DECISION 23/1999 (VI. 30.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

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

decision:

1. The Constitutional Court holds that the second sentence of Section 2 para. (4), and the text "may be searched and" in Section 25/G para. (4) item c) of Act XXIII of 1994 on Checking Persons Holding Certain Key Positions and on the Historical Archive Office are unconstitutional and accordingly nullified.

Section 25/G para. (4) item c) will remain in force as follows:

"(c) in case of any unqualified data, or if the disclosure of the data is not restricted by law, personal data containing the names and natural identification data of "top secret" officers and network contact partners of the former state security organs and their predecessors may only be disclosed after the expiry of the deadlines set in Section 24 para. (1) of the Archives Act."

2. The Constitutional Court hereby rejects the petitions seeking an establishment of the unconstitutionality and the annulment of Section 1 items a) and b), Section 2 para. (1), the first sentence of Section 2 para. (4), Section 8 paras (1), (2), (3), (5) and (6), Section 25/G para. (1), Section 25/G para. (4) item a), Section 25/G para. (5), and Section 25/H paras (1)-(2) of the Act XXIII of 1994 on Checking Persons Holding Certain Key Positions and on the Historical Archive Office.

3. The Constitutional Court hereby rejects the petitions seeking an establishment of the unconstitutionality and the annulment of point 6 of Office of National Security Order 8/1995 NbH on the implementation of certain provisions of Act XXIII of 1994 on Checking Persons Holding Certain Key Positions and on the Historical Archive Office as well as on the tasks related to handling requests of citizens.

4. The Constitutional Court hereby rejects the petition according to which the Parliament caused an unconstitutional omission of legislative duty by not regulating in detail the way of effectively realising the requirement prescribed in Section 25/C para. (1) of the Act regarding the President of the Historical Archive Office.

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

Reasoning

I

1. The Constitutional Court received several petitions to implement a posterior review on the constitutionality of certain provisions of (the amended) Act XXIII of 1994 on Checking Persons Holding Certain Key Positions (hereinafter: the CA).

The Constitutional Court has already reviewed the CA in two decisions. These are Decision 60/1994 (XII. 24.) AB (CCDec. 1) and Decision 18/1997 (III. 19.) AB.

The original basic concept of the CA was to order the obligatory checking of certain state officials and persons holding other key positions as to whether, before the formation of the state under the rule of law, they had been engaged in state security operations (to counteract inner reaction), whether they had received data from state security organs for their own decision-making, and whether they had been members of paramilitary forces or the Arrow Cross Party. If in the course of such check-ups, any of above facts was revealed about someone, the relevant results had to be disclosed save for the case the checked person had already resigned from the position concerned. Accordingly, certain data of the checked person were classified by the CA as ones of public interest in a function of his/her participation in public politics and involvement in forming public opinion.

Although CCDec. 1 established in many respects the unconstitutionality of the statute in question, it did, in fact, reject the petitions as for their main concern. In addition, it extended the basic concept of the CA by raising the issue of the need to generally settle the legal situation of unconstitutional registries and the data contained therein, and – establishing the existence of an omission causing an unconstitutional situation – it had called upon the legislature to secure the right to informational self-determination for both the trailed persons and the agents.

2. Act LXVII of 1996 subsequently amending the CA tried to comply with the above decision of the Constitutional Court. Its provisions focused – in addition to refining some procedural and technical rules – on defining the scope of persons to be checked and securing the exercise of the right to informational self-determination. For the latter purpose, the CA established a new institution called the Historical Archive Office as a special archive.

The petitions challenging the amended CA criticise, in effect, the significant limitation of the scope of persons checked and the lack of extending the scope of state security activities to be checked to departments other than Department III/III of the Ministry of Interior, while also challenging some of the new rules for handling closed state security registries. One of the petitions objects to the order of the Director General regulating the data supply for the committee, adopted in the field of implementing the CA in the National Security Office (NSO).

The Constitutional Court sent the first two petitions to the Minister of Justice asking the Minister to form an opinion thereon. The Minister without Portfolio for the Secret Services also addressed the Constitutional Court in relation to the two petitions mentioned above.

II

1.1. Section 1 of the (amended) CA provides the following:

"Section 1 It shall be checked whether any of the persons specified in Section 2 (a) served as a commissioned – open or "top secret" – officer at the former Department III/III of the Ministry of Interior, at Departments III/III of the Police Headquarters of Budapest or of the counties or the predecessors thereof (Political Police Department of the Budapest Headquarters of the Hungarian State Police, departments in charge of counteracting "inner reaction" at the State Defence Department of the Hungarian State Police, the State Defence Authority of the Ministry of Interior and the State Defence Authority, Department IV of the Ministry of Interior in charge of counteracting inner reaction, Department V of the Political Investigation Department of the Ministry of Interior in charge of the combat against inner reaction);"

According to Section 1 item a) of the CA, it must be checked whether the persons listed in Section 2 served as commissioned officers at Department III/III of the Ministry of Interior (or at its local branches and predecessors). The "predecessor" organisations are listed in this item of the CA.

According to Section 1 item b) of the CA, it must be examined whether the persons to be checked

"(b) were engaged in any activity on the merits for the organisations listed under item a), namely

- whether they signed an undertaking referred to performing network assignments and whether they filed any report, or

- whether they received any remuneration, premium or benefit from the above organisations and whether they signed an undertaking referred to performing network assignments and whether they filed any report, or

- whether they are included in the network registries of the organisations listed under item a) and whether they received any remuneration, premium or benefit from the above organisations or whether they filed any report".

According to the petition, it is unconstitutional to define in the CA the exclusive content of the term "activities on the merits", as it "restricts the examination procedure of those who apply the law and interferes with the principle of adopting a decision based on free discretion without any undue influence".

The petition does not indicate which constitutional provision is considered to be violated this way, but it refers to a specific part in the reasoning of CCDec. 1. This part deals with Section 8 of the CA.

The original Section 8 of the CA restricted the commissions' rights to requesting data. The Constitutional Court annulled the former rule (restricting the gathering of evidence) that had obliged only two ministers to supply documents for inspection, and thus extended the examination and data request rights of the control commissions. As in the above respect, the Constitutional Court referred to legal certainty, it should – with a formal deduction – be considered the relevant constitutional provision.

However, examining the contents of the petition, raising an objection against the definition of the term "activity on the merits" refers to another aspect. Giving a definition means that this way, on the basis of the CA, only the conducts listed – and nothing else – can be qualified as "activities on the merits".

This may, nevertheless, violate the provision opening up the public actors' data of public interest, as a certain part of their "activities contradictory to the principles of the rule of law" may remain hidden.

1.2. According to Section 1 item a) of the CA, it must be examined whether the persons to be checked served as commissioned officers at Department III/III of the Ministry of Interior or at its local branches and predecessors as listed.

There is a petition stating that it is discriminative to restrict the scope of Section 1 item a) of the CA to Department III/III only, leaving out other departments or predecessor organisations. The petitioner considers it necessary for the enforcement of equality to extend the scope of the CA, as Department III/III was tightly collaborating with other organisations not listed under item a) in respect of both their personnel and activities contrary to the principles of the rule of law.

According to this petition, it is unconstitutional to restrict item a) to officers only, leaving out sub-officers and covering only commissioned officers without reserve officers being included.

2. Some petitions challenge the legislature's act of limiting the scope of persons to be checked (Section 2 para. (1) of the CA).

One of the petitions claim this to be contrary to the aims of the Act (transparency of the state sphere and of public political matters); what is more, it considers the Act to be "inconsistent" as the scope of persons to be checked covers only a part of the persons to be appointed by the President of the Republic, leaving out, "in particular, judges (including the judges in charge of reviewing the decisions of the control committee), ambassadors and generals". Leaving out public prosecutors is also questioned by the petitioner taking into account the prosecutors' powers.

With respect to the provisions of CCDec. 1, from a material point of view, claiming "inconsistency" and referring to "not uniform criteria" is to be considered a reference to violating Article 70/A of the Constitution.

By adopting a "regulation extraordinarily limiting" the scope of persons to be checked, the principle of access to data of public interest cannot be enforced either. As far as the voters are concerned, it is especially objectionable that the scope of check-ups does not cover – on an obligatory or voluntary basis – all persons directly elected. According to the petition, all the above is expressly contrary to the provisions of CCDec 1.

3. The petitioners also challenge the rules of the CA that provide for checking the staff of the Historical Archive Office (Section 2 para. (4)). The above rules of the CA provide that "the president and its deputy shall be checked before their appointment. The checking of the

staff members of the Historical Archive Office shall be performed in an extraordinary proceeding on a written request by the president."

One of the petitions refers to the parts of CCDec 1. which, on one hand, raised objections against the inconsistencies in specifying the scope of persons to be checked and, on the other hand, established the unconstitutionality of the special rules – different from the general ones – related to the checking of clergymen (checking based on the principal's discretion, written procedure not disclosed to the person checked, call for resignation, and no disclosure to the public). In the petitioner's opinion, it is unconstitutional that the CA "makes checking subject to the discretion of the President of the Office and specifies a special (extraordinary) procedure different from the general rule". According to the petition, this is contrary to the general prohibition of discrimination specified in Article 70/A para. (1) of the Constitution.

One of the petitions argues that the reviewed provisions of the CA allow the checking of persons beyond the scope defined in Section 2 paras (1)-(3) in line with the aims of the CA. The petitioner claims that it is discriminative "to put the personnel of the Historical Archive Office into an exceptional position as compared to other civil servants".

4.1. There is a petition challenging Section 25/G para. (1) of the CA as well. As a matter of fact, this provision allows that "any affected person mentioned in the documents handled by the Historical Archive Office may have access to data pertaining to him/her. Data suitable for the identification of other persons mentioned in the documents concerned shall be made unrecognisable."

According to the petition, the second sentence of the paragraph quoted is contrary to the right of having access to data of public interest as "the structure of the present statute violates the constitutional interest in preserving the intact nature of the original document's content, since it statutorily allows modification of the documents presented instead of the ones presented as photocopies".

4.2. (a) It is stated in another petition that the provision related to "data suitable for identification" offers such an excessively broad discriminatory power to the Office that in certain cases a whole report may be deleted, and thus the person affected (the one observed) would receive no information other than his/her own name. This violates Article 61 para. (1) of the Constitution.

(b) According to the petition, Sections 25/G and 25/H of the CA related to the handling of documents are unconstitutional both in general and as a whole, with reference to the constitutional provisions of Article 59 para. (1) on the protection of personal data and Article 61 para. (1) on the distribution of information of public interest.

The CA provides the following:

„Section 25/G para. (1) Any affected person mentioned in the documents handled by the Historical Archive Office may have access to data pertaining to him/her. Data suitable for the identification of other persons mentioned in the documents concerned shall be made unrecognisable.

(2) The affected person may exercise the right of correcting his/her data in the document by attaching to the document a note containing the correct data, leaving the original data unchanged.

(3) Any person mentioned under any title in the documents handled by the Historical Archive Office may, after 30 June 2000, request the deletion of his/her personal data. Personal data found in documents valued worth preserving as specified in the Archives Act may not be deleted; however, the affected person may file a written statement prohibiting – for a maximum period of 90 years from the recording of the data – the research as specified in paragraph (4) of his/her personal data recorded with the use of covered tools or methods of information collection, not related to any of his/her public appearances or public, political activity, or – if the affected person was acting on behalf of a government agency – the personal data was not related to his/her field of competence.

(4) As far the research related to personal data found in the documents kept in the Historical Archive Office is concerned, Section 24 of the Archives Act shall be applied with the following derogations:

a) personal data recorded with the use of covered tools or methods of information collection shall not be open for research even if they are not classified according to the Secrets Act or their distribution is not restricted by an Act of Parliament, with the exception of the following:

- in case the research may be implemented on a copy made anonymous (at the researcher’s expense),

- upon the expiry of the period of prohibiting research specified by the affected person in line with paragraph (3), or – in case of no prohibition – the conditions specified in Section 24 para. (1) of the Archives Act have been fulfilled,

- with the approval of the affected person or any of his/her heirs or relatives upon the death of the person affected,

- in case the data pertain to the public appearance, or the public or political activity of the affected person, or in the case of the personal data of any person, related to his/her powers, who had acted on behalf of any state agency and 15 years have elapsed from the date of recording, provided that the research is of a scientific nature and the provisions specified in Section 24 paras (3)-(4) of the Archives Act have been fulfilled;

b) data specified in Section 2 item 2) of the Data Protection Act, with the exception of data pertaining to criminal records, shall only be open for research with the approval of the affected person or – upon the death of the affected person – any of his/her heirs or relatives for a period of 90 years from the date of the present Act taking effect;

c) in case of any unqualified data, or if the disclosure of the data is not restricted by law, personal data containing the name and natural identification data of "top secret" officers and network contact partners of the former state security organs and their predecessors may only be studied and disclosed after the expiry of the deadlines set in Section 24 para. (1) of the Archives Act.

(5) No research of the documents shall be allowed for a period of 30 years from the date of the present Act entering into force, with the exception of research specified in paragraph (4) and Section 25/F para. (3). In addition to the inspection of the documents as specified in Section 25/G para. (1) and the provision of data as specified in Section 25/F para. (1) item b), the documents may only be inspected by – and data may only be supplied for – the courts and the investigation authorities in relation to court procedures connected to the enforcement of the legal rights of the affected persons and in case of criminal procedures dealing with criminal offences, the statute of limitation of which has not yet expired, punishable with imprisonment exceeding 5 years. With the exception of the above cases, neither data nor documents may be forwarded, disclosed or taken out of the territory of the country from the archives of the Historical Archive Office.

(6) The personnel of the national security services, the Ministry of Defence, the Ministry of Interior or the organs thereof may have access to the personal data contained in the documents kept in the Historical Archive Office upon the prior approval of the committee in charge of the Parliament, or – in cases demanding the adoption of measures with exceptional urgency – upon subsequently notifying the committee in charge if it is necessary for performing their tasks specified in an Act of Parliament in the field of national security, defence or the prevention of crimes.

Section 25/H para. (1) Documents falling under the scope of Section 25/A para. (1) and produced before 1980 shall be stored separately upon the completion of the secret protection review specified in Section 28 para. (2) of the Secrets Act, and such documents shall be handed over to the Historical Archive Office within 60 days from the commencement of its operation.

(2) Documents specified in Section 25/A para. (1) and produced after the date specified in paragraph (1) shall be handed over to the Historical Archive Office within 60 days from the completion of the secret protection review, but not later than 28 February 2000.

(3) During the process of handing over the documents to the Historical Archive Office, the conditions for operating the committee specified in Section 5 shall be secured.

(4) The documents that contain both the data specified in Section 25/A para. (1) and the manageable data necessary for the continuous and smooth performance of the statutory tasks of the organs handing over the documents shall not be handed over to the Historical Archive Office if the technical separation of the above data would make it impossible to recover the document in its original form.

(5) Documents produced during the operation of the committee – including documents produced in the course of proceedings pursuant to Section 19 at the Metropolitan Court – shall be handed over to the Historical Archive Office on a continuous basis upon the final completion of the proceedings, but not later than 31 December 2000."

The above rules are challenged by the petition on the basis of the right of inspection covering only the documents handled by the Historical Archive Office, leaving out other documents handled by the secret services (Section 25/G para. (1)). Documents classified by the national security services may only be inspected if allowed by the classifying authority. This way, the CA provides for the primacy of protecting secrets; this is contrary to the provisions of CCDec. 1 on the disclosure of public data and the protection of personal data.

(c) It is considered unconstitutional by one of the petitioners that according to the CA it is solely within the discretion of the services to decide which documents they hand over to the Historical Archive Office (Section 25/H paras (1)-(2)). This "violates the requirement specified in recommendation 27/A/1995 by the Ombudsman of Data Protection".

d) According to the petitioner, the fundamental rights to research and informational self-determination are violated by the provisions not allowing the exercise of such rights in the period between the putting into force of the CA and the final deadline for handing over the documents (the latter date is 31 December 2000 as specified in Section 25/H para. (2) of the CA).

5. Section 25/G para. (4) item a) of the CA introduced a restriction or ban on the research of certain personal data, with the provision of some exceptions. One of such exceptions is the following: "… personal data recorded with the use of covered tools or methods of information collection shall not be open for research even if they are not classified according to the Secrets Act (Act LXV of 1995 on State Secrets and Official Secrets) or their distribution is not restricted by an Act of Parliament, with the exception of the approval to research made by the affected person or any of his/her heirs or relatives upon the death of the person affected".

The petitioner argues that the provision in the CA "allowing for any heir to restrict the rights of the deceased and to disclose his/her private secrets is contrary to the rights to the protection of private secrets and personal data." Entitling the relatives to exercise such rights raises similar concerns. It is another problem that the term "relative" is not defined in the CA.

6. According to Section 25/G para. (4) item c) of the CA, Section 24 of the Archives Act [Act LXVI of 1995 on Public Documents, Public Archives and the Protection of the Materials in Private Archives] shall apply to the research of personal data found in the documents stored in the Historical Archive Office, with the following derogations: ...
"c) in case of any unqualified data, or if the disclosure of the data is not restricted by law, personal data containing the names and natural identification data of "top secret" officers and network contact partners of the former state security organs and their predecessors may only be studied and disclosed after the expiry of the deadlines set in Section 24 para. (1) of the Archives Act."

According to Section 24 para. (1), unless otherwise provided by an Act of Parliament, the archive materials containing personal data shall open for research by anyone upon the expiry of 30 years after the decease of the affected person. The period of protection shall be 90 years from the date of birth of the person affected if the date of decease is not known, and it shall be 60 years from the date of producing the archived material if neither the date of birth nor that of decease is known.

According to the petitioner, the challenged rule makes it impossible to reveal the personal data in question in the framework of scientific research without public disclosure, thus it violates "the relevant provisions found in part IV of CCDec. 1", i.e. the requirements specified in Article 61 para. (1) of the Constitution.

7. Section 25/G para. (5) of the CA provides for the courts' right to inspect, and retrieve data from, the documents stored in the Historical Archive Office – in addition to other cases specified in the CA – only "in the case of criminal procedures dealing with criminal offences, the statute of limitation of which has not yet expired, punishable with imprisonment exceeding 5 years".

According to the related constitutional concern, "… when the CA restricts the courts' right to inspect documents on the basis of the sanctions applicable, it violates Article 57 para. (1) of the Constitution and the independence of jurisdiction as well". The latter, however, "is reflected in the unrestricted nature of performing judicial activities… it is justified to allow the criminal courts to inspect the documents in respect of any perpetrator in criminal cases of any weight".

8. According to Section 8 para. (1) of the CA under review, checking shall be based on documents.

In the petitioner's opinion, this deviates from the rules of Act IV of 1957 on the General Rules of Public Administration Procedure providing for a free production of evidence and, therefore, limits the scope of potential tools of evidence to documents in the course of checking.

According to Section 8 para. (2), the committee may (without any restriction) review the documents handled in the Historical Archive Office as well as the ones closed on 14 February 1990 and stored in the Ministry of Interior.

It is pointed out by the petitioner that this way, "documents that might have been taken away by the legal successor organisations are not covered by procedure of checking".

The challenged provisions of Section 8 paras (2), (3), (5) and (6) of the CA allow examination and research by the committee in respect of the checked persons' data and documents specified in Section 1 only. Such rules are also of a restricting nature, and therefore, unconstitutional: they allow the committee to directly examine only the documents that contain the relevant data of the checked person as stated by the possessor of the document.

Therefore, according to the petitioner, Section 8 paras (1)-(3) and (5)-(6) of the CA, violating the principle of the rule of law, unconstitutionally restricts the right of the control committee to freely obtain evidences.

9. One of the petitions is, in essence, seeking the establishment of an unconstitutional omission, claiming that due to the incompleteness of the CA, it is impossible to implement the provisions of the Act under review which stipulate that those who had been employed by the former Department III of the Ministry of Interior and its predecessors shall not be appointed President of the Historical Archive Office. This is so because the right of control of the committee does not cover Department III in its entirety.

According to the petitioner, it is part of the principle of the rule of law that the provisions of an Act of Parliament shall be suitable for implementation. The Parliament caused an unconstitutional omission of legislative duty by not regulating in detail the way and the procedure of effectively realising the requirement prescribed in Section 25/C para. (1) of the Act regarding the President of the Historical Archive Office.

10. One of the petitions holds that Office of National Security Order 8/1995 NbH on the implementation of certain provisions of the CA and on the tasks related to handling requests by citizens is contrary to the rules of the CA. It refers to the arguments contained in CCDec. 1 which have led to the annulment of Minister of Interior Order 13/1994. BM on the Implementation in the Ministry of Interior of the Act on Checking Persons Holding Certain Key Positions.

III

The petitions referred to above are only partly well-founded according to the following reasons:

1.1. Section 1 item b) of the CA covers the activities of the so-called networked persons, and it covered the same before its amendment by Act LXVII of 1996. The only difference is that according to the law in force, as quoted before, the checked person is only covered by the provisions of item b) if he/she had been engaged in activities on the merits as listed in details in the CA.

It is this item b) of Section 1 of the CA covering networked persons that caused the most concerns even at the time of the constitutional review closed by CCDec. 1. It is caused by the incomprehensive nature and the unreliability of the data available on networked persons covered by item b). The report of the National Security Committee of the Parliament reinforces the fact of public knowledge that in December 1989 and January 1990, documents

were demolished on a large scale in the organisations of internal security (ABH 1994, 342, 358-359). The reliability of data is of great importance with respect, primarily, to the fact that they might contain manipulated data and names – especially ones subsequently inserted.

Even the original text of the law provided for two joint conditions to have the person concerned be covered by item b).

According to Section 1 item b) of the CA as effective until 27 April 1995, it had to be examined whether the persons to be checked signed with their own hands a statement for the organisations listed under item a) undertaking to perform networked activities and whether they received any remuneration, premium or benefit for their activities".

According to the amended statute, it has to be examined whether "they were engaged in any activity on the merits for the organisations listed under item a), namely

- whether they signed an undertaking referred to performing network assignments and whether they filed any report, or

- whether they received any remuneration, premium or benefit from the above organisations and whether they signed an undertaking referred to performing network assignments and whether they filed any report, or

- whether they are included in the network registries of the organisations listed under item a) and whether they received any remuneration, premium or benefit from the above organisations or whether they filed any report".

As stated in CCDec 1, "activities against the principle of the rule of law" are qualified as data of public interest (ABH 1994, 342, 355). It is the task of the legislature to give a definition of the above. Similarly, it was stated in CCDec. 1 that the determination of both the personal scope and the depth of checking is an issue of political decision making.

The amendment does not affect the committee's right to pass "an influence-free decision based on free discretion".

The legal definition does not contain any restriction as far as data of public interest are concerned.

1.2. According to CCDec. 1, it was the registries of Department III/III the aim, contents and classified nature of which violated all principles of the rule of law and the provisions of the Constitution in force as well.

Then it had to be decided what reasons may justify the maintenance of classified documents in a state under the rule of law (ABH 1994, 342, 351).

CCDec. 1 addressed the maintenance as classified information of the Department III/III registries closed on 14 February 1990 and stored in the Ministry of Interior rather than that of "party-state documents" in general.

However, the freedom of access to information may be restricted for reasons of national security even in a state under the rule of law. Clearly, reasons of national security may not be applied to Department III/III as it was terminated – for its activities violating the principles of the rule of law – even before the first free elections (ABH 1994, 342, 353).

Department III/III was set up to support the state-party. Its structure and operational mechanism as well as the secret legal acts regulating it were all tailored to a custom-made enemy model. All persons and communities thinking differently were considered enemies. The statutes regulating the organisation and its operation violated even the provisions of the Constitution in force at that time (see Parliamentary Decision 29/1990 (III. 13.) OGY on the activity of the internal security service of the Ministry of Interior).

Despite their close cooperation, other secret services were only partially involved in such activities.

This is why the fact that someone used to be, or has been, a commissioned officer of another secret service still in operation is not necessarily considered to be a data of public interest that may be disclosed to anyone.

As far as the personnel is concerned, it was noted by the Minister of Justice that in addition to open officers and the "top secret", so-called "TS" officers, there were no other types of officers involved in the work of Department III/III. According to the Minister, the CA "clearly covers the entire personnel of Department III/III".

In "an objective assessment" (ABH 1994, 197, 200), evaluating the level of independent and continuous work performed by the person covered by the examination can be accepted as reasonable criteria applied in the political decision defining the depth of checking. An important position often implied an officer's rank as well. All this can duly justify why commissioned officers are covered by the CA. Taking into account the above, no unconstitutional discrimination may be established in relation to the different rules pertaining to officers and sub-officers or commissioned and reserve officers.

2. CCDec. 1 established the partial unconstitutionality of, and completely annulled, Section 2 of the CA before its amendment, where it had specified the scope of persons to be checked, due to the application of criteria that were not uniform. However, taking into account the arguments of CCDec. 1, as the definition of the scope of persons requires a political decision, the Parliament might specify this scope in either a broader or a more limited scale in terms of both the data and the persons concerned. Therefore, limiting the check-ups to those who had filled "important" positions and disclosing their data alone may not be criticised.

The reasoning of CCDec. 1 provides for the following: ... "this political decision, namely, the exact definition of the data and the persons to be checked, cannot be deducted from the Constitution but it is required that, on the hand, data may neither be kept secret, nor may they be completely disclosed and, on the other hand, once the political decision has been adopted, the Parliament shall define in a uniform manner the scope of persons to be checked as well as the data of public interest on the basis of the standard set by the interrelated limitations specified in Articles 61 and 59 of the Constitution, within the constitutional possibilities. ... In this respect, the Constitutional Court may not take over the responsibility from the legislature to adopt a political decision, but it may establish the lack of applying uniform constitutional criteria. Section 2 is, therefore, contrary to Article 70/A of the Constitution. To eliminate discrimination, the legislature must pass a decision to define a uniform standard and it must enforce this standard consistently" (ABH 1994, 342, 357).

It is still a question whether the objections put forward in the petitions justify the establishment of the lack of uniform criteria.

From this aspect of constitutional law, all the arguments found in the petitions in relation to other criteria, different from the one defined in the CA, merely chosen by the petitioner (e.g. the scope of persons appointed by the President of the Republic or the ones directly elected by the voters) as a basis for raising objections to leaving out certain groups of persons from the check-ups are irrelevant. Objections have been raised on the above ground to the omission of, for example, judges, ambassadors, generals and directly elected officials, such as mayors. Although they are appointed by the President of the Republic, they take an oath before the president of the competent county court.

Section 2 paras (1)-(3) of the CA redefines the scope of persons to be checked, and paragraph (4) covers the President, the Deputy President and the personnel of the Historical Archive Office just established. The latter is dealt with in detail in points 3 and 9 of the Decision.

According to the CA, checking "covers the officials who take an oath before the Parliament or the President of the Republic, furthermore, the officials elected by the Parliament", "with the exceptions specified in paragraph (2)".

The CA restricts the scope of checking to a particular scope of civil servants. This rule of the CA does not specify in detail the officials who fall into this scope. The listing of positions (Section 2 para. (3)) has relevance in respect of the order of checking only. In this respect, the law in force is different from the original normative text of the CA, because the CA was extended beyond the scope of the state sphere, using a detailed list without specifying the criteria in the text of the Act. It was, however, possible to deduct the criteria applied from the above list.

On the contrary, the CA in force applies criteria to define the scope of persons to be checked.

According to Section 2 para. (1) of the CA, "… checking … covers the officials who take an oath before the Parliament or the President of the Republic, furthermore, the officials elected by the Parliament."

One of the criteria applied is taking an oath before the Parliament or the President of the Republic, and the other one is being elected by the Parliament. The latter makes the scope of persons wider as, for example, the members of the National Board of Radio and Television are elected by the Parliament, but they take an oath before the Speaker of the Parliament.

The fact alone that the scope of persons was not defined using a single criterion does not mean the lack of a uniform standard.

Being elected directly by the Parliament, or taking an oath before the Parliament or the President of the Republic can duly justify the weight and the role of such positions in public law, the level of intensity of their exercising public authority and of participating in public politics as well as their importance of national level beyond the scope of local politics – in other terms, it justifies that such positions were deemed "important" by the constitution-making or legislative power.

3. Checking the personnel of the Historical Archive Office is possible but not an obligatory act according to the CA.

Beyond any doubt, the petition alleging the unconstitutionality of the extraordinary procedure – as a "rule differing from the general regulation" – is unfounded. The constitutional provisions quoted are not related to the regulation prescribing the order of checking.

However, the President (Deputy President) and the personnel of the Historical Archive Office do not fall under the criteria specified in general in the CA: the Historical Archive Office is, in fact, an archive with a special function.

As far as the President (Deputy President) is concerned, the CA provides for special incompatibility rules, specifies the conditions of their employment and deals with the related legal consequences as well as the rules of terminating the employment. In order to implement its aims, the CA may set up a public administration organ and provide for rules of incompatibility as well.

Such rules do not cover the employees of the Office; according to the CA, they fall under the provisions of the Act on Civil Servants. The CA does not specify on what grounds the President of the Office may order the checking of employees as specified in the CA, nor does it provide for the consequences of the check-up results in the field of labour law or otherwise.

However, the public disclosure of the results as a potential general consequence specified by the CA in relation to the procedure of checking would be contrary to the right to protect personal data granted in Article 59 para. (1) of the Constitution. The personnel of the Office may not be deemed with due ground to participate in public political life or to be professionally engaged in forming political public opinion. Therefore, in their case, there is no ground to consider the data covered by the CA to be of public interest.

The provisions of the CA concerning the checking of personnel are incomplete. It must be noted that in the scope examined, the CA does not specify any incompatibility rule to be applied to the personnel. In fact, their employment is not conditional upon the exclusion of the explicit causes of incompatibility as in the case of the president. This way, it is impossible to find out the aim of checking merely on the basis of the CA.

It is also not clear whether their checking is obligatory or it depends on the free discretion and the request of the president. The wording of the CA, i.e. “The checking of the staff members of the Historical Archive Office shall be performed in an extraordinary proceeding at the written request of the president” allows both interpretations.

Based on the above arguments, the Constitutional Court established that the second sentence of Section 2 para. (4) of the CA violated Article 59 para. (1) of the Constitution and annulled it.

4.1. Section 25/F of the CA provides that data may only be deleted from any document to be handled by the Historical Archive Office if ordered by the court in the course of a data

protection procedure or if the affected person explicitly requested the deletion in line with the provisions of the present Act after 30 June 2000, with the exception of personal data found in documents valued worth preserving. (Deletion of data: rendering data unrecognisable by making it impossible to recover them – Section 2 item 8) of DPA [Act LXIII of 1992 on the Protection of Personal Data and the Right to Acquire Information about Public Data].

Paragraph (3) of the same Section provides that the documents kept in the Historical Archive Office may be "studied in the form of photocopies if needed".

By comparing the above rules, it can be pointed out as an interpretation needed for the constitutional review that due to the rule prohibiting deletion, if it is necessary to make certain data unrecognisable in the "document presented", the document must be presented "in the form of photocopies" while preserving the original document in its intact form.

Therefore, the statement made in one of the petitions alleging that the rule providing for making certain data unrecognisable in the "document presented" would lead to damaging the contents of the original document is false.

4.2. (a) According to the CA, "data suitable for the identification of other persons" mentioned in the documents concerned shall be made unrecognisable.

According to one of the petitioners, the above rule is too broad, threatening with a chance for the affected person to receive a document containing no data other than but his/her own name.

Based on the provisions of the DPA, "data suitable for the identification of other persons" are considered personal data.

According to the DPA, personal data may only be handled if
(a) the affected person approved to do so, or
(b) it is ordered in an Act of Parliament or – if authorised by an Act of Parliament and in the scope defined therein – in a decree of a local government.

The reasoning of CCDec. 1 pointed out among others in the classification of lustration laws that "… a consummate example of the other type of lustration law is Germany's Stasi Act. In this case, the primary aim was nothing other than bringing completely to the light of day the activities of the former state security organs and secret agents. Calls for the public naming of former agents were to be heard in other countries as well, but did not come to pass. …" (ABH 1994, 342, 349).

The reasoning contains the following as well: "Similarly, there exist constitutional obstacles to a complete disclosure of records; one of such obstacles is, for example, the right

to informational self-determination of those individuals on whom files were kept. Defining the scope of data of public interest and the ones to remain classified [within the conditions of constitutionality specified in points 2 (a) and (b)] is a political question offering a relatively wide space for the legislature to balance, as it has intended to do so, between making some functions completely "transparent" – in order to successfully implement the change of the regime and to perform its obligations for the general public – and restricting access to other kinds of data by maintaining the personal nature thereof in order to enforce the need for "stability". The political decision may provide for either narrower or broader limits for public access and depth of lustration." (ABH 1994, 342, 356-357).

Taking into account the above arguments in the present review, the Constitutional Court holds that the rule of the CA ordering that "the data suitable for the identification of other persons" are to be made unrecognisable, performs the necessary balancing act, and this way, it provides for the primacy of the protection of personal data in respect of both the agents and the persons observed.

(b) According to Section 25/A para. (1) of the CA, the Historical Archive Office is responsible for storing and handling the documents of certain organisations specified in the CA, except for the case the Ministry of Interior, the Ministry of Defence and their organs, or the national security services need such documents to perform their duties specified in an Act of Parliament.

The Historical Archive Office is responsible for storing and handling the documents of the former Department III of the Ministry of Interior and its predecessors as well as those of the former Intelligence Department of the MNVK (Division of Chief of Defence Staff) of the Ministry of Defence and its predecessors that – due to their data content – may not be handled in order to comply with the statutory tasks of the national security services.

The CA takes out of the competence of the Historical Archive Office the storing and handling of documents that are still needed for the performance of the duties of the Ministry of Interior and the Ministry of Defence and the organs thereof or that of the statutorily defined duties of the national security services provided that the data contents of the documents may be handled.

In this respect, the CA guarantees the primacy of protecting secrets; however – based on the arguments presented in point 1.2 – it is not unconstitutional. CCDec. 1 took a position in respect of the "unconstitutionality of classifying all documents in the registries or demolishing them instantly". Neither the original text of the CA, nor CCDec. 1 was aimed at

making impossible the operation of the Ministry of Interior, the Ministry of Defence and the organs thereof, as well as the operation of the national security services by generally and completely disclosing all of their documents produced before the “rule of the law”.

According to the address filed by the Minister without Portfolio for the Secret Services, the primacy of the protection of secrets may only be applied to documents having a new classification in line with the Secrets Act. It often happens as far as the documents of other units of Department III are concerned. In case the document concerned contains data related to illegal activities, to which the classification may not be applied – on the basis of the opinion presented in CCDec 1 as quoted by the petitioner – the classifier shall act in accordance with Section 14 of the Secrets Act.”

(c) Supervising the handing over of the documents.

According to Section 25/H para. (4) of the CA, the documents that contain both the data specified in Section 25/A para. (1) and the manageable data necessary for the continuous and smooth performance of the statutory tasks of the organs handing over the documents shall not be handed over to the Historical Archive Office if the technical separation of the above data would make it impossible to recover the document in its original form.

On the basis of the CA, all organs that hand over documents are themselves responsible for reviewing what documents they hand over to the Historical Archive Office or, vice-versa, what documents they keep. This handing-over process is, in fact, not supervised by any external body.

However, for the protection of personal data and for the enforcement of the right to informational self-determination and of other fundamental rights, it is not necessary to put the handing-over of documents under the supervision of an external body. As the scope of documents that may not be handed over does not exceed the scope of documents that may, in any case, be legally and generally handled by the organs handing over the documents, the general rules solve the problem of handing over the documents the “other way round”, by specifying what data the organs handing over the documents may handle on the basis of the statutes in force.

There is no express or implied provision in the CA that could be interpreted in a way so as to empower the organs obliged to hand over documents to handle data in their fields of competence beyond the scope specified in the general rules.

In the absence of a related petition, the Constitutional Court has not examined the general rules “otherwise” guaranteeing that the organs handing over the documents may only handle data (documents containing such data) that fall within their competence. Nor did the

Constitutional Court examine Section 25/H para. (4) of the CA in the absence of an explicit relevant petition.

(d) The CA specifies two deadlines for handing over the documents to the Historical Archive Office.

The review of the classified status of classified documents produced before 1980 must be completed within one year from the date of the CA entering into force; upon the expiry of this deadline, their qualified status shall lapse (Section 25/H para. (1)).

Documents produced after 1980 must, at the latest, be handed over to the Historical Archive Office until 28 February 2000, upon the completion of the secret protection review (Section 25/H para. (2)).

The above rules do not result in excluding research and the exercise of the fundamental rights to informational self-determination in the period between the Act's entering into force and the handing over of documents. On the one hand, this is possible on the basis of the rules in force pertaining to the protection of secrets and, on the other hand, the review of the documents is a continuous process: the deadline of 28 February 2000 is an objective and "final" deadline; the documents must be handed over within 60 days from the date of review.

Section 28 para. (1) of the Secrets Acts also contains a provision on the review of documents. Accordingly, the operator of the archives must take stock of, register and review not later than 31 December 1999 all documents produced and put into the archives before the entering into force of the Secrets Act and bearing the marks of "Top Secret", "Of Special Importance", "Secret", "To Be Handled as a Secret Document", "Top Classified Document", "Classified", "Service Use Only".

In the case reviewed, the rules contain some relatively short restriction for a transitional period, and thus the "essential contents" of the fundamental rights to research and informational self-determination are not affected. The Constitutional Court refers to the arguments found in its Decision 7/1991 (II. 28.) AB (ABH 1991, 22, 26-27).

5. The CA prohibits the performance of scientific research into the personal data recorded with the use of covered tools and methods of information collection (i.e. those ferreted out without the knowledge and consent of the affected person, for a purpose not complying with the principles of the rule of law), with the exception of having an approval to research given by the affected person or – upon the decease of such person - by any of his/her heirs or relatives.

According to the petition, this (i.e. the possibility of relieving the ban on research) violates the right to private secrets and the right to the protection of personal data.

In contrast, this rule differs from the Act on Archives by protecting the (ferreted out) personal data of the observed persons without a time limit (period of protection).

According to the Act on Archives, research before the expiry of the period of protection is dependent upon having a licence to do so, and one of its cases (Section 24 para. (2) item b) of the Act on Archives) has the same wording as the challenged rule relieving the ban.

Nevertheless, the Act on Archives was not challenged even by the petitioners.

A deceased person can be the subject of neither the right to private secrets, nor the protection of personal data. Both rights are attached to persons, and this way, may not be traded or inherited, but they may only be enforced personally and they lapse with the decease of the person concerned. On the basis of piety rights, the same persons are entitled to act as those entitled to relieve the ban on research (Section 85 para. (3) of Act IV of 1959 on the Civil Code (hereinafter: CC)).

The alleged publicity of any private secret opened for research is a false statement in the petition. This is not dealt with by the CA, but the Act on Archives provides that the researcher must undertake in writing that he will deal with and use any personal data he has had access to, and extracted from the files, as prescribed in Section 32 of the DPA (Section 24 para.(4)).

According to Section 32 of the DPA:

"(1) Personal data recorded or stored for the purpose of scientific research may only be used for the purpose of scientific research.

(3) Any personal data may only be made public by the organisation or person performing the scientific research if

a) the affected person approved to do so, or

b) it is necessary for presenting the results of the research done in respect of historical events."

There is no constitutional concern about the CA not defining the term "relatives". It follows from the rules of the CC that the rules of the CC are to be applied unless otherwise provided by an Act of Parliament (Section 1 para. (1) of the CC).

6. As far the personal data “not ferreted out” are concerned (the names and natural identification data of commissioned and non-commissioned agents), Section 25/G para. (4) item c) of the CA uses in part the general rules of the Act on Archives concerning non-public research, which means allowing research upon the expiry of the protection period – but in the scope concerned the CA does not provide for any possibility on relieving the ban on research.

This strict and unrelievable ban on research was challenged by the petitioner.

According to the reasoning of the bill of the CA, “… allowing research in an unrestricted and immediate manner is impeded by a special feature, namely the fact that these documents contain in a technically inseparable way (in some cases on the same page or in the same row), in addition to irrelevant data and information necessary for gaining knowledge on recent events, some personal data to be particularly protected relating to matters of intimate privacy of the affected person, although some of such data do not represent any value worth preserving, and the affected persons themselves might not be aware of the collection and the existence of such data. Therefore, it is reasonable to prescribe a certain time limit for scientific research, and to apply the rule of the Act on Archives allowing research only after making the personal data anonymous.”

It seems necessary to quote the relevant parts form the reasoning of CCDec 1.

As far as research is concerned, CCDec. 1 contained the following: “The shedding of light on the past, and with it an objective evaluation of the importance of the change of regime, presume the public disclosure of the activities of the former secret services. With regard to such records, even laws which otherwise protect the security of information, personal and otherwise, regularly make exceptions to the rule, given suitable guarantees and in order to serve the interest of public knowledge. This includes Section 32 para. (3) item b) of the DPA, which allows public access to personal data if necessary to assure that research underway into historical events can reach objective conclusions to be imparted to the public. Just as violations of the right to (informational) self-determination require that everyone may gain access to secret service files concerning them so that they may understand the true extent to which the past regime influenced their personal fate, and in this way, at least, temper the transgression against their human dignity [see Part VI], so the nagging issue of the past in the larger sense, too, as it concerns the nation as a whole, can be resolved only if the secrecy of former secret service records is not further maintained.” (ABH 1994, 342, 353).

Similarly, the Constitutional Court attributed a determining role to MDP [Hungarian Workers Party] and MSZMP [Hungarian Socialist Workers Party] in the exercise of state power and, therefore, deemed the data relating to them indispensable in presenting the

historical process of our age, when it examined the statute allowing access to and performing research into their documents (ABK June, 1994, 257). In this case as well, the freedom of information gained primacy with respect to shedding light to the history of recent years." (ABH 1994, 342, 355).

Although the position presented in CCDec. 1 gave primacy to research, it did not specify the way to achieve it. However, this primacy was not unconditional even in the argumentation of CCDec. 1 but it "was kept between appropriate guarantees". It was the "unconditional secrecy" of the registries which would have been unconstitutional according to CCDec. 1. The Constitutional Court shall adhere to the above position.

Agents have not lost their rights to the protection of their personal data – just as the personal data of other persons. Nevertheless, the level of protection provided by the CA is higher than the general one. The remark made by the Minister of Justice justifies this with nothing else but the protection of personal data as well as the fact that unlawful activities of the secret service may be made public without the disclosure of data enjoying special protection by the CA. On the basis of the petition, the Constitutional Court had to review the constitutionality of this special protection.

The Constitutional Court has already interpreted in many decisions the constitutional contents of the prohibition found in Article 70/A of the Constitution in relation to the right to human dignity (Article 54 para. (1) of the Constitution) as well.

It established that "all people must be treated as equal (as persons with equal dignity) by law – i.e., the fundamental right to human dignity may not be impaired, and the criteria for the distribution of the entitlements and benefits shall be determined with the same respect and circumspection, and with the same degree of consideration of individual interests." (9/1990. (Decision 9/1990 (IV. 25.) AB, ABH 1990, 46, 48.)

It also pointed out that "the unconstitutionality of discrimination between persons or any other restriction concerning their rights other than fundamental ones may only be established if the injury is related to any fundamental right, and finally, to the general personality right to human dignity, and there is no reasonable ground for the distinction or the restriction, i.e. it is arbitrary." (Decision 35/1994 (VI. 24.) AB, ABH 1994, 197, 200)

The CA makes a distinction in the protection of personal data (Article 59 para. (2) of the Constitution); this distinction favours the agents. The designated personal data of TS-officers and networked persons enjoy in the CA the highest level of protection and the most severe restriction on research as compared to the data of anyone else. In the opinion of the Constitutional Court, there is no recognisable "reasonable ground on the basis of an objective

evaluation" for making such a distinction or applying such a restriction (ABH 1994, 197, 200.). The rule under review restricts the freedom of scientific research (Article 70/G of the Constitution). Based on the above arguments, the Constitutional Court established the unconstitutionality of the relevant part of Section 25/G para. (4) item c) of the CA and annulled it.

7. The fact that the CA allows judicial observation of the documents kept in the Historical Archive Office only in the case of more serious criminal offences the statute of limitation of which has not yet expired – and not in the case of any criminal offence – affects neither the independence of judges (Article 50 para. (3) of the Constitution), nor Article 57 para. (1) of the Constitution. The latter provides for the right to judicial review.

8. (a) Section 8 of the CA contains the rules empowering the control committee and the National Security Committee of the Parliament to make investigations, to inspect documents and to request the supply of data.

These rules essentially provide for a free examination of the documents handled in the Historical Archive Office – and until then, the archive of Department III/III in any case – in line with the statutes pertaining to the protection of secrets and personal data.

As far as other documents are concerned,

– if the documents concerned are handled by an organ under the authority, supervision or direction of the Ministry of Interior, Ministry of Defence or the Minister without Portfolio for the Secret Services, the control committee and the National Security Committee of the Parliament may only inspect, and ask for data extracted from, such documents (concerning data related to the persons specified in Section 1 of the CA),

– while any other document may be examined by them.

It means that "dead registries" may be examined without any restriction, and operating registries, i.e. "living materials" may be examined through the organs responsible for handling them. In case of operating registries, the handling organ is in charge of deciding if there are data in the operating registry related to the checked person's activities subject to checking.

CCDec. 1 made three remarks regarding the "research rights" of the committee: it annulled a certain part of the original Section 8 of the CA and an Order of the Ministry of Interior, and also established an omission concerning Section 9.

According to the reasoning of the Decision, the Order of the Ministry of Interior was annulled because it concerned the committee and restricted the committee's right to checking

specified in Section 8. The ground of establishing an omission was the fact that Section 9 of the CA "did not extend the obligation of securing the conditions necessary for the examination of registries to all authorities supervising registries". The restricting parts in Section 8 were deleted for the same reason, and the Constitutional Court established that "according to the remaining text in force, the committee may examine or request any document from any registry."

The CA provides for differentiated rules on examination, inspection and the request of data supply (i.e. the way how the committee may examine or request documents "from any registry"). As demonstrated above, the "application of the necessary entitlements" is – although in a restricted manner – secured by the CA "for the effectiveness of the procedure and the operation of the public administration organ established by the Act" in respect of "living materials".

It is not required in other public administration or judicial procedures either to allow the official in charge or the judge to examine archives personally if the organ addressed is otherwise obliged to supply data.

(b) It is a false statement by the petitioner to allege that in Section 8 para. (1), the text providing that "checking is to be implemented on the basis of the documents that contain data related to the persons specified in Section 1" has deprived the committee of the freedom of proof. Such a consequence cannot be drawn from this rule alone.

The committee may use other tools of evidence, too – Section 8 para. (4) refers explicitly to the possibility of hearing witnesses – and it may assess the evidences freely and comprehensively.

As noted by the Minister of Justice as well, "the committee may use any tool of evidence". The Minister without Portfolio agreed with "all elements of the legal position elaborated by the Ministry of Justice".

(c) In a transitional period, until the handing over of documents to the Historical Archive Office is fully realised, the committee has only data request and inspection rights with regard to the materials to be handed over which may be examined without any restriction (as such documents are, in principle, not part of "living materials"). This fact alone – similarly to the position expressed in point 4.2. b)-d) – does not raise any constitutional concern.

9. There is no rule in the CA providing who and how may check if the President of the Historical Archive Office was engaged in the work of Department III.

The prohibition that such a person should not be the President of the Office is not related to the original aim of lustration but it is a special rule of incompatibility even if relating to the "past". The CA was free to apply such a rule of incompatibility for the appointment to the public service position concerned.

For a rule of incompatibility it is not necessary to examine ex officio, in a separate procedure, the existence of the causes of incompatibility. Under a rule of incompatibility, it is in general enough to obtain the negative declaration of the person concerned.

The candidate persons shall be heard by the Parliamentary Committees of National Security, Human Rights, Minority and Religious Affairs and of Culture and Press. These committees have adequate legal tools (provided in other statutes) to verify the existence of a cause disqualifying the candidate.

The CA shared the responsibility of such check-ups between the control committees and the committees of the Parliament. Control committees carry out check-ups within their own scope of competence. They are not required to perform all check-ups regarding the whole Department III.

Based on the above, the petition raising objections against the first sentence of Section 2 para. (4) of the CA and claiming that these persons are outside the personal scope defined in line with the original aim of the CA is unfounded in respect of the president and the deputy president.

Taking into account all the above, the Constitutional Court has also rejected the petition according to which the Parliament caused an unconstitutional omission of legislative duty by not regulating in detail the way of effectively realising the requirement prescribed in Section 25/C para. (1) of the Act regarding the President of the Historical Archive Office.

10. The Constitutional Court has found that the petition alleging a contradiction between the CA and the Order of the Office of National Security is unfounded, too.

In this respect, the petition refers once more to CCDec. 1, alleging a collision of the two rules on the basis of the arguments presented there.

However, Act LXVII of 1996 amended the original Section 8 of the CA. The unconstitutionality of this may not be established on the basis of the petitions in line with the arguments presented in point 8 of the Decision. The Order of the Office of National Security is in line with the amended Section 8 of the CA; it does not restrict the rights of the control committee as specified in the CA.

Points 3-8 of the Order of the Office of National Security address the requests filed by the committees. The way of access to “living” and “dead” registries is regulated in the Order on the basis of the CA. As detailed earlier, it means that “dead registries” may be examined without any restriction, while operating registries, including archived materials that may be lawfully handled but may not be handed over to the Historical Archive Office on the basis of Section 25/A para. (1) items a)-b) of the CA, i.e. “living materials” may be examined through the organs responsible for handling them (point 6 subpoints (a)-(b)). The Order covers the “living” registries interpreted as such, and it is to be applied in the Office of National Security in the course of check-ups made in its “registries and data bases that belong to the operative registry system” (point 5 (a) of the Order of the Office of National Security).

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Budapest, 29 June 1999.

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