

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of an objection against a decision rejecting authentication of the specimen of the sheet of signatures underlying an initiative for referendum, the Constitutional Court has – with a dissenting opinion by *dr. András Bragyova*, Judge of the Constitutional Court – adopted the following

decision:

The Constitutional Court annuls Resolution 568/2006 (XI. 21.) OVB of the National Electoral Committee and orders the National Electoral Committee to repeat its procedure.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

1. In its Resolution 568/2006 (XI. 21.) OVB, the National Electoral Committee (hereinafter: the NEC) refused authentication of the specimen of the sheet of signatures underlying the initiative for a national referendum submitted on 24 October 2006 by Fidesz – Hungarian Civic Union and the Christian Democratic People’s Party.

The sheet of signatures contains the following question:

“Do you agree that family doctor care, dentistry care and special outpatient care should henceforth be exempt from visiting fees?”

According to the NEC’s decision, the initiative violates the prohibition under Article 28/C para. (5) item *a*) of the Constitution as “according to Annex No 12 to the Bill on the Budget for the Year 2007 (T/1145), setting out the Health Insurance Fund’s budget for the year 2007, an amount of HUF 22 billion is planned as revenue from this resource under Title 1, Subtitle 7, Heading 12 “Visiting fee and hospital daily fee”. The existence or the termination of the visiting fee as one of the sources of the Health Insurance Fund, as a revenue, is a question directly affecting the budget.” As argued in the resolution, although the question “does not

affect the budget in force, it does change the level of budget revenues – in a quantifiable way – with regard to the future budget.”

2. The resolution was published in Vol. 144/2006, dated 24 November 2006, of the Official Gazette.

The initiators submitted an objection against the decision. The objection was received by the Constitutional Court at 13.20 hours on 8 December 2006. Under Section 130 para. (1) of Act C of 1997 on the Election Procedure (hereinafter: the AEP), the deadline for filing an objection was fifteen days, until 16.00 hours on 9 December 2006. The objection was received within the statutory deadline.

The Constitutional Court has judged upon the objection with priority.

According to the objection, it is possible to hold a referendum in the matter concerned, as even in the case of a successful referendum, the question would not cause to amend the Act on the Budget, and the question is not aimed at empowering the voting citizens to exactly determine certain expenditures of the future Act on the Budget. As referred to in the objection, a successful referendum would not necessarily imply the amendment of the relevant appropriation in the Act on the Budget. Therefore, according to the objection, the NEC should have authenticated the specimen of the sheet of signatures.

3. It is a question related to the assessment of the objection that Bill No T/1145 on the Budget of the Republic of Hungary for the Year 2007 was submitted by the Government to the Parliament on 31 October 2006. The Act was adopted by the Parliament on 21 December and it was promulgated on 22 December.

Section 18/A of Act LXXXIII of 1997 on Mandatory Health Insurance (hereinafter: the AHE) regulates the visiting fee. This is the statutory regulation pertaining to the payment of the visiting fee. It is a statutory regulation the consequence of which is the introduction of the budgetary appropriation connected to the visiting fee. Section 18/A of the AHE was determined by Section 7 of Act CXV of 2006 on the Amendment of Certain Acts Related to Healthcare in Connection with the Healthcare Reform (hereinafter: the Act).

The Bill on the Act submitted by the Government under No T/1093 on 20 October 2006 was adopted by the Parliament at its session of 11 December 2006; the Act was promulgated on 18 December. Section 7 of the Act providing for the obligation to pay visiting fee was put into force on 15 February 2007, in accordance with Section 43 para. (2) of the Act.

II

The following statutory provisions have been taken into account when judging upon the objection:

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

“Article 2 (2) In the Republic of Hungary the supreme power is vested in the people, who exercise their sovereign rights directly and through elected representatives.

Article 28/C (...)

(2) A national referendum shall be held if so initiated by at least 200,000 voting citizens. (...)

(3) If a national referendum is to be held, the result of the successfully held national referendum shall be binding for the Parliament. (...)

(5) National referendum may not be held on the following subjects:

a) on the content of Acts of Parliament on the central budget, the execution of the central budget, taxes to the central government and duties, customs tariffs, and on the central government conditions for local taxes, (...)”

2. The relevant provisions of the AEP are as follows:

“Section 130 (1) Objections against the resolution of the National Electoral Committee on the authentication of a signature-collecting sheet or on the concrete question may be filed at the National Electoral Committee – addressed to the Constitutional Court – not later than fifteen days upon the publication of the resolution. (...)

(3) The Constitutional Court shall judge upon the objection with priority. The Constitutional Court may uphold or annul the resolution of the National Electoral Committee or the Parliament, and it may order the National Electoral Committee or the Parliament to start a new procedure.”

3. The relevant provisions of Act XVII of 1998 (hereinafter: the ANR) are as follows:

“Section 10 The National Electoral Committee shall refuse the authentication of the signature-collecting sheet when (...)

b) no national referendum may be held on the issue,”

III

The objection is well-founded for the following reasons.

1. The Constitutional Court has already interpreted Article 28/C para. (5) item *a*) of the Constitution in its Decision 51/2001 (XI. 29.) AB (ABH 2001, 392).

The Constitutional Court has established during its procedure that the referendum subjects prohibited under Article 28/C para. (5) of the Constitution represent a constitutional listing that may only be extended by the amendment of the Constitution. [Decision 64/1997 (XII. 17.) AB, ABH 1997, 380, 384]

As stressed in the decision, it follows from the constitutional listing that a closed and strict interpretation of the prohibited subjects is in accordance with the prominent importance of the constitutional regulation. Under Article 28/C para. (5) item *a*) of the Constitution, the contents of concrete Acts of Parliament, including the Act on the Budget and on the implementation thereof, are not allowed to be put to a referendum. The Act on the Budget and the Act on the implementation of the budget mean a legislative subject directly related to the implementation of the relevant constitutional provision. The wording of “the budget and the implementation thereof (final accounts)” as used in Article 19 para. (3) item *d*) and in Article 32/C para. (1) of the Constitution is fully identical with the terminology used in Article 28/C para. (5) item *a*) of the Constitution. The concept of the Act on the Budget may not be interpreted as one including all statutes having any financial-budgetary implication. Similarly, the term referring to the implementation of the budget may not be interpreted as one including the contents of all statutes aimed at enforcing the budget, but it refers in particular to the Act on Final Accounts.

As held in the decision, almost all of the issues falling into the Parliament’s scope of competence have a budgetary connection. In fact, the holding of a national referendum itself has implications related to the budget, as according to Section 14 para. (2) of the ANR, the Parliament shall decide about the budget of the referendum in the parliamentary resolution ordering the referendum. The mere fact that the result of the referendum may affect the Parliament’s scope of discretion concerning the adoption of the next Act on the Budget does not make the holding of a referendum prohibited.

According to the decision, it is prohibited under Article 28/C para. (5) item *a*) of the Constitution by virtue of the causes for exclusion related the Act on the Budget to hold a referendum about a question which is related to the amendment of the Act on the Budget, or when there is a causal connection between the question and the amendment of the Acts of Parliament specified on the list of prohibited subjects, or when the question is aimed at the

voting citizens exactly determining certain expenditures to be contained in the future Acts on the Budget. (ABH 2001, 392, 395)

Decision 59/2004 (XII. 4.) is based on the presumption that the concept of the Act on the Budget mentioned in Article 28 para. (5) item *a*) of the Constitution may not be interpreted as one including all statutes having any budgetary implication. However, in the decision in question, the Constitutional Court held that a successful referendum would have implied the amendment of the Act on the Budget: although the question proposed to be put to a referendum did not contain a text about the amendment of the Act on the Budget, there was a causal connection between the question and the amendment of the Act of Parliament specified on the list of prohibited subjects, i.e. the main amount of expenditure of the Pension Insurance Fund in the Act on the Budget. According to the decision, in the case of a successful referendum, the increase of the pensions – at a level different from the one defined in the Act on the Budget – would be a necessary consequence of the question put to a referendum. As the question to be answered at the referendum pertains directly to the budget, it impairs the scope of prohibited subjects as listed in the Constitution. (ABH 2004, 834, 837)

As held in Decision 15/2005 (IV. 28.) AB, when assessing whether a question put on the sheet of signatures – i.e. the referendum to be held – is directly and essentially related to certain revenue or expenditure items contained in the Act on the Budget, and whether it either positively or negatively determines certain elements of the budget, the Constitutional Court makes its decision on deliberation case by case, in accordance with the Constitution and the principles developed in the practice of the Constitutional Court. The Constitutional Court's review is based on the criteria of constitutional law rather than on financial law considerations related to the budget. As established in the decision related to the question on the stopping of privatisation, “a successful referendum held about the question put on the sheet of signatures would result in the immediate stopping of privatisation, directly and essentially affecting the Act on the annual budget of the country. Therefore, the question put on the sheet of signatures is against Article 28/C para. (5) item *a*) of the Constitution”. (ABH 2005, 165, 171)

2. The competence of the Constitutional Court in the present case is defined in Section 130 of the AEP in line with Section 1 item *h*) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC). In the above scope of competence, the procedure by the Constitutional Court is of a legal remedy nature. The Constitutional Court shall examine based on the contents of the NEC's resolution and the objection whether the NEC acted in compliance with the Constitution and the relevant statutes when authenticating the sheet of signatures.

[Decision 63/2002 (XII. 3.) AB, ABH 2002, 342, 344] Also in this scope of competence, the Constitutional Court shall act in accordance with its constitutional status and function.
 [Decision 25/1999 (VII. 7.) AB, ABH 1999, 251, 256]

As far as the present case is concerned, when the relevant resolution on authentication was adopted by the NEC, there was no budgetary Act in force regulating the visiting fee and the daily fee to be paid in hospitals. The above regulations were only laid down – as established in the NEC’s resolution as well – in Annex No 12 to the Bill (No T/1145) on the Budget for the Year 2007.

The authentication of the sheet of signatures may not be constitutionally rejected by making reference to a future budget or to a Bill on the budget. The Bill on the budget might be changed until its adoption, and it is also possible that the adopted Act would not contain any appropriation related to the question to be put to a referendum.

In view of all the above, the Constitutional Court has decided as explained in the holdings of the Decision. In the repeated procedure, the NEC shall examine in the light of the decisions mentioned in point III.1 of the present Decision whether the question concerned can be regarded as one falling under the cause of exclusion referring to the Act on the Budget in Article 28/C para. (5) item *a*) of the Constitution.

The Constitutional Court, in view of the publication of the NEC’s resolution in the Official Gazette, has ordered the publication of the present Decision in the Official Gazette.

Budapest, 8 March 2007

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 President of the Constitutional Court

Dr. Elemér Balogh
 Judge of the Constitutional Court

Dr. András Bragyova
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Dr. Péter Paczolay

Judge of the Constitutional Court, Rapporteur

Dissenting opinion by *Dr. András Bragyova*, Judge of the Constitutional Court

I do not agree with the majority Decision as the Constitutional Court should have approved the NEC resolution based on the following reasons.

1. The question to be put to a referendum is out of the scope of the subjects of referendum according to Article 28/C para. (5) item *a*) of the Constitution. Contrary to what has been established in the majority Decision, this statement has been true from the moment of submitting the sheet of signatures for authentication until this day, and it will remain true until the present constitutional rules on holding a referendum are valid. To decide whether using medical services against the payment of visiting fee is a question affecting the contents of the Act on the Budget – and therefore excluded from the scope of subjects eligible for a national referendum – is subject to the definition of two concepts and their interrelation: on the one hand, the definition of the Act on the Budget and, on the other hand, the definition of the visiting fee.

Although the Constitutional Court has – in several of the decisions passed during its practice – already addressed the term of “Act on the Budget” mentioned in Section 28/C para. (5) item *a*) of the Constitution, so far it has not succeeded in setting a benchmark for differentiation between the “Act on the Budget” and other Acts of Parliament, and therefore this question remains a subject of deliberation in each case. [See, for example, Decision 59/2004 (XII. 14.) AB, (ABH 2004, 834); Decision 51/2001 (XI. 29.) AB, (ABH 2001, 392)] Only one thing is sure: the “Act on the Budget” is not identical with the appropriations Act. [Decision 4/2006 (II. 15.) AB, (ABK, February 2006, 68)] As a general conclusion, based on the practice of the Constitutional Court, having a distant and indirect link to the budget is not enough to qualify a question as being about “the contents of the Act on the Budget” within the meaning of Article 28/C para. (5) item *a*) of the Constitution.

Based on the generally accepted definition of the budget being the itemised listing and the balance of the State’s expenditures and revenues planned for a fixed period of time, the contents of the Act on the Budget mean any and all matters affecting the titles of the revenues

and the expenditures of the budget. This statement applies in particular to the revenue titles of the budget, as the catalogue of the titles of expenditures in the budget seems to be endless, but the list of revenue titles is relatively short.

The visiting fee does not simply affect the revenues and the expenditures of public finances – in specific, a sub-system of that, i.e. the Health Insurance Fund – as at the same time, it creates a direct title of revenue, thus directly affecting the balance of the budget: the State must either collect the missing revenues from other sources or it must cut the expenditures. The fact that the revenues from visiting fees remain at the institutions collecting such fees does not affect the above arguments since visiting fees are collected as budgetary revenue. The fixing of State expenditures and the collecting of the financial means necessary for covering them – including the introduction of new tax types or the establishment of consideration payable upon using the services provided by the State – is undoubtedly the competence of the Parliament.

According to this argumentation, the referendum on the visiting fee would be about an Act necessarily and essentially affecting the contents of an Act on the Budget (presently: Section 18/A of Act LXXXIII of 1997 on Mandatory Health Insurance Services), although at the moment of submission for authentication, the specimen of the sheet of signatures and the question indicated thereon, and at the moment of rejecting the authentication of the specimen of the sheet of signatures, the visiting fee did not exist in a legal sense. Therefore, as interpreted above, the question about the visiting fee to be put to a referendum is deemed to be one with a nature affecting the contents of the budget irrespectively of the normative law situation prevailing, i.e. of whether or not there is any Act in force regulating the visiting fee, and regardless of what the Act on the Budget in force says about this question. This is all the more so since no provision about the visiting fee not yet introduced can be expected to be found in the Act on the Budget for the year preceding the introduction of the visiting fee.

When reviewing this question, one should bear in mind that the Act on the Budget and the Acts closely related to it, regulating the revenues and the expenditures of public finances are special Acts of Parliament. With regard to that, it is important to note that the State always has a budget (and thus an Act on the Budget), at least a provisional one (see: Section 34 of Act XXXVIII of 1992 on Public Finances as amended several times), the contents of which could be quite diverse despite a constant legal definition. Having a budget is necessary for the State to exist. The budgetary cycle is uninterrupted: there is an Act on the Budget in force also in the period of preparing the Act on the Budget for the next year or years as well as the Acts of Parliament supporting the former or necessary for its implementation. Therefore, the “Act on

the Budget” may not be identified with a single Act or Acts of Parliament valid at a specific date.

2. The referendum question on the visiting fee, as termed in the question, does not only aim to cancel the visiting fee payment obligation for a single year, but it would bind the Parliament not to adopt an Act on the visiting fee in the future either. Without going into details in the present dissenting opinion about the constitutionality of such types of questions, let me note that due to the nature of the question, the budgetary character of the question may not be linked exclusively to the contents of an Act on the Budget for a specific year.

If the desired objective of the question put to a referendum is – as mentioned above – to prevent any future Act on the Budget to contain a provision on the visiting fee, then it would not be reasonable to judge upon the suitability of a referendum question about the visiting fee based on the Act on the Budget for a specific year or on Acts of Parliament directly affecting the budget currently in force.

Budapest, 8 March 2007

Dr. András Bragyova

Judge of the Constitutional Court

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