68 para. (1) of the AP does not violate the right to the protection of personal data, as it only allows the handling of data for a specific purpose and when it is necessary for achieving the desired objective and in proportion with that objective.

1.2.2. The petitioner also objects to the alleged violation of the right to the protection of personal data regarding Section 23 para. (3) of the AMD, referring to the obligation of the attending physician to inform the investigating authority on the medical and related personal identification data in connection with the case concerned, of persons attended by him or her. In line with Section 68 para. (2) of the AP, Section 23 para. (3) of the AMD provides that the physician is obliged to supply data at the request of the investigating authority even without the consent of the public prosecutor.

The requirements set out in paras (1) and (2) are also applicable in the case of supplying data in accordance with Section 23 para. (3) of the AMD. Section 23 paras (1)-(2) of the AMD lay down the requirements that requesting organs shall comply with when they request data from the attending physician. According to Section 23 para. (1) of the AMD, the requested medical and personal identification data must be indicated in the request for data supply in accordance with Section 4 para. (4) of the AMD. Pursuant to Section 4 para. (4) of the AMD, only medical or personal identification data of such types and quantity as is absolutely necessary for the achievement of the purpose of data handling may be handled. According to Section 23 para. (2) of the AMD, the request must specify the exact aim of the data supply and the scope of the data requested. Therefore, the scope of organisations entitled to handle data, the aim of data handling and the scope of requested data, as well as the requirement of data handling being performed in adherence to the desired objective are defined by the AMD in its Section 23 as a whole. In addition, handling data in accordance with Section 23 para. (3) of the AMD is restricted by the fact that it may only be performed, as provided in Section 68 para. (2) of the AP, if “delay would entail danger and the case is in connection with trafficking in drugs, terrorism, illegal trafficking in weapons, money laundering or organised crime.” Beyond the provisions under Section 68 para. (2) of the AP, other guaranteeing provisions of the AP related to data handling are also applicable when the police as an investigative authority requests from the attending physician the handing out of medical and related data, and when,

upon such request, the physician supplies data to the investigative authority. As a consequence, in accordance with Section 23 para. (3) of the AMD, data may only be supplied if the requirements of constitutional data handling resulting from the fundamental right to the protection of personal data are met. Thus, Section 23 para. (3) of the AMD is not in conflict with the right to the protection of personal data.

1.2.3. The petitioner also challenges Section 24 para. (1) of the AMD, which imposes a reporting obligation on the attending physician in cases where the person concerned has suffered an injury the healing of which is expected to last for more than 8 days, and the injury is presumed to be the result of a criminal offence. The reporting obligation of the attending physician covers the personal identification data of the data subject, and this obligation is to be exercised towards the police.

Section 4 of the AMD defines the aim of data handling ordered by the AMD. In line with Section 4 para. (2) item g) of the AMD, medical and related personal identification data may be handled, in the cases defined in Acts of Parliament, for purposes of criminal law enforcement, and – within the scope of the authorisation to perform specific tasks defined in the AP – for purposes of crime prevention. Data supply by the attending physician in accordance with Section 24 para. (1) of the AMD also serves the purpose of criminal law enforcement defined in Section 4 para. (2) item g) of the AMD. The supply of data by the attending physician is indispensable for investigating the crime that has caused the injury. However, the reporting of the personal identification data of the data subject only constitutes data supply to the extent necessary for reaching the desired objective of criminal law enforcement. The reporting obligation vests no "criminal law enforcement tasks" with the attending physician. Commencing a criminal law enforcement procedure and investigating the criminal offence are to be done by the police based on the reported personal identification data. The attending physician plays no role in the above, and he or she is not obliged to supply data other than those used for personal identification. Thus, the physician's obligation of confidentiality is not violated when the attending physician reports to the police the personal identification data of a person who has suffered an injury the healing of which is expected to last for more than 8 days, and the injury is presumed to be the result of a criminal offence. Data supply by the attending physician is necessary for reaching the desired objective, it is proportionate to that, and as data handling adheres to the desired objective, it complies with the constitutional requirements resulting from the right to the protection of personal data.

1.2.4. With reference to the right to the protection of personal data, the petitioner also initiated the establishment of the unconstitutionality of Section 24 para. (4) of the AMD. This provision supplements the rules contained in Section 24 paras (1)-(3) of the AMD, and it is in connection to those rules that it allows data handling without the consent of the data subject. As data handling on the basis of Section 24 para. (1) of the AMD does not violate the right to the protection of personal data, and as para. (4) only contains provisions in line with para. (1), the latter provision is not in conflict with the fundamental right to the protection of personal data either.

2. The petitioner claims that the supply of personal data as allowed by the above statutory provisions is also contrary to Article 54 of the Constitution on the right to life and Article 70/D of the Constitution on the right to health.

The Constitutional Court indeed pointed out in its Decision 56/2000 (XII. 19.) AB that "the special protection of medical data is justified not only by the right to the protection of privacy and personal data, but also by the State's institutional obligation to protect life and health." Citizens can only consult their doctors with confidence if they are not afraid of others having access to their private secrets related to their state of health. As a consequence, the State must establish the statutory conditions for the protection of medical data." (ABH 2000, 527, 532)
The challenged statutory provisions basically allow the handling and forwarding of personal data not qualifying as medical data. However, there is no relevant constitutional link between the obligation of data supply concerning personal data not qualifying as medical data and the State obligation to protect life and health. The handling of personal data in itself restricts neither the constitutional right to life, nor the one to the highest level of physical and mental health.

At the same time, the challenged provisions allow the forwarding of medical data. However, as pointed out above, the handling of medical data may only be performed in strictly justified cases, and only in compliance with the constitutional requirements established for data handling. Consequently, neither is the stipulation of such an obligation of data supply in conflict with the State obligation to protect life and health.

Based on the above, the Constitutional Court has rejected the petition aimed at the establishment of the unconstitutionality and the annulment of Section 68 para. (1) of the AP and Section 23 para. (3) and Section 24 paras (1) and (4) of the AMD.

Budapest, 9 March 2004

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