DECISION 50/2003 (XI. 5.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of a constitutional complaint and petitions seeking a posterior constitutional review of other legal tools of state administration as well as the examination of an unconstitutional omission of legislative duty, the Constitutional Court has adopted the following

decision:

1. The Constitutional Court holds that the Parliament has made an unconstitutional omission of legislative duty by having failed to regulate in an Act of Parliament, in line with Article 21 paras (2) and (3) of the Constitution, the order of inquiries performed by the standing and the temporary committees of the Parliament, as well as to create the statutory preconditions for the effectiveness of inquiries by the parliamentary committees. In addition, an unconstitutional omission of legislative duty is deemed to exist since the Parliament has failed to adopt an Act to ensure the enforcement, during the inquiries performed by the parliamentary committees, of the freedom to debate issues of public interest in accordance with Article 61 para. (1) of the Constitution, to protect the rights safeguarding one's personality and privacy in line with Article 54 para. (1) and Article 59 para. (1) of the Constitution, and to offer legal remedies – in accordance with Article 57 para. (5) of the Constitution – against decisions that are adopted by parliamentary committees performing inquiries and that violate one's rights or lawful interests.

The Constitutional Court therefore calls upon the Parliament to meet its legislative duty by 31 March 2004.

2. The Constitutional Court holds that Parliamentary Resolution 41/2002 (VII. 12.) OGY on setting up a committee for examining the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament after the change of regime is unconstitutional and, therefore, it is annulled with retroactive effect as of 9 July 2002, the day of its adoption.

3. The Constitutional Court holds that the committee set up for examining the facts and circumstances of participation in the state security operations of the former political system by

persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament after the change of regime acted in an unconstitutional manner in the specific case serving as the basis of the constitutional complaint registered at the Constitutional Court under file number 850/D/2002.

In addition, the Constitutional Court holds that in the specific case serving as the basis of the constitutional complaint registered at the Constitutional Court under file number 850/D/2002, the deadline for using legal remedy shall commence when the statutory regulation eliminating the unconstitutional omission is put into force.

4. The Constitutional Court rejects the petition seeking a posterior establishment of the unconstitutionality and a declaration of the nullification of Section 36 para. (5) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary.

5. The Constitutional Court refuses the petition seeking a posterior establishment of the unconstitutionality and a declaration of the nullification of Parliamentary Resolution 42/2002 (VII. 12.) OGY on electing the officials and members of the committee set up for examining the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament after the change of regime.

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

REASONING

I

1.1. The Parliament adopted at its session on 9 July 2002 and published in the Official Gazette of 12 July 2002 Parliamentary Resolution 41/2002 (VII. 12.) OGY on setting up a committee for examining the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament after the change of regime (hereinafter: PR1). At the same time, the Parliament adopted and published Parliamentary Resolution 42/2002 (VII. 12.) OGY on electing the officials and members of the committee set up for examining the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in

governments after the formation of the first freely elected Hungarian Parliament after the change of regime (hereinafter: PR2).

1.2. On 13 September 2002, the Constitutional Court received a petition for the posterior establishment of the unconstitutionality and for the retroactive annulment of PR1, alleging that it is contrary to the requirements of legal certainty and the division of power, furthermore, that it violates the constitutional interests of those affected and contains negative discrimination.

According to the petition, based on Act XI of 1987 on Legislation (hereinafter: the AL), PR1 belongs to the category of "other tools of State administration", and it contains normative provisions that affect subjects other than the organs controlled by the Parliament or the Members of the Parliament. In this context, it is alleged by the petitioner that PR1 "affects fundamental rights that may only be restricted or otherwise regulated in an Act of Parliament".

With reference to the principle of the division of power, the petitioner objects to PR1 regulating an activity that falls outside the competence of both the Parliament and its committees. "In respect of persons having held political positions, their past activities may only be judged upon by a Court adopting a condemning or a declaratory decision in the course of a fair trial […], based on an Act of Parliament."

It is also claimed by the petitioner that as far as many of the persons to be examined under PR1 are concerned, the data concerned no longer qualify as being of public interest, they are subject to the constitutional protection of personal data, and therefore they may only be used with the affected person's consent or by virtue of a provision of an Act of Parliament.

Finally, the petitioner holds that PR1 is contrary to Act XXIII of 1994 on Checking Persons Holding Certain Key Positions and Positions of Public Trust, and Persons Shaping Public Opinion, and on the Historical Archive Office (hereinafter: the CA).

1.3. On 8 November 2002, following the preparatory procedure by the Secretary General of the Constitutional Court, the Constitutional Court declared another petition to be suitable for examination by the Constitutional Court, where the petitioner – in addition to referring to the constitutional concerns mentioned in the first petition – argued that PR1 expanded "screening" to a new scope of persons, and it did so "partly with retroactive effect and partly in a discriminative manner".

1.4. On 18 November 2002, the Constitutional Court received a constitutional complaint initiating the retroactive annulment of PR1. In respect of PR1, the following constitutional objections are raised therein: it violates the requirement of the rule of law provided for in Article 2 of the Constitution as a parliamentary committee is not empowered to examine the scope of persons affected by PR1; it is contrary to Article 8 para. (2) of the Constitution guaranteeing that the rules pertaining to fundamental rights are to be regulated in Acts of Parliament; it violates Article 54 para. (1) of the Constitution as the persons covered by the procedure are not the subjects but the objects thereof; it violates Article 57 paras (1) and (5) as it grants neither a right to judicial review, nor a right to legal remedies; and finally, it is contrary to Article 59 para. (1) of the Constitution as it does not provide for the way of handling data collected and used by the committee.

With regard to the application of the norm considered unconstitutional, the person submitting the constitutional complaint points out the following: "As I held various political positions in the government in office between 1990-1994, the committee of inquiry set up by the resolution hereby challenged performed an examination on me, too."

The petitioner's position about the possibilities of legal remedy is the following: "…as a result of the Parliament's resolution, the parliamentary committee of inquiry started and conducted an examination against me, causing a serious injury to my constitutional rights, and as I cannot request at an ordinary court any remedy of the injury of my rights, I have no option to seek legal remedy other than to propose to the Hon. Constitutional Court the establishment of unconstitutionality […]". As the committee did not make a report, the petitioner considered the day of terminating the committee's operation to be the starting of date of the 60-day term open for filing a constitutional complaint.

1.5. On 25 November 2002, the Constitutional Court received another petition in the same subject. The petitioner requested the establishment of an unconstitutional omission of legislative duty. According to the petitioner, the activity and the rights of the Parliament's *ad hoc* committees and committees of inquiry are to be determined in an Act of Parliament rather than in parliamentary resolutions as the operation of such committees may cover organs and persons not supervised by the Parliament. "This is a deficiency violating Article 8 para. (2), Article 59, Article 61 para. (3), Article 57 para. (1), and Article 57 para. (5) of the Constitution. Procedural and substantive norms restricting one's fundamental rights may be created on a hierarchical legislative level lower than an Act of Parliament, such sources of law

are not considered statutes, and in addition, neither a judicial way, nor legal remedies are offered with regard to decisions made by the committee of inquiry."

Moreover, the petitioner proposes the establishment of the unconstitutionality and the annulment of the whole of PR1 and PR2 as well as of Section 36 para. (5) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary (hereinafter: the Standing Orders).

As far as PR1 and PR2 are concerned, the petitioner requests their annulment with reference to the lack of their statutory basis. The annulment of Section 36 para. (5) of the Standing Orders is requested with reference to the fact that a parliamentary resolution may not give an authorisation to adopt provisions as found in the challenged rule of the Standing Orders.

The Constitutional Court consolidated the petitions and judged them in a single procedure.

In the course of its procedure, the Constitutional Court asked for information on the operation of the committee of inquiry set up by PR1 from the Speaker of the Parliament, who forwarded to the Constitutional Court the summary note prepared by the members of the committee and its members belonging to the governing parties. In addition, in the course of its procedure, the Constitutional Court requested information from the Ombudsman for Data Protection.

2.1. The provisions of the Constitution relevant to the present case are the following:

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

"Article 8 para. (1) The Republic of Hungary recognises inviolable and inalienable fundamental human rights. The respect and protection of these rights is a primary obligation of the State.

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

"Article 21 para. (2) The Parliament shall establish standing committees from among its members and may delegate a committee for the investigation of any issue whatsoever.

(3) Everyone is obliged to provide Parliamentary Committees with the information requested and is obliged to testify before such committees."

"Article 54 para. (1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights."

"Article 57 para. (1) In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law."

"Article 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. A law 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 59 para. (1) In the Republic of Hungary everyone has the right to the good standing of his reputation, the privacy of his home and the protection of secrecy in private affairs and personal data."

"Article 61 para. (1) In the Republic of Hungary everyone has the right to freely express his opinion, and furthermore, to have access to, and distribute information of public interest."

"Article 61 para. (3) A majority of two-thirds of the votes of the Members of Parliament present is required to pass an Act of Parliament on public access to information of public interest and an Act on the freedom of the press."

2.2. The provisions of the Standing Orders relevant to the present case are the following:

"Temporary Committees

Section 34 para. (1) The Parliament may appoint a committee of inquiry to investigate any matter, and may set up an *ad hoc* committee to deal with issues defined in the resolution on setting up the committee for a period of time specified in the same (hereinafter committees of inquiry and *ad hoc* committees shall be referred to jointly as "temporary committees").

(2) No motion of amendment to the proposed resolution concerning the establishment of a temporary committee may be submitted regarding

a) the name of the committee of inquiry and the subject matter investigated, and

b) the name of the *ad hoc* committee and the matter referred into the scope of its tasks.

Special Rules Concerning Ad Hoc Committees

Section 35 para. (1) The task, name, number of members and competence of an *ad hoc* committee shall be determined by the Parliament when establishing the same.

(2) cancelled

(3) The rules pertaining to the operation of standing committees shall – in the absence of other provisions made by the Parliament or the *ad hoc* committee itself – be applied to *ad hoc* committees as appropriate. The chairman and the deputy chairman of the committee shall be a Member of Parliament, and non-Member members of the committee shall have no vote.

Special Rules Concerning Committees of Inquiry

Section 36 para. (1) To the setting up, operation, name, determination of the subject of inquiry and termination of the committee of inquiry, the provisions governing *ad hoc* committees shall be applied with the exceptions laid down in this Section.

(2) A committee of inquiry shall be set up if at least one fifth of the Members support such a motion.

(3) Only Members of Parliament may be members of the committee of inquiry.

(4) cancelled

(5) The committee of inquiry shall make a report on its activity, which report shall include the following:

a) the task of the committee;

b) the rules of procedure and methods of inquiry determined by the committee;

c) statement of the facts and legal findings the committee has revealed;

d) presentation of the evidence on which its findings are based;

e) the comments of the organ or person concerned on the methods and findings of the inquiry;

f) a motion on the measures to be taken if such a proposal has formed part of the committee's tasks.

(6) cancelled"

2.3. According to Section 46 of the AL:

"(1) The Parliament, the Government, the committees of the Government, the local governments, and the organs of the local governments regulate in resolutions the tasks of the organs supervised by them, as well as their own operation, and determine the plans that fall into the scope of their tasks.

(2) The above provision is without prejudice to the right of the organs listed in paragraph (1) to adopt an individual resolution."

II

1. First, the Constitutional Court examined the petition proposing the establishment of an unconstitutional omission concerning the regulation of parliamentary temporary committees.

According to the petitioner, it is an unconstitutional omission of legislative duty that the activities and rights of parliamentary *ad hoc* committees and committees of inquiry are only defined, instead of an Act of Parliament, in parliamentary resolutions and decisions by parliamentary committees, violating the provisions of the Constitution on the restriction of fundamental rights [Article 8 para. (2)], the right to the judicial way [Article 57 para. (1)], the right to legal remedy [Article 57 para. (5)], the right to the protection of personal data (Article 59), and the Act of Parliament on public access to data of public interest [Article 61 para. (3)].

According to Section 49 para. (1) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), an unconstitutional omission of legislative duty may be established if the legislature has failed to fulfil its legislative duty mandated by a legal norm, and this has given rise to an unconstitutional situation. The Constitutional Court shall establish an unconstitutional omission if the guarantees necessary for the enforcement of a fundamental right are missing, or if the omission of regulation endangers the enforcement of a fundamental right. [Decision 22/1990 (X. 16.) AB, ABH 1990, 83, 86; Decision 37/1992 (VI. 10.) AB, ABH 1992, 227, 232; Decision 6/2001 (III. 14.) AB, ABH 2001, 93, 103]

Therefore, in the present case, in the scope of competence of the Constitutional Court with regard to the elimination of an unconstitutional omission of legislative duty, the Constitutional Court has had to examine whether the regulations concerning parliamentary committees are deficient in a sense that qualifies as an omission. Where an omission can be established, it has to be decided whether or not it has caused an unconstitutional situation.

There is another closely related question, namely, what legislative level the missing regulation requires; in other words, whether it is necessary to have an Act of Parliament or it is sufficient to adopt a normative parliamentary resolution. In order to answer these constitutional questions, the Constitutional Court has examined in a broader constitutional context the parliamentary committees' functions of inquiry and control as well as the legal regulation thereof.

In the present case, the examination of the sources of law in connection with the alleged unconstitutional omission is limited to the provisions defining parliamentary committees' functions of inquiry and control.

2.1. The Constitutional Court has reviewed the relevant legal norms with regard to parliamentary committees, and in particular to *ad hoc* committees and committees of inquiry.

Parliamentary committees' functions of inquiry and control are based on Article 21 of the Constitution providing for the setting up of standing committees and allowing the delegation of a committee of inquiry to examine any question [para. (2)], and also providing that everyone is obliged to supply parliamentary committees with the information requested and to testify before such committees [para. (3)].

The detailed rules on the system of committees as well as the committees' functions of inquiry and control are laid down in the Standing Orders. According to the Standing Orders, there are standing and temporary committees working in the Parliament.

A standing committee is an organ of the Parliament participating – among others – "in the supervision of government work, and it shall exercise its competence as laid down in the Constitution and other Acts, the Standing Orders, as well as in other resolutions of the Parliament." [Section 29 para. (1)] The number and the scope of tasks of standing committees shall conform basically to the structure of the Government, but the Parliament may, at any time, set up, transform, and terminate standing committees – with the exception of committees to be set up mandatorily. [Section 28 paras (2) and (3)] The Parliament may request a standing committee to prepare an informative report on any measure or inquiry or on the operation of a particular organ. [Section 30 para. (1); Section 89 para. (1)] In addition, a standing committee may decide to discuss any matter within its competence and may take a position thereon. In such a case, the committee publishes in its information material its position taken on the matter. [Section 30 para. (3)]

The Parliament may set up temporary committees in the form of *ad hoc* committees and committees of inquiry.

An *ad hoc* committee is established "to deal with issues defined in the resolution on setting up the committee for a period of time specified in the same." The scope of tasks and the competence of an *ad hoc* committee is determined by the Parliament when establishing the same. The members of an *ad hoc* committee may include non-Members of the Parliament, but they have no right to vote. The rules pertaining to the operation of standing committees shall – in the absence of other provisions made by the Parliament or by the *ad hoc* committee itself – be applied to *ad hoc* committees as appropriate. [Section 34 para. (1), Section 35]

The Parliament may set up a committee of inquiry "to investigate any matter" A committee of inquiry must be set up by the Parliament if at least one fifth of the Members support such a motion. Only Members of Parliament may be members of a committee of inquiry. The committee of inquiry shall make a report on its activity, which report shall include the contents specified in Section 36 para. (5) of the Standing Orders. In other respects, the rules

on *ad hoc* committees or, in the absence thereof, the rules on standing committees shall apply to committees of inquiry. [Section 34 para. (1), Section 36]

Chapter 2 of Part IV (Order of Proceedings in the Parliament) of the Standing Orders defines the general rules of the sessions of the committees that apply appropriately to the control and investigation activities of standing and temporary committees as well. The Standing Orders offer significant ground for self-regulation by the committees by providing that "Following its formation, each committee shall determine the order of its sessions." [Section 67 para. (1)] "The committees shall determine their rules of operation taking into account the provisions of the Standing Orders." [Section 81 para. (1)]

2.2. The Constitutional Court has surveyed the legal norms relevant in the present case regarding parliamentary committees' functions of inquiry and control. According to Section 68 para. (3) of the Standing Orders, on request by two fifths of its members, the committee shall hold a hearing. Section 73 regulates the invitation and speeches of experts. Section 78/A regulating the contents of the minutes taken at the session of the committee *in camera* mentions "the declaration of a person heard by or testifying before the committee". Section 139 provides for the protection of state secrets and official secrets in the field of protecting secrets.

The Standing Orders have special rules on hearings and reports by the committees in respect of the election and control of prominent officials under public law. According to Section 132 para. (3), "If, before the election or appointment of an office holder, an Act prescribes the hearing of the nominee by a parliamentary committee, the competent committee shall hear the nominee and give an opinion on the nomination. The committee shall make its decision regarding the appointment of the nominee to minister by open ballot." The related rule under Section 68 para. (4) provides for the following: "The committee shall hear, at least once annually, the minister whom it heard before his appointment."

2.3. Based on the examination of the above provisions of the Constitution and the Standing Orders, the Constitutional Court has concluded that the parliamentary committees' functions of inquiry and control result directly from Article 21 paras (2) and (3) of the Constitution. The parliamentary committees' activities of inquiry are not connected to a specific type of committees based on either the Constitution or the Standing Orders. Standing committees, temporary *ad hoc* committees, and temporary committees of inquiry may equally carry out inquiries and have control functions. The only difference between the individual committee

forms is that conducting inquiries is not the primary task of standing committees and *ad hoc* committees, while committees of inquiry are established for the very purpose of carrying out investigations in a specific case and of preparing a report thereon for the Parliament. However, based on the regulations in force, committees other than committees of inquiry may – by a decision of the Parliament or the committee – carry out an inquiry in a particular case.

Furthermore, the Constitutional Court has established that neither the Standing Orders, nor any other legal norm contains coherent and detailed rules concerning inquiry activities by parliamentary committees, the procedure of investigation, or the tools and methods that may be used. Basically, the Standing Orders refer the determination of the order of investigation procedures into the scope of self-regulation by the committees.

3. The Constitutional Court has examined the constitutional requirements the legislature has to comply with in securing the guarantee rules about parliamentary committees' activities of inquiry and control.

3.1. According to the Constitutional Court, parliamentary committees' functions of inquiry and control, which result directly from Article 21 paras (2) and (3) of the Constitution, are based on two constitutional rules.

3.1.1. One of them is the requirement of the rule of law under Article 2 para. (1) of the Constitution, which includes – in line with the practice of the Constitutional Court – a primary criterion of constitutionality in terms of content: the principle of the division of power. It follows from this principle that there is no branch of power subordinated to the Parliament, and none of the branches of power may expropriate the rights of another branch. It also follows from the principle of the division of power that in a constitutional democracy there is no unlimited and unrestrictable power, and the single branches of power form a balance against the other ones. [Decision 38/1993 (VI. 11.) AB, ABH 1993, 256, 261; Decision 41/1993 (VI. 30.) AB, ABH 1993, 292, 294; Decision 55/1994 (XI. 10.) AB, ABH 1994, 296, 300; Decision 28/1995 (V. 19.) AB, ABH 1995, 138, 142; Decision 66/1997 (XII. 29.) AB, ABH 1997, 397, 403]

The Constitution contains the foundations of the institutional and guarantee system of the principle of the division of power enforced in the state administrative system of Hungary. The constitutional acknowledgement of parliamentary committees' function of inquiry and their regulation in the Standing Orders are part of that guarantee system, in addition to several other constitutional institutions, together with the statutory rules that provide for hearings by

parliamentary committees of persons (candidates) who fulfil prominent positions under public law. The right of the Parliament to carry out investigations through its committees and its obligation of having ministers report serve the purpose of controlling the work of the Government, i.e. the executive branch. The rights of investigation and the obligations of reporting secure information for the Parliament, which is indispensable for exercising control.

3.1.2. Parliamentary committees' function of inquiry follows not only from the principle of the division of power that forms part of the rule of law, but also from Article 61 para. (1) of the Constitution, which acknowledges as a fundamental right the right of access to data of public interest (freedom of information) and the freedom of expressing one's opinion. The above two rights facilitate, in addition to the freedom of expressing one's personal opinion, the freedom of debating public matters. Being informed and knowing the facts is one of the conditions for the freedom of expression. The right to the freedom of expression is one of the fundamental values of a pluralist democratic society. In the practice of the Constitutional Court, this right has a special place among the fundamental rights, amounting in effect to the "mother right" of the fundamental rights of "communication" that jointly allow one to participate in social and political processes. The intellectual enrichment of society depends on the freedom of expression as well: false ideas can only be screened out if contradicting arguments can confront in free debates, and if harmful ideas also have the chance to come to light. "Historical experience shows that on every occasion when the freedom of expression was restricted, social justice and human creativity suffered and humankind's innate ability to develop was stymied. The harmful consequences afflicted not only the lives of individuals but also that of society at large, inflicting much suffering while leading to a dead end for human development. Free expression of ideas and beliefs, free manifestation of even unpopular or unusual ideas is the fundamental requirement for the existence of a truly vibrant society capable of development." [First: Decision 30/1992 (V. 26.) AB, ABH 1992, 167, 171]

The Parliament plays a prominent and indispensable role not only in setting norms but in debating public matters as well. Parliamentary committees carrying out inquiries in public matters and hearing officials under public law are important parliamentary forums for debating public matters. The free debating of public matters in the Parliament is, on the one hand, an indispensable precondition for adequate legislation. On the other hand, free parliamentary debate contributes to making it possible for voters to gain an adequate picture about the activities of the Members of Parliament and other important officials under public law, so that they can participate in political discussions and decision-making in possession of proper information.

3.1.3. The Constitutional Court holds that the above constitutional criteria form the ground of determining the relation between procedures of inquiry by parliamentary committees and court procedures. Although there are similarities in several respects between inquiries by committees and court procedures, the two procedures show fundamental differences.

On the basis of Article 45 para. (1) of the Constitution, in the Republic of Hungary justice is administered by courts. According to Article 50 para. (1), courts shall determine the punishment for those who commit criminal offences. Article 50 para. (3) provides for the independence of judges and prohibits their participation in political activities. As pointed out by the Constitutional Court on several occasions concerning the above provisions of the Constitution: "The power of the judiciary, separated from the powers of the legislature and of the executive branch in the Hungarian parliamentary democracy as well, is a manifestation of the power of the State authorised to decide with binding force, through the organisation established for this purpose, on rights injured or debated, in the course of a procedure regulated by the law. Thus, the power of the judiciary – to which the independence of judges is related – is primarily manifested in judgement." [First: Decision 53/1991 (X. 31.) AB, ABH 1991, 266, 267] "[The] speciality of the judiciary branch, as opposed to the other two "political" branches of power, is permanency and neutrality." [Decision 38/1993 (VI. 11.) AB, ABH 1991, 256, 261]

In contrast with the above, parliamentary committees carrying out inquiries are not part of the judiciary but they belong to the Parliament as tools of parliamentary control and of identifying the political responsibility of the Government as well as forums of debating public matters and examining problems of public interest. In general, the officials and members of parliamentary committees cannot be regarded as impartial since most of them are members of political parties making their way into the Parliament.

In international experience, one of the greatest constitutional problems is the clarification of the relation between the activities of committees of inquiry and criminal procedures. The select committees and elect committees of the US Congress enjoy a very extensive competence of inquiry, similarly to the Appropriations Committee and the Government Operations Committee as standing committees. The committees of inquiry and control of the French Parliament may also carry out investigations in parallel to criminal procedures, provided that they take into account the criminal procedure under way. In Italy, according to Article 82 para. (1) of the Constitution, committees of inquiry may be set up to investigate any issue of public interest, and, according to para. (2), the committee of inquiry performs investigations and examinations with the same competence and with the same restrictions as

the authorities of jurisdiction. The above extensive constitutional empowerment resulted in the significant political role of the parliamentary committees in the so-called mafia cases. In Belgium, based on the special Act on parliamentary committees of inquiry adopted in 1996, committees have extensive powers in carrying out criminal investigations, and the Act even allows the president of the criminal court of appeal to delegate, on request by the chairman of the committee of inquiry, a criminal judge to help the work of the committee.

3.1.4. The Constitutional Court concludes that it is constitutionally indispensable to have adequate legal guarantees securing the efficient operation of parliamentary committees engaged in inquiries and controlling. One such guarantee is specified under Article 21 para. (3) of the Constitution itself, providing that everyone is obliged to supply parliamentary committees with the information requested and to testify before such committees. However, according to the Constitutional Court, this rule is not sufficient in itself. Further legal guarantees are necessary, rendering the norm under Article 21 para. (3) of the Constitution more specific, providing for a legal sanction against those who unlawfully violate the norm, and guaranteeing the enforcement of the norm and the sanction. Without further legal regulation, Article 21 para. (3) of the Constitution is *lex imperfecta*. Consequently, the legal norms have to clarify the relation between investigations by parliamentary committees and court procedures, and in particular criminal procedures.

3.2. The Constitutional Court has examined whether there are constitutional restrictions on the investigation activities conducted by parliamentary committees that demand legal regulation. Naturally, investigations by parliamentary committees playing an important role in parliamentary control and in debating issues of public interest may not be unlimited. Enforcing other provisions of the Constitution is just as important as the enforcement of Article 21 paras (2) and (3) and the closely related principle of the division of power found under Article 2 para. (1), as well as the enforcement of the freedom of information and expression based on Article 61 para. (1) of the Constitution.

The petitioner claiming an unconstitutional omission of legislative duty refers to the violation of several constitutional provisions by the fact that the activity of parliamentary *ad hoc* committees and committees of inquiry is regulated by parliamentary resolutions rather than by Acts of Parliament that bind all persons.

3.2.1. Article 54 para. (1) and Article 59 para. (1) of the Constitution protect the privacy of people as well as their private secrets, good standing of reputation, and personal data. According to the standing practice of the Constitutional Court, it is the violation of the above

rights originating from the fundamental right to human dignity when the State interferes without due reasons with relations that fall into the scope of privacy, for example, through the authorities using coercive measures against individuals without due grounds. “Therefore, any legal regulation which allows this to happen is unconstitutional without regard to the percentage of cases in which such unconstitutional legal consequence actually occurs.” [First: Decision 46/1991 (IX. 10.) AB, ABH 1991, 211, 215] “Given constitutional rights and liberties, the sovereign power may only interfere with one’s rights and freedoms on the basis of constitutional authorisation and constitutional reasons.” [First: Decision 11/1992 (III. 5.) AB, ABH 1992, 77, 85] The limitations of State interference are set by the formal and substantial requirements defined under Article 8 para. (2) of the Constitution, and eventually by the requirements of necessity and proportionality elaborated by the Constitutional Court on the basis of the Constitution.

As none of the institutions exercising public authority has unlimited power over people, the rights of parliamentary committees carrying out inquiries may not be unlimited. Consequently, the provision in Article 21 para. (3) of the Constitution providing that everyone is obliged to supply parliamentary committees with the information requested may only be enforced in harmony with other constitutional provisions. No parliamentary committee is entitled to have access to any information about any person in any case, on the basis of its sole discretion.

3.2.2. It is a question closely related to the protection of privacy how the constitutional guarantees required in other procedures, and in particular in criminal procedures, are enforced in the course of procedures conducted by parliamentary committees carrying out investigations. Due to the functional differentiation between courts and parliamentary committees, parliamentary committees carrying out investigations are also subject to the constitutional requirement that “[the] declaration of guilt (conviction) may only be performed by a court of law through establishing the defendant’s guilt in a resolution. This follows from Article 57 para. (2) of the Constitution declaring the presumption of innocence.” [First: Decision 11/1992 (III. 5.) AB, ABH 1992, 77, 87]

Nevertheless, in the Hungarian rules, the legal status of persons under investigation and obliged to testify or invited to a hearing is not clarified. Pursuant to Article 21 para. (3) of the Constitution, everyone is obliged to testify before parliamentary committees. At the same time, it is evident on a constitutional basis that the prohibition of obliging someone to accuse himself and the presumption of innocence provided for in Article 57 para. (2) of the Constitution are also to be enforced unconditionally in procedures other than criminal

procedure. [Decision 41/1991 (VII. 3.) AB, ABH 1991, 193, 195; Decision 26/B/1998 AB, ABH 1999, 647, 649] However, the right to deny making a testimony and the obligation of telling the truth depend on the procedural position of the person obliged to make a testimony. In this respect, the "parties", the "clients", the "witnesses", the "defendants" etc. are subject to different rules of procedural law. There are other procedural deficiencies in the Hungarian normative regulation in force, for example, it does not provide for rules on legal representation (cf. representation of the injured party, the right to defence).

In states where the law orders the appropriate application of the rules of criminal procedure in procedures by parliamentary committees, this is partly justified by the necessary protection of the participants in the procedure through the guarantees of criminal procedure. [For example, Article 44 para. (2) of the German Constitution provides that the rules of criminal procedure are to be applied appropriately in a procedure of taking evidence by the committee of inquiry, however, "correspondence, postal and telecommunication secrets are inviolable".]

3.2.3. Article 57 para. (1) of the Constitution guarantees the right to have a court trial, and Article 57 para. (5) acknowledges the right to legal remedies against decisions by judicial and administrative organs and other authorities.

According to the Constitutional Court, the activity of parliamentary committees carrying out investigations qualifies as an activity of applying the law on the basis of public authority. The requirement of the availability of legal remedies against decisions passed in the course of the above activity when they affect the rights, obligations and lawful interests of citizens and other persons derives from Article 57 para. (5) of the Constitution.

Legal remedies against unlawful decisions made by committees of inquiry are granted in the law of many countries. For example, in the United States, the judicial way is open for legal remedies against unlawful acts by the committees of the Congress. In Germany, Article 44 para. (4) of the Constitution provides that "decisions by committees of inquiry may not be subject to judicial review. The courts are free to judge upon the facts that have served as the basis of the investigation." However, a constitutional complaint – which differs significantly from its equivalent in Hungary – may be filed to the Federal Constitutional Court against any decision by a committee of inquiry when it has a direct legal effect on citizens.

According to the rules in force in Hungary at present, parliamentary committees carrying out investigations are not bound to adopt formal resolutions on their decisions and measures affecting the rights and obligations of citizens, and there are no normative requirements about the legal remedies against the committees' decisions. No procedure of legal remedy can be commenced against decisions made by parliamentary committees as they cannot sue or be

sued, and nor can they be regarded as public administration bodies under Act IV of 1957 on the General Rules of Public Administration Procedure (hereinafter: the APAP).

The CA established a committee for checking persons holding certain key positions, positions of public trust and persons shaping public opinion, which is in charge of a task in many respects similar to those of parliamentary committees, and which acts on the basis of the CA and the APAP, and therefore it can be considered a special body of public administration. [Decision 60/1994 (XII. 24.) AB, ABH 1994, 342, 366] However, no procedural Act is applicable to parliamentary committees performing inquiries.

4.1. Based on all the above facts, the Constitutional Court has concluded that the legal regulations on the investigation and control activities of standing and temporary parliamentary committees are to a great extent incomplete. On the one hand, there are no statutory conditions ensuring the efficiency of examinations by the committee, or stating the *sui generis* nature of the committee's inquiry (its relation to court procedures, public administration and criminal procedures) and, on the other hand, there are no legal guarantees safeguarding the fundamental rights of citizens (right to privacy, procedural rights, right to legal remedies etc.) against parliamentary committees carrying out investigations as organs applying the law on the basis of public authority.

4.2. This omission has resulted in an unconstitutional situation, on the one hand, because of the incomplete regulation failing to ensure an efficient performance of investigations by the parliamentary committees acknowledged under Article 21 paras (2) and (3) of the Constitution, and thus the control function to be exercised by the Parliament originating from the division of power can be injured and the freedom of debating public matters, based on Article 61 para. (1) of the Constitution, can be violated. On the other hand, an unconstitutional omission can be established on the basis of the fact that the incompleteness of the regulation endangers the personality rights and the freedom of private life originating from Article 54 para. (1) and Article 59 para. (1) of the Constitution, while excluding the exercise of the right to legal remedy resulting from Article 57 para. (5) of the Constitution and threatening the enforcement of the fundamental procedural guarantees in a State under the rule of law in the course of investigations by the committees.

4.3. The unconstitutional omission shall be eliminated by the Parliament as the legislative authority. This follows from Article 8 para. (2) of the Constitution, according to which the rules pertaining to fundamental rights are determined in Acts of Parliament. Moreover, this is

what follows from the provisions of the AL, stating that the Parliament shall adopt Acts on "the fundamental rules concerning the social order, the most important institutions of society, the organisation and the operation of the State, and the competences of State organs" as well as "the fundamental rights and obligations of citizens, the conditions thereof and restrictions thereupon as well as the procedural rules of enforcing them". [Section 2 items a) and c)] "In relation to the social order, Acts of Parliament shall cover, in particular, […] the operation of the State organs listed in the Constitution." [Section 3 item a)]

Investigation and control activities by parliamentary committees necessarily affect the rights and obligations of subjects of law not belonging to the organs mentioned in Section 46 para. (1) of the AL, i.e. to organs supervised by the Parliament, or to the organs of the Parliament itself. The contents of the rights of the committees in restricting fundamental rights may not be based on either casual circumstances that result from the incompleteness of regulation, or self-regulation that gives priority to the parliamentary committees' own aspects. [cf. Decision 49/1996 (X. 25.) AB, ABH 1996, 150, 153; Decision 39/1997 (VII. 1.) AB, ABH 1997, 263] Consequently, the Constitutional Court has established not only the incompleteness of the regulations in the Standing Orders, but also the fact that the omission is to be remedied by the adoption of an Act of Parliament.

4.4. On the basis of the Constitutional Court's decision, the Parliament is to adopt the missing statutory regulations not later than 31 March 2004. When setting the deadline, the Constitutional Court took into account the fact that the activities of standing and temporary parliamentary committees carrying out investigations are based on the Constitution, and there are significant constitutional reasons for ensuring that such committees operate properly, efficiently and in a well-regulated framework, at the same time respecting fundamental rights and serving the public.

III

The Constitutional Court has examined the petitions aimed at a posterior constitutional review and initiating the establishment of the unconstitutionality of PR1. Several petitions for abstract review and the constitutional complaint filed at the Constitutional Court under No. 850/D/2002 are aimed at the above.

1.1. First, the Constitutional Court had to decide whether or not its scope of competence included the abstract constitutional review of the challenged parliamentary resolution.

Pursuant to Article 32/A para. (1) of the Constitution, the Constitutional Court shall review the constitutionality of laws and attend to the duties referred by law into its jurisdiction. According to Section 1 item b) of the ACC, the competence of the Constitutional Court covers the posterior constitutional examination of statutes and other legal tools of State administration.

The AL specifies the normative acts of the State, determining the ones that qualify as statutes and the ones regarded as other legal tools of State administration. According to Section 46 of the AL, the Parliament may adopt resolutions with normative contents that fall into the category of other legal tools of State administration, as well as individual resolutions. The Constitutional Court may only review resolutions with normative contents that fall into the category of other legal tools of State administration.

According to the standing practice of the Constitutional Court, the mere fact that a certain act has been issued under a name used in the AL for the identification of statutes or other legal tools of State administration is not sufficient for establishing the competence of the Constitutional Court for the review of the act in question. In examining the competence of the Constitutional Court, the decisive factor is not the name of the act but the legal nature of the provisions contained therein. [Order 52/1993 (X. 7.) AB, ABH 1993, 407, 408; Decision 60/1992 (XI. 17.) AB, ABH 1992, 275, 278-279; Order 337/B/1994 AB, ABH 1995, 1033, 1036; Order 3/1996 (II. 23.) AB, ABH 1996, 361, 363; Order 227/B/1999 AB, ABH 1999, 932, 933]

According to its standing practice concerning the examination of the normative nature of parliamentary resolutions, the Constitutional Court has in most cases examined the aim of the resolution, the scope of the subjects of law affected by the provisions therein, and the nature or the time span of the rules of conduct contained therein when determining whether the parliamentary resolution in question is a normative or concrete act in the sense of the AL. [Order 1239/B/1990 AB, ABH 1991, 905; Decision 57/1993 (X. 28.) AB, ABH 1993, 349; Order 439/B/1993 AB, ABH 1993, 908; Decision 682/B/1993 AB, ABH 1994, 764; Order 1375/B/1992 AB, ABH 1993, 862; Order 753/B/1995 AB, ABH 1995, 981; Order 453/B/1995 AB, ABH 1996, 883; Decision 922/B/1994 AB, ABH 1997, 799; Decision 868/B/1995 AB, ABH 1997, 609; Decision 22/1999 (VI. 30.) AB, ABH 1999, 176; Order 227/B/1999 AB, ABH 1999, 932]

In order to determine the nature of PR1 as a source of law, the Constitutional Court has examined whether the parliamentary resolution in question contains any normative provisions. The existence of normative nature is sufficient for establishing the competence of the

Constitutional Court; the examination of the existence of the constitutionally required normative regulatory level is not a precondition for that. Therefore, in deciding on its own competence, the Constitutional Court has not had to address the petitioner's concern about the Parliament not adopting the rules in PR1 at an adequate level of the legislative hierarchy.

As stated in the introduction of PR1, "the Parliament has adopted the resolution to promote the purity of democratic public life and to prevent the misuse of personal data and data of public interest for political purposes".

According to point I of PR1, "The Parliament establishes a committee for the examination of the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament on 2 May 1990, after the change of regime."

Point II of PR1 defines the task of the committee of inquiry as follows: "to examine whether the persons holding political positions in governments formed after 2 May 1990 participated in the state security operations of the former political system." According to point III, the "examination shall cover the political leaders of the governments formed after 2 May 1990, i.e. prime ministers, ministers, and political undersecretaries." Point IV details the facts and circumstances to be examined by the committee of inquiry. Point V states, among others, that the committee of inquiry "may, in the course of its operation, hold hearings and request documents related to its task." In connection with the above, point V of PR1 stipulates the following: "Everyone is obliged to supply committees with the information requested and to testify before such committees." Point VI details the reporting obligations of the committee of inquiry, and points VII-VIII contain provisions on electing the chairman, vice-chairman and members of the committee.

The preamble of the CA contains objectives similar to the ones found in PR1: the Parliament has adopted the Act "to promote the purity of democratic State life".

The committee of inquiry set up by PR1 is based on Article 21 paras (2) and (3) of the Constitution as well as on Section 34 para. (1) of the Standing Orders, which specifies – among others – that the Parliament can delegate a committee of inquiry to investigate any question.

Committees of inquiry form part of the Parliament's organisation, and the resolutions on setting up, transforming, and terminating committees, and on defining the tasks thereof are considered other legal tools of State administration. Therefore, the Constitutional Court has established that the majority of the provisions found in PR1 comply with the condition specified in Section 46 para. (1) of the AL, according to which the Parliament shall regulate

its own operation and the tasks of the organisations supervised by it through resolutions qualifying as other legal tools of State administration.

In addition, PR1 also contains provisions that provide for normative rules binding subjects of law who are outside the scope of the Parliament's structure or its competence of supervision.

Accordingly, the Constitutional Court has found that PR1 meets the criterion specified under Section 1 item b) of the ACC, which defines the Constitutional Court's competence of abstract posterior constitutional review.

1.2. The Constitutional Court has had to decide whether or not the classification of PR1 as other legal tool of State administration excludes its constitutional review on the basis of a constitutional complaint.

Pursuant to Section 48 of the ACC on constitutional complaints, the Constitutional Court shall review the constitutionality of statutes on the basis of constitutional complaints. The reason for limiting the scope of objects of constitutional complaints to statutes is the fact that, according to the order of legislation, other legal tools of State administration may not provide for citizens' rights and obligations. However, in the present case, the person submitting the constitutional complaint challenges – among others – the very fact of the Parliament adopting a normative resolution on an issue that falls into the regulatory scope of Acts of Parliament and providing therein for the restriction of fundamental rights. That is to say, so the petitioner claims, the Parliament has adopted the contents of an "Act" hidden under the formal cover of a resolution.

According to the practice of the Constitutional Court, if during the application of the law in an individual case, the rights and obligations of citizens are determined on the basis of provisions contained in a document qualifying as other legal tool of State administration, the constitutional complaint challenging this other legal tool of State administration is to be judged on the merits. [Decision 22/1991 (IV. 26.) AB, ABH 1991, 408; Order 753/B/1995 AB, ABH 1995, 981, 982]

Therefore, the Constitutional Court has established that the formal classification of the challenged norm as other legal tool of State administration does not preclude judging upon the constitutional complaint.

Consequently, the Constitutional Court has established its competence for the posterior review of PR1 with respect to both the petitions aimed at an abstract review of the norm and the constitutional complaint.

2. There are additional preconditions in Section 48 para. (1) of the ACC for the examination of a constitutional complaint on the merits. Accordingly, the Constitutional Court has examined the compliance of the submitted constitutional complaint with these statutory requirements.

According to Section 48 para. (1) of the ACC, the Constitutional Court may proceed when an injury of rights has been caused by the application of an unconstitutional statute. In the present case, the committee of inquiry set up after the norm (i.e. PR1) had been adopted by the Parliament operated undoubtedly as an institution applying norms (i.e. PR1 and statutes), therefore its measures and decisions qualified as application of the law.

The Constitutional Court has established that based on point III of PR1, the committee of inquiry was in charge of collecting data on the person submitting the constitutional complaint. The committee was entitled to define its own rules of procedure and its methods of investigation, furthermore, it could hold hearings and request documents (point V of PR1). According to the summary note sent by the Speaker of the Parliament to the Constitutional Court, on 24 July 2002 the committee of inquiry informed in a letter 194 politicians who had held governmental positions after 2 May 1990 about their falling into the scope of investigation by the committee of inquiry. On the same day, the committee sent letters to the Director of the Historical Archive, the Minister of the Interior and the Minister of Defence, asking whether the names of the 194 persons subject to the inquiry were included in the registries of the organisations supervised by them.

The Constitutional Court holds that the individual injury of rights claimed by the person submitting the constitutional complaint can be established without detailing the data on the petitioner obtained by the parliamentary committee of inquiry. The mere activity of the committee, including the collection and forwarding of data on the petitioner, is sufficient to establish the petitioner's being personally affected, as required in Section 48 para. (1) of the ACC.

According to Section 48 para. (2) of the ACC, "Constitutional complaints are to be submitted in writing not later than 60 days of serving the decision with final force." However, on the basis of paragraph (1), having a decision with final force adopted in a procedure of appeal is not a precondition for the procedure of the Constitutional Court when the petitioner has no legal remedy available other than filing the constitutional complaint.

In the case serving as the basis of the constitutional complaint filed, the parliamentary committee of inquiry did not deliver any formal resolution. Neither a statutory provision, nor PR1 provides expressly for legal remedies available against measures and decisions taken by

parliamentary committees of inquiry. (In contrast, according to Section 19 of the CA, the decisions by the committee checking persons holding certain key positions, positions of public trust, and persons shaping public opinion may be appealed against at the Metropolitan Court by the person screened, in line with the rules on the judicial review of public administration resolutions.)

The parliamentary committee concerned ceased to exist on 30 September 2002, and it had not had a capacity to sue and be sued even while in operation. No court may overrule PR1 adopted by the Parliament with normative contents. Consequently, the deficiencies of the regulations on the legal remedies available concerning the activity of the parliamentary committee of inquiry may not be taken into account to the detriment of the person submitting the constitutional complaint. These are – among others – the very deficiencies challenged by the petitioner. Therefore, in the present case, the Constitutional Court has regarded 30 September 2002, the day of terminating the committee of inquiry, as the starting date of the period of 60 days open for submitting the constitutional complaint as defined in Section 48 of the ACC.

As a result, the Constitutional Court has concluded that the constitutional complaint submitted has to be examined on the merits.

3. According to the practice of the Constitutional Court, as far as a statute out of force is concerned, no posterior and abstract constitutional review may be performed if – in the case of the establishment of unconstitutionality – the only procedural consequence of the review would be the declaration of the norm losing force. [Decision 1449/B/1992 AB, ABH 1994, 561, 564] In view of Section 1 item b), Sections 37 and 40 and Section 42 para. (1) of the ACC, this requirement applies to other legal tools of State administration as well. [Order 1239/B/1990 AB, ABH 1991, 905]

At the same time, according to Section 48 of the ACC, the Constitutional Court may review statutes out of force based on constitutional complaints. [Decision 52/1992 (X. 27.) AB, ABH 1992, 257, 259] The difference between procedures started on the basis of a constitutional complaint and abstract normative reviews lies in the possible legal consequences rather than in judging the constitutionality of PR1.

With due account to the above, the Constitutional Court has not considered the examination of PR1 being in force to be a preliminary question with decisive force upon the posterior constitutional review on the merits, including both the abstract and the concrete normative reviews.

IV

The petitioners call for the establishment of the unconstitutionality of PR1 with reference to Article 2, Article 8 para. (2), Article 54 para. (1), Article 57 paras (1) and (5), Article 59 para. (1), and Article 70/A of the Constitution.

First, the Constitutional Court examined if the Parliament had had the right to authorise, by way of a normative parliamentary resolution qualifying as other legal tool of State administration, a committee of inquiry to carry out investigations specified in PR1. In that respect, the Constitutional Court answered the objection raised in the petition alleging that the rules of PR1 are not contained in a legal norm of an adequate level.

1. Although, as pointed out by the Constitutional Court in point 1.1 of part III of this Decision, the aim of PR1 is almost the same as that of the CA, the normative provisions of PR1 are different from the rules in the CA: the scope of persons covered is narrower and the investigative process applied is completely different. It is a significant difference that the personal scope of PR1 included persons who, at the time of the investigation, did not hold an important position under public law (nor were they candidates to such positions).

According to PR1, the rules of procedure of the committee of inquiry set up by PR1 were to be specified by the committee itself. Point V only states that the committee of inquiry "may, in the course of its operation, hold hearings and request documents related to its task." In connection with the above, point V of PR1 repeats the provision in Article 21 para. (3) of the Constitution: "Everyone is obliged to supply committees with the information requested and to testify before such committees."

2. When examining the regulatory level of PR1, the Constitutional Court followed the statements made in Decision 41/1993 (VI. 30.) AB – with due regard to the differences between the two constitutional reviews. [In that decision, the Constitutional Court examined the Parliament's Resolution in Principle 1/1993 (II. 27.) OGY on the interpretation of the statute of limitation of punishability (hereinafter: the Parliament's Resolution in Principle), which changed, by "interpreting the law", the institution of the statute of limitation, introducing a new general condition for statutes of limitation – in addition to the lapse of time –, namely performance of the State's obligation of prosecuting crime.] Decision 41/1993 (VI. 30.) AB contains the following statements important with regard to the present case:

"Due to the separation of powers, there is no branch of power subordinated to the Parliament; the interpretation of the law contained in a resolution in principle only binds the

Parliament itself and its organs. In order to give any interpretation of the law affecting a broader scope of subjects, the Parliament has to apply the tool of legal interpretation through an Act of Parliament.

The requirement of legal certainty under Article 2 para. (1) and the constitutional requirement concerning the legislative interpretation of Acts affecting one's fundamental rights and obligations based on Article 8 paras (1) and (2) of the Constitution are violated by the parliamentary Resolution in Principle by way of interpreting the Criminal Code, which regulates the statutory conditions and tools of restricting constitutional fundamental rights and interference by the State with one's life, liberty and rights, not in an Act of Parliament, but in the form of a resolution in principle, to which – though it has no binding force upon either the authorities acting in criminal matters or the citizens – a general binding force is attributed.

(...) In addition, the parliamentary Resolution in Principle is unconstitutional as its contents are not an interpretation of the law but criminal legislation showing a formal deficiency: an amendment of the Criminal Code by interpreting the law." (ABH 1993, 294)

3. PR1 reviewed in the present case, similarly to the parliamentary resolution in principle examined in Decision 41/1993 (VI. 30.) AB, is a norm formally qualifying as other legal tool of State administration, containing rules of conduct that bind subjects of law outside the Parliament's organisation and competence of supervision, and expanding the personal scope of the examination institutionalised in the CA. Moreover, PR1 empowered the committee of inquiry to determine the rules and the tools for the procedure of investigation without granting the appropriate statutory guarantees for the procedure affecting citizens' fundamental rights in order to set the limits of the operation of the committee.

The Constitutional Court emphasises that the Parliament has a wide scale of discretion in determining the matters for the investigation of which it sets up a temporary committee. In addition, standing committees of the Parliament also have a wide scale of discretion in carrying out investigations in connection with their tasks. This follows from the provisions under Article 21 para. (2) of the Constitution, ensuring parliamentary control and the debating of public issues.

At the same time, Article 2 para. (1) and Article 8 para. (2) of the Constitution require that the general rules on committees carrying out investigations beyond the scope of the Parliament itself, its organs and the organs controlled by the it are to be determined in an Act of Parliament. It also follows from Article 2 para. (1) and Article 8 para. (2) of the Constitution that when setting up committees to carry out such investigations or empowering

existing committees to carry out such investigations, the general provisions in an Act are to be enforced in every respect. Guarantees in an Act are needed for allowing the Parliament to adopt a resolution on setting up a committee to carry out investigations about persons and organisations outside the scope of the Parliament itself, its organs and the organs supervised by it, and for empowering a committee to carry out such an investigation.

[The Constitutional Court notes the following: until the entry into force of the Act of Parliament eliminating the unconstitutional omission, this Decision shall not prevent the Parliament from setting set up committees to carry out investigations, nor shall it prevent the continuation of the activities of existing committees. It follows, however, from the Decision of the Constitutional Court that until the elimination of the unconstitutional omission, the aspects of constitutionality mentioned in this Decision are to be respected, e.g. until the adoption of statutory guarantees, investigations (hearings, data management, etc.) by parliamentary committees are to be based on voluntary cooperation by the affected persons.]

In consideration of the above, the Constitutional Court has concluded that PR1 is contrary to Article 2 para. (1) and Article 8 para. (2) of the Constitution.

Having established the unconstitutionality of PR1 on the basis of Article 2 para. (1) and Article 8 para. (2) of the Constitution, the Constitutional Court has not examined on the merits the other objections raised in the petitions. [Decision 44/1995 (VI. 30.) AB, ABH 1995, 203, 205; Decision 4/1996 (II. 23.) AB, ABH 1996, 37, 44; Decision 61/1997 (XI. 19.) AB, ABH 1997, 361, 364; Decision 15/2000 (V. 24.) AB, ABH 2000, 420, 423; Decision 16/2000 (V. 24.) AB, ABH 2000, 425, 429; Decision 29/2000 (X. 11.) AB, ABH 2000, 193, 200].

V

On establishing the unconstitutionality of PR1, the Constitutional Court had to establish the legal consequences of the unconstitutionality found.

1. In order to determine the appropriate legal consequences, the Constitutional Court had to examine the force of PR1.

Pursuant to Section 13 of the AL: “A statute shall cease to be in force when it is put out of force by another statute or upon the lapse of the period defined in the statute.” A statute or other legal tool of State administration is considered by the Constitutional Court to be out of force not only if the legislature has expressly put it out of force, but also if being out of force follows logically from the provisions of the statute or other legal tool of State administration.

[Order 1239/B/1990 AB, ABH, 1991, 905, 906; Decision 28/1995 (V. 19.) AB, ABH 1995, 138, 141; Order 276/B/1999 AB, ABH 2000, 1159]

There is no express provision in PR1 on the time limits of its force, and no other parliamentary resolution has put it out of force. According to point X of PR1: "The mandate of the committee shall cease upon performing its task, but not later than on 30 September 2002. The committee shall publish its report on the investigation." According to the Constitutional Court, the above provision contains a relative and an absolute timeframe for being in force. The relative force of the committee's mandate is specified in the term "upon performing its task", while the absolute force is determined by stating that the committee shall cease to operate "not later than on 30 September 2002". Therefore, the second sentence in point X, i.e. "the committee shall publish its report on the investigation", can only be interpreted in such a way that the committee could have made its report public not later than on the last day of its operation, as then it ceased to operate. It is evident that a non-existing committee cannot carry out any investigation and cannot publish any report. PR1 does not contain any provision on entitling or obliging subjects of law to perform any conduct after 30 September 2002.

Bearing in mind the above, it is unnecessary to prove that after 30 September 2002, in principle, no new documents could be created and no documents could be requested from other institutions on the basis of PR1. PR1 contains no provisions about the way of handling after 30 September 2002 documents obtained or created by the committee. The handling and processing of such data, access thereto etc. are primarily regulated by Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest, Act LXV of 1995 on State Secrets and Official Secrets, and Act LXVI of 1995 on Public Documents, Public Archives and the Protection of Materials in Private Archives. In addition, Section 78/H of the Standing Orders contains an important provision stating that "The chairman's scope of authority regarding the documents of *in camera* sessions of a terminated parliamentary committee shall be exercised by the chairman of the committee that has taken over the tasks of the committee terminated. The scope of authority regarding the documents of *in camera* sittings of a committee terminated without a legal successor shall be exercised by the Speaker of the Parliament."

Consequently, with the deadline lapsed, the provisions contained in PR1 lost force on 30 September 2002 even in the absence of an express provision to that effect.

2. In view of the above, the Constitutional Court has had to examine the potential legal consequences in the case of an unconstitutional norm that has already lost its force.

Pursuant to Section 40 of the ACC, "If the Constitutional Court establishes the unconstitutionality of a statute or any other legal tool of State administration, the statute or other legal tool of State administration in question shall be fully or partly annulled."

According to the practice of the Constitutional Court, in the case of a norm out of force, no posterior and abstract constitutional review is performed if – in the case of the establishment of unconstitutionality – the only procedural consequence of the review would be the declaration of the norm losing force. [Decision 1449/B/1992 AB, ABH 1994, 561, 564; Order 1239/B/1990 AB, ABH 1991, 905] Therefore, in such a case, the Constitutional Court does not provide for the annulment of the norm but terminates its procedure on the basis of Section 31 item a) of amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's provisional rules of procedure and on the publication thereof (hereinafter: the CCRP).

In the practice of the Constitutional Court, a constitutional review of a norm put out of force may only be carried out on the basis of a judicial initiative as defined in Section 38 of the ACC or a constitutional complaint regulated under Section 48 of the ACC, or in the case when – even in the framework of an abstract constitutional review – the norm put out of force is to be applied in the concrete procedures referred to by the petition even after putting the norm out of force. In the practice of the Constitutional Court, typical examples for the latter are the statutes on taxation applicable to tax audits to be carried out within 5 years. [In summary: Decision 7/1994 (II. 18.) AB, ABH 1994, 68, 69; Decision 842/H/1993 AB, ABH 1995, 844, 846]

On establishing the unconstitutionality of a norm formally put out of force, the Constitutional Court usually does not provide for the annulment of the norm but prohibits its application in a concrete case or in general, as necessary. "The annulment of a statute that has already been formally put out of force cannot be performed as it is unnecessary. Therefore, in the case of establishing their unconstitutionality, the Constitutional Court shall prohibit the application of the relevant statutes or provisions in a concrete case or in general for the future." [Decision 7/1994 (II. 18.) AB, ABH 1994, 68, 70] Nevertheless, the Constitutional Court annulled some statutory provisions already out of force but still applicable to tax audits. [Decision 21/1992 (IV. 7.) AB, ABH 1992, 343]

3. When determining the legal consequences connected to the unconstitutionality of PR1, the Constitutional Court had to take into account – in addition to its own practice – the specific features of the case concerned.

- PR1 has not been formally put out of force: neither PR1 itself, nor any other parliamentary resolution has expressly provided for its losing force. The Constitutional Court has established that PR1 is to be considered out of force – as detailed in point V.1 of this Decision – on the basis of an interpretation of the provisions of PR1.

- As argued under point IV.3 of this Decision, PR1 formally qualifies as other legal tool of State administration, yet, on the basis of the Constitution and the AL, it regulates issues that fall into the regulatory scope of Acts of Parliament. This means that the Parliament acted outside its legislative competence and did not comply with the rules of procedure of legislation when it adopted rules requiring the form of an Act, and thus it violated the requirements of the Constitution.

- In the present case, based on the petitions, not only an abstract posterior constitutional review has been initiated, but an abstract and a concrete review at the same time.

- It would be unreasonable to declare a general prohibition of application, since the normative provisions of PR1 are not applicable any longer.

Bearing the above in mind, the Constitutional Court has found that it is the annulment of PR1 as a norm created by violating the fundamental rules on the hierarchy of legislation and formally not put out of force, while not being applicable any more, that serves best the purpose of legal certainty resulting from Article 2 para. (1) of the Constitution.

The Constitutional Court has provided for the annulment of the unconstitutional PR1 on the basis of Section 40 of the ACC, and annulled it – for the sake of legal certainty – with *ex tunc* effect, in line with Section 43 para. (4) of the ACC.

4. By declaring the unconstitutionality of PR1, the Constitutional Court found the constitutional complaint well-founded. In determining the legal consequences of a well-founded constitutional complaint, the Constitutional Court had to take into account the specific features of the legal institution of constitutional complaint.

According to the practice of the Constitutional Court followed since Decision 57/1991 (XI. 8.) AB, constitutional complaint is a legal remedy. This follows, on the one hand, from the ACC calling it a “complaint” and, on the other hand, from the ACC providing for it in cases where the use of “all other legal remedies” has been attempted or “in the absence of other legal remedies”, i.e. as a further or final means of legal remedy for the person entitled to use

it. (ABH 1991, 272, 281-282) The possibility of "remedying" is an essential and immanent element of all legal remedies, i.e. the concept and the substance of a legal remedy contains the possibility to remedy the rights injured. [Decision 23/1998 (VI. 9.) AB, ABH 1998, 182, 186]

The Constitutional Court first declared in Decision 57/1991 (XI. 8.) AB that it is this function of legal remedy that differentiates the institution of constitutional complaint from posterior constitutional review. In the absence of a remedy for the concrete injury of rights caused by the application of an unconstitutional statute, the constitutional complaint would not only lose its function, but it would also lose its special feature that lies in the legal institution itself as compared to posterior constitutional review, which can be initiated by anyone on the basis of Section 21 para. (2) of the ACC. From the petitioner's point of view, the only reasonable point in filing a complaint against an injury of rights guaranteed in the Constitution is the hope for having a remedy for the injury of rights as a result of the procedure by the Constitutional Court. (ABH 1991, 272, 282)

In the present case, the declaration of the unconstitutionality and the annulment of PR1 do not constitute a legal remedy for the complaining party.

According to Section 43 para. (4) of the ACC, the Constitutional Court may prohibit – even with *ex tunc* effect – the application of a norm in a concrete case when this is justified by legal certainty or by an especially important interest of the party initiating the procedure.

In the opinion of the Constitutional Court, in the present case, the application of Section 43 para. (4) of the ACC would not be a legal remedy for the person submitting the constitutional complaint as in his case the past application of PR1 (collecting and forwarding data) had no negative legal consequences for the future that could be eliminated by the prohibition of application. A declaration of prohibiting in a concrete case the application of PR1, which is already out of force and not applicable any more, would not contribute to the aim of constitutionally protecting fundamental rights or to remedying the injury of rights.

The potential injuries of rights caused by the activities of parliamentary committees of inquiry could only be revealed and remedied if legal remedies compliant with Article 57 para. (5) of the Constitution were available, the lack of which has resulted in the Constitutional Court establishing in this Decision an unconstitutional omission and calling upon the Parliament to eliminate that omission.

Therefore, the Constitutional Court, in order to enforce the legal remedy function of the constitutional complaint, has followed the solution applied in the second paragraph of the holdings of Decision 23/1998 (VI. 9.) AB. In that case, it followed, on the one hand, from the establishment of an unconstitutional omission and, on the other hand, from holding the

constitutional complaint well-founded that the Constitutional Court declared the following: “the negative legal consequences of the unconstitutional omission by the legislature may not be applied in the concrete case against the person submitting the constitutional complaint. Consequently, regardless of how and by the adoption of what procedural rules the Parliament shall eliminate the unconstitutional omission, in the concrete case, the Supreme Court is to carry out the procedure of review, as opened with the earlier decision of the Constitutional Court, with the appropriate application of the statutory provisions adopted.” (ABH 1998, 182, 189)

The Constitutional Court has granted legal remedy for the person submitting the well-founded constitutional complaint on the basis of Decision 23/1998 (VI. 9.) AB and taking into account the specific features of the constitutional complaint constituting the subject of the present case.

By declaring in this Decision the unconstitutionality of PR1, the Constitutional Court has established that the committee set up by PR1 acted in an unconstitutional way in the concrete case serving as the basis of the constitutional complaint registered at the Constitutional Court under file number 850/D/2002.

In addition, the Constitutional Court has established that in the specific case serving as the basis of the constitutional complaint registered at the Constitutional Court under file number 850/D/2002, the deadline for using legal remedy shall commence when the statutory regulation eliminating the unconstitutional omission is put into force. The provisions of the Act of Parliament to be adopted for the elimination of the unconstitutional omission shall determine the legal remedy or remedies available for the person submitting the constitutional complaint, the procedure of legal remedy, and the legal institutions serving as remedy for the injury of rights.

VI

The Constitutional Court has examined the petition requesting a posterior constitutional review of Section 36 para. (5) of the Standing Orders.

According to the practice of the Constitutional Court, the Standing Orders – having the form of a parliamentary resolution – qualify as other legal tool of State administration as defined in Section 46 of the AL and contain the normative rules on the Parliament’s own operation. [Decision 39/1996 (IX. 25.) AB, ABH 1996, 134; Decision 633/B/1995 AB, ABH 1999, 504] This also applies to Section 36 para. (5) of the Standing Orders examined in the

present case, the posterior constitutional review of which is within the competence of the Constitutional Court.

According to the petitioner, this paragraph of the Standing Orders is unconstitutional as it allows another parliamentary resolution or decision by a parliamentary committee to regulate the committee's rules of procedure, methods of investigation, the contents of the report on the investigation and the rights of the organs and persons affected by the investigation.

As provided for in Article 24 para. (4) of the Constitution, "The Parliament shall establish, by a majority of two-thirds of the votes of the Members of Parliament present, its rules of procedure and speaking order in the Standing Orders." Section 36 para. (5) of the Standing Orders requires the committee of inquiry to prepare a report on its activities for the Parliament, and the obligatory elements of the report are specified in items a) to f). The report has to contain the description of the task of the committee of inquiry; the rules of procedure, and the methods of investigation determined by the committee; the statement of facts and legal findings revealed by the committee; the presentation of evidence supporting the findings of the committee; the comments of the organ or person concerned on the methods and findings of the inquiry; and a proposal for measures to be taken if the committee has been authorised to do so.

Consequently, in contrast to what is stated by the petitioner, the authorisations to determine the rules of procedure and the methods of investigation of the committee as well as to define the rights and obligations of persons affected by the investigation are not given in the rule under review. The mere fact of listing in the Standing Orders the obligatory elements of the report of the committee of inquiry does not violate the order of legislation specified in the Constitution and in the AL, and it is in compliance with Article 24 para. (4) of the Constitution on the Standing Orders.

Therefore, the Constitutional Court has rejected the petition seeking an establishment of the unconstitutionality and a declaration of the annulment of Section 36 para. (5) of the Standing Orders.

VII

The Constitutional Court has examined the petition requesting a posterior constitutional review of PR2.

In PR2, with reference to points VII and VIII of PR1, the Parliament provided for the election of the officials (chairman and deputy chairman) and six members of the committee

for the examination of the facts and circumstances of participation in the state security operations of the former political system by persons holding political positions in governments after the formation of the first freely elected Hungarian Parliament after the change of regime.

In the practice of the Constitutional Court, parliamentary resolutions adopted exclusively on matters concerning persons, including resolutions on the election of officials and members of parliamentary committees, qualify as individual acts as defined in Section 46 para. (2) of the AL, therefore they are not considered to be other legal tools of State administration. [Decision 1375/B/1992 AB, ABH 1993, 862, 863; Decision 753/B/1995 AB, ABH 1995, 981; Decision 22/1999 (VI. 30.) AB, ABH 1999, 176]

Consequently, the Constitutional Court has – for lack of competence and acting in line with Section 29 item b) of the CCRP – refused the petition aimed at a posterior constitutional review of PR2.

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

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