Decision 90/2007 (XI. 14.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

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

d e c i s i o n :

1. The Constitutional Court holds that the first sentence in Section 98 para. (1) of Act LXV of 1990 on local governments and Government Decree 297/2006 (XII. 23.) Korm. on regional offices of public administration are unconstitutional and they are accordingly annulled with such annulment being effective as of 30 June 2008.

Following the annulment, Section 98 para. (1) of Act LXV of 1990 on local governments will remain in force as follows:

"Section 98 para. (1) The operation costs of the public administration office shall be covered by the Parliament separately in the chapter of the budget act on the minister responsible for local government affairs."

2. The Constitutional Court holds that Section 13/A of Act CVII of 2004 on the multi-purpose partnerships of local governments in a micro-region is unconstitutional and, therefore, annuls it as of the date of publication of this Decision in the Hungarian Gazette.

3. The Constitutional Court holds that Section 174/A item *b)* and the text "or government decree" in Section 100 para. (1) item *a)* of Act CXL of 2004 on the general rules of public administration procedures and services are unconstitutional and, therefore, annuls them as of the date of publication of this Decision in the Hungarian Gazette.

Section 100 para. (1) item *a)* of Act CXL of 2004 on the general rules of public administration procedures and services shall remain in force as follows:

"Section 100 para. (1) No appeal may be lodged

a) if appeal is excluded in the case by an Act of Parliament"

4. The Constitutional Court rejects the petition seeking establishment of the unconstitutionality and nullification of Section 176 para. (2) of Act CIX of 2006 on the amendment of certain Acts of Parliament in connection with changes in the branch of government.

5. The Constitutional Court rejects the petitions aimed at establishing the unconstitutionality of Section 17 para. (2), Section 33/A para. (1) item *i)*, Section 42 para. (3), Section 52 para. (2), Section 63/C para. (1), Section 70 para. (3), Section 92/C para. (6), Section 95 item *a)*, Section 97 item *a)*, Section 96 item *c)*, the heading before Section 98, Section 98 para. (2), Section 98 para. (3), Section 99 paras (1) and (2), Section 98 paras (4) and (5), Section 99 para. (1), Section 103 para. (3), and Section 105 of Act LXV of 1990 on local governments.

6. The Constitutional Court rejects the petitions aimed at establishing the unconstitutionality of Section 4/A para. (1) and Section 24 para. (4) item *e)* of Act LV of 1993 on citizenship, Section 30/B para. (4), Section 30/O para. (1), Section 60/H para. (1), Section 60/M item *b)*, Section 60/H para. (2), Section 60/I paras (1) and (4), Section 60/J paras (1), (2) and (4), Section 60/I paras (2) and (3), Section 60/J para. (1) and Section 62 para. (1) of Act LXXVII of 1993 on the rights of national and ethnic minorities, Section 39 para. (3) of Act XXXII of 1997 on border surveillance and the border guard, Section 28 para. (2), Section 29 para. (1) and Section 55 para. (4) item *a)* of Act CV of 2004 on national defence and the Armed Forces, Section 19 and Section 116 paras (2) and (3) of Act CXL of 2004 on the general rules of public administration procedures and services, furthermore, Section 2 para. (3) of Act LVII of 2006 on the central administrative organs and the legal status of members of the Government and undersecretaries of state.

7. The Constitutional Court rejects the petitions aimed at establishing the unconstitutionality of Government Decree 295/2006 (XII. 30.) Korm. on the Hungarian Labour Inspectorate, Government Decree 311/2006 (XII. 23.) Korm. on the Hungarian State Treasury, Government Decree 365/2006 (XII 28.) Korm. on the selection of the health insurance supervisory authority, Government Decree 347/2006 (XII. 23.) Korm. on the selection of organs responsible for tasks related to environment protection, nature protection and water issues, Government Decree 343/2006 (XII. 23.) Korm. on the selection and operation of building authorities and the building supervisory authorities, Government Decree 334/2006 (XII. 23.) Korm. on the selection of animal protection authorities, Government Decree 331/2006 (XII. 23.) Korm. on child protection and child welfare tasks and competences and the hierarchy of the child welfare authorities and their competence, Government Decree 317/2006 (XII.

23.) Korm. on the National Health Insurance Fund, Government Decree 314/2006 (XII. 23.) Korm. on the organisation of the Hungarian Customs and Finance Guard and the selection of the proceding organs, Government Decree 338/2006 (XII. 23.) Korm on land registry offices, the Institute of Geodesy, Cartography and Remote Sensing, the Committee of Geographical Names and the detailed regulations of land registration, Government Decree 313/2006 (XII. 23.) Korm. on the Treasury Property Directorate, Government Decree 312/2006 (XII. 23.) Korm. on the Government Audit Office, Government Decree 322/2006 (XII. 23.) Korm. on the National Ambulance Service, Government Decree 307/2006 (XII. 23.) Korm. on the National Education Office, and Government Decree 308/2006 (XII. 23.) Korm. on the National Office of Cultural Heritage.

8. The Constitutional Court has rejected the petition seeking establishment of an unconstitutional omission of legislative duty in respect of Government Decree 297/2006 (XII. 23.) Korm. on public administrative offices.

9. The Constitutional Court terminates the proceeding aimed at establishing the unconstitutionality of Act CIX of 2006 on the amendment of certain Acts of Parliament in connection with changes in the branch of government as a whole or Section 1 paras (1) to (3) and para. (6), Section 5 para. (1), Section 7 para. (1) items *d)*, *h)* and *i)*, Section 7 para. (2) items *a)* and *l),* and Sections 8 item *a)* of the same Act.

10. The Constitutional Court terminates the procedure aimed at establishing the unconstitutionality of Section 33/A para. (6) of Act LXV of 1990 on local governments.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

The Constitutional Court has received four petitions aimed at establishing the unconstitutionality of certain provisions in Act CIX of 2006 on the amendment of certain Acts of Parliament in connection with changes in the branch of government (hereinafter: the AGC) and of certain statutes related to the

setting up of other regional public administration organs in connection with the AGC. As the petitioners have brought up issues of constitutionality under the same statute, the Constitutional Court has consolidated the petitions and judged them in a single procedure.

1. One of the petitioners requests establishment of the unconstitutionality and annulment with *ex tunc* effect of certain provisions of the AGC based on the following reasoning:

a) The petitioner requests establishment of the unconstitutionality and annulment of Section 7 para. (1) item *d)* of the AGC modifying certain provisions of Act LXV of 1990 on local governments (hereinafter: the ALG) and also of Section 8 item *a)* of the AGC. The petitioner is of the opinion that the legislator violated Article 44/C and Article 2 para. (1) (i.e. the principle of the state under the rule of law) for modifying a 'two-thirds' Act of Parliament by a simple majority of votes when it changed the names of the county and the Budapest public administration offices to public administration offices as used in the ALG. The petitioner holds that Article 34 para. (2) does not apply to this case as by modifying the ALG not only the names of the public administration bodies have changed but also the competence regulations of the ALG have been modified by the legislator.

b) The petitioner finds Section 5 para. (1) of the AGC unconstitutional as this provision has authorised the Government to select public administration offices in decrees by adding a new Section 13/A to Act CVII of 2004 on the multi-purpose partnerships of local governments in micro-regions (hereinafter: the MMPA). By adopting this regulation, the legislator has avoided the necessity of modifying the ALG, a 'two-thirds' Act of Parliament establishing the county and the Budapest public administration offices and the legislator has authorised the Government to "terminate and to specify the legal successor" of an organ established by the ALG. The petitioner thinks that this regulation violates the principle of the state under the rule of law and impairs the right of the Parliament granted in Article 19 para. (2) of the Constitution to define the organisation, orientation and conditions of government in Acts of Parliament.

c) The petitioner has also asked for establishing the unconstitutionality of Section 176 para. (2) of the AGC. This provision of the AGC has repealed Sections 1 to 173 of the AGC effective from 31 January 2007. These latter provisions are the core regulations of the AGC modifying other Acts of Parliament. The petitioner is of the opinion that the reason for the haste was to avoid a constitutionality review. The petition includes the notion that this violates the requirement of legal certainty stemming from the principle of the state under the rule of law defined in Article 2 para. (1) of the Constitution. It is for the same reason that the petitioner has asked the Constitutional Court to establish the unconstitutionality of the regulations in the ALG and the MMPA that have been modified by the AGC.

d) In addition, to prevent any problem that may arise concerning the coherence in the legal system, the petitioner has initiated the annulment of all the AGC provisions (not listed in detail in the petition) that include regulations affecting the public administration offices.

e) On the basis of the authorisation granted by the AGC, the Government has passed Government Decree 297/2006 (XII. 23.) Korm. on public administration offices (hereinafter: the GovDec). For the case the Constitutional Court accepts the petition and annuls the challenged provisions of the Acts of Parliament, the petitioner has made a second request for the annulment of the GovDec as it violates a statute of a higher rank.

2. The second petitioner requests a constitutionality review of Section 7 para. (1) items *d)*, *h)* and *i),* Section 7 para. (2) items *a)* and *l)* as well as of Section 8 item *a)* of the AGC. These challenged provisions of the AGC have modified the names of the county and the Budapest public administration offices to public administration offices as used in the ALG, in Act LV of 1993 on citizenship (hereinafter: the AC), in Act LXXVII of 1993 on the rights of national and ethnic minorities (hereinafter: the AEM), in Act XXXII of 1997 on border surveillance and the border guard (hereinafter: the ABG) and in Act CV of 2004 on national defence and the Armed Forces (hereinafter: the AAF). The petitioner requests the Constitutional Court to establish the unconstitutionality of the challenged provisions due to invalidity under public law and the annulment of these provisions with a retroactive effect to the day of promulgation. The challenged provisions of the AGC have modified the regulations of such Acts of Parliament that have been passed by the Parliament by a two-third majority of votes under Article 40/A para. (4), Article 44/C, Article 68 para. (5) and Article 69 para. (4) of the Constitution, and accordingly they should have been modified by a qualified majority of votes. As it has not complied with the constitutional requirements of the legislative procedure, the legislator has violated the principle of the rule of law specified in Article 2 para. (1) of the Constitution.

3. The third petitioner requests a constitutionality review and annulment of the AGC as a whole as a primary petition and, as a secondary petition, review and annulment of Section 19, Section 100 para. (1), Section 116 paras (2) and (3) and Section 174/A of Act CXL of 2004 on the general rules of public administration procedure and services (hereinafter: the APAPS), Section 13/A of the MMPA, and Section 2 para. (3) of Act LVII of 2006 on the central administrative organs and the legal status of members of the Government and undersecretaries of state (hereinafter: the ACAO) as established by the AGC, and also review and annulment of 16 Government Decrees.

The government decrees challenged in the petition are the following:

– Government Decree 297/2006 (XII. 23.) Korm. on public administration offices
– Government Decree 295/2006 (XII. 30.) Korm. on the Hungarian Labour Inspectorate

– Government Decree 311/2006 (XII. 23.) Korm. on the Hungarian State Treasury

– Government Decree 365/2006 (XII 28.) Korm. on the selection of the health insurance supervisory authority

– Government Decree 347/2006 (XII. 23.) Korm. on the selection of organs responsible for tasks related to environment protection, nature protection and water issues

– Government Decree 343/2006 (XII. 23.) Korm. on the selection and operation of building authorities and the building supervisory authorities

– Government Decree 334/2006 (XII. 23.) Korm. on the selection of animal protection authorities

– Government Decree 331/2006 (XII. 23.) Korm. on child protection and child welfare tasks and competences and the hierarchy of the child welfare authorities and their competence

– Government Decree 317/2006 (XII. 23.) Korm. on the National Health Insurance Fund

– Government Decree 314/2006 (XII. 23.) Korm. on the organisation of the Hungarian Customs and Finance Guard and the selection of the proceeding organs

– Government Decree 338/2006 (XII. 23.) Korm on land registry offices, the Institute of Geodesy, Cartography and Remote Sensing, the Committee of Geographical Names and the detailed regulations of land registration

– Government Decree 313/2006 (XII. 23.) Korm. on the Treasury Property Directorate

– Government Decree 312/2006 (XII. 23.) Korm. on the Government Audit Office

– Government Decree 322/2006 (XII. 23.) Korm. on the National Ambulance Service

– Government Decree 307/2006 (XII. 23.) Korm. on the National Education Office

– Government Decree 308/2006 (XII. 23.) Korm. on the National Office of Cultural Heritage

The petitioner holds that the legislator has failed to comply with the provisions of Act XI of 1987 on Legislation (hereinafter: the AL) concerning the legislative procedure when passing the AGC. The AGC has allowed the Government to regulate in decrees the competence and management of public administration organs in violation of the regulations in Sections 2 to 5 of the AL specifying the rules applicable to topics that must be regulated by the Parliament in Acts of Parliament. No impact study required under Section 18 of the AL was prepared before passing the AGC and the opinion of the interest groups was not requested. Under Section 15 para. (2) of the AL, it is not allowed to grant an authorisation affecting fundamental rights and the statutes concerned did not grant sufficient time to prepare for their application. As the requirements of the legislative procedure specified above have not been complied with, the principle of the rule of law specified in Article 2 para. (1) of the Constitution has been violated.

Under Article 19 para. (2) of the Constitution, the Parliament defines the organisation, orientation and conditions of government. The petitioner holds that defining the organisation of government includes specifying the competence of the public administration organs and also the definition of their superior authority. The Government exercises the power of the Parliament if it passes decrees in topics that are subject to parliamentary legislation and, therefore, the Government violates the separation-of-powers principle and extends its scope of powers beyond the limits specified by the Constitution.

As held by the petitioner, the provision in Article 34 para. (2) of the Constitution may not be interpreted as an authorisation for the Government to regulate the competence of the public administration organs and their superior authorities by decrees, thus excluding the Parliament from the decision.

The same petitioner also points out that the regulations of the AGC modifying the ALG violate Article 44/C of the Constitution.

The fact that the Government is entitled to exclude the possibility of lodging an appeal by a Government decree under the rules of the APAPS (as modified by the AGC) and that it is entitled to set the superior authorities entitled to review the legal remedies by Government decrees violate the right to legal remedy granted in Article 57 para. (5) of the Constitution.

Since the AGC was only in effect for a month and as there are examples in its practice that the Constitutional Court only annulled the modifying statute but not the modified provisions, the petitioner has requested the Court to review the constitutionality of certain Acts of Parliament (the challenged regulations of the APAPS, the MMPA, the ACAO) and 16 Government Decrees) as they seriously violate the Constitution.

4. The second petitioner requests a constitutionality review and annulment of Section 7 para. (1) item *d)* of the AGC modifying the ALG based on the same arguments as presented by the first three petitioners.

The petitioner also requests establishment of an unconstitutional omission concerning the GovDec as it has failed to specify how the powers of the public administration office specified in several statutes should be exercised in the jurisdiction of the local offices as there is no authorisation in the decree for the delegation of power. As argued by the petitioner, there is an additional unconstitutional omission as Section 2 item *a)* of the AL declares that the competence of state organs needs to be defined by Acts of Parliament but the competence of public administration offices is regulated by Government decrees and there is no regulation in an Act of Parliament delegating such power. The petitioner holds that the lack of clear provisions specified above violates Article 2 para. (1) of the Constitution.

II

The following statutory provisions were taken into account by the Constitutional Court in the procedure:

1) The provisions of the Constitution referred to by the petitioners are the following:

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

“Article 19 para. (2) Exercising its rights based on the sovereignty of the people, the Parliament shall ensure the constitutional order of society and define the organisation, orientation and conditions of government.”

“Article 34 para. (2) The name of a ministry, a minister or an administrative body specified by an Act of Parliament may be modified by an Act of Parliament to be adopted with a simple majority of the votes of the Members of Parliament present.”

“Article 40 para. (3) The Government has the right to place any branch of public administration under its direct supervision and create separate government bodies for this purpose.”

“Article 40/A para. (4) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the Act of Parliament establishing the detailed regulations and duties of the Armed Forces and to pass the Act of Parliament on the detailed regulations on the Police, the Border Guard and the activities of the national security services.

Article 44/C A majority of two-thirds of the votes of the Members of Parliament present is required to pass the Act of Parliament on local governments. The fundamental rights of local governments may be restricted by a law which also requires a two-thirds majority.”

“Article 57 para. (5) In the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions which infringe on his rights or justified interests. An Act of Parliament passed by a majority of two-thirds of the votes of the Members of Parliament present may impose restrictions on the right to legal remedy in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time.”

“Article 68 para. (5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the Act of Parliament on the rights of national and ethnic minorities.”“(4) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the Act of Parliament on citizenship.”

2) The provisions of the AGC challenged by the petitioners are as follows:

Section 1 para. (1) Section 100 of Act CXL of 2004 on the general rules of public administration procedures and services shall be replaced by the following regulation:

"Section 100 para. (1) No appeal may be lodged

a) if appeal is excluded in the case by an Act of Parliament or a government decree,

b) if the clients choose to exclude their right of appeal against a decision based on a settlement they have approved of,

c) in case of a decision made concerning an application in equity.

(2) In the case specified in para. (1) item *a)*, the judicial review of the decision of first instance may be requested from the court."

(2) Section 116 para (2) of Act CXL of 2004 on the general rules of public administration procedures and services shall be replaced by the following regulation and the following new para. (3) shall be added:

"(2) Unless otherwise provided by an Act of Parliament or a Government decree, the minister supervising or managing the administrative organ shall be considered the superior authority in case of administrative cases within the competence of

a) Government agencies or central agencies without territorial or local organs

and

b) the central organ of Government agencies or central agencies without territorial or local organs.

(3) Unless otherwise provided by an Act or a Government decree, the minister responsible for the subject matter shall be considered the superior authority in case of administrative cases within the competence of the public administration offices."

(3) The following new section, that is, Section 174/A shall be added to Act CXL of 2004 on the general rules of public administration procedures and services:

"Section 174/A In administrative procedures (with the exception of administrative procedures of local governments), the Government shall be authorised to

a) specify specialised authorities participating in the procedure by decree,

b) exclude the possibility of an appeal againts a decision of first instance."

(6) The following new para. (3) shall be added to Section 2 of Act LVII of 2006 on the central administrative organs and the legal status of members of the Government and undersecretaries of state:

"(3) An Act of Parliament or a Government decree may provide in connection with the management of a central agency or a public administration office that the head of a central administrative organ

exercises the powers specified in para. (1) items *c)*, *e)* and *g)* to *i)* regarding certain groups of cases (except for financial and efficiency audits)".

Section 5 para. (1) The following Section 13/A shall be added to Act CVII of 2004 on the multi-purpose partnerships of local governments in a micro-region:

"Section 13/A The Government is hereby authorised to appoint the public administration office or offices by decree."

Section 7 para. (1) As of the effective date of the present Act, the following modifications shall be made:

(…)

d) In Act LXV of 1990 on local governments, the text "the head of the Budapest or the county public administration office" in Section 17 para. (2) shall be replaced by the text "the organ appointed by decree (the public administration office)", the text "the head of the Budapest or the county public administration office" in Section 33/A para. (6), Section 95 item *a)* and Section 97 item *a)* shall be replaced by the text "public administration office", the text "the head of the Budapest or the county public administration office who" in Section 42 para. (3) shall be replaced by the text "the public administration office that", the text "the head of the county public administration office" in Section 52 para. (2) and Section 105 shall be replaced by the text "public administration office", the text "the head of the Budapest public administration office" in Section 63/C para. (1) shall be replaced by "the public administration office", the text "the head of the Budapest or the county public administration office" appearing twice in Section 92/C para. (6) shall be replaced by "the public administration office" in both cases, the heading before Section 98 entitled "the Budapest and the county public administration office" shall be replaced by the heading "the public administration office", the text "the Budapest or the county public administration office (hereinafter: public administration office)" in Section 98 para. (1) shall be replaced by "the public administration office", the text "the head of the public administration office in Budapest and in the counties" in Section 98 para. (2) shall be replaced by the text "the public administration office" and the text "the head of the public administration office" in Section 98 para. (3) as well as in Section 99 paras (1) and (2) shall be replaced by "the public administration office", the text "of the head of the public administration office" in Section 98 paras (4) and (5) shall be replaced by "the public administration office", and the text "the head of the public administration office" in Section 99 para. (1) shall be replaced by "the public administration office",

(…)

h) the text "the county (or Budapest) public administration office according to the residence of the person" in Section 4/A para. (1) of Act LV of 1993 on citizenship shall be replaced by "public

administration office” and the text “of the head of the public administration office” in Section 24 para. (4) item *e)* shall be replaced by the text “of the public administration office”,

d) In Act LXXVII of 1993 on the rights of national and ethnic minorities, the text “the competent public administration office” in Section 30/B para. (4) shall be replaced by “the public administration office”, the text “the Budapest or the county public administration office” in Section 30/O para. (1) shall be replaced by the text “the public administration office”, the text “the head of the Budapest or the county public administration office” in Section 60/H para. (1) and Section 60/M item *b)* shall be replaced by the text “the public administration office”, the text “the head of the public administration office with competence at the seat of the local government” shall be replaced by the text “the public administration office appointed by the Government”, the text “the head of the public administration office” in Section 60/I paras (1) and (4) as well as in Section 60/J paras (1), (2) and (4) shall be replaced by “the public administration office”, the text ”of the head of the public administration office” in Section 60/I paras (2) and (3) shall be replaced by “the public administration office", the text ”the head of the public administration office” in Section 60/J para. (1) shall be replaced by the text “the public administration office”, and the text “of the heads of the Budapest or the county public administration offices” shall be replaced by the text “the public administration office”. (…)

Section 7 para. (2) As of the effective date of the present Act,

a) In Section 39 para. (3) of Act XXXIV of 1997 on border surveillance and the border guard, the text “the head of the competent public administration office” shall be replaced by the text “the public administration office”,

(…)

l) In Section 28 para. (2) of Act CV of 2004 on national defence and the Armed Forces, the text “to the county (or Budapest) public administration office at the residence of the person” shall be replaced by “to the public administration office” and the text “the county (or Budapest) public administration office at the residence of the person” in Section 29 para. (1) of the same Act shall be replaced by “the public administration office”, while the text “the county (or Budapest) public administration office” shall be replaced by the text “the public administration office” in Section 55 para. (4) item *a)* of the same Act,

(…)

Section 8 As of the effective date of the present Act,

a) the text "county or Budapest" in Section 33/A para. (1) item *i)*, Section 96 item *c)* and Section 103 para. (3) of Act LXV of 1990 on local governments and the text "county" in Section 70 para. (3)

(…)

is hereby deleted.

Section 176 para. (2) Section 174 para. (6) of this Act shall lose its effect on 31 December 2006 while Sections 1 to 173 shall lose effect on 31 January 2007.

3) The sections of the Acts of Parliament the passing of which requires a two-thirds majority of the Members of Parliament present as modified by the AGC and challenged by the petitioners are as follows:

3.1. The regulations of the ALG modified by the AGC:

"Section 17 para. (2) The minutes of the session of the body of representatives shall be signed by the mayor and the notary. The notary shall send the minutes within fifteen days of the session to the organ appointed by the Government in a decree (the public administration office)."

"Section 33/A para. (1) The mayor may not be: (…)

i) the head or a civil servant of the public administration office, the civil servant of an administrative organ whose range of duties includes matters concerning the given local government if the jurisdiction of the organ applies to the local government,"

"Section 42 para. (3) The agreement shall be sent to the Budapest or the county public administration office and the office may make comments on its legality within fifteen days."

"Section 52 para. (2) If the forming of a new village is initiated, the village meeting shall elect a committee of at least three members from among the settlement representatives living in the given settlement part; if there are not enough settlement representatives, or if they do not accept the appointment, from among other citizens eligible to vote. The committee in charge of preparations shall draw up a proposal in respect of the territory of the new village, the name of the village (based on an expert opinion), the division of property and intangible assets and also obligations and the sharing of costs. At the request of the committee in charge of preparations, the public administration office shall provide professional assistance or another organ may provide professional assistance for the drafting of the proposal."

"Section 63/C para. (1) In the interest of ensuring a uniform urban policy in Budapest, the General Assembly shall define the city's general urban planning principles (after consultation with the Government and the district councils), and the urban development and urban rehabilitation programme for Budapest. The area of public services supplying several districts of the city and the locations and

access lanes of the facilities may be defined in the general urban planning concept of the city. In such designated areas and lanes, and in respect of such designated facilities which provide public services, the notary's authority shall be exercised by the public administration office.”

“Section 70 para. (3) In accordance with the range of duties and in the organization set out by a separate Act, the coordination of the duties of settlement development and of the regional development programmes of the government is performed by the regional development council.”

“Section 95 The Government shall

a) provide for the supervision of local governments as to the legality of their operation through the public administration office with the assistance of the minister responsible for local government affairs;”

“Section 96 The minister responsible for local government affairs shall (...)

c) take part in preparing the drafts of statutes and other legal instruments of state administration and of specific state decisions concerning the responsibilities and the authority of local governments and the activities of mayors, the Mayor of Budapest and the public administration office;”

“Section 97 The minister shall

a) set out (in the form of decrees) the professional rules concerning the tasks of state administration fulfilled by mayors, the Mayor of Budapest, the chairman of the county assembly, the notary, the notary of Budapest and the public administration offices and shall verify their enforcement;”

“The public administration office

Section 98 para. (1) The public administration office is a budgetary organ that performs state administration duties. The operation costs of the public administration office shall be covered by the Parliament separately in the chapter of the budget act on the minister responsible for local government affairs.

(2) The public administration office shall

a) perform the legality control of local governments but it may review the decisions of the local governments made in equity only from the aspect of legality;

b)

c) perform the state administration tasks and exercise the competence and rights delegated by the Government or specified by an Act

d)

e) based on the data collected in the course of legality control it may initiate with the State Audit Office an audit of the local government finances;

f) call the meeting of the body of representatives if the mayor has failed to comply with the petition defined in Section 12 para. (1) within fifteen days;

g) provide professional assistance in matters within its scope of duties and authority by request of a local government.

(3) The public administration office shall examine within its authority to control legality whether

a) the organisation, operation and decision-making procedure,

b) the decisions (decrees and resolutions),

c) the resolutions adopted by a committee, by a segment of the local government, by the mayor, the Mayor of Budapest or the chairman of the county assembly or the partnerships of local governments are in compliance with the relevant statutes.

(4) The authority of the public administration office of legality control with the exception of para. (5) shall not apply to those resolutions of the local government or its organs on the basis of which

a) a labour dispute, or a dispute arising from the civil service legal relationship,

b) court or state administration proceedings as stipulated in a separate statute may take place.

(5) The authority of the public administration office of legality control shall also extend to the resolutions listed in para. (4) with the scope outlined in para. (3) item *a)*, and in the case of para. (4) item *a)* if the resolution constitutes an infringement of a statute for the employee's benefit.

Section 99 para. (1) Within the scope of legality control, the public administration office shall call upon the party concerned to stop the infringement by setting a deadline. The party concerned shall examine the facts referred to in the abovementioned notice and (within the deadline) inform the public administration office on the measures taken on the basis thereof or if the party disagrees with the notice, the public administration shall be informed on the disagreement within the deadline.

(2) If no measure is taken within the deadline set, the public administration office may initiate

a) with the Constitutional Court the revision and nullification of the local government decree in conflict with the law;

b) the judicial review of the local government resolution in conflict with the law;

c) the convening of the local council to eliminate the infringement to assess the responsibility of the local council officer.

(3) Litigation aimed at eliminating the infringement of the law may be initiated against a local government or the mayor within thirty days from the expiry of the deadline set. The filing of the statement of claim has no suspending effect on the enforceability of the decision but the enforcement may be suspended by the court on request. If the enforcement of the decision in conflict with the law

were to violate public interest or it caused unavoidable damage, the suspension of enforceability shall be requested from the court and the affected party shall be notified on the request without delay."

"Section 103 para. (3) The public administration office is the legal successor of the Commissioner of the Republic and the office of the commissioner."

"Section 105 The villages belonging to a notary district shall be selected by the public administration office if the affected parties fail to come to an agreement. The local council may appeal to the minister responsible for local government affairs if the selection violates the interests of the population."

3.2. The regulations of the AC modified by the AGC:

"Section 4/A para. (1) The examination specified in Section 4 para. (1) item *e)* shall take place before the committee selected by the public administration office."

"Article 24 para. (4) The Government shall be authorised to establish

(…)

e) the exam requirements for the exam defined in Section 4 para. (1) item *e)* and also the tasks of the public administration office in connection with the exam, the procedure, the rules for verifying the eligibility for exam exemption and the content of the document certifying that the candidate has passed the exam and also the security requirements concerning the document."

3.3. The regulations of the AEM modified by the AGC:

"Section 30/B para. (4) Should any dispute arise between the parties concerning the implementation of the agreement in para. (3), the public administration office will hold a conciliation meeting in 15 working days from the proposal of the parties. If no agreement is reached within 30 working days, the office may take measures under its power of legality control."

"Section 30/O para. (1) The following officers may not be elected to the position of the president of the local minority self-government: the President of the Republic of Hungary, Judges of the Constitutional Court, an ombudsman, the president, the deputy president and the auditors of the State Audit Office, ministers, undersecretaries of state, deputy undersecretaries, civil servants of the central administration, heads or civil servants of the public administration office, the civil servants of those local and territorial state organs whose powers and duties include affairs affecting the respective local minority self-government and whose competence covers also the local (regional) minority self-government, the notary (the county notary or the Notary of Budapest, the district notary) of the relevant municipal government, the civil servants of the mayor's office, judges, prosecutors, notaries public, bailiffs, members of the permanent staff of armed forces and the police, staff members of the competent

council for regional development, the officers and the managers of institutions and companies established or maintained by the local minority self-government and persons appointed as officers by the local minority self-government.”

“Section 60/H para. (1) The public administration office is responsible for the legality control of the minority self-governments. The decisions of the self-government made under discretionary powers may only be reviewed from the aspect of their legality.

(2) The public administration office selected by the Government shall be responsible for the legality control specified in para. (1) of the national minority self-government.”

“Section 60/I para. (1) The public administration office under its authority of legality control shall examine whether

a) the organisation, operation and decision-making procedure,

b) its resolutions, including the resolutions of the organs of the local minority self-government, of its president, committee or partnership

comply with the relevant statutes.

(2) The authority of the public administration office of legality control with the exception of para (3) shall not apply to those resolutions of the local minority self-government on the basis of which

a) a labour dispute (or a dispute arising from a civil service or a state employee legal relationship),

b) court or state administration proceedings as stipulated in a separate statute may take place.

(3) The authority of the public administration office of legality control shall also extend to the cases listed in para. (2) with the scope outlined in para. (1) item *a)*, and in the cases of para. (2) item *a)* if the resolution constitutes an infringement of a statute for the employee's benefit.

(4) The public administration office shall provide professional assistance in matters within its scope of duties and authority by request of the local minority self-government.”

“Section 60/J para. (1) Within the scope of legality control, the public administration office shall call upon the party concerned to stop the infringement by setting a deadline. The party concerned shall examine the facts referred to in the abovementioned notice and (within the deadline) inform the public administration office on the measures taken on the basis thereof or if the party disagrees with the notice, the public administration shall be informed on the disagreement within the deadline.

(2) If no measure is taken within the deadline set or the affected party disagrees with the contents of the notice, the public administration office may initiate

a) the judicial review of the local government resolution in conflict with the law;

b) convening the council of the local minority self-government to eliminate the infringement of the law,

c) establishing the responsibility of the president or the vice-president of the council.

(…)

(4) Based on the data collected in the course of legality control, the public administration office may initiate with the State Audit Office an audit of the local minority self-government finances."

"Section 60/M The Government shall (…)

b) provide for the supervision of local minority self-governments as to the legality of their operation through the public administration office with the assistance of the minister responsible for local government affairs,"

"Section 62 para. (1) The Government (with the involvement of the affected minsters and organs with national competence and with the assistance of the public administration offices) shall aid the minorities in exercising their rights, promoting their interests and in providing for the conditions of these rights and interests through an administrative organ specified in a Government decree responsible for the state tasks related to national and ethnic minorities."

3.4. The regulation of the ABG modified by the AGC are as follows:

"Section 39 para. (3) The head of the territorial agency of the Border Guard shall inform the head of the competent public administration office, the president of the county (Budapest) assembly (or the Mayor of Budapest), the county (Budapest) police commissioner, the commander of the county (Budapest) civil defence unit; the head of the Border Guard's local unit shall inform the mayor of the local government, and with respect to item *e)* hereof, the competent environment protection and nature conservation authority without delay."

3.5. The regulations of the AAF modified by the AGC are as follows:

"Section 28 para. (2) The application shall be submitted to the head of the draft agency or the public administration office. The form including the data set by the relevant statute shall be attached to the application. If the person called up for military service has applied for unarmed military service and the application is rejected, such person may not file a new application."

"Section 29 para. (1) The public administration office shall make a decision on allowing or rejecting the application for unarmed military service. The draft agency may participate in the procedure as a client."

"Section 55 para. (4) The president of the county defence committee is the president of the county assembly while the defence committee of Budapest is presided over by the Mayor of Budapest. Its members are:

a) the head of the public administration office, (…)"

III

First of all, the Constitutional Court has examined which regulations in which Acts of Parliament need to be reviewed from the aspect of constitutionality.

This examination has become necessary since Section 176 para. (2) of the AGC provides that Sections 1 to 173 of the AGC shall lose effect as of 31 January 2007. As a result, the provisions of the AGC challenged by the petitioners are not effective on the day the present Decision of the Constitutional Court is passed.

As a general rule, the Constitutional Court only reviews the constitutionality of statutes in force. Statutory provisions not in effect may only be subject to a Constitutional Court procedure in two cases: in the case of a judicial initiative under Section 38 para. of Act XXXII of 1989 and in the case of a constitutional complaint under Section 48 of the same Act. As the petitions are not subject to Sections 38 or 48 of the AGC, the Constitutional Court has terminated the procedure for the establishment of the unconstitutionality of the AGC as a whole or of Section 7 para. (1) items *d)*, *h)* and *i)*, Section 7 para. (2) items *a)* and *l)* as well as of Section 8 item *a)* of the same Act, respectively, with reference to Section 31 item *a)* of Decision of the Full Session 3/2001 (XII. 3.) Tü. as amended on the Constitutional Court's Provisional Rules of Procedure and on the Publication Thereof (ABH 2003, 2065, hereinafter: Rules of Procedure).

One of the petitioners has also challenged Section 176 para. (2) of the AGC by stating that the actual purpose of repealing the AGC so early was to prevent a constitutionality review.

According to the ministerial reasoning of the AGC, the purpose of setting the date of repealing the Act was "to prevent the legal system from becoming unnecessarily 'overburdened'". As explained in the ministerial reasoning, the purpose of Act LXXXII of 2007 on repealing certain statutes and statutory provisions (a deregulation act) to be adopted later was the same: to reduce the complexity of the legal system by repealing provisions that modify or repeal statutes and that are already enforced. Sections 1 to 173 of the AGC only contain provisions modifying other Acts of Parliament. These provisions modifying other Acts of Parliament were incorporated in the provisions of the said Acts of Parliament on the effective date of the AGC (1 January 2007) and by the date specified in Section 276 para. (2), the AGC has been "emptied" (save for the closing provisions). [See Decision 4/2006 (II. 15.) AB, ABH 2006, 101]

An Act of Parliament modifying other Acts of Parliament is not unconstitutional just because it includes the date it is automatically repealed when it has performed its function. As pointed out by the

Constitutional Court in its Decision 1437/1995 AB, “the establishment of the unconstitutionality of a statute that has repealed another statute does not mean that the provisions affected by the repeal will be ‘reborn’ automatically; the Constitutional Court has no power to ‘re-enact’ a statute as this is a power reserved for the legislator.” (ABH 1998, 616, 618-619)

In view of the above, the Constitutional Court has rejected the petition seeking establishment of the unconstitutionality and annulment of Section 176 para. (2) of the AGC.

As the petitioners claim that certain regulations modified by the AGC are also unconstitutional, the Constitutional Court has had to review the constitutionality of the regulations modified by the challenged regulations of the AGC.

These are the following:

– Section 17 para. (2), Section 33/A para. (1) item *i)*, Section 42 para. (3), Section 52 para. (2), Section 63/C para. (1), Section 70 para. (3), Section 92/C para. (6), Section 95 item *a)*, Section 97 item *a)*, Section 96 item *c)*, the heading before Section 98 [“The county (Budapest) public administration office], Section 98 para. (2), Section 98 para. (3), Section 99 paras. (1) and (2), Section 98 paras (4) and (5), Section 99 para. (1), Section 103 para. (3) and Section 105 of the ALG,

– Section 4/A para. (1) and Section 24 para. (4) item *e)* of the AC,

– Section 30/B para. (4), Section 30/O para. (1), Section 60/H para. (1), Section 60/M item *b)*, Section 60/H para. (2), Section 60/I paras (1) and (4), Section 60/J paras (1), (2) and (4), Section 60/I paras (2) and (3), Section 60/J para. (1) and Section 62 para. (1),

– Section 39 para. (3) of the ABG,

– Section 28 para. (2), Section 29 para. (1) and Section 55 para. (4) item *e)* of the AAF,

– Section 13/A of the MMPA,

– Section 19, Section 100 para. (1), Section 116 paras (2) and (3) and Section 174/A of the APAPS,

– Section 2 para. (3) of the ACAO and the 16 Government Decrees challenged by the third petitioner.

Section 33/A para. (6) of the ALG is also challenged by the petitioners. The Constitutional Court has established that the Parliament has adopted a new regulation following the filing of the petitions to replace Section 33/A para. (6) of the ALG in Act LIX of 2007 on modifications of Acts of Parliament on the procedure for establishing conflicts of interest of mayors and local council members. These new regulations have been adopted by the Parliament in a legislative procedure specified by the Constitution and with a qualified majority. As a result, there is no reason to continue the procedure regarding this petition and, therefore, the Constitutional Court has terminated the procedure for examining the

constitutionality of Section 33/A para. (6) of the ALG under Section 31 item *e)* of the Rules of Procedure.

IV

1. All petitioners claim that the legislator has violated Article 44/C of the Constitution by modifying the provisions of the ALG through an Act of Parliament adopted by a simple majority of votes. Also, one of the petitioners alleges that Article 40/A para. (4), Article 68 para. (5) and Article 69 para. (4) have also been violated by the fact that the legislator has modified the provisions of the AC, the ABG, the AAF and the AEM on the Budapest and the county public administration offices by a simple majority of votes.

In the holdings of Decision 1/1999 (II. 24.) AB, the Constitutional Court specified the following constitutional requirements:

"1. It is established by the Constitutional Court that the requirement to have a qualified majority in the adoption of any Act of Parliament defined by the Constitution is not simply a formal requirement of the legislative process but a constitutional guarantee with the essential content of securing wide-scale concordance among the Members of Parliament. The requirement to have a qualified majority applies not only to the adoption of the Act of Parliament as the direct implementation of the constitutional provision concerned but to its modification (i.e. amendment or completion) and repealing as well. No Act of Parliament passed constitutionally by a qualified majority may be amended or repealed by an Act of Parliament passed by a simple majority." (ABH 1999, 25)

This constitutionality requirement is not equally applicable in this case as Section 1 of Act LIV of 2006 (on the amendment of Act XX of 1949 on the Constitution of the Republic of Hungary) has added a second paragraph, i.e. paragraph (2) to Article 34 of the Constitution to facilitate the reform of the public administration. Article 34 para. (2) of the Constitution includes the following provision:

"(2) The name of a ministry, a minister or an administrative body specified by an Act of Parliament may be modified by an Act of Parliament to be adopted with a simple majority of the votes of the Members of Parliament present.

This new rule in the Constitution allows the Parliament to modify 'two-thirds' Acts of Parliament by a simple majority of votes if the legislator only wishes to modify the name of the public administration organ specified in the provision of the 'two-thirds' Act. In the present case, the Constitutional Court is required to interpret this provision of the Constitution and it must decide whether the modifications of "the Budapest or county public administration office" and "the head of the Budapest or county public

administration office" to "the public administration office" or to "the public administration office selected by the Government" as used in the ALG, the AC, the AEM, the ABG and the AAF only mean that the name of the public administration offices have been modified or the Constitutional Court must establish that the legislator has exceeded its powers granted under Article 34 para. (2) of the Constitution by the modifications above.

The practice of the Constitutional Court has been consistent in enforcing the constitutional requirement under Decision 1/1999 (II. 24.) AB in all cases when the provision of a 'two-thirds' Act of Parliament has been directly modified by an Act passed by only a simple majority of votes. As pointed out by the Constitutional Court in Decision 31/2001 (VII. 11.) AB (ABH 2001, 252, 263-265), in all cases when the modification (amendment or repeal) is unclear from a formal (that is, textual) aspect, "it must be examined what the essence of the regulatory concept is in the 'two-thirds' Act of Parliament, which means the examination of whether the Act of Parliament passed by a simple majority of votes affects the essential content of the 'two-thirds' Act."

"Due to the fact that the function of the qualified majority is to secure a broad consensus, in the course of examining whether a two-thirds majority is necessary, it must be analysed what the necessity of securing a broad consensus has applied to. This very often means that the intention of the constituent entity and the history of the evolved regulations need to be analysed. This method has already been applied by the Constitutional Court. [See for example Decision 4/1997 (I. 22.) AB, ABH 1997, 41, 45; Decision 66/1997 (XII. 29.) AB, ABH 1997, 397, 402-403; Decision 4/1999 (III. 31.) AB, ABH 1999, 52, 57-59]"

Since in the present case the essence of the constitutionality dilemma is the fact that under the wording of the Constitution it is difficult to specify the cases when a two-thirds majority is required for changing the name of a public administration organ, the Constitutional Court (with regard to its established practice) must examine whether the change of the name in the 'two-thirds' Act of Parliament affects the essence of the regulatory concept of the same Act.

2. In Acts of Parliament, the regulation concerning the administrative organs (from the aspect of deciding whether a two-thirds majority is required under the Constitution) is twofold:

a) One legislative method is when a 'two-thirds' Act of Parliament sets up the organ (including its position in the hierarchy of state organs, its designation and the main aspects of its status) either because there is a provision of the Constitution on the regulation of an organ enumerated in the Constitution (for instance, the police) or for the purpose of guarantee as the organ is key in exercising certain fundamental rights for the regulation of which a 'two-thirds' Act is required. If the organ is set

up by the legislator through an Act of Parliament adopted by a two-thirds majority (for example the National Radio and Television Commission), a regulation that changes the legal status or the structure of such organ results in modifying the essential content of the Act of Parliament adopted by a qualified majority since the modified rules are meant to enforce the provisions of the Constitution requiring a two-thirds majority. Therefore, the modification of the provisions in 'two-thirds' Acts of Parliament setting up administrative organs exceeds the authorisation specified in Article 34 para. (2) of the Constitution. Consequently, a two-thirds majority is obligatory for any amendment.

b) The other type of two-thirds regulation in Acts of Parliament involving the name of the administrative organ is when the Act of Parliament adopted by a two-thirds majority in the given topic regulates an administrative task or power the fulfilment or exercising of which is delegated to an existing administrative organ set up by another statute (Act of Parliament adopted by a simple majority or a Government Decree).

In such cases of regulation, the legal status of the affected administrative organ is not based on the statutory provision regulating the task or the power by a two-thirds majority. Such provisions in the Act of Parliament only select an existing organ or type of organ from the hierarchy of state organs to fulfil the particular task or to exercise the given power. If the statute establishing the administrative organ specified in such regulations is amended due to the restructuring of the state administration system, the task or power requiring a two-thirds majority will be fulfilled or exercised by a different organ and this means that the 'two-thirds' Act must be modified to change the relevant name. In this case, changing the name of the relevant organ will not affect the regulatory concept of the 'two-thirds' Act of Parliament if the task or power is unchanged. (For instance, under effective regulations, the tasks of the Ministry of the Interior related to local governments are now fulfilled by the Ministry of Local Governments and Regional Development as the Ministry of the Interior has been dissolved. The tasks and powers granted to the Minister of the Interior in the ALG are the same and they are still fulfilled and exercised by a ministry. The regulatory concept and the essence of the regulation in the ALG have not changed by the provisions of the AGC modifying the name "Ministry of the Interior" to "the minister responsible for local government affairs".) The Constitutional Court is of the opinion that no two-thirds majority is required for amending the Acts of Parliament on these grounds under Article 34 para. (2) of the Constitution even if Acts of Parliament requiring a two-thirds majority for amendment are modified.

3. The public administration office is a state administration organ inferior to the Government. Public administration offices are not mentioned in the Constitution. The Constitution includes no rule that

would require a two-thirds majority for regulating the legal status of the public administration office. A two-thirds majority is required for regulating such powers or tasks of the office that affect human rights to be regulated by Acts of Parliament adopted by a two-thirds majority or such powers or tasks that affect the fundamental rights of local governments.

The majority of the challenged ALG regulations and all the challenged provisions in the AC, the AEM, the ABG and the AAF have either specified the public administration office as an organ to which these Acts have delegated a task or a power or a procedural action or they have enumerated conflict-of-interest regulations affecting the head of the public administration office. In these regulations, the reference to the Budapest or the county public administration offices were meant to specify the type of administrative organ to which the procedural action, the task or the power has been delegated as these public administration offices were organisations with competence over a county (or Budapest) each at the time these Acts of Parliament were passed. The legal status of these offices (that is, they are state administration organs with competence over a county or Budapest) was not based on these statutory provisions. The essence of the regulation in these statutes has not been affected by the fact that the challenged provisions have removed the geographical indicator "Budapest" or "county" or by the removal of the "head" and specifying the public administration office as the entity to which the power or the task is delegated as the public administration office is managed by a single person exclusively accountable for the basic functions of the office. The public administration office has remained the entity responsible for the tasks and procedural events and exercising the powers specified in the challenged regulations. Consequently, it cannot be established with regard to these provisions that the legislator has exceeded the limits of the authorisation in Article 34 para. (2) of the Constitution.

As a result, the Constitutional Court has rejected the petitions aimed at establishing the unconstitutionality of, and at annulling, the following provisions: Section 17 para. (2), Section 33/A para. (1) item *i)*, Section 42 para. (3), Section 52 para. (2), Section 63/C para. (1), Section 96 item *c)*, Section 95 item *a)*, Section 97 item *a)*, Section 92/C para. (6), the heading before Section 98 ["The county (Budapest) public administration office], Section 98 para. (2), Section 98 para. (3), Section 99 paras (1) and (2), Section 98 paras (4) and (5), Section 99 para. (1), Section 103 para. (3) and Section 105 of the ALG, Section 4/A para. (1) and Section 24 para. (4) item *e)* of the AC, Section 30/B para. (4), Section 30/O para. (1), Section 60/H para. (1), Section 60/M item *b)*, Section 60/H para. (2), Section 60/I paras (1) and (4), Section 60/J paras. (1), (2) and (4), Section 60/I paras (2) and (3), Section 60/J para. (1) and Section 62 para. (1) of the AEM, Section 39 para. (3) of the ABG, Section 28 para. (2), Section 29 para. (1) and Section 55 para. (4) item *a)* of the AAF.

4. Regarding the modification of Section 98 para. (1) of the ALG, it must also be examined whether the requirement of a broad consensus entailing a two-thirds majority applies to the legal status of the organ exercising legality control over the local governments and whether the regulatory concept of the ALG has changed due to the fact that the modification of the ALG by a simple majority has made it possible to change the position of the public administration office within the hierarchy of the state administration.

This means that the evolution of the present regulations needs to be analysed.

The Commissioner of the Republic [the institution that is the legal predecessor of public administration offices under Section 103 para. (3) of the ALG] was founded by the ALG originally, and its legal status was regulated in Sections 98 to 100 initially. The Commissioner of the Republic was an institution of a peculiar legal status and its basic tasks included the supervision of local governments from the aspect of legality and it was also the appellate organ in the decisions of first instance passed by the local governments in issues of state administration. It also was competent in coordinating the operation of subordinate state administration and it was responsible for state administration issues delegated by the Government. The original ALG also set the Commissioner's term of office and the method of appointment. Another Act of Parliament (Act XC of 1990) included additional regulations on the legal status and the office of the Commissioner. The regions of the Commissioners (their areas of operation) were defined by Parliamentary Resolution 66/1990 (VIII. 14.) OGY and the detailed rules for their procedure were established by Government Decree 77/1992 (IV. 30.) Korm.

The 1994 amendment of the ALG dissolved the institution of the Commissioners and established the public administration offices as a replacement. Act LXIII of 1994 on the amendment of the ALG specified the following reasons for the reorganisation:

"The Bill proposes the cancellation of the Commissioners as a legal institution. The final provisions declare that the Budapest/county public administration offices are the legal successors of the Commissioners and their offices. The Commissioners will be replaced by the public administration offices with slightly modified competences. Public administration offices are budgetary organs operating in the counties and in Budapest and responsible for state administration tasks.

The institution of regional Commissioners of the Republic did not prove suitable. Their offices, however, were efficient in legality supervision in the hierarchy of the administration. In addition to retaining the main functions, the public administration offices in Budapest and in the counties as organs inferior to the Ministry of the Interior may be more efficient in supervising legality and in the management of the administrative system. (…)"

“The main purpose of the restructuring was to prescribe exclusively state administration tasks to the Commissioners of the Republic and to re-establish its position within the hierarchy of state administration as this institution was born as a result of political compromises back in 1990 and as a result its tasks were partly enforcement-related state administration tasks and partly tasks related to public administrative policy.

The public administration office is a state administration organ controlled by the Minister of the Interior out of the political sphere. Its basic function remains the operative supervision of local governments from the aspect of legality.”

As a result of the modifications in Act LXIII of 1994, the public administration offices were set up under Section 98 to 100 of the ALG as a category of state administration organs. Their legal status, designation and main tasks and also their position in the hierarchy of state administration were defined. The regulations included two tiers. In addition to the regulations of the ALG, Government Decree 161/1994 (XII. 2.) Korm. specified the detailed regulations regarding the legal status of the offices.

Another change occurred in the legal status of the public administration offices in 1996.

Act LXXII of 1996 modifying the ALG reduced the weight of the ALG in defining the legal status of the Budapest and county offices of public administration. According to the minister’s reasoning, the main reason for modifying the ALG was to reform the territorial state administration organs, that is, to enable them to fulfil their tasks under the purpose of the reform. This Act repealed the provisions of the ALG on the legal status of the public administration offices with the exception of Section 98 para. (1). By then, the modified legal status of the Budapest and county public administration offices was regulated by a Government Decree, namely Government Decree 191/1996 (XII. 17.) Korm. on public administration offices. This Government decree modified the position of public administration organs in the hierarchy of state administration. They became territorial organs of the Government instead of being subordinated to the Ministry of the Interior. The organisational framework of their operation changed and their tasks and powers were extended.

After the 1996 amendment, only the competence and procedural regulations concerning the legality supervision of the local governments remained in the ALG. However, Section 98 para. (1), one of the rules governing the legal status of the offices, was not affected by Act LXXII of 1996 and stayed in effect as follows (until the effective day of the challenged modification in the AGC):

“Section 98 para. (1) The Budapest/county public administration office (hereinafter: public administration office) is a budgetary organ that performs state administration duties. The operation costs of the public administration office shall be covered by the Parliament separately in the chapter of the budget act on the Minister of the Interior."

This regulation was modified by Section 7 item *d)* of the AGC as follows:

“Section 98 para. (1) The public administration office is a budgetary organ that performs state administration duties. The operation costs of the public administration office shall be covered by the Parliament separately in the chapter of the budget act on the minister responsible for local government affairs.”

The starting point in deciding on the constitutionality of these regulations is the same: it must be resolved whether the regulatory concept of a ‘two-thirds' Act has changed by the fact that the legislator has deleted the indicator “Budapest or county” from the name of the public administration office.

The requirement of regulating the issue in a 'two-thirds' Act is based on Article 44/C of the Constitution which declares that a two-thirds majority of the votes of the MPs present is required to pass the Act of Parliament on local governments and to restrict the fundamental rights of local governments.

The legality supervision over local governments includes the possibility of restricting the freedom of exercising the fundamental rights of the local governments. As a result, a two-thirds Act is required for establishing the powers of the organ entitled to supervise the local governments from the aspect of legality. It is an organisational guarantee of protecting the fundamental rights of local governments (regulated by a 'two-thirds' Act) that the ALG itself founded the organ entitled to supervise local governments from the aspect of legality. Section 98 para. (1) of the ALG founded the public administration offices and established their position within the system of state organs. This rule of the ALG specified that the public administration offices are organs at the county (Budapest) level of state administration and, therefore, the political consensus manifested in the Act of Parliament adopted by a two-thirds majority meant that it had been agreed that a state administration organ operating at a Budapest/county level would supervise the local governments from the aspect of legality. Consequently, an important element in the regulatory concept of the ALG has been affected by the modification that has allowed the modification of the offices’ position in the hierarchy of state administration through the removal of the indicator “county or Budapest”. By that, the legislator has exceeded the limits of the authorisation in Article 34 para. (2) of the Constitution. It may be, therefore, established that the Parliament has adopted the text of Section 98 para. (1) of the ALG set by Section 7 para. (1) item *d)* of the AGC in violation of the legislative regulations defined in Article 44/C of the Constitution. Consequently, the first sentence in Section 98 para. (1) of the ALG is unconstitutional.

As the establishment of regional public administration offices and the adoption of the statutory basis for their establishment require to be regulated by a ‘two-thirds’ Act of Parliament, the lack of constitutional statutory basis makes the GovDec unconstitutional as well.

Based on the above, the Constitutional Court has established that the first sentence in Section 98 para. (1) of the ALG and the GovDec are unconstitutional and they have consequently been annulled by the Court.

Under Section 43 para. (1) of the ACC, a statute or another legal instrument of state administration annulled by the Constitutional Court shall not be applicable as from the day of publication of the relevant decision in the Official Gazette. Regarding the date of the annulment, an exception from this general rule is granted by Section 43 para. (4) of the ACC, by which the Constitutional Court may set a date different from the one specified in Section 43 para. (1) for the annulment of the unconstitutional statute if it is justified by the requirement of legal certainty or by a particularly important interest of the petitioner. Under the GovDec, the public administration offices were reorganised; regional public administration was formed, and their leaders were appointed. Similarly, annulment with *ex nunc* effect would result in annulling the legal basis of the public administration offices, and consequently the validity of their decisions would become questionable. As a result, the Constitutional Court has come to the conclusion that due to the requirement of legal certainty, the challenged provisions will be annulled from a specific future date.

When specifying the date of annulment, the Constitutional Court intended to leave sufficient time for the legislator to comply with its obligation in rectifying the unconstitutionality. Consequently, the Constitutional Court has resolved that the date of annulment is 30 June 2008.

5. On the basis of the petitions, the Constitutional Court has also examined the constitutionality of Section 13/A of the MMPA. Section 5 para. (1) of the AGC added a new section (Section 13/A) to the MMPA under which the Government has become authorised “to appoint the public administration office or offices by decree”.

The petitioners hold that by adopting this regulation, the legislator has avoided the necessity of modifying the ALG, a 'two-thirds' Act of Parliament establishing the county and Budapest public administration offices, and the legislator has authorised the Government to “terminate and to specify the legal successor” of an organ established by the ALG. They are also convinced that this regulation violates the principle of the state under the rule of law and impairs the right of the Parliament granted in Article 19 para. (2) of the Constitution.

The Constitutional Court holds that the interpretation of the challenged provision is ambiguous since the provision has been incorporated in the act on multi-purpose partnerships in micro-regions and the authorisation applies to the appointment of the public administration office and not to regulating the legal status of the office.

One possible interpretation is that the Government has been authorised to appoint the public administration office to exercise the powers granted under the MMPA. This interpretation does not result in the unconstitutionality of the authorisation as alleged by the petitioners.

Another possible interpretation is that this rule (although its wording is inconsistent with the terminology applied in administrative law) should be regarded as an authorisation to regulate the legal status of the public administration offices. If the latter interpretation is accepted concerning the authorisation, the petitioners are right in claiming that the authorisation includes the power to modify the position of the public administration offices in the state administration hierarchy.

Due to the ambiguity of the authorisation, the Constitutional Court has had to examine how this rule of the MMPA is interpreted by the legislator in light of the wording of the GovDec.

The preamble of the GovDec does not help interpret the challenged regulation since the basis of the Government authorisation is specified as follows:

"Under its basic legislative power granted by Article 35 para. (2) of the Constitution and acting in accordance with its task specified in Article 35 para. (1) item *c)* and Article 40 para (3) of the Constitution, furthermore, by virtue of the authorisation granted in Section 13/A of Act CVII of 2004 on the multi-purpose partnerships of local governments in micro-regions, the Government hereby passes the following decree:"

The phrasing above means that the underlying principle of the legal regulation is unclear. If it is presumed that the legislator has intended the Government's regulatory power regarding the legal status of the public administration offices to be based on Article 35 para. (2), Article 35 para. (1) item *c)* and Article 40 para (3) of the Constitution, and the GovDec has been based on these provision and on its primary legislative power, it is unclear what the reasons are that have necessitated the authorisation in Section 13/A of the MMPA.

The GovDec has replaced the Budapest/county public administration offices with regional offices, and therefore it may be established by the contents of the GovDec that the legislator has considered the provision under review an authorisation for regulating all aspects concerning the legal status of the public administration offices, including the authorisation to change the position of public administration offices in the system of state administration. The Constitutional Court has pointed out in accordance with the above that public administration offices have been set up as county (Budapest)-level state administration organs by Section 98 para. (1) of the ALG and therefore their position within the hierarchy of state organs may only be modified by an Act of Parliament adopted by a two-thirds majority of the MPs present. Based on the authorisation in Section 13/A of the MMPA, certain elements

in the legal status of the public administration offices that had been regulated by the ALG earlier and are subject of legislation by a two-thirds majority became regulated in a Government decree.

The Constitutional Court is of the opinion that this regulatory method contravenes Article 44/C of the Constitution and violates the principle of the rule of law in Article 2 para. (1) of the Constitution. Consequently, the Court has established that Section 13/A of the MMPA is unconstitutional and it has annulled the rule.

6. Although Section 70 para. (3) of the ALG includes no rule affecting public administration organs, the petitioners have requested the Court to examine it due to the fact that the rule has not been passed by a two-thirds majority. Section 70 para. (3) of the ALG read as follows prior to the modification by the AGC:

"(3) In accordance with the range of duties and in the organisation set out by a separate Act, the coordination of the duties of settlement development and of the regional development programmes of the government is performed by the county regional development council.

The AGC has modified the rule and removed the indicator "county" from the name of the council.

The rule of the ALG regarding the county regional development councils was added to the Act by Section 40 of Act LXIII of 1994 on amending Act LXV of 1990 on local governments. This rule has included the provision since it was passed that the organisation and the tasks of the regional development council are to be defined by a separate Act of Parliament. Therefore, the ALG has allowed the Parliament to define the legal status of the county regional development council in a separate Act to be passed by a simple majority of votes. This "separate Act of Parliament" is Act XXI of 1996 on Regional Development and Land Use Planning (hereinafter: the ARD). The ARD created a multi-tier system of development councils (national, regional, territorial and county and as of 1 September 2004, the micro-regional development councils) and they fulfil their regional development tasks in accordance with the task-sharing specified by the ARD. Considering this, it may be established that the removal of the indicator "county" from Section 70 para. (3) of the ALG has not affected the regulatory concept of the ALG (namely that the regional development tasks are not to be performed by county local governments but by an organisation with a different legal status, that is, the regional development council). Consequently, the legislator has not exceeded the limits of the authorisation in Article 34 para. (2) of the Constitution by modifying Section 70 para. (3). For this reason, the Constitutional Court has rejected the petition aimed at establishing the unconstitutionality of, and at annulling Section 70 para. (3) of the ALG.

V

1. Based on one of the petitions, the Constitutional Court has had to decide whether the regulation or the foundation of state administration organs and the regulation of their legal status are to be considered subjects that may only be regulated by Acts of Parliament under the Constitution.

The petitioner is of the opinion that Article 19 para. (2) of the Constitution is violated by the fact that the Government has been granted the power to regulate the legal status of state administration organs and to reorganise their hierarchy as a result of the statutory modifications effected by the AGC. Article 19 para. (2) declares that through exercising its rights based on the sovereignty of the people, the Parliament shall ensure the constitutional order of society and define the organisation, orientation and conditions of government." The petitioner is of the opinion that under this provision of the Constitution the establishment and the legal status of state administration organs may only be defined by Acts of Parliament.

Article 19 para. (2) of the Constitution vests with the Parliament the power to establish the legal status of organs in the organisation of government, that is, government bodies. This does not mean that Acts of Parliament must be applied for founding and establishing the legal status of organs in the entire system of state administration.

The Constitution itself regulates which organs in the state administration require to be founded by Acts of Parliament. Under Article 34 para. (1) of the Constitution, the list of ministries is included in a separate Act of Parliament while Article 40/A provides that the legal status of certain law enforcement agencies (the police, the board guard and the national security agencies) is to be regulated in Acts of Parliament. Sections 1 and 71 of the ACAO provide that certain other state administration organ types (the autonomous state administration organs and the government agencies) are to be established by Acts of Parliament exclusively.

In the course of evaluating the petition, the provisions of the Constitution governing the position of the Government in the administrative system of the state and its accountability regarding the operation of the state administration system must be used as a starting point.

Under Article 35 para. (1) of the Constitution, it is the fundamental duty of the government to ensure the enforcement of the laws and to direct and coordinate the work of the system of state administration that is responsible for executive tasks. The Government is responsible for securing the legitimate and efficient operation of the system of state administration. Recognising this function,. the Constitution grants powers to the Government regarding the entire system of state administration and in this respect

the Government is given the right under Article 40 para. (3) of the Constitution to establish organs. Article 40 para. (3) declares that the Government has the right to place any branch of public administration under its direct supervision and create separate government bodies for this purpose.”

The Government decrees the petitioner considers unconstitutional define the legal status of such central agencies and territorial state administration organs that are parts of the state administration system subordinate to the Government, and therefore the Government has organisation rights under Article 40 para. (3) of the Constitution regarding these organs and agencies. Therefore, the unconstitutionality of the Government decrees listed by the petitioner cannot be established based on Article 19 para. (2) of the Constitution. Also, the rule in Section 2 para. (3) of the ACAO authorising the Government to delegate certain management powers of central and administrative agencies to the head of a central state administration organs is not unconstitutional.

Based on the above, the Constitutional Court has rejected the petitions aimed at establishing the unconstitutionality of, and at annulling Section 2 para. (3) of the ACAO, Government Decree 295/2006 (XII. 30.) Korm. on the Hungarian Labour Inspectorate, Government Decree 311/2006 (XII. 23.) Korm. on the Hungarian State Treasury, Government Decree 365/2006 (XII 28.) Korm. on the selection of the health insurance supervisory authority, Government Decree 347/2006 (XII. 23.) Korm. on the selection of organs responsible for tasks related to environment protection, nature protection and water issues, Government Decree 343/2006 (XII. 23.) Korm. on the selection and operation of building authorities and the building supervisory authorities, Government Decree 334/2006 (XII. 23.) Korm. on the selection of animal protection authorities, Government Decree 331/2006 (XII. 23.) Korm. on child protection and child welfare tasks and competences and the hierarchy of the child welfare authorities and their competence, Government Decree 317/2006 (XII. 23.) Korm. on the National Health Insurance Fund, Government Decree 314/2006 (XII. 23.) Korm. on the organisation of the Hungarian Customs and Finance Guard and the selection of the proceeding organs, Government Decree 338/2006 (XII. 23.) Korm on land registry offices, the Institute of Geodesy, Cartography and Remote Sensing, the Committee of Geographical Names and the detailed regulations of land registration, Government Decree 313/2006 (XII. 23.) Korm. on the Treasury Property Directorate, Government Decree 312/2006 (XII. 23.) Korm. on the Government Audit Office, Government Decree 322/2006 (XII. 23.) Korm. on the National Ambulance Service, Government Decree 307/2006 (XII. 23.) Korm. on the National Education Office and Government Decree 308/2006 (XII. 23.) Korm. on the National Office of Cultural Heritage.

2. Under one of the petitions, the Constitutional Court has also examined the constitutionality of Section 19, Section 100 para. (1), Section 116 paras (2) and (3) and Section 174/A of the APAPS as

defined by the AGC. The petitioner holds that the delegation of legislative powers to the Government under these provisions of the APAPS violates the right to legal remedy granted by Article 57 para. (5) of the Constitution.

The Constitutional Court has established that regarding Section 100 para. (1) item *a)* and Section 174 para. (1) item *b)* of the APAPS the petition is well-founded.

Under Section 100 para. (1) item *a)*, no appeal may be lodged if the right of appeal is denied by an Act of Parliament or a Government decree while Section 174/A item *b)* authorises the Government to deny the right of appeal by decree.

Pursuant to Article 57 para. (5) of the Constitution, the right to seek legal remedy is granted to everyone within the framework provided by Acts of Parliament and under Article 8 para. (2) of the Constitution this right may only be regulated by Acts of Parliament.

The Constitutional Court has already interpreted in several of its decisions the connection of regulations by decrees or by Acts of Parliament with respect to Article 8 para. (2) of the Constitution. In these regulations the Court has pointed out that the regulation of fundamental rights only complies with the formal constitutionality requirement in Article 8 para. (2) of the Constitution if the fundamental rights are regulated by Acts of Parliament. However, not every kind of relationship with the fundamental rights calls for regulation by an Act of Parliament. It is not unconstitutional to regulate by decree issues that are connected with the fundamental rights if these issues affect them only indirectly and remotely and the rules are not restrictive and only govern technical issues. “The determination of the content of a certain fundamental right and the establishment of the essential guarantees thereof may only occur in Acts of Parliament; furthermore, the direct and significant restriction of a fundamental right also calls for an Act of Parliament.” [Decision 64/1991 (XII. 17.) AB, ABH 1991, 297, 300; Decision 29/1994 (V. 20.) AB, ABH 1994, 148, 155]

In public administration cases to be resolved by authorities, the content of the right to legal remedy and the basic guarantees of the right to legal remedy are regulated by Chapter VII of the APAPS. In public administration procedures, the right of appeal is not the exclusive form of legal remedies but the right of appeal is one of the important guarantees for securing the right to legal remedy. The appeal is the key element of the legal remedy system regulated by the APAPS. It is an ordinary form of legal remedy. The appeal is the key element of the legal remedy system regulated by the APAPS. It is a regular form of legal remedy. The delegated legislation that authorises the Government to exclude the right of appeal violates Article 57 para. (5) and, consequently, Article 8 para. (2) of the Constitution.

As a result, the Constitutional Court has established that the phrase “or government decree” in Section 100 para. (1) item *a)* and the entire Section 174 para. (1) item *b)* of the APAPS are unconstitutional and these provisions have been annulled accordingly.

The petitioner has also challenged the provisions of the APAPS on the forums of legal remedies since the petitioner is of the opinion that the right of legal remedy is violated by the new text of the APAPS allowing the Government as well to regulate the appellate organs, the authorities proceeding in case of legal remedies and the authorities exercising the right of supervision.

The modifications in Section 2 para. (1) item *i)* and Section 1 para. (2) of the AGC regarding Section 19 para. (1) and Section 116 paras (2) and (3) respectively were aimed at harmonising the APAPS with Acts of Parliament adopted since the APAPS took effect and also at clarifying certain provisions that were difficult or impossible to interpret. This provision did not result in extending the regulatory powers of the Government; the petitioner’s claim is unfounded. The Government had had regulatory powers to define the forums for legal remedies before the AGC took effect.

On the basis of the petition, the Constitutional Court has had to examine whether Article 57 para. (5) of the Constitution (the right to legal remedy) is violated by the fact that the Government is authorised to specify the forums of legal remedies under Section 19 and Section 116 paras (2) and (3) of the APAPS.

The Constitutional Court has established that there is no such connection between Section 116 paras (2) and (3) and Article 57 para. (5) of the Constitution that has constitutional relevance. Pursuant to Article 57 para. (5) of the Constitution, the right to seek legal remedy is granted to everyone as a personal right if such person’s rights or rightful interests are infringed by the authority. In the administrative procedure, the right to legal remedy is granted to clients and it is implemented through legal remedy procedures that may be initiated by the client. Section 116 paras (2) and (3) of the APAPS define the organs granted the right of supervision over inferior organs. The so-called supervisory procedure is by no means a legal remedy to implement the right to legal remedy of the client. Instead, it is an *ex officio* procedure under Section 115 of the APAPS, the purpose of which is to provide that the decision is legal. The definition of the organs granted the right of supervision over inferior organs does not affect the clients’ rights of legal remedy.

Under Sections 19, 107 and 108 of the APAPS, the appellate organs (the organs entitled to evaluate the appeal) may be defined by other statutes in addition to Acts of Parliament. These regulations of the APAPS regulate the evaluation of the application for legal remedy aimed at implementing the right of legal remedy, and therefore these rules are closely connected to the right to legal remedy. Consequently, in connection with these regulations, the Constitutional Court (in accordance with its standing practices

defined above) has had to examine whether the definition by decree of authorities to evaluate legal remedies actually affects the essence of the right to legal remedy.

The Constitutional Court has been engaged in interpreting Article 57 para. (5) of the Constitution in several of its decisions from the aspect of the organ entitled to review the petition for legal remedy. According to the practice of the Constitutional Court, the option to turn to another organ or a higher forum in respect of decisions on the merits […] is the immanent content of the right to seek legal remedy. [Decision 5/1992 (I. 30.) AB, ABH 1992, 27, 31] The Constitutional Court has pointed out in the course of evaluating the legal remedy system in the administrative procedure that the fundamental right to seek legal remedy is deemed to be secured if in the procedure the law guarantees for the affected person to have his case reviewed by an organ other than the one which acted in the basic case (Decision 513/B/1994 AB, ABH 1994, 734).

Under the practice of the Constitutional Court so far, the essence of the right to legal remedy is that the law must guarantee that the organ reviewing the petition for legal remedy is different from that of first instance.

Section 106 of the APAPS provides as follows:

"Section 106 para. (1) In order to implement the right to legal remedy of the client (except for cases when appeals are excluded under this Act), the system of appellate forums shall be established in a way that the appellate body entitled to review the appeal is an organ separate from the authority of first instance (from the aspect of both the organisation and the duties of the organs).

This provision of the APAPS provides appropriate guarantees to ensure that the requirements under the Constitution concerning the organ reviewing the petition for legal remedy are complied with. [In Decision 19/2007 (III. 9.) AB, the Constitutional Court established the unconstitutionality of Government Decree 81/2003 (VI. 7.) Korm. on the same grounds (ABK, March 2007, 256)]

Due to the varied character of public administration cases, it is impossible to regulate the forum of legal remedies, the authorities of first instance, the appellate authorities and the authorities in supervisory procedures through generally applicable provisions. That is why Section 19 para. (1) of the APAPS declares that the authority of first instance is specified by statute. Sections 107 and 108 of the APAPS include generally applicable regulations regarding appellate authorities by specifying the immediate superior organs of the proceeding organ as the forum for reviewing the legal remedy. However, as generally applicable regulations by their very nature are unable to consider all the peculiarities of all types of administrative cases and administrative organs, the rules in the Act of Parliament governing the legal remedy procedure in general are naturally secondary regulations. This means that these regulations of the APAPS are only applicable if no other statute (Act of Parliament of

Government decree) provides otherwise. As it has already been pointed out by the Constitutional Court, under Article 40 para. (3) the Government is granted the right to establish organs within the system of state administration. This power includes the option to regulate the competence of the organs, and therefore it is not unconstitutional that the APAPS has granted the right to the Government to shape the forum system for legal remedies within the public administration.

Consequently, the Constitutional Court has established that the unconstitutionality alleged by the petitioner regarding Section 19 and Section 116 paras (2) and (3) of the APAPS cannot be established and has rejected the petition in this respect.

3. Also, the Constitutional Court has rejected the petition aimed at the elimination of an unconstitutional omission with regard to the GovDec.

The petitioner has submitted the petition for the establishment of an unconstitutional omission of legislative duty partly because the petitioner is of the opinion that the GovDec has established the competence of the public administration offices in violation of Section 2 item *a)* of the AL the due to the lack of regulations by an Act of Parliament.

According to cited provision of Section 2 item *a)* of the AL, the basic competence and powers of state organs are regulated by Acts of Parliament. Under the standing practice of the Constitutional Court, the violation of the AL does not automatically result in the unconstitutionality of the statute. Neglecting the provisions of the AL may only result in the establishment of the unconstitutionality of a statute when the statute concerned violates at the same time any provision of the Constitution. [Decision 30/1991 (VI. 5.) AB, ABH 1991, 421, 422; Decision 50/1998 (XI. 27.) AB, ABH 1998, 387, 395-397; Decision 39/1999 (XII. 21.) AB, ABH 1999, 325, 349-350; Decision 30/2000 (X. 11.) AB, ABH 2000, 202, 206 etc.] The Constitutional Court will not establish an unconstitutional omission solely based on the AL. (Decision 1621/E/1992 AB, ABH 1993, 765, 766)

Under Section 98 para. (2) item *c)* of the ALG, the public administration office performs the state administration tasks and exercises the competence and rights delegated by the Government or specified by an Act of Parliament. Therefore the Government is authorised to set the powers of the public administration office by decree. The petitioner has failed to specify such powers of the public administration offices granted by the GovDec that in the petitioner’s opinion should have been regulated by an Act of Parliament

The petitioner has also submitted the petition for the establishment of an unconstitutional omission of legislative duty regarding the GovDec because the petitioner believes that legal certainty (an element of the rule of law) specified in Article 2 para. (1) is violated by the lack of an authorisation in the GovDec for delegating the powers of the public administration offices to branch offices.

Under Section 2 para. (2) of the GovDec, the branch office is an organisational unit of the public administration office responsible for tasks defined in the rules of organisation and operation of the public administration office.

It is clear under the regulations of the GovDec that the branch offices are not independent organs of public administration but rather they are internal organisational units of the public administration office. Under effective statutory regulations (the GovDec and other regulations establishing powers), the public administration offices and its specialised authorities have actual administrative powers. The branch offices fulfil tasks defined as theirs in the rules of organisation and operation of the public administration office on behalf of the public administration office. The GovDec regulates the powers and competences accurately, and it is not a constitutionality issue how and in what depth a statute regulates the division of tasks within an individual organ. The Constitutional Court holds that the violation of the requirement of legal certainty stemming from the principle of the rule of law specified in Article 2 para. (2) of the Constitution cannot be established in connection with the GovDec on the basis that the regulations are not sufficiently detailed.

The publication of this Decision in the Hungarian Gazette is based on Section 41 of the ACC.

Budapest, 13 November 2007

Dr. Mihály Bihari

President of the Constitutional Court

Dr. Elemér Balogh	Dr. András Bragyova
Judge of the Constitutional Court	Judge of the Constitutional Court
Dr. András Holló	Dr. László Kiss
Judge of the Constitutional Court	Judge of the Constitutional Court
Dr. Péter Kovács	Dr. István Kukorelli
Judge of the Constitutional Court	Judge of the Constitutional Court
Dr. *Barnabás Lenkovics*	Dr. *Miklós Lévay*
Judge of the Constitutional Court	Judge of the Constitutional Court
Dr. Péter Paczolay	Dr. *Trócsányi László*
Judge of the Constitutional Court	Judge of the Constitutional Court

Constitutional Court file number: 116/B/2007.

Published in the Official Gazette (*Magyar Közlöny*) MK 2007/150