Decision 35/2002 (VII. 19.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition seeking a posterior examination of the unconstitutionality of statutory provisions, the Constitutional Court has – with concurring reasoning by Dr. Árpád Erdei and Dr. Attila Harmathy, Judges of the Constitutional Court, and a dissenting opinion by Dr. László Kiss and Dr. István Kukorelli, Judges of the Constitutional Court – adopted the following

decision:

1. The Constitutional Court holds that Section 82 para. (5) of Act CXLV of 2000 on Sports is unconstitutional, and therefore annuls it as of 31 December 2002.

2. The Constitutional Court holds that the provision in the first sentence of Section 85 para. (4) of Act CXLV of 2000 on Sports, allowing the organisers of sports events of the same type or similar types to request camera-made or other recordings, is unconstitutional, and therefore – in view of the above as well as the context – the entire paragraph (4) is annulled as of 31 December 2002.

3. The Constitutional Court rejects the part of the petition aimed at the establishment of the unconstitutionality and at the annulment of Section 82 paras (4) and (6), Section 84 para. (2), Section 85 paras (2), (3), (5), (6) and (7) item f) of Act CXLV of 2000 on Sports.

4. The Constitutional Court terminates the procedure in respect of the parts of the petition aimed at the review of the unconstitutionality of Section 82 paras (1), (2) and (3), Section 83, Section 84 paras (1), (3) and (4), furthermore, Section 85 para. (1), para. (7) with the exception of item f), and paras (8) to (10) of Act CXLV of 2000 on Sports, as well as of Sections 7, 11 and 14 of Government Decree 33/2001 (III. 5.) Korm. on the Safety of Sports Events.

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

Reasoning

I.

1. The petitioner asked for establishing the unconstitutionality of and for annulling Sections 82 to 85 of Act CXLV of 2000 on Sports (hereinafter: the AS) as well as Sections 7, 11 and 14 of Government Decree 33/2001 (III. 5.) Korm. on the Safety of Sports Events (hereinafter: the GD). In the opinion of the petitioner, the challenged provisions of the AS and the GD, aimed at combating sports hooliganism, violate the constitutional rules on legal certainty, the protection of personal data, and the right to fair trial.

Upon request by the Constitutional Court, the Minister of Youth and Sports Affairs presented his position, and the Minister of Foreign Affairs supplied information about the applicability in Hungary of the "European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches".

2. According to Section 22 para. (2) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), the petition must contain a definite request in addition to the specification of the cause serving as the basis of the request. As the petition had not complied with the above requirement in respect of each of the provisions objected to, the Constitutional Court adopted a ruling setting a forfeit deadline and calling upon the petitioner to submit a proper request.

The petitioner complied with the call of the Constitutional Court within the specified deadline. In the new petition, the petitioner maintained the request for a posterior review of the unconstitutionality of Section 82 paras (4), (5) and (6), Section 84 para. (2) as well as Section 85 paras (2), (3), (5) and (6) only, and withdrew the remaining part of the former petition.

The petitioner objected to Section 82 para. (4) of the AS by claiming that it violated legal certainty and the constitutional right to the freedom of movement to provide that the spectator may, on account of football hooliganism, be prevented for two years from visiting other sports events, too, and that he may be prevented from visiting a certain sports facility for five years,

thus preventing him from participating “at a mass, exhibition, fair, or political gathering” held there.

The petitioner challenged Section 82 para. (5) of the AS on the ground of it violating the constitutional principle of fair trial. He complained about the statutory regulation concerned prescribing that one may, for legal remedy, turn to the consumer protection authorities “and” the Permanent Court of Sports Arbitration only together.

The petitioner claimed that the term [the spectator’s act] “would have posed a disproportionate threat” [to the security of the sports event] in Section 82 para. (6) of the AS violated the requirement of the clarity of legal norms.

With regard to Section 84 para. (2) of the AS, the petitioner objected to the regulation obliging the organiser to “prevent the entry of a spectator not allowed to enter”, and claimed that the lack of a provision in the AS on “informing correctly in advance the spectators who do not understand the Hungarian language” was contrary to the principle of legal certainty.

With respect to Section 85 paras (2)-(3) and (5)-(6) of the AS, the petitioner referred to the violation of the right to informational self-determination. He complained about total surveillance during the matches, and about storing for 30 days the data of persons monitored even if there was no criminal offence or administrative infraction. The petitioner also objected to the fact that in the case of “data mismatch”, the spectator was not allowed to enter the sports event.

The petitioner supplemented the above petition and extended his request to the establishment of the unconstitutionality and the annulment of Section 85 para. (4) and para. (7) item f) of the AS. He complained about the text in Section 85 para. (4) rendering possible the flow among the organisers of sports events of data of spectators not committing any unlawful act, without the realisation of the constitutional guarantees of data protection. Concerning Section 85 para. (7) item (f) of the AS, the petitioner raised objection to the recording of the descriptions of spectators prohibited to enter the sports event.

II.

The Constitutional Court has based its decision laid down in the holdings on the following statutory provisions.

1. According to Article 2 para. (1) of the Constitution the Republic of Hungary is an independent democratic state under the rule of law.
Article 57 para. (1) of the Constitution – among fundamental rights – provides for the following: "In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law."
Article 58 para. (1) of the Constitution states that "Everyone legally staying or residing in the territory of the Republic of Hungary – with the exception of the cases established by law – has the right to move freely and to choose his whereabouts, including the right to leave his domicile or the country."
Article 59 para. (1) of the Constitution provides that "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."
According to Article 70/D of the Constitution:
"(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 Republic of Hungary shall implement this right through institutions of labour safety and health care, through the organisation of medical care and the opportunities for regular physical activity, as well as through the protection of the urban and natural environment."

Pursuant to Article 8 para. (2) of the Constitution "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."

2. Section 2 item 1 of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (hereinafter: the DPA) gives a definition of personal data.
Pursuant to this provision, personal data "shall mean any information that can be brought into relation with a specific natural person (hereinafter referred to as 'data subject') and any inference drawn, whether directly or indirectly, 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."

Section 3 paras (1)-(2) of the DPA provide for the handling of personal and special data as follows:
"(1) Personal data may be handled if
a) the data subject has given his consent, or
b) it is ordered in an Act of Parliament or – if authorised by an Act of Parliament and in the scope defined therein – in a local government decree.
(2) Special data may be handled if
a) the data subject has given his explicit consent in writing, or
b) prescribed by an international treaty concerning the data specified in Section 2 item 2 a), or if ordered by an Act of Parliament in connection with the enforcement of a constitutional right or for the purposes of national security, crime prevention or law enforcement;
c) ordered by an Act of Parliament in other cases."

According to Section 2 item 4 a) of the DPA, data handling shall mean "independently from the procedure applied, the collection, recording, storage, processing, use (including forwarding and disclosure) or deletion of personal data. Data handling shall also include the alteration of data and blocking them from further use."

Section 5 para. (1) of the DPA provides that "Personal data may only be handled for a particular purpose, exercise of rights or fulfilment of obligations. Each phase of data handling shall comply with this purpose."

Section 12 para. (1) of the DPA regulates the rights of the data subjects and the enforcement thereof: "Upon the data subject's request the data handler must provide information on the data relating to him, including those processed by a data processor appointed by the data handler, on the purpose, grounds and duration of data handling, the name and address (corporate address) of the data processor and on the activities related to data handling, as well as on the recipients of the data and the purpose for which they are or were transferred. The duration for which records must be kept on the data transferred, and in consequence the obligation of information may be limited by the statutory regulation on data handling. The

period of restriction shall not be less than five years in respect of personal data, and twenty years in respect of special data."

3. The provisions of the AS challenged by the petition are the following:

"Section 82 para. (1) The organiser shall, on the territory of the sports facility, display an easily recognisable announcement on the general terms and conditions of visiting the sports event. A summary of the general terms and conditions shall be displayed on the entrance tickets and season tickets.

(2) If the sports event has been cancelled, the price of the entrance ticket shall be reimbursed within three working days. If the sports event is interrupted, the ticket shall be valid for the repeated sports event.

(3) In the case of a sports event organised by the same organiser, the organiser may refuse to sell an entrance ticket to a person removed from a former sports event, or may prevent him from participating at the sports event (hereinafter jointly: prohibition from visiting certain sports events). The possibility of prohibition from visiting certain sports events shall be mentioned in the general terms and conditions specified in paragraph (1).

(4) The duration of prohibition from visiting certain sports events shall be a maximum of two years when applied to all sports events organised by the organiser, and a maximum of five years when applied to a specific sports facility.

(5) The decision of the organiser on prohibition from visiting certain sports events may be appealed against at the territorially competent consumer protection authority and the Permanent Court of Sports Arbitration.

(6) A person who should have been removed according to Section 84 para. (2) item *c)* but in respect of whom intervention by the organisers at the location of the sports event was cancelled as it would have resulted in an expected action of the spectators posing a disproportionate threat to the security of the sports event may also be prohibited from visiting certain sports events.

Section 83 para. (1) The organiser may conclude a contract with a managing organisation or a steward to manage the sports event, to maintain order on the site, and to secure the conditions for management (hereinafter: management).

(2) In the case of a managing organisation, an assignment as specified in paragraph (1) is conditional upon the employment of a steward who complies with the requirements specified in this Act.

(3) The managing organisation shall be a private enterprise or a company falling within the scope of Act IV of 1998 on the Regulation of Activities of Personal and Property Protection and Private Investigation and on the Professional Chamber of Personal and Property Protection and Private Investigation; while a steward may only be a person with no criminal record.

(4) The steward shall bear an outer mark to identify him as such.

(5) The managing organisation and the steward shall follow the orders of the organiser. The by-laws of the organiser and the terms and conditions specified in the call for tenders qualify as orders.

(6) The organiser shall regularly prepare the steward for maintaining the order of the sports event and for co-operation with the police. For the purposes of such training the organiser may use the services of the police, as specified in a separate statute.

(7) A separate statute may specify the sports events in the case of which

a) it is compulsory to have a managing organisation or steward;

b) the organiser shall be bound to take out liability insurance for the participants of the sports event.

(8) The sports events specified in accordance with paragraph 7 item *b)* shall not be held without liability insurance. The existence of the liability insurance shall be indicated on the entrance ticket.

Section 84 para. (1) The spectator shall be allowed to enter the site of the sports event if he

a) holds a valid entrance ticket, season ticket or other certificate entitling him to enter the site of the sports event;

b) is apparently not under the influence of alcohol, drugs or other narcotic substance;

c) takes with him no alcohol, narcotic drugs, or any object that might endanger the holding of the sports event or the personal safety or the property of others, or one the entry of which had been prohibited by the organiser before the sale of the entrance ticket and the organiser had duly informed the buyer of the ticket thereon;

d) holds no inscription or flag that could raise hatred against others, or a symbol of despotism prohibited by law;

e) holds no object or tool the possession of which would qualify him, according to the provisions of a separate statute, as appearing in an armed manner or with weapons.

(2) The organiser shall

a) prevent the participant from entering the sports event in the case of not meeting any of the conditions specified in paragraph (1), or in the case of conduct specified in item *b)* of this paragraph;

b) call upon the participant who endangers the holding of the sports event or the personal safety or the property of others, or who behaves in a racist or hatred-raising manner, to stop that conduct;

c) remove the participant from the site of the sports event if the conditions specified in paragraph (1) are not met, or if the warning according to point *b)* was in vain, or in the case of non-compliance with Section 87 para. (1).

(3) The police forces in charge and the employees of the managing organisation may apply coercive measures, as specified in a separate statute, against the participant of a sports event, and may check persons or packages.

(4) In cases specified in a separate statute, proportionate physical force may be used by the employee of the managing organisation as well.

Section 85 para. (1) For the purpose of protecting the personal safety and the property of the participants, the organiser shall use surveillance cameras on the site of the sports event in cases specified by a separate statute.

(2) The fact of camera surveillance and recording shall be communicated to spectators by a clearly recognisable announcement in the sports facility, and a relevant notice must also be printed on the entrance ticket or season ticket.

(3) For the purpose of facilitating a criminal procedure or one pertaining to administrative infraction, the organiser

a) may make a recording of the participants of the sports event with a camera or by other means, and shall store the recording for thirty days;

b) may apply a security entry and checking system suitable for the individual identification of spectators (hereinafter: entry system);

c) may keep a register of persons prohibited from visiting certain sports events.

(4) The person affected and the organiser of sports events of the same type or similar types – in addition to the State's authorities specified in a separate statute – may request the recording made in accordance with paragraph (3) point *a)* and data from the register specified in paragraph (3) item *c)*. The communication of data upon request by the affected person shall be subject to Section 12 para. (1) of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest.

(5) In the case of applying an entry system, the organiser may only sell entrance tickets or season tickets bearing the name of the spectator.

(6) In the case specified in paragraph (5), the organiser shall verify – through an employee of the managing organisation – the personal identity of the holder of the ticket or season ticket and compare it with the personal data indicated on the ticket or season ticket. If the data do not match, entry shall be denied.

(7) In the register specified in Section (3) item *c)*, the organiser shall enter a short description of the affray, and the following personal data suitable for identifying persons prohibited from visiting certain sports events and persons banned on the basis of criminal law or the regulations pertaining to administrative infractions:

a) name,

b) mother's name,

c) place and date of birth,

d) permanent and temporary residence addresses, address of stay,

e) identification card number,

f) description of the person.

(8) The register specified in paragraph (3) item *c)* shall contain – in addition to the data specified in paragraph (7) – the duration of the prohibition from visiting certain sports events, or the duration of the ban based on criminal law or the regulations pertaining to administrative infractions.

(9) The register specified in paragraph (3) item *c)* can be a printed or electronic one.

(10) The organiser shall destroy the recordings made in accordance with paragraph (1) upon the expiry of the duration specified in paragraph (3) item *a)*".

III.

In the opinion of the Constitutional Court, the petition is in part well-founded.

1. The Constitutional Court first examined the constitutionality of the provisions of the AS on the protection of personal data [Section 85 paras (2) to (7)]. The petitioner complains about the non-realisation of the constitutional guarantees for data protection, with regard to the obligatory general application of the camera system and the registration of banned spectators.

1.1. According to Article 8 para. (2) of the Constitution, Acts of Parliament define the rules concerning fundamental rights and duties, which, however, may not restrict the essential content of fundamental rights. In its Decision 15/1991 (IV. 13.) AB (hereinafter: the CCD), the Constitutional Court interpreted the right to the protection of personal data, having regard to its active aspect as well, as a right to informational self-determination rather than as a traditional protective right. Thus, the right to the protection of personal data, as guaranteed by the above-mentioned Article 59 of the Constitution, means that everyone has the right to decide about the disclosure and use of his personal data. Hence, approval by the person concerned is generally required for the registering and use of personal data; the entire route of data processing must be monitorable and checkable by the person concerned, i.e. everyone has the right to know who, when, where and for what purpose uses his personal data. In exceptional cases, an Act of Parliament may require the compulsory supply of personal data and prescribe the manner in which these data may be used. Such an Act restricts the fundamental right to informational self-determination, and such restriction is only constitutional when in accordance with the requirements specified in Article 8 of the Constitution. (ABH 1991, 40, 57).

According to the permanent criterion set by the Constitutional Court, the constitutional restriction of any fundamental right must be made on the ground of a forcing necessity and in a proportionate manner. The requirement of proportionality includes the application of the least restrictive appropriate tool. [Decision 20/1990 (X. 4.) AB, ABH 1990, 69, 71]

It is clear from the relevant provisions of the AS that the camera surveillance of spectators and the recording of such surveillance are performed in order to prevent and eliminate conduct that threatens the security of persons and property, as well as racist and hatred-raising actions, i.e. for the purpose of protecting other fundamental rights – such as human life, dignity and health – and constitutional values.

It is referred to in Section 16 of the DPA that an Act of Parliament may restrict the rights of the data subject – in addition to other causes specified – in order to prevent crime or for the purpose of criminal investigation, furthermore, in the interest of protecting the rights of the data subject or those of other persons.

On the basis of the above, the Constitutional Court has concluded that although the provisions in Section 85 paras (2)-(3) and para. (7) item f) of the AS on the application of a so-called camera system at the locations of sports events and on the registration of banned spectators do restrict the spectators' right to informational self-determination, taking into account the desired objective of the restrictive provision, it is not an unnecessary and disproportionate restriction of the spectators' right to informational self-determination, and therefore it is not unconstitutional.

1.2. The petitioner also challenges Section 85 para. (4) of the AS regulating data handling by the organiser (steward) of a sports event, claiming a violation of the constitutional requirement of being bound to a specific purpose.
This provision allows the persons affected, the organisers of sports events of the same type or similar types as well as the State authorities specified in a separate statute to request recordings made by cameras and the register of persons prohibited from visiting certain sports events.

Although the separate statutes contain provisions on data handling by State authorities, they are not challenged by the petitioner. With regard to the handling of data upon request by the affected person, the provisions of the AS under review provide for the application of the manifold guarantees specified in Section 12 para. (1) of the DPA referred to above to the affected persons' rights and to the enforcement thereof. Section 85 para. (4) of the AS does not provide for the application of data handling (data protection) regulations concerning the organisers of sports events of the same type or similar types.

According to the CCD, being bound to the purpose to be achieved is a condition of and, at the same time, the most important guarantee for exercising the right to informational self-determination. The enforcement of this principle means that personal data may only be processed for a clearly defined and lawful purpose. Each phase of data processing must comply with the notified and authentically recorded purpose. The purpose of data processing must be communicated to the data subject in a manner making it possible for him to assess the effect of data processing on his rights, to decide with due basis on the disclosure of data, and to exercise his rights in the case of the use of data for a purpose other than the specified one. Consequently, the data subject must be notified of the changing of the purpose of data processing. Data processing for a new purpose without the consent of the data subject is only

lawful if it is expressly provided for in an Act of Parliament with respect to the specific data and data processor. It follows from the principle of being bound to the purpose that collecting and storing data without a specific goal, "for the purpose of storage", i.e. for unspecified future use are unconstitutional. (ABH 1991, 40, 41-43)

The provision in Section 85 para. (4) of the AS allowing the forwarding of data on all spectators to the organisers of sports events of the same type or similar types – presumably according to the legislature's intention – is a preventive measure to eliminate a potential future threat of affray. According to the Constitutional Court, the constitutional requirement of being bound to the purpose demands the existence of not a potential threat, but an actual and direct one. The provision under review cannot be justified on constitutional grounds, since it also allows the forwarding of the recording of persons other than the ones prohibited from visiting certain sports events, and since the forwarding of such recordings, qualifying as personal data, to organisers of sports events of the same type or similar types is also allowed, without the guarantees of data protection. Thus, the challenged regulation is aimed at the prevention of a remote and abstract danger, and it is for this purpose that it requires, without due constitutional guarantees, the handling of data "to be stored". On the basis of the above, the Constitutional Court has established that the reference in Section 85 para. (4) of the AS to recordings made in accordance with paragraph (3) item a) is, in respect of the organisers of sports events of the same type or similar types, an unnecessary and disproportionate violation of the requirement of being bound to the purpose as a constituent of the right to informational self-determination, and, on the basis of partial unconstitutionality bearing influence on the whole of the first sentence of the norm concerned, it has annulled the complete first sentence of Section 85 para. (4).
Together with the unconstitutional provisions of the statute, the statutory provisions allowing the two other categories of data users to request recordings and all three categories of data users to request the register of banned spectators have also been annulled, although they are not deemed by the Constitutional Court to constitute an unnecessary and disproportionate restriction of the right to informational self-determination.

Pursuant to Section 40 of the ACC, when the Constitutional Court establishes the unconstitutionality of a statute, it shall be annulled in part or completely. When the partial annulment of an unconstitutional provision is not possible due to the intratextual relations and the aspects of the practical applicability of the statute, the Constitutional Court shall – in line

with its practice – annul, as a consequence of unconstitutionality, the complete provision under review. [Decision 3/1994 (I. 21.) AB, ABH 1994, 59, 62; Decision 6/1997 (II. 7.) AB, ABH 1997, 67, 71; Decision 12/2002 (III. 20.) AB, ABK March 2002, 126, 130]

In view of the normative structure and intratextual relations of the first sentence in Section 85 para. (4) of the AS under review, its partial annulment would not have been possible without endangering legal certainty. The first sentence in Section 85 para. (4) of the AS provides for access to the recordings made in accordance with paragraph (3) item a), and to data from the register specified in item c) for all three categories of users, namely, the affected persons, the State authorities specified in a statute, and the organisers of sports events of the same type or similar types. Due to the sentence structure of the above legal provision, the declaration of the unconstitutionality of the possibility of access for only one of the user categories (the organisers of sports events of the same type or similar types) to the recordings made in accordance with paragraph (3) item a) did not make it possible to annul the unconstitutional part of the statute (part of sentence). The annulment of the first sentence in Section 85 para. (4) of the AS rendered the second sentence in that paragraph meaningless and inapplicable, therefore the Constitutional Court has decided to extend the scope of annulment to that provision as well. Since the Constitutional Court has to ensure the fulfilment of the requirement of legal certainty in the scope of its own operation, too, it has annulled not only the unconstitutional part of the legal norm, but the whole paragraph (4) of Section 85.

After the annulment of the above-mentioned provision, it shall be the task of the legislature to adopt a new regulation with due account to the contents of the rules not deemed unconstitutional.

1.3. The petitioner claims the registration specified in Section 85 paras (3) and (7) to be of a "total" character. It is clear from Section 85 para. (3) item c) of the AS that the organiser may maintain a register only of persons prohibited from visiting certain sports events, and surveillance may only be performed – in accordance with Section 85 para. (1) of the AS – in the case of certain sports events mentioned in the GD (i.e. not in the case of all sports events).

The Constitutional Court has established in the course of its procedure that according to Section 85 para. (3) of the AS, the personal data recorded may only be handled for the purpose of facilitating a criminal procedure or one pertaining to administrative infraction. The

same paragraph provides for the maximum period of storing personal data – taking into account the aspects of guarantee –, specifying that the organiser may store them for not more than thirty days. Besides, pursuant to Section 85 para. (10) of the AS, the organiser shall be bound to destroy the recorded data upon the expiry of 30 days. Within the period of 30 days, the investigation authorities shall decide whether the acts committed necessitate the initiation of a criminal procedure or one pertaining to administrative infraction. In view of the above, the Constitutional Court considers the 30-day period of data handling allowed for organisers of sports events to be an acceptable term with respect to the realisation of the constitutional guarantees of data protection. This is so because, according to the regulation in the AS as presented above, the handling of data by the organiser of the sports event is related to a constitutionally protected objective, i.e. the protection of public order and public safety; the affected person is informed of the handling of his data, the forwarding of the recorded data to the investigation authorities is statutorily allowed, and in that respect the route of his data can be traced by the affected person. Consequently, the Constitutional Court does not consider the provisions under Section 85 paras (3) and (7) of the AS to violate the right to informational self-determination with regard to the requirement of being bound to the purpose.

2. The petitioner challenges the provision in Section 85 para. (5) of the AS on the legal remedies available in the case of banning a spectator on the grounds of it violating the right to fair trial and the requirement of legal certainty.

According to Section 82 para. (5) the decision of the organiser on prohibition from visiting certain sports events or sports facilities may be appealed against at the territorially competent consumer protection authority and the Permanent Court of Sports Arbitration.

Section 82 para. (4) of the AS provides that the duration of the prohibition from visiting certain sports events shall be a maximum of two years when applied to all sports events organised by the organiser, and a maximum of five years when applied to a specific sports facility.

2.1. Act CLV of 1997 on Consumer Protection (hereinafter: the ACP) is aimed at the protection of consumers' financial interests, life, health and safety. Pursuant to Section 2 item e) of the ACP, the consumer is defined as "a natural person who purchases, orders, receives, or uses goods for non-business or non-professional purposes, or for whom a service is

rendered, furthermore who is the addressee of information or an offer related to goods or services". The territorial organisations of consumer protection are the regional inspectorates. In accordance with Section 46 of the ACP, the provisions of Act IV of 1957 on the General Rules of Public Administration Procedure are applicable – with the deviations specified in the ACP – to the procedures by the above organisations. According to Section 50 para. (1) of the ACP, appeals lodged against resolutions of first instance of the regional inspectorates shall be judged by the head of the General Inspectorate for Consumer Protection. The second sentence of paragraph (2) of that Section provides that a claim may be filed to the court for the review of decisions by the head of the General Inspectorate for Consumer Protection.

2.2. Section 82 para. (5) of the AS under review also provides for the possibility of the spectator prohibited from visiting certain sports events to turn to the Permanent Court of Sports Arbitration. Section 53 para. (1) of the AS regulates the competence of the Permanent Court of Sports Arbitration as follows:

"(1) The Permanent Court of Sports Arbitration operates, with the deviations specified in this Act, in accordance with the rules contained in Act LXXI of 1994 on Arbitration, on the basis of the parties' mutual stipulation of its jurisdiction, in the following types of cases:

a) legal debates, related to sports affairs, between the associations, or ones related to the National Sports Association, the National Leisure Sports Association, the National Sports Association for the Disabled, or the Hungarian Olympic Committee;

b) legal debates, related to sports affairs, between the associations and their members, and between the members;

c) legal debates, related to sports affairs, between the associations and sportsmen or sports experts;

d) legal debates, related to sports affairs, between sports organisations and sportsmen or sports experts, and between sports associations and sportsmen or sports experts."

Act LXXI of 1994 on Arbitration (hereinafter: the AA) as referred to in the above-mentioned provision of the AS contains the following fundamental provision on the procedure of arbitration:

"Section 3 para. (1) Instead of court proceedings, arbitration may take place, if

a) at least one of the parties is a person dealing professionally with economic activity, and the legal dispute is in connection with this activity, furthermore

b) the parties may dispose freely of the subject-matter of the proceedings, and

c) the arbitration was stipulated in an arbitration agreement.
(2) Arbitration may be stipulated also in the absence of the condition provided for in paragraph (1) item a) if this is permitted by an Act of Parliament."

2.3. The Constitutional Court has interpreted in several decisions the constitutional content of the "right to fair trial" referred to by the petitioner. The Constitution uses the term "just trial" for "fair trial". Constitutional Court Decision 6/1998 (III. 11.) AB (hereinafter: CCDec 1) of principal importance pointed out that the requirement of fair trial also encompasses, in addition to the requirements specified in Article 57 para. (1) of the Constitution, the fulfilment of the other guarantees of Article 57. According to CCDec 1, "fair trial is a quality factor that may only be judged by taking into account the whole of the procedure and all of its circumstances. Therefore, a procedure may be "inequitable", "unjust" or "unfair" even despite lacking certain details or complying with all the detailed rules. (ABH 1998, 91, 95).
The right to the judicial way, i.e. to have one's case judged by a court includes as an essential element the quality of the procedure: it is the reason behind turning to the court.

Decision 1074/B/1994 AB expressly called attention to the following: "It follows from Article 57 para. (1) of the Constitution that the State is bound not only to offer a judicial way for the civil law debates of persons, but also to secure the concrete conditions of turning to the court". (ABH 1996, 452, 453) As pointed out in Decision 39/1997 (VII. 1.) AB (hereinafter: CCDec 2), a fair trial is required to render possible the actual realisation of lawfulness and the effective protection of rights. (ABH 1997, 263, 272)

The Constitutional Court has established in the course of its procedure the following: Section 43 of the ACP, providing for the responsibilities and competences of the regional inspectorates and the General Inspectorate for Consumer Protection, specifies in particular in item a) the monitoring of compliance with statutes related to consumer protection, in item h) the monitoring of the general contractual terms and conditions affecting consumers, and in item i) the handling of quality objections and complaints by consumers. According to Section 43 item o) of the ACP, the General Inspectorate for Consumer Protection and the regional inspectorates shall perform all duties declared by law to belong to their competence and responsibility. Section 82 para. (5) of the AS is such a provision. However, this provision of the AS, allowing the – alternative – procedure of the consumer protection authorities without any relevant, detailed provisions, does not ensure the effective protection of rights, and

therefore it cannot be considered to be a provision aimed at the constitutional enforcement of the right to fair trial.

2.4. The Constitutional Court has also examined the constitutionality of the provision in Section 82 para. (5) of the AS allowing the spectator to seek legal remedy at the Permanent Court of Sports Arbitration against the prohibiting decision. In view of the challenged provision and the above-mentioned relevant decisions of the Constitutional Court adopted earlier, the Constitutional Court has established that this way of legal remedy does not ensure effective judicial review in the case of banning a spectator. This is so because, as a comparison of the provisions of the AS and the AA reveals, the procedure of the Permanent Court of Sports Arbitration (as is general for courts of arbitration) is exclusively subject to the relevant agreement of the litigating parties, i.e. their mutual declaration of accepting the jurisdiction of the court of arbitration. Consequently, the Permanent Court of Sports Arbitration may only start proceedings in the case of a spectator complaining about prohibition if both the spectator and the organiser accept the jurisdiction of that court of arbitration.

It also follows from Article 57 para. (1) of the Constitution that – as stated in CCDec 2 – the parties have the right to have their litigated rights and obligations judged by the court specified in Article 45 para. (1) of the Constitution. (ABH 1997, 263, 272) This is a constitutional guarantee offering enhanced protection for citizens against the State. However, the constitutional fundamental right to have one's case judged by the court cannot be enforced when the procedure is exclusively subject to the relevant agreement of the litigating parties. In the present case, the organisation itself applying a sanction against the spectator can decide whether or not to render legal remedy possible. Such a procedure cannot be considered to be effective in constitutional terms: it does not provide for the unconditional possibility of litigation and the enforcement of the litigated rights for the party concerned.

In view of the above, the Constitutional Court holds that Section 82 para. (5) of the AS violates – on the grounds of the inadequacy and insufficiency of the regulation of the legal remedies available to spectators – the fundamental right to fair trial, therefore it has established the unconstitutionality of, and annulled the above provision as stated in the holdings of the Decision.

Upon establishing the unconstitutionality of Section 82 para. (5) of the AS for the above reasons, the Constitutional Court, acting in compliance with its practice, has not examined whether the statutory provision concerned violates further constitutional provisions, such as the constitutional requirement of legal certainty. [Decision 61/1997 (XI. 19.) AB, ABH 1997, 361, 364; Decision 16/2000 (V. 24.) AB, ABH 2000, 425, 429; Decision 56/2001 (XI. 29.) AB, ABH 2001, 478, 482]

3. With respect to the provisions challenged, the petitioner also claims a violation of the right to move freely and to choose one's whereabouts freely as guaranteed in Article 58 para. (1) of the Constitution. These rights are related to Section 82 paras (4), (6) of the AS on the removal of spectators, to Section 84 para. (2) on spectators' behaviour and on removing spectators from the location of the sports event, and to Section 85 paras (5)-(6) on the entry of spectators.

In the practice of the European Court of Human Rights, the right to move freely and the right to choose one's residence are regarded as manifestations of personal freedom. Modern documents of international law mainly contain provisions on migration in relation to the above rights. The Constitutional Court interpreted in its Decision 60/1993 (XI. 29.) AB the constitutional contents of these rights and established that in their various forms of manifestation, e.g. in the field of the freedom of traffic, they represent the right to free change of place. (ABH 1993, 507, 509-510)

The challenged provisions of the AS provide for restrictions on access to sports events (entry into sports facilities) applicable to persons who show improper behaviour as specified in the AS. Sports events can be visited on the basis of a contractual legal relation. This legal relation is established by the spectator's buying an entrance ticket or season ticket. Pursuant to Section 87 para. (1) of the AS, "the spectator is bound to observe the security requirements specified by the organiser and he may not perform any activity that disturbs or thwarts the sports event, or harms or endangers the physical integrity or the property of the participants of the sports event". The spectator's behaviour at the sports event violating the rules specified in the general terms and conditions is a breach of contract and the banning of the spectator is a sanction specified for that case.

In the opinion of the Constitutional Court, there is no connection in constitutional terms between the possibility to visit an event – e.g. a sports event – on the basis of a contract under private law and the constitutional content of the right to freely chose one's whereabouts or the right to free movement. The right to freely chose one's whereabouts and the right to free movement do not cover the freedom of entering sports events. Therefore, the Constitutional Court has performed no examination in this respect and has rejected the relevant part of the petition.

4. The petitioner challenges several provisions of the AS on the ground of their violating the right to legal certainty and its constituent, the requirement of the clarity of norms.

4.1. According to Section 82 para. (4) of the AS – a provision challenged by the petitioner – on account of football hooliganism, spectators may be prohibited, for two years, from visiting other sports events as well, and prohibition from visiting a specific sports facility covers – according to the petitioner – non-sports events organised in that sports facility, too. The contents of the challenged provision are different from what is alleged by the petitioner, and there is no ground for establishing any relation with the constitutional provision ordering the protection of the constitutional requirement of legal certainty [Article 2 para. (1)].

Section 82 para. (4) of the AS specifies the maximum terms of prohibition applicable to spectators. According to the first part of that paragraph, when the prohibition applies "to all sports events organised by the organiser", it may not last longer than two years. Thus, on the ground of an affray committed at a sports event, the organiser may prohibit the spectator from visiting all sports events organised by him. It does not follow from the requirement of legal certainty that a spectator banned on account of football hooliganism may only be prohibited from visiting football matches. This provision of law is not related to the constitutional requirement of legal certainty. However, the second part of Section 82 para. (4) of the AS – contrarily to what is alleged by the petitioner – does not allow preventing the spectator prohibited from visiting a sports facility from visiting a non-sports event organised in the same sports facility. According to the wording of the relevant provision, "The duration of prohibition from visiting certain sports events shall be … a maximum of five years when applied to a specific sports facility". Thus, the prohibition applies expressly to sports events organised in the sports facility. Consequently, the Constitutional Court has not established a

violation of the constitutional requirement of legal certainty by Section 82 para. (4) of the AS and has rejected the request for the establishment of unconstitutionality and for annulment.

4.2. The petitioner claims that the provision in Section 82 para. (6) of the AS violates the requirement of legal certainty and that of the clarity of norms as – according to the petitioner – it provides for an "unclear procedure" of banning spectators. The challenged provision referred to earlier in the Decision allows the banning of a spectator whose conduct justifies banning on the basis of Section 84 para. (2) item c) of the AS but who was not removed during the event as in the given situation, an intervention by the organisers could have resulted in acts posing a disproportionate threat to the security of the sports event. As pointed out by the Constitutional Court in Decision 26/1992 (IV. 30.) AB, "it is a constitutional requirement that normative texts must have a clear, comprehensible and lucid normative content." (ABH 1992, 135, 142)

The regulation under review offers a certain scope of discretion for the person applying the law (the organiser) to decide whether to remove from the sports event the person participating in an affray at the time of commission (and to apply prohibition on the basis of the removal performed), or to refrain from removal in order to prevent a greater disturbance threatening security. The provision under review refers to applying prohibition in the latter case as well. In the opinion of the Constitutional Court, there is no substantial difference between the two types of cases in respect of prohibiting the spectator from visiting certain sports events. Prohibition is based in both cases on the fulfilment of the conditions specified under Section 84 para. (2) item c) of the AS. Prohibition, as the legal consequence of improper spectator behaviour, is in both cases based on clear legal concepts well-defined in the AS. Therefore, the Constitutional Court does not consider this provision to violate the constitutional principle of legal certainty. When forming its opinion, the Constitutional Court has taken into account the fact that it has not established the unconstitutionality of Section 84 para. (2) (including item c)) referred to in Section 82 para. (6) as an applicable rule. According to its established practice, the Constitutional Court is not to examine the practicability of normative contents that do not violate the requirement of legal certainty. In view of the above, the Constitutional Court has also rejected the part of the petition seeking determination of the unconstitutionality and declaration of the nullification of Section 82 para. (6) of the AS.

4.3. As far as Section 84 para. (2) of the AS is concerned, the petitioner claims it to violate the constitutional principle of legal certainty by not providing for an obligation to inform foreign spectators in a foreign language. Pursuant to Article 70/A para. (1) of the Constitution, the Republic of Hungary respects the human rights of all persons in the country without discrimination on any grounds whatsoever, including language. Besides, the Acts pertaining to procedures provide for guarantees concerning parties' (clients') rights of using their mother tongues in official procedures.

When determining the constitutional contents of legal certainty, the Constitutional Court established the fundamental importance of the realisation of procedural guarantees. [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 65-66] In the opinion of the Constitutional Court, the State may – also in a market economy – encourage and support the communication in foreign languages of information of public interest to the contracting parties (participants of a legal relationship under civil law, consumers, spectators). However, there is no forcing constitutional obligation for the legislature to require the supply of information in foreign languages in respect of the participants of any legal relationship under civil law.
The Constitutional Court deems it necessary to point out the following: in the case of prohibiting a spectator from visiting any sports event (or sports facility), all persons concerned shall have the right to use their mother tongues in the procedure specified in Section 82 para. (5) of the AS.

On the basis of the above, the Constitutional Court has not established a violation of the constitutional principle of legal certainty by Section 84 para. (2) of the AS, and therefore it has rejected the relevant part of the petition.

5. The petitioner asked for the retroactive annulment of the challenged statutes as from the date of their entry into force. Pursuant to Section 42 para. (1) of the ACC, a statute or a statutory provision deemed unconstitutional by the Constitutional Court shall cease to be in force on the day of publication of the decision. A possibility for deviation from the general rule is provided for by the provision in Section 43 para. (4) of the ACC, according to which the Constitutional Court may specify a date different from the one defined in Section 42 para. (1) and Section 43 paras (1)-(2) for the annulment of the unconstitutional statute or its applicability to a concrete case, if so justified by the interest of legal certainty or by a particularly important interest of the petitioner.

The Constitutional Court has not found any circumstance that would justify the declaration of an *ex tunc* effect in the case of the statutory provisions annulled in the holdings of the Decision. In connection with the above, the Constitutional Court points out that Section 85 para. (1) of the AS on camera surveillance is, according to Section 89 para. (3) of the same Act, obligatorily applicable only from the day of 1 January 2002 on. Consequently, the retroactive annulment of the unconstitutional statutes as from the date of their adoption is not justifiable at all.

6. The Constitutional Court has annulled the unconstitutional provisions specified in the holdings of this Decision as from the day of 31 December 2002 in order to allow due time for the legislature to adopt regulations that ensure in a constitutional manner legal remedies for spectators prohibited from visiting certain sports events, guarantee their access to a judicial procedure, and regulate the forwarding of recordings.

7. The petitioner has withdrawn the parts of the petition aimed at the establishment of the unconstitutionality of Section 82 paras (1), (2) and (3), Section 83, Section 84 paras (1), (3) and (4) as well as Section 85 paras (1) and (8) to (10) of the AS, and the challenged provisions of the GD. Since according to Section 20 of the ACC the Constitutional Court proceeds on the basis of the petition of an entitled petitioner, it has terminated the procedure in respect of the above provisions.

The publication of the present Decision of the Constitutional Court is based on Section 41 of the ACC.

Budapest, 12 July 2002

Dr. János Németh
President of the Constitutional Court

Dr. István Bagi
Judge of the Constitutional Court

Dr. Mihály Bihari
Judge of the Constitutional Court

Dr. Ottó Czúcz
Judge of the Constitutional Court

Dr. Árpád Erdei
Judge of the Constitutional Court

Dr. Attila Harmathy
Judge of the Constitutional Court

Dr. András Holló
presenting Judge of the Constitutional Court

Dr. László Kiss
Judge of the Constitutional Court

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. János Strausz
Judge of the Constitutional Court

Dr. Éva Tersztyánszky-Vasadi
Judge of the Constitutional Court

Concurring reasoning by Dr. Attila Harmathy, Judge of the Constitutional Court

I agree with the holdings of the Decision and with the majority of its reasoning. However, my position is partly different from the one stated in point III. 1 of the reasoning. According to the reasoning, the establishment of the unconstitutionality of the provision under Section 85 para. (4) of Act CXLV on Sports (hereinafter: the AS) and the annulment of the whole paragraph (4) is based upon the protection of personal data as granted in Article 59 para. (1) of the Constitution. In my view, however, beyond the scope of personal data, the constitutional evaluation of camera recordings has to be dealt with separately. In the present case, the examination based on other grounds does not lead to results different from the ones specified in the Decision. Nevertheless, taking pictures raises questions that have to be answered on a basis other than the data protection regulations. My arguments are the following:

1. Personality rights are protected in several branches of law in addition to constitutional law. Certain provisions of the AS contain civil law rules pertaining to participants of sports events. However, it is not on the basis of civil law that one should examine the provisions which allow the application of coercive measures against the participants and the checking of persons and packages by the employee of the managing organisation [Section 84 para. (3) of the AS], which oblige the organisers of certain sports events to survey with a camera the location of the sports event for the purpose of securing the personal safety and protecting the property of the participants [Section 85 para. (1) of the AS], and which entitle – in order to facilitate a criminal procedure or one pertaining to administrative infraction – the organisers of sports events to make camera recordings or other recordings of the participants at the sports event and to store such recordings, as well as to maintain a register of data of the persons prohibited from visiting certain sports events

[Section 85 para. (3) of the AS] and to forward to third persons the recordings and the registered data [Section 85 para. (4) of the AS].

2. Section 85 para. (4) of the AS challenged by the petitioner contains provisions on more than one subject: on the one hand, it deals with the transfer of data of persons prohibited from visiting certain sports events, and on the other hand, it is about the transfer of recordings, made and stored by the organiser, of the participants of the sports event. The second sentence in the paragraph challenged provides that in a concrete case a specific rule of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest is to be applied appropriately in respect of the disclosure of data upon request by the person concerned. That rule does not constitute proper grounds for the evaluation of the constitutionality of the provision of that paragraph concerning photographs on the basis of the rule of the Constitution on the protection of personal data.

3. As other provisions of the AS do not deal with classifying photographs as data, other statutes of a similar subject have to be examined as well.

Pursuant to Section 2 item 1 of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest, for the purposes of the Act, data that can be brought into relation with a specific natural person qualify as personal data. That rule is about data; photographs and sound recordings, however, do not belong to the category of data, except if the contrary is expressly provided for by a statute. There is, however, a broader definition in Section 2 of Act VI of 1998 on the Promulgation of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, adopted in Strasbourg on 28 January 1981, according to which, for the purposes of the Convention, any information relating to an identified or identifiable individual qualifies as personal data. However, it does not follow from the above provision of the Convention that the very same rules are applicable to photographs, sound recordings and fingerprints as the ones applicable to data (e.g. name, residence address).

The statutes similar to the one under review handle personal identification data differently from photographs, sound recordings, or other particular features that represent the individual character of persons (e.g. fingerprints and palmprints), and the reason for this lies not only in the difference in the technique of recording the data. Different regulations can be

found, for example, in Section 42 of Act XXXIV of 1994 on the Police, and in several provisions of Act LXXXV of 1999 on the Criminal Register and the Official Certificate of (No) Criminal Record.

4. The Constitutional Court has already pointed out in one of its first decisions – and has consistently applied this holding ever since – that the right to human dignity is one of the designations of the "general personality right", and this right serves as the constitutional basis of protecting the personality in each case when the Constitution does not provide for a specifically named right [Decision 8/1990 (IV. 23.) AB, ABH 1990, 42, 44-45]. In another decision of the Constitutional Court, reviewing the regulations on identity cards, the reasoning referred to a distinction to be made between the data of identification and the other means of identification contained in the card, namely the photograph and the signature (Decision 1202/ B/1996 AB, ABH 2000, 658, 663).

Taking and storing a photograph (and similarly a sound recording) do not belong to the regulatory scope of Article 59 para. (1) of the Constitution; the rules on neither the right to the good standing of one's reputation, nor the right to the privacy of one's home, nor the protection of secrecy in private affairs and personal data are primarily applicable in this respect, although taking or storing photographs unlawfully may be related to the violation of these rights. Thus, in line with the practice of the Constitutional Court, Article 54 para. (1) on the right to human dignity as the general designation of the personality right is to be applied during the review.

5. Applying different principles to the handling of image and sound recordings from the ones applicable to the registration and handling of personal data is in line with the practice of the European Court of Human Rights (hereinafter: the Court). The Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (hereinafter: the Convention), and promulgated in Hungary in Act XXXI of 1993, does not provide for the general protection of personality rights. Article 8 of the Convention provides for the right to respect for private and family life, home and correspondence. The Court has not deduced from the above rule the general protection of personality, although with the interpretation of Article 8, it has considered this rule as a provision on the protection of privacy (as explained by Mr. Wildhaber, President of the Court, in his commentary on Article 8 of the Convention: Internationaler Kommentar zur Europäischen

Menschenrechtskonvention, red. W. Karl, Köln, Berlin, Bonn, Art. 8., pp. 46-51). It was considered to be a violation of Article 8 of the Convention that the police stored data about one's private life, recorded fingerprints and took photographs during the interrogation, but the Commission did not establish a violation of Article 8 by taking pictures of a person participating at a demonstration (Friedl v. Austria, No 15225/89, Commission's Report 19 May 1994, points 45-51). Although the practice of the Court is in line with the text of the Convention, and thus it is different from the rules to be reviewed on the basis of the Constitution, one can conclude that the Court has handled the making and registration of photographs and sound recordings as a special matter different from other cases (as reinforced in the Case P.G. and J.H v. The United Kingdom, No. 44787/98, judgement of 25 September 2001, points 56-59).

6. On the basis of the above, in my opinion, different constitutional rules should have been applied in the assessment of the rules applicable to the various cases specified in Section 85 para. (4) of the AS:

- the constitutional examination of the rules on registering and transferring data of persons prohibited from visiting certain sports events should be based on Article 59 para. (1) of the Constitution,
- as far as the making, storage and transfer to third persons of recordings of persons are concerned, the basis of constitutional assessment should be not the protection of personal data, but the protection of human dignity as guaranteed under Article 54 para. (1) of the Constitution.

Budapest, 12 July 2002

Dr. Attila Harmathy
Judge of the Constitutional Court

I concur with the concurring reasoning.

Dr. Árpád Erdei
Judge of the Constitutional Court

Dissenting opinion by Dr. László Kiss and Dr. István Kukorelli, Judges of the Constitutional Court

We agree with points 1 and 2 of the holdings of the Decision. However, we are of the opinion that the constitutional review should have been extended to all provisions of Section 85 of Act CXLV of 2000 on Sports (hereinafter: the AS) that provide for the camera surveillance and the camera recording of the location and the participants of sports events. The review should have been extended to the implementing regulations as well, i.e. Section 1, Section 5 para. (2) item c), and Section 11 para. (4) item b) of Government Decree 33/2001 (III. 5.) Korm. on the Safety of Sports Events (hereinafter: the implementing decree).

Although the petitioner expressly challenged Section 85 paras (2) to (6) and para. (7) item f) only, he claimed that the camera surveillance of the location of a sports event and the recording thereof, i.e. "total surveillance" during the matches, violated the right to informational self-determination. In view of this and the close relation between the provisions of Section 85 mentioned in the petition, paragraphs (1) and (10) and the decree-level implementing rules, the latter two should also have been examined.

In our opinion, the concept of surveillance and recording as specified in the AS together with all of the rules based thereupon are unconstitutional, therefore the constitutional review should have resulted in establishing the unconstitutionality of Section 85 paras (1) and (2), para. (3) item a), and para. (10) of the AS, together with the unconstitutionality of Section 5 para. (2) item c) and Section 11 para. (4) item b) of the implementing decree.

I. The concept of the regulation reviewed: expansion of the authority over information

1. The legal regulation of sport – and in particular the Act on Sports – raises several fundamental constitutional questions. In the present case, the Constitutional Court has had to examine for what purposes and with what kinds of tools the legislature provided for the surveillance of the location and participants of sports events and the recording of the resulting data.

First of all, it is to be noted that sports activities – and in particular professional sport – are considered to be part of both the business and the non-profit sectors. Therefore, we consider it important in the examination of this case to take into account the provisions of the

Constitution on market economy [Article 9 para. (1)], the freedom of economic competition [Article 9 para. (2)], and the right of association [Article 63 para. (1)] as well. In line with the above, professional sport is predominantly regulated by private law: self-regulation and civil law rules specified by the State. Interference by the State as public authority is constitutionally limited in this field, as is general in the business and non-profit sectors: it must respect the fundamental rights of the persons concerned, and it may not apply tools that essentially and conceptually contradict the paramount requirement of the rule of law in an economic sense: the principle of market economy. [Decision 21/1994 (IV. 16.) AB, ABH 1994, 114, 119-120]

2. The Act on Sports regulates two – apparently different – sets of cases of camera surveillance.

a) One of the sets of cases is first mentioned in Section 85 para. (1), where the organisers of certain types of sports events are required to perform camera surveillance of the locations of sports events "for the purpose of protecting the personal safety and the property of the participants". According to the implementing decree, camera surveillance is obligatory for all sports events held on "public ground or place with public access" in the case of which the expected number of spectators exceeds fifty percent of the capacity of the facility concerned, or in the case of which the spectators are called upon publicly to attend the event and the number of spectators reaches or exceeds three thousand on the basis of the entrance tickets issued, and – regardless of the above conditions – at matches in the professional or national league, or matches in the first division, cup-matches, and matches of the national team in football, handball, basketball, water polo and ice hockey, as well as at motor-sports events, and open bicycle and running competitions [Section 1 para. (2); Section 5 para. (2) item c); for exceptions see Section 1 para. (3)].

Although Section 85 para. (1) does not expressly provide for the obligation of the organiser to make recordings in addition to the surveillance of the location and the participants, this is the case, since pursuant to paragraph (10), the "recordings made" during the obligatory camera surveillance as specified in paragraph (1) are to be destroyed upon 30 days. Section 85 para. (2) also refers to camera "surveillance and recording".

Thus the above paragraphs oblige organisers to perform surveillance and make recordings, and they specify the purpose of recording as the protection of the personal safety and the property of the participants (spectators, sportsmen etc.). On the basis of the implementing

decree, the obligation specified in Section 85 para. (1) of the Act affects a very wide range of organisers of sports events.

b) The other set of cases is found under Section 85 para. (3) item a). This provision allows the organiser to make ("record") camera recordings or other types of recordings of the participants of the sports event "for the purpose of facilitating a criminal procedure or one pertaining to administrative infraction". Such recordings may be stored for thirty days. According to paragraph (4), the recordings thus made may be requested by the State authorities specified in a statute, the persons affected and organisers of sports events of the same type or similar types.
Consequently, Section 85 para. (3), in itself, only "allows" but does not require surveillance and recording, and it applies not only to the events specified in the implementing decree, but to all sports events.

In our opinion, the above two sets of cases cannot be separated completely. One must note that in most cases – due to the very broad scope of applicability of the implementing decree – the optional recording under Article 85 para. (3) is not realised alone, but it usually comes together with the surveillance specified in paragraph (1). As a result, obligatory surveillance and recording affects a very wide scope of organisers of public sports events. It is also of significance that due to the connection between the two sets of cases, organisers – depending on the decisions of the various State authorities – are obliged within a wide scope to forward the recordings.

3. It follows from the statutory provisions under review that the State obliges certain subjects of private law (the organisers of sports events) in a particularly broad scope to survey the locations and the participants of public events that also have a private character, and make recordings thereof, and to forward such recordings – if so requested – to certain State authorities specified in a separate statute. According to the implementing decree, camera surveillance and recording must be performed also in the case of events held on private ground with public access and on public ground [Section 1 para. (1) of the implementing decree]. This way the State has increased the authority over information exercised by certain subjects of private law, but it has also extended its own authority: it has guaranteed access to recordings of locations and events that it could not – or could only casually – have

information about earlier in the form of images. [Cf. Section 42 para. (1) of Act XXXIV of 1994 on the Police (hereinafter: the AP)]
In view of all the above, we hold that it necessitates a thorough constitutional examination to what extent the rules pertaining to surveillance and recording restrict fundamental rights, whether the restriction of rights serves a constitutionally legitimate aim, and whether there is a forcing need for that.

II. Surveillance as a tool of exercising authority over information

Surveillance by means of video cameras applied for the purposes of personal, property and public security has developed by now into a vast industry. In several democratic countries, such as the United States and the United Kingdom, the further development of surveillance, recording and data-matching systems are partly financed from the State budget. Cameras surveying public grounds and operated by the police cover whole urban districts, the cameras of shopping centres serve not only the purpose of property protection but also of selecting the clientele, and the cameras at workplaces are designed not only to boost the efficiency of employee performance, but also to ensure continuous compliance with working regulations. As a result of the boom in the use of closed-circuit camera surveillance systems, we should presume in our everyday life that we are being surveyed by an invisible eye at almost every place of our social contacts.

Camera surveillance is a cost-effective tool for the enforcement of statutes and other norms. However, the cost of this is that many people not related in any form to the legitimate aim of surveillance (e.g. personal or public safety) or to the event or activity surveyed also become subjects of surveillance. In addition, the recordings thus gained may be used to deduce information about the private sphere of the individuals surveyed, with which the surveying party has nothing to do – except for a few cases. Camera surveillance may be effective, but it is surely dangerous as it represents total control.

On the basis of the prison model with the “all-seeing eye” described in the book *Panopticon* by Jeremy Bentham, Michel Foucault, examining the role of surveillance in social control, concludes that surveillance routinely applied in prisons has penetrated other social institutions as well, such as hospitals, schools and workplaces. For Foucault, panoptical surveillance is a new form of exercising power as control, in the case of which no physical force and physical

presence is needed. Thus, this authority is primarily not a physical one, but it means authority over people's mind: it encourages compliance with the norms through the knowledge of being under surveillance. According to Foucault, the automatic operation of exercising authority is ensured by the continuous character of surveillance and by being aware thereof. (Foucault, Michel. *Discipline and Punish: The Birth of the Prison.* New York: Vintage, 1979)

Surveillance offers a chance for supervision – with immediate intervention or involvement in the case of the violation of norms – by the surveying party, and at the same time, it induces those under surveillance to act in compliance with the norms prescribed by the surveying party (e.g. surveillance at workplace). Consequently, the possibility of immediate sanctioning guaranteed by surveillance is indirectly suitable for preventing conduct not favoured by the majority.

By the end of the 20th century, this form of control has become widespread in both the public and the business sectors. The nearly incessant surveillance is redefining the limits of privacy, too. It is becoming traceable how and with whom we spend our free time; with whom, when and what we discuss; what newspaper we read, and what other habits we have. The danger of abusing technical achievements threatens us not only from the State's side, but camera surveillance is applied in the competitive business sphere, too, as a tool for increasing efficiency of action.

III. Camera surveillance at sports events

1. In the 1980's, in almost every European country, low security standards in stadiums and football hooliganism were serious problems, and several tragic events happened resulting therefrom. 56 people died in the fire in a stadium in Bradford in 1985, and in the same year before the Liverpool–Juventus cup final held in the Heysel Stadium of Brussels, a group of the supporters of Liverpool attacked Italian supporters, and one of the terraces of the stadium collapsed under the fleeing people. The tragedy claimed 39 lives. In 1989, in the Hillsborough Stadium, 95 supporters of Liverpool died because the organisers let much more spectators into one of the fenced sectors than allowed by the regulations, and there was no way of escape.

The camera surveillance of sports events was introduced as part of the complex measures aimed at increasing the security of stadiums. After the Hillsborough tragedy, an investigation took place in England: Lord Justice Taylor led the commission that elaborated proposals to make stadiums safer and to combat football hooliganism. Some of the recommendations of the Taylor Report (1990) were incorporated in the law. The new legislation provided for the mandatory separation of the two supporter groups, the demolition of rails in front of the sectors, ordered a ban on alcoholic beverages in sports facilities, and required that all spectators have a seat in the stadium. The safety of stadiums is supervised by an independent body appointed by the Minister of Interior (Football Licensing Authority).

Although in England camera surveillance is in general applied in the stadiums of the teams that play in the Premier League and the league immediately below that, the clubs are not expressly obliged by the law to do so (although the final version of the Taylor Report contained such a recommendation.) From 1985 on, the installation of camera surveillance systems in stadiums has been partly financed from the State budget. In England, Wales and Scotland, the Football Trust, set up in order to finance reforms in the field of football, provided budgetary support for the installation of closed-circuit camera surveillance systems. Camera surveillance in stadiums led to the subsequent spread of cameras on public grounds. Today, 90% of the towns in England have cameras on public grounds in operation or under installation. (Simon Davies: Closed Circuit Television and the Policing of Public Morals. http://www.privacy.org/pi/conference/copenhagen/report.html)

2. The following three are important aspects of the British experience in the field of complex stadium safety measures, and in particular closed-circuit camera surveillance:
a) As shown by the study of surveillance in stadiums, the surveying parties pay attention not only to events related to affrays but also to minor gestures, moreover, they use the devices to read the lips of those surveyed. (See: Clive Norris and Gary Armstrong: The Maximum Surveillance Society: The Rise of Cctv. Berg Pub. 1999. 8.)
b) Due to surveillance, fights between supporter groups were restricted to public ground outside the stadiums. In the 2000-2001 season, 85 per cent of the violent acts related to football were committed outside stadiums. (See the report of the National Criminal Intelligence Service. http://www.ncis.co.uk/downloads/UK_Division.pdf)
c) According to Lord Justice Taylor, leading the committee studying stadium safety as mentioned above, the most effective security measure is the use of “all-seater stadia”. [Taylor,

P., Lord Justice (Chairman) (1990). *Inquiry into the Hillsborough Stadium Disaster: Final Report* . London: HMSO.]

The complex stadium safety measures have resulted in the elimination of lethal fights between supporter groups and stadium catastrophes; most of the violent criminal acts committed earlier within stadia now take place on public ground. At the same time, there is evidence of misusing cameras.

In addition to the experience questioning the unconditional necessity of camera surveillance, one should note that there is no obligation under international law to perform camera surveillance of the spectators and participants of sports events. It must be pointed out that the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches mentioned in the Decision does not prescribe any obligation under international law for the State to apply camera surveillance and recording systems in sports facilities. Consequently, nor are the organisers obliged to do so by the Convention.

IV. Unconstitutionality of the provisions under review

1. We agree with the Decision concerning the obligatory application of camera systems being a restriction of the right to informational self-determination. On the basis of what has been stated under point II, we deem that the mere fact of camera surveillance restricts a fundamental right, and there is further restriction when recordings are made of the surveillance, and when they are stored and forwarded. The requirement to inform spectators in advance of camera surveillance does not mean that all participants accept by their own free will the fact of surveillance, as it is prescribed by the law, and spectators are not in a position to negotiate the conditions as equal partners. Therefore, the Decision is right in establishing that the principle of *volenti non fit iniuria* may not be applied here, and the regulation concerned is to be considered a restriction of fundamental rights.

Since Decision 15/1991 (IV. 13.) AB, which elaborated the contents of the right to informational self-determination, the Constitutional Court has deduced informational self-determination directly from Article 59 para. (1) and indirectly from Article 54 para. (1) of the Constitution. The right to informational self-determination is one of the personality rights enjoying constitutional protection, and it is closely related to the right to privacy. [ABH 1991, 49, 51, 52]

As the regulation at issue is one restricting a fundamental right, its objective must be examined together with whether it is absolutely necessary for reaching the desired objective. According to Section 85 paras (1) and (10) of the Act on Sports, the sole objective of the restriction of the fundamental right is to protect "the personal safety and the property of participants". We should note that the Act restricts the rights of participants in their own interest. However, this is not deemed unconstitutional as such, since there can be situations where the State may provide for obligatory rules restricting fundamental rights in the relation between subjects of private law, in the interest of one of the parties. For example, prescribing camera surveillance for the purposes of personal or property security can be justified in places considered "sites of dangerous operations" where, due to the dangerousness of the activity or the high number of participants involved in the activity, the prevention or the rapid detection of accidents cannot be ensured effectively by other means.

In our opinion, surveillance and recording as specified in Section 85 paras (1) and (10) of the Act on Sports are not absolutely necessary for the purpose of achieving such goals. First of all, the Act does not specify the sports events that bear such an exceptional risk that could render camera surveillance absolutely necessary. As a consequence, the implementing decree provides for an unreasonably and almost absurdly broad category of such events. On the other hand, on the basis of the foreign experience detailed under point III, we can conclude that even in the case of sports events attracting the highest number of spectators, personal and property security can be protected by means not restricting fundamental rights, or restricting them to a lesser extent. With sports facilities meeting the relevant standards (all-seater stadia, separation of rival supporter groups, demolition of fences etc.), well-trained stewards, proper information and service of spectators, and with the support of the police when needed, there is no forcing need for organisers to continuously monitor the sports facility and the participants by cameras and make recordings thereof. Therefore, we deem that the restriction of fundamental rights in Section 85 paras (1) and (10) of the Act on Sports has no constitutional grounds. Consequently, these provisions and the resulting Section 5 para. (2) item c) and Section 11 para. (4) of the implementing decree should have been annulled.

2. Section 85 para. (3) item a) of the Act on Sports is to be examined separately, as it allows (and in many cases requires) recordings to be made "for the purpose of facilitating a criminal procedure or one pertaining to administrative infraction".

First of all, we emphasise that – save in exceptional cases – it is not acceptable to use public funds to have private interests protected by the police. Thus, we do not contest the

legislature's choice of vesting on the organiser of a sports event – as a subject of private law – the obligation and the responsibility to ensure the security of the sports event for the protection of his own private interests as well as of the personal and property security interests of the participants. However, there can be sports events held on public ground in the case of which concerns of public security are raised in connection with the organisation of the sports event, due to the high number of spectators.

The legislature prescribes an obligation of the organiser to notify the holding of the sports event at least ten working days in advance at the competent police headquarters, and to attach the security plan of the sports event. If the organiser disregards a call made by the police to increase the number of stewards specified in the security plan, and an affray happens at the sports event putting an end to which makes it necessary to concentrate or regroup police forces, the organiser shall reimburse the verified costs related to the intervention by the police (implementing decree, Sections 6-7). The organiser shall involve on a large scale the manager of the event to ensure security. The organiser may also decide to conclude a contract with the police for security services at the event. Thus, it is the responsibility of the organiser to assess correctly the security risks related to the sports event.

At the same time, the legislature prescribes for the organiser an option but – as a result of the overlap between Section 85 para. (1) and para. (3) item a) – in many cases an obligation to make camera recordings at the sites of sports events for the purpose of facilitating criminal procedures and ones pertaining to administrative infraction, to store such recordings for thirty days and to hand them over to State authorities if so requested. The only reason for this could be the assumption of the legislature that there is an abstract threat to public security during the whole duration of sports events falling into the scope of application of obligatory camera recording. This means that recordings for the purpose of protecting the personal or property security interests of others or the private interests of the organiser are made not only when such interests are endangered by a concrete threat, but also in the case of the lack of such situation of danger, during the whole sports event.

Making recordings during the whole duration of a sports event serves no purpose other than collecting evidence that can be used in the course of criminal procedures and ones pertaining to administrative infraction. Collecting evidence in the course of criminal procedures and ones pertaining to administrative infraction is the task of the investigation authorities. In

performing such tasks, the investigation authorities exercise public authority, the performance of which is necessarily related to guarantee provisions rooted fundamentally in the principle of the rule of law [Article 2 para. (1) of the Constitution], and defined by the rules of the Constitution on tasks and competencies. Pursuant to Article 40/A para. (2) of the Constitution, the fundamental duty of the police is to maintain public safety and domestic order. The competence rule specified in Section 1 para. (2) items a) and b) of the AP is concretised by the first and third sentences of Section 42 para. (1). According to this rule of the AP, the recording of any circumstance relevant from the point of view of official action is strictly related to measures to be taken in concrete cases by the police as an organ exercising public authority. At the same time, the Act on Sports obliges the organiser, as a subject of private law, to perform – during the whole duration of sports events that are not of prominent importance in respect of public safety, and also in the case of the lack of a concrete threat – an activity (collection of evidence) that can generally be performed only by organs exercising public authority, without rendering appropriate guarantees to that activity.

It is especially important from the aspect of constitutionality that the legislature has required one of the parties to the relationship under private law (the organiser) to perform an activity which falls, pursuant to the Constitution, within the competence of the police and which injures the right to informational self-determination of the other contracting party (the spectators). Thus, one of the parties to a relationship under private law becomes Janus-faced: he is at the same time obliged to provide a service under private law and to perform a task of a police/public authority nature. The legislature has “privatised” an activity related to a special task of public authority (the enforcement of the State’s demand for punishment) by providing for obligatory surveillance for private interests, and allowing data to be obtained on private ground for the purposes of law enforcement. At the same time, we see no evidence for participants of sports events in general endangering public safety to a critically high extent. Consequently, there is no forcing need for the provision in the Act on Sports aimed at facilitating criminal procedures or ones pertaining to administrative infraction.

On the whole, we deem that Section 85 para. (3) item a) of the Act on Sports violates, on the one hand, the right to informational self-determination guaranteed in Article 59 para. (1) of the Constitution. On the other hand, it is incompatible with the rule defining competencies in Article 40/A para. (2) of the Constitution – which also follows from the principle of the rule

of law specified in Article 2 para. (1) of the Constitution –, as in this case there is no forcing need to use private organisations for the enforcement of the State's punitive demand.
In view of the above, the Constitutional Court should also have annulled Section 85 para. (3) item a) of the Act on Sports.

Budapest, 12 July 2002

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. László Kiss
Judge of the Constitutional Court

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