Decision 17/2004 (V. 25.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition submitted by the President of the Republic seeking a preliminary constitutional review of certain provisions of an Act passed by the Parliament but not yet promulgated, the Constitutional Court has adopted the following

decision:

The Constitutional Court holds that Section 2 para. (2) as well as Sections 3 and 5 of the Act adopted by the 5 April 2004 session of the Parliament on measures related to the accumulation of commercial surplus stocks of agricultural products are unconstitutional.

The Constitutional Court publishes this Decision in the Hungarian Official Gazette.

REASONING

I

1. The President of the Republic, acting on the basis of Article 26 para. (4) of the Constitution, did not sign the Act of Parliament adopted by the 5 April 2004 session of the Parliament on measures related to the accumulation of commercial surplus stocks of agricultural products (hereinafter: the ACSS) but forwarded it to the Constitutional Court for examination. With reference to Section 1 item a), Section 21 para. (1) item b), and Section 35 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), the President of the Republic proposed that the Constitutional Court examine the ACSS, alleging in the petition the unconstitutionality of Section 2 para. (2) as well as of Sections 3 and 5 of the ACSS.

2. The petition raises constitutional concerns regarding various provisions of the ACSS – a statute issued for the implementation of certain regulations of the Commission of the European Union. The petition underlines that the objections relate to provisions the contents of which are not specified by community law but which fall into the independent legislative competence of the Parliament, and therefore, Article 2/A of the Constitution is not applicable in this case.

a) According to the petition, the ACSS violates Article 2 para. (1) of the Constitution by providing in Section 2 para. (2) – although Section 7 para. (1) provides that the Act shall enter

into force on the 45th day following its promulgation – for an inventory of stocks to be taken and declared as at 1 May 2004, and in the case of surplus stocks established under the relevant criteria, for a specific amount to be paid according to Section 3, qualifying as a single tax on products or property in view of the rule in Section 3 para. (3) of the ACSS. After the Parliament had adopted the Act at its session on 5 April 2004, the Speaker of the Parliament sent the text for signature to the President of the Republic on 7 April, wherefore, having regard to Section 7 para. (1) of the ACSS, the date of entry into force could not be earlier than the second half of May 2004. This means that the dates of performing certain acts as well as of incurring the relevant payment obligations of a tax nature would precede the entry into force of the ACSS. This regulatory method in the ACSS violates the principle of legal certainty.

b) The principle of legal certainty is also violated by Section 5 para. (3) of the ACSS, where a presumption is made about contracts signed after 1 January 2004, assuming an intention to accumulate stocks and a purpose of applying for multiple refunds, despite the fact that the accumulation of stocks had not been prohibited under the Hungarian law in force before the ACSS, and the regulations of the Commission shall only be binding upon their publication in the Official Journal of the European Union in Hungarian after the entry into force and the promulgation of the Accession Treaty.

c) According to the petition, Article 8 para. (2) of the Constitution is violated by Section 2 para. (2) of the ACSS, which provides that an implementing decree shall define the scope of market players obliged to take an inventory of and declare stocks as well as to fulfil the relevant payment obligation, and by Section 3 para. (2), pursuant to which the implementing decree may provide for exemptions from such payment obligation. The payment obligation is either based on Article 70/I of the Constitution or related to the right to property granted under Article 13 of the Constitution; in both cases, the payment obligation is to be regulated in an Act of Parliament. Therefore, no authorisation may be given to provide for this in a decree, with due regard to the fact that “neither the ACSS, nor the regulations of the Commission give clear guidance on the future contents of the implementing decree.”

II

1. In examining the issue, the Constitutional Court has drawn on the following provisions of the Constitution:

“Article 2 para. (1) The Republic of Hungary is an independent democratic state under the rule of law.”

“Article 8 para. (2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by law; such law, however, may not restrict the basic meaning and contents of fundamental rights.”

“Article 13 para. (1) The Republic of Hungary guarantees the right to property.”

“Article 70/I All natural persons, legal persons and unincorporated organizations have the obligation to contribute to public revenues on the basis of their income and wealth.”

2. The provisions of the ACSS challenged in the petition are the following:

“Section 2 para. (2) The market player specified – with due account to the criteria of risk analysis defined in Regulation 230/2004/EC of the European Commission – in the decree governing the implementation of this Act (hereinafter: the implementing decree) shall take an inventory of stocks as at 1 May 2004 according to the provisions under Section 5 and record the stocks by using the forms specified in the same decree. Stocks may also be defined on the basis of a value-based register.”

“Section 3 para. (1) If the market player establishes on the basis of an inventory count according to Section 2 para. (2) that it has surplus stocks, with due account to the criteria specified in the implementing regulation, using the daily average calculated from the stocks in 2002-2003, it shall make a declaration on such stocks as at 1 May 2004.

(2) The holder of surplus stocks shall – with the exceptions provided for in the implementing decree – make a single payment on account of such stocks. The method of calculation of the amount to be paid is defined by the relevant EC regulations.

(3) The market player shall – save in the case specified in para. (4) – declare its established payment obligation not later than 20 July 2004 to the Tax and Financial Control Authority (“*Adó- és Pénzügyi Ellenőrzési Hivatal*”, hereinafter: the APEH) by using the appropriate form, and at the same time, it shall fulfil its payment obligation to the account specified by the APEH and published in its official journal.

(4) By way of derogation from the provisions of para. (3), for products that fall within the scope of Regulation 60/2004/EC, the deadline for performing the obligations of declaration and payment shall be 20 July 2005 with regard to the stocks calculated in accordance with the above Regulation.

(5) The revenues from the payment obligation shall become part of the central budget.”

"Section 5 para. (1) Goods sold on the basis of a contract or a unilateral legal declaration made after 1 January 2004 with the purpose of decreasing the stocks that form the basis of the payment obligation shall be taken into account as part of the seller's stocks as at 1 May 2004.

(2) The following shall in particular be considered a contract decreasing the stocks that form the basis of the payment obligation under paragraph (1):

a) a contract of sale and purchase concluded with a right to purchase,

b) a contract aimed at the re-purchase of stocks sold or owned earlier,

c) a contract concluded with a party not actually engaged in such business activity before signing the contract, if the contract is concluded after the day of publishing the Notice of Information on inventory count in the Hungarian Official Gazette, and

d) a contract concluded with a business organisation in which the seller is a member or holds a stake (shares) exceeding the level of significant influence as defined in Section 289 of Act CXLIV of 1997 on Business Associations.

(3) In the cases mentioned in paragraph (2), the purpose specified in paragraph (1) shall be presumed. Evidence may be put forward to confute this presumption."

"Section 7 para. (1) This Act shall enter into force on the 45th day following its promulgation.

(2) The Government is hereby authorised to adopt a decree on the criteria of risk analysis, the rules of procedure and the method of calculation relating to inventory count as well as on the detailed rules of control."

III

The Constitutional Court has examined the connection between the ACSS and the legislation of the European Union as a preliminary question related to the constitutional examination of the ACSS.

1. According to Article 2 para. (2) of the Accession Treaty published as Annex I to Act XXX of 2004 (hereinafter: the A.) promulgating the treaty on the accession, together with other states, of the Republic of Hungary to the European Union, the treaty shall enter into force on 1 May 2004 provided that all the instruments of ratification have been deposited before that date. However, according to Article 2 para. (3), the institutions of the Union may, before accession, adopt the measures referred to in the specified articles of the Act of Accession. These measures would only enter into force subject to, and on the date of, the entry into force of the Treaty of Accession.

The A. entered into force on 1 May 2004 (Section 4).

According to the first paragraph of Article 41 of the Act of Accession, if transitional measures are necessary to facilitate the transition from the regulatory systems existing in the new Member States to that resulting from the application of the agricultural policy under the conditions set out in the Act of Accession, such measures may be adopted by the Commission.

Based on Article 2 para. (3) of the Accession Treaty as well as on Article 41 para. (1) of the Act of Accession, the Commission of the Union adopted Regulation 1972/2003/EC (Official Journal L 293, 11.11.2003; hereinafter: R.a), Regulation 60/2004/EC (Official Journal L 9, 15.1.2004; hereinafter: R.b), Regulation 230/2004/EC amending R.a (Official Journal L 39, 11.2.2004), and Regulation 735/2004/EC (Official Journal L 114, 21.4.2004).

2. According to paragraph (4) of the preamble of R.a, the purpose of adopting the rule concerned was to prevent agricultural goods in respect of which export refunds were paid before 1 May 2004 from benefiting from a second refund if exported to third countries after 30 April 2004.

Pursuant to Article 4 para. (1) of R.a, where no stricter legislation is applied at a national level, the new Member States shall levy charges on holders of surplus stocks of products in free circulation as at 1 May 2004.

According to Article 4 para. (2) of R.a, surplus stocks include products imported into, or originating from, the new Member States. The term “surplus stocks” also applies to products intended for the markets of the new Member States. The criteria to be taken into account when determining surplus stocks include, in particular, the averages of stocks available in the years preceding accession, the pattern of trade in the years preceding accession, and the circumstances in which stocks have been built up.

Pursuant to Article 4 para. (3), the amount of the charge referred to in paragraph (1) shall be determined on the basis of the *erga omnes* import duty rate applicable on 1 May 2004, and the charges collected shall be assigned to the national budget of the new Member State concerned.

Article 4 para. (4) calls for the new Member States to take, without delay, an inventory of stocks as at 1 May 2004 and, on the basis of that, to notify the Commission about the quantity of products in surplus by 31 July 2004 at the latest.

R.a was published in the Official Journal of the European Union on 11 November 2003, and the date of its entry into force was (according to Article 10) the same as that of the Accession Treaty.

The regulations amending R.a do not contain any rule important for the present constitutional review.

3. The preamble of R.b provides, among others, for the following:

- there is a considerable risk of disruption on the markets in the sugar sector by products introduced for speculative purposes into the new Member States before their accession and, therefore, provisions similar to those defined in R.a with regard to agricultural products are necessary,

- the quantities of surplus stocks of sugar and isoglucose must be eliminated from the market at the expense of the new Member States; surplus stocks will be determined by the Commission on the basis of the data on the period of 1 May 2000 to 1 May 2004,

- it is necessary to identify market players and individuals involved in major speculative trade transactions, and for that purpose, the new Member States must, by 1 May 2004, put in place a system that enables them to identify those concerned.

Pursuant to Article 5 para. (1) of R.b, under specific conditions, certain products stored on 1 May 2004 shall be subject to the duty rate applicable on the date of release for free circulation.

According to Article 6 para. (1) of R.b, the Commission shall determine, by 31 October 2004 at the latest, for each new Member State the quantity of sugar as such or in processed products, isoglucose or fructose exceeding the quantity regarded as normal stock as at 1 May 2004, and this surplus stock has to be eliminated from the market.

According to Article 6 para. (3) of R.b, the new Member States shall, by 1 May 2004, put in place a system for the identification of traded or produced surplus quantities of sugar as such or in processed products, isoglucose or fructose. The new Member States shall use that system to compel market players to eliminate from the market any surplus quantities by 30 April 2005 at the latest. The market players concerned shall provide a proof of complying with the above obligation, and if such proof is not provided, an amount shall be charged, which shall be assigned to the national budget of the new Member State.

Pursuant to Article 7 para. (1) of R.b, the elimination from the market of surplus stocks of the products concerned is an obligation of the new Member States. According to paragraph

(2), if elimination from the market is not performed by a new Member State, it shall be charged an amount to be calculated in a specific way.

R.b. was published in the Official Journal of the European Union on 15 January 2004 and, according to Article 9, it entered into force on 1 May 2004 in view of the date of entry into force of the Accession Treaty.

4. The above regulations of the Commission of the European Union have followed an established practice. In order to protect the stability of the market of agricultural products and to prevent speculative transactions, similar regulations were issued in 1985 when Spain and Portugal joined the Union, and in 1994 at the time of accession by Austria, Finland and Sweden. The European Court adopted a prior ruling on request by the Member States' courts with regard to the validity of these regulations as well as to the interpretation of the law of the Union (C-30/00, William Hinton & Sons LdS v Fazenda Pública [2001] ECR I-7511; C-179/00, Gerald Weldacher (Thakis Vertriebs- und Handels GmbH) v Bundesminister für Land- und Forstwirtschaft, [2002] ECR I-501). In the prior ruling adopted upon a petition by the Austrian court, the Court established, among others, that the regulation in question had been adopted by the Commission within the scope of its competence, the measure on surplus stocks was not considered a disproportionate restriction of rights, and market players had been informed in time on the expected measures concerning the stocks through the published text of the accession treaties.

5. On the basis of the above, the connection between the ACSS and the regulations of the European Union is as follows:

- R.a and R.b specify obligations for the new Member States rather than for their citizens,
- the ACSS serves the purpose of implementing the regulations of the European Union,
- there are several references in the ACSS to the rules in the regulations of the Union,
- the provisions of the ACSS challenged in the petition do not qualify as a translation or publication of the regulations of the Union, as they implement the aims of the regulations by using the tools of Hungarian law.

In view of the above, the question about the provisions challenged in the petition concerns the constitutionality of the Hungarian legislation applied for the implementation of the EU regulations rather than the validity or the interpretation of these rules.

IV

1. According to the petition, the retroactive provisions of the ACSS violate the requirement of legal certainty resulting from the principle of the rule of law granted under Article 2 para. (1) of the Constitution, by providing,

- on the one hand, for taking an inventory of stocks as at 1 May 2004 despite the fact that the expected date of entry into force of the Act was not earlier than the second half of May 2004, and by prescribing a tax-type payment obligation concerning the stocks existing as at that date [Section 2 para. (2), Section 3], and

- on the other hand, for the presumption of intended speculation in the case of contracts signed after 1 January 2004, although there had been no rule in force up to that time prohibiting the increase of stocks.

2. The entry into force of R.a and R.b is connected to the entry into force of the Accession Treaty, i.e. 1 May 2004. It was in view of this that Article 4 para. (4) of R.a published in the Official Journal of the European Union on 11 November 2003 and Article 6 para. (3) of R.b published in the Official Journal of the European Union on 15 January 2004 called upon the new Member States to put in place, by 1 May 2004 at the latest, a system ensuring the implementation of the regulations concerned.

The rules on the date of application of R.a and R.b exclude the application of these regulations before the entry into force of the Treaty of Accession, i.e. the date of the acceding countries becoming Member States of the Union. In line with the above is Decision 30/1998 (VI. 25.) AB of the Constitutional Court, examining the application of the laws of the European Union by the Hungarian law-applying authorities before Hungary's becoming a member of the Union, and establishing that with regard to the regulations of the Union, there is no obligation of their application without transposing them into Hungarian law (ABH 1998, 220, 234). Besides, R.a and R.b specify obligations for the new Member States rather for their citizens.

3. The Parliament adopted the ACSS at its session on 5 April 2004. The Speaker of the Parliament forwarded the Act to the President of the Republic with a priority request on 7 April 2004.

According to Article 26 para. (1) of the Constitution, the President of the Republic shall sign, and ensure the promulgation of, the Acts adopted by the Parliament. For that purpose,

the Constitution provides for a period of fifteen days or a period of five days in the case of a priority request.

According to Section 7 para. (1) of the ACSS, the Act shall enter into force on the 45th day following its promulgation. Having regard to the Act being sent by the Speaker of the Parliament to the President of the Republic on 7 April as well as to the deadline for promulgation set by the Constitution, the statutory date of entry into force would be later than 25 May 2004. However, the Act could have been promulgated in April 2004 had it been signed by the President of the Republic.

This means that the provision is retroactive concerning the commencement date of 1 January 2004 specified in Section 5 para. (1) of the ACSS and to be taken into account in the inventory count of stocks. As far as Section 2 para. (2) and Section 3 para. (1) of the ACSS as well as the subsequent provisions built thereupon are concerned, if the Act had been signed and promulgated, the promulgation could have preceded the action to be performed from 1 May 2004 and the application of its consequence; therefore, no retroactive effect can be established. However, in this case, too, one should examine whether there would have been sufficient time to prepare for the application of the statute.

For examining the constitutionality of the Act, it is irrelevant that on 23 March 2004, a few days before the adoption of the ACSS by the Parliament, the Ministry of Agriculture and Rural Development, the Ministry of Economy and Transport, the Ministry of Finance, and the Ministry of Foreign Affairs published in issue 33/2004 of the Hungarian Official Gazette, in the section of communications and announcements, a joint communication on the inventory count of stocks of agricultural and food products in Hungary. R.a, the amendment of 11 February 2004 to R.a, and the text of R.b were annexed to the communication for the purpose of information, noting that the official Hungarian version of these regulations shall be included in the special Hungarian language issue of the Official Journal of the European Union. The communication contains, among others, the following:

“The aim of this communication is to call, in advance, the attention of producers and traders to the regulations of the European Commission to be put into force on 1 May 2004 in all new Member States, including Hungary. By that, we would like to make it possible for the market players concerned to avoid the accumulation of stocks that may have negative consequences. Product quantities sold with the purpose of decreasing stocks on the basis of a contract or a unilateral legal declaration concluded after 1 January 2004 are to be included in the stocks taken as at 1 May 2004.”

The communication did not contain the implementing provisions based on R.a and R.b.

With regard to the examination of the constitutionality of an Act adopted by the Parliament but not yet promulgated, it has no relevance that in Government Decree 103/2004 (IV. 27.) Korm. on the inventory count of stocks of agricultural and food products, the Government provided – after the ACSS had been sent to the Constitutional Court for constitutional review – for rules that serve the purpose of implementing R.a. and R.b.

4. According to Section 12 para. (2) of Act XI of 1987 on Legislation, no statute may provide for an obligation as effective on any date preceding the promulgation of the statute, and it is stated in para. (3) that the date of entry into force is to be determined with due account to the time needed to prepare for the application of the statute.

According to the practice of the Constitutional Court followed since the very beginning of its operation, the requirement of legal certainty is an indispensable element of the principle of a democratic State under the rule of law provided for in Article 2 para. (1) of the Constitution [Decision 34/1991 (VI. 15.) AB, ABH 1991, 170, 173, Decision 7/1992 (I. 30.) AB, ABH 1992, 45, 48]. Legal certainty requires, among other things, the determination of citizens' rights and obligations in statutes promulgated in a way specified in an Act of Parliament and made accessible for everyone and, in addition, statutes may not define obligations for a time period preceding their promulgation, and no lawful act may be declared illegal with retroactive effect, in order to allow the subjects of law to adapt their conduct to the legal provisions they have access to. The same principle applies to both the definition of obligations and the determination of liability: no rule can be considered constitutional if it is to be applied without allowing the persons concerned to have access thereto at a date when they have enough time to adapt their conduct to the requirements without facing negative consequences [Decision 25/1992 (IV. 30.) AB, ABH 1992, 131, 132].

It was repeatedly pointed out by the Constitutional Court that the principle of the rule of law requires the determination of the date of entry into force of a statute in a way allowing the persons concerned to become familiar with the statute, to prepare for its application, and to adapt to the new regulations. The time needed for preparation (i.e. the time between the promulgation and the entry into force of the statute) is to be determined on a case-by-case basis. The legislature has to consider the period of time absolutely necessary with due account to the specific features of the given case [Decision 28/1992 (IV. 30.) AB, ABH 1992, 155, 156-158, Decision 723/B/1998 AB, ABH 1999, 795, 798-800, and Decision 10/2001 (IV. 12.) AB, ABH 2001, 123, 130].

According to Decision 44/B/1996 AB, in the case of a statute providing for a payment obligation, the Constitutional Court assesses the time necessary for preparation on the basis of Section 10 para. (4) of Act XXXVIII of 1992 on Public Finance (hereinafter: the APF) (ABH 2001, 856, 860). This statutory provision provides for the following: "in the case of statutes related to payment obligations, to the scope of those obliged to pay, or to the amount of payment obligations, at least 45 days are to lapse between the promulgation and the entry into force of the relevant statute, save if the statute concerned decreases the payment obligation without extending the scope of payment obligations or that of persons obliged to pay."

Section 7 para. (1) of the ACSS specifying the 45th day following promulgation as the date of entry into force of the Act is in line with the above mentioned provision of the APF as well as with the practice of the Constitutional Court. However, even in the case of the ACSS being promulgated in mid-April 2004, the payment obligation rule in Section 3 of the ACSS fails to meet the above requirements, as it provides for taking into account the quantity of products and the inventory of stocks as at 1 May 2004 (see Section 2 para. (2) and Section 3 para. (1)). In that case, the time available is insufficient for preparation. Section 5 para. (1) of the ACSS is considered to further violate the above requirements since it defines the basis of the inventory count of stocks for the payment obligation by taking into account the quantity of products covered by the contracts concluded after 1 January 2004 and specified in Section 5 para. (2).

Consequently, the provisions under Section 2 para. (2), Section 3 para. (1) and Section 5 para. (1) as well as the other related provisions of Sections 3 and 5 violate the principle of legal certainty provided for in Article 2 para. (1) of the Constitution.

As the Constitutional Court has established the unconstitutionality of Section 5 of the ACSS, it is unnecessary to examine the interpretability of the rule on presumption in Section 5 para. (3).

V

1. The petition challenges the rules in the ACSS on the adoption of the implementing regulation. In view of the fundamental right protected under Article 13 para. (1) of the Constitution and the fundamental obligation defined in Article 70/I, it argues that a tax-type payment obligation may only be regulated in an Act of Parliament, and any different provision would violate Article 8 para. (2) of the Constitution. According to Section 2 para. (2) of the ACSS, the scope of market players is to be defined in the decree implementing the

Act, and Section 3 para. (2) provides for a payment obligation but with exceptions to be defined in the implementing decree.

The petition raises constitutional concerns about the inexact wording of Section 2 para. (2) and Section 3 paras (1) and (2) of the ACSS with regard to the implementation of the Act. In this context, it also raises concerns about Section 7 para. (2), where the authorisation of the Government to adopt a decree is not extended to the cases listed under Section 2 para. (2) and Section 3 paras (1) and (2).

However, it is stated in the petition that "the authorisation given to the Government in Section 7 para. (2) is clear-cut and close-ended". "Despite the uncertainties, one can establish beyond doubt the scope of issues in the case of which the ACSS allows regulation at the level of the implementing decree." Furthermore, "in the matters of calculation and procedure specified in Section 7 para. (2) of the ACSS, regulation at the level of a Government Decree would suffice."

Based on the above, the Constitutional Court, having regard to the statements of the petition referred to above, has examined Section 2 para. (2) and Section 3 paras (1) and (2) of the ACSS, aiming to clarify whether the reference to the implementing decree in the relevant rules of the ACSS allows regulation below the level of an Act of Parliament, and whether Article 8 para. (2) of the Constitution is violated by adopting an implementing decree below that level.

2. Section 2 para. (2) and Section 3 paras (1) and (2) of the ACSS do not provide for the place in the legislative hierarchy of the statute to be adopted as the implementing decree. However, the Constitutional Court has presumed that a reference in an Act of Parliament to an implementing decree means in the legislative practice a regulation below the level of an Act of Parliament.

In respect of the issue to be regulated by the implementing decree, the nature of the payment obligation referred to in Section 3 para. (2) of the ACSS has a crucial role. The rule concerned only mentions a payment obligation without defining its legal nature; it merely refers to the regulations of the European Union. Pursuant to Section 3 para. (3) of the ACSS, the statement is to be submitted to the Tax and Financial Control Authority, and payment is to be performed to the account specified by the Authority. This refers to the payment obligation being of a tax nature.

With regard to the amount and the way of calculation of the payment obligation, Section 3 para. (2) of the ACSS refers to the regulations of the Union. The relevant regulations of the

Union use, without any legal qualification, the terms of levying “deterrent charges” [paragraph (3) of the preamble of R.a], and “charge” [Article 4 paragraph (1) of R.a and Article 6 paragraph (3) of R.b].

It was pointed out in Decision 821/B/1990 of the Constitutional Court interpreting Article 70/I of the Constitution that public burdens include public payments that may be levied for the benefit of the State. The provision under Article 8 para. (2) of the Constitution providing that the rules on fundamental rights and obligations are to be defined in Acts of Parliament applies to the regulation of such public payments as well (ABH 1994, 481, 486). The same position is set out in Decision 56/1993 (X. 28.) AB, declaring that any payment obligation imposed on the subjects of law for the benefit of the State budget affects fundamental rights, and therefore it is to be regulated in an Act of Parliament based on Article 8 para. (2) of the Constitution. Where the relationship with fundamental rights is indirect and remote, regulation in the form of a decree is sufficient. However, when the scope of subjects or the content of the payment obligation concerned is at stake, the Parliament is to decide in the form of an Act of Parliament (ABH 1993, 345, 346-347).

Thus, according to the practice of the Constitutional Court, the fundamental rules concerning a payment obligation that qualifies as public burden are to be defined in an Act of Parliament. Section 10 para. (3) of the APF provides for the same. The above requirement concerning the level of legislation applies to defining the scope of persons obliged to take an inventory of stocks as the basis of the payment obligation for the benefit of the State budget specified in Section 3, as well as to defining the cases exempted from the payment obligation, since such rules affect fundamental rights and obligations. Therefore, Article 8 para. (2) of the Constitution is violated when such issues are regulated in an implementing decree instead of an Act of Parliament. Consequently, the rule allowing regulation in a decree as specified in the first sentence of Section 2 para. (2) and Section 3 para. (2) of the ACSS is unconstitutional as it deviates from the above principle. The unconstitutionality of the other paragraphs in Section 3 has been established by the Constitutional Court on the basis of their close relation with Section 2 para. (2) and with the first sentence in Section 3 para. (2).

Having regard to the importance of the position in principle included herein, the Constitutional Court publishes this Decision in the Hungarian Official Gazette.

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