

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of petitions seeking a posterior constitutional review of, and the establishment of the violation of an international treaty by, a statute, the Constitutional Court has – with concurring reasoning by dr. Mihály Bihari, dr. Attila Harmathy, and dr. István Kukorelli, Judges of the Constitutional Court – adopted the following

decision:

1. The Constitutional Court holds that Section 383 para. (3) item b) and Section 384 para. (2) item b) of Act I of 1973 on Criminal Procedure are unconstitutional and, therefore, annuls them as of the date of publication of this Decision.
2. The Constitutional Court holds that Section 580 para. (2) item b) and Section 581 para. (2) item b) of Act XIX of 1998 on Criminal Procedure are unconstitutional and, therefore, annuls them as of the date of publication of this Decision. As a consequence, the provisions concerned shall not enter into force.
3. The Constitutional Court rejects the petition aimed at the establishment of the unconstitutionality and at the annulment of Section 383 para. (3) item a) and Section 384 para. (2) item a) of Act I of 1973 on Criminal Procedure.
4. The Constitutional Court rejects the petition aimed at the establishment of the unconstitutionality and at the annulment of Section 580 para. (2) item a) and Section 581 para. (2) item a) of Act XIX of 1998 on Criminal Procedure.
5. The Constitutional Court refuses the petitions aimed at the establishment of the violation of an international treaty by Section 383 para. (3) item b) and Section 384 para. (2) items a) and b) of Act I of 1973 on Criminal Procedure, as well as by Section 581 para. (2) item b) of Act XIX of 1998 on Criminal Procedure.

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

## Reasoning

### I

1. Act I of 1973 on Criminal Procedure (hereinafter: the ACP) provides for the legal institution of compensation to regulate the cases when it is subsequently verified that the ordering or the implementation of a procedural coercive measure or a sanction under criminal law resulting in the deprivation of liberty has been lawful, but unfounded.

In addition to the titles of compensation claims, the cases of excluding compensation are also specified in the ACP. The Act provides separately for the legal grounds of compensation for coercive measures under criminal law and criminal law sanctions served on the basis of final judgements, and it defines separately the causes excluding the possibility of enforcing the claim. Accordingly, persons hiding away, escaping or attempting to escape from the authority are excluded from compensation for pre-trial detention or temporary forced medical treatment, similarly to those who have tried to deceive the authority in order to prevent successful investigation, or who have otherwise attributably given ground to the suspicion of having committed the criminal offence [Section 383 para. (3) items a) and b) of the ACP]. In the case of imprisonment, education in a reformatory institution, or forced medical treatment served on the basis of a final judgement, compensation, otherwise due, is excluded by the Act if the defendant withheld in the original procedure facts or evidence on which the judgement in the retrial is based, or if the defendant failed to appeal against the judgement in the original case [Section 384 para. (2) items a) and b) of the ACP].

For the constitutional review of the above rules, two petitions have been submitted, and the Constitutional Court has consolidated and judged them in a single procedure in view of the fact that they concern the same subject.

1.1. One of the petitioners holds that the provisions excluding the compensation of victims of unlawful pre-trial detention or confinement violate the right to damages granted in Article 55 para. (3) of the Constitution.

The petitioner argues that any person subjected to a criminal procedure (hereinafter: the defendant) enjoys the right to remain silent, following from the presumption of innocence [Article 57 para. (2) of the Constitution], and from the fact that according to Section 87 para. (2) of the ACP, the authorities involved in a criminal procedure have to inform the defendant of his right to remain silent. According to the petitioner, “The defendant should not be at a disadvantage concerning his right to compensation on the ground of showing such an attitude to the case.”

The petitioner holds that Section 383 para. (3) item b) of the ACP is “too general, and not clear enough”, and therefore it “can lead to arbitrary interpretation, making it possible to escape an obligation provided for in international law and in the Constitution, too.”

With regard to Section 384 para. (2) item b) of the ACP, the petitioner claims that a failure to use the statutory possibility of appeal is “too strict a criterion to refer to when excluding the compensation of an innocent person deprived – for several years in some cases – of his liberty.” Thus, the Act “violates the principle of equal parties, and grants privileges for the State.”

According to the petitioner, the above provisions are contrary to Article 9 item 5 and Article 14 item 6 of the International Covenant on Civil and Political Rights adopted at Session XXI of the General Assembly of the United Nations on 16 December 1966 and promulgated in Hungary in Law-Decree 8/1976 (hereinafter: the Covenant), furthermore, to Article 5 item 5 and Article 50 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and promulgated in Hungary in Act XXXI of 1993 (hereinafter: the Convention).

1.2. The other petitioner claims that Section 383 para. (3) items a) and b) as well as Section 384 para. (2) items a) and b) of the ACP are contrary to the right to defence [Article 57 para. (3) of the Constitution], and Section 384 para. (2) item b) also violates the right to legal remedy [Article 57 para. (5) of the Constitution]. According to the petition, the latter provision “excludes compensation on a scale wider than allowed by the treaties under international law.” Therefore, the relevant provision is contrary to Article 14 item 6 of the Covenant and Article 3 of the Seventh Additional Protocol to the Convention.

As Act XIX of 1998 on Criminal Procedure to be put into force as of 1 July 2003 (hereinafter: the new ACP) contains essentially the same provisions as the ones challenged by the petition concerning the exclusion of compensation, the petitioner asks for the annulment of Section 580 para. (2) items a) and b) as well as Section 581 para. (2) items a) and b) of the Act, too.

2. During its procedure, the Constitutional Court obtained the opinion of the Minister of Justice.

## II

When judging the petitions, the Constitutional Court has taken account of the following statutory provisions:

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

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

“Article 7 para. (1) The legal system of the Republic of Hungary accepts the generally recognised principles of international law, and shall harmonise the country's domestic law with the obligations assumed under international 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 55 para. (1) In the Republic of Hungary everyone has the right to freedom and personal security; no one shall be deprived of his freedom except on the grounds and in accordance with the procedures specified by law.

[...]

(3) Any individual subject to illegal arrest or detainment is entitled to compensation.”

“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.

(2) In the Republic of Hungary no one shall be considered guilty until a court has rendered a final legal judgment determining criminal culpability.

(3) Individuals subject to criminal proceedings are entitled to legal defense at all stages of the proceedings. Defense lawyers may not be held accountable for opinions expressed in the course of the defense.

[...]

(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.”

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

“Section 87 para. (2) The defendant shall be warned at the commencement of his interrogation that he is not obliged to give a testimony, he may refuse to give a testimony at any time during interrogation, and that anything stated by him may be used as evidence against him. The warning and the reply of the defendant shall be recorded in the minutes. Failure to warn the defendant shall result in excluding his testimony from the scope of the tools of evidence.

(3) If the defendant refuses to give a testimony, he shall be warned that this shall not prevent the continuation of the procedure, however, he shall be deemed to have waived the respective form of defence.”

“Section 276 para. (1) In the case of an act judged upon in the final judgement of the court (original case), retrial may be initiated if

a) new evidence is put forward – referring to a fact either raised or not raised in the original case – which makes it probable that

1. the defendant is to be acquitted, a significantly less severe punishment is to imposed, or the criminal procedure is to be terminated;

2. the guiltiness of the defendant is to be established or a significantly more severe punishment is to be imposed;

b) on the basis of the same act, more than one judgement was passed against the defendant;

- c) false or falsified evidence was used in the original case;
- d) in the original case, any staff member of the authority failed to perform his obligations by violating the provisions of the Criminal Code;
- e) the judgement in the original case was adopted in the absence of the defendant in accordance with the procedure set out in Chapter XVII/A.”

“Section 383 para. (1) Compensation is due for pre-trial detention and temporary forced medical treatment if

I. the criminal procedure has been terminated because

- a) the act is not a criminal offence, or it was not committed by the defendant,
- b) on the basis of the data available, it cannot be established that a criminal offence was committed at all, or that it was committed by the defendant,
- c) there is a cause excluding the punishability of the defendant,
- d) the period of limitation of the criminal offence has expired,
- e) the act has already been judged upon with final force;

II. the court has

- a) acquitted the defendant,
- b) terminated the procedure on the basis of the dropping of the charges.

(2) No compensation shall be paid if the criminal procedure has been cancelled on the ground of the negligible degree of the danger of the act for society (Section 28 of the CC).

(3) However, no compensation shall be paid in the case specified under paragraph (1) if the defendant

- a) hid away, escaped or attempted to escape from the authority,
- b) tried to deceive the authority for the purpose of preventing successful investigation, or has otherwise attributably given ground to the suspicion of having committed the criminal offence,
- c) if acquitted, the defendant was ordered to be subjected to forced medical treatment.

Section 384 para. (1) In the case of imprisonment, education in a reformatory institution, or forced medical treatment served on the basis of a final judgement, the defendant is to be compensated if – in the course of retrial, review or legal remedy initiated on the ground of legality – he has been acquitted, sentenced to a less severe punishment, put on probation, the procedure against him has been terminated, or it has been established that the forced medical treatment had been ordered without due and lawful grounds.

(2) No compensation shall be paid if the defendant

- a) had withheld in the original procedure the facts or evidence on which the judgement in the retrial is based;
- b) failed to appeal against the judgement in the original procedure, except for the case of legal remedy initiated on the ground of legality,
- c) was acquitted and ordered to be subjected to forced medical treatment in a specific health institution.”

3. The relevant provisions of the new ACP are as follows:

“Section 580 para. (1) Compensation is due for pre-trial detention and temporary forced medical treatment if

I. the investigation has been terminated because

- a) the act is not a criminal offence,
- b) no commission of criminal offence could be established on the basis of the data collected during the investigation,
- c) the criminal offence was not committed by the suspect or its commission by the suspect could not be established on the basis of the data collected during the investigation,
- d) there is a cause excluding the punishability of the defendant,
- e) the procedure cannot be continued due to the expiry of the period of limitation,
- f) the act has already been judged upon with final force;

II. the court has

- a) acquitted the defendant,
- b) terminated the procedure on the ground of the period of limitation having expired, the charges having been dropped, or the act having been judged upon with final force.

(2) However, no compensation shall be paid in the case specified under paragraph (1) if the defendant

- a) hid away, escaped or attempted to escape from the court, the public prosecutor or the investigating authority,
- b) tried to deceive the court, the public prosecutor or the investigating authority for the purpose of preventing successful investigation, or has otherwise attributably given ground to the suspicion of having committed the criminal offence,
- c) if acquitted, the defendant was ordered to be subjected to forced medical treatment.

Section 581 para. (1) In the case of imprisonment, education in a reformatory institution, or forced medical treatment served on the basis of a final judgement, the defendant is to be

compensated if – within the framework of extraordinary legal remedy – he has been acquitted, sentenced to a less severe punishment, put on probation, reprimanded, the procedure against him has been terminated, or it has been established that the forced medical treatment had been ordered without due and lawful grounds.

(2) No compensation shall be paid if the defendant

a) had withheld in the original procedure the facts or evidence on which the judgement in the retrial is based,

b) failed to appeal against the judgement in the original procedure, except if appeal was excluded by the law,

c) if acquitted, the defendant was ordered to be subjected to forced medical treatment.

(3) Paragraph (2) item b) shall not apply if the circumstance which forms the basis of compensation can be established on the basis of a resolution adopted in a procedure of legal remedy on the ground of legality or in a procedure of legal uniformity.”

4. The relevant provisions of the Covenant are as follows:

Article 14 “6 When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

5. The relevant provisions of the Seventh Additional Protocol to the Convention are as follows:

“Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”



## III

The petitions are in part well-founded, for the reasons set out hereunder.

## A

1. The Constitutional Court has established that there is no connection between Article 55 para. (3) of the Constitution and the rules on compensation, and therefore the provisions on excluding compensation cannot result in a violation of that constitutional provision.

The Constitutional Court has already interpreted Article 55 paras (1) and (3) of the Constitution in its Decision 66/1991 (XII. 21.) AB (ABH 1991, 342). The Decision made a distinction between depriving one of his personal freedom unlawfully (illegally or arbitrarily) to be remedied on the basis of the provisions on damages specified in Act IV of 1959 on the Civil Code, and the injuries resulting from depriving one of his personal freedom in a lawful manner to be remedied by compensation as specified in the ACP (ABH 1991, 342, 347-348).

It is confirmed by the Constitutional Court in the present case that Article 55 para. (3) of the Constitution covers the liability of the State for damages in cases of explicitly unlawful pre-trial detention or other forms of confinement (not ordered or performed on a statutory basis or in a statutorily defined procedure) either based on the punitive power of the State or applied by the police or a medical institution, the detailed rules, conditions and limitations of which are regulated in civil law. The institution of compensation (reimbursement) serves the purpose of remedying the mistakes made when exercising the punitive power of the State; its conditions and limitations are prescribed in the statutes on criminal procedure.

2. Similarly, no connection can be found between the provisions on excluding compensation and the presumption of innocence, and therefore those provisions cannot violate the constitutional fundamental right granted in Article 57 para. (2) of the Constitution.

The presumption of innocence is a constitutional fundamental right relating to the process of establishing criminal liability, and it determines the defendant's objective legal status. It is an order binding the court, the public prosecutor and the investigating authority engaged in the

criminal case, requiring that the defendant may not be regarded as guilty as long as he is not convicted by the court with final force. Regardless of whether the facts verifying the defendant's criminal liability have already been revealed by the authorities and whether their opinion on the defendant's guiltiness has already been recorded in procedural acts (closing of investigation, pressing of charges, decision of first instance establishing guiltiness), the legal consequences resulting from the establishment of guiltiness may not influence the defendant's procedural position until the judgement becomes final. It is the responsibility of the State agencies acting in the respective criminal procedure to prove the defendant's guiltiness beyond any doubt, and the risk of failure of the criminal procedure is borne by the State. [For a summary of the practice followed by the Constitutional Court, see Decision 26/1999 (IX. 8.) AB, ABH 1999, 265, 271 and Decision 719/B/1998 AB, ABH 2000, 769, 772-773]

Earlier, the Constitutional Court examined the definition of the titles of compensation with respect to the presumption of innocence. As explained by the Constitutional Court in Decision 30/1995 (V. 25.) AB, it follows from the presumption of innocence that a person whose criminal liability has not been established by a final judgement may not be the subject of legal consequences that, according to the law, result from the determination of guiltiness. It is a constitutional requirement that when, for any reason, no guiltiness or no facts of the case verifying guiltiness are established, the decision made on the supplementary issue of compensation may not be one that is related to a resolution declaring guiltiness. The above requirement was violated by the – unconstitutional – Section 383 para. (1) item a) of the ACP, which regulated the titles of compensation for pre-trial detention, and which, by way of excluding the case of closing the procedure on the basis of the lack of a private complaint, put the affected person into a position as if his guiltiness had been declared. For the same reason, Section 384 para. (1) of the ACP also violated the presumption of innocence by not acknowledging as a due title for compensation the case of closing the procedure on the basis of the act having been judged upon earlier with final force (ABH 1995, 155, 156).

However, the provisions excluding compensation do not influence the defendant's legal status; the presumption of innocence has no effect on the legal status of the person enforcing a claim for damages against the State. For the same reason, there is no connection between the causes excluding compensation and the "equality of the parties" that forms part of the principle of fair trial following from Article 57 para. (1) of the Constitution [Decision 6/1998 (III. 11.) AB, ABH 1998, 91, 95-96].

## B

1. The cases of excluding compensation specified in item a) and in the first part of item b) of Section 383 para. (3) as well as in Section 384 para. (2) item a) of the ACP indirectly restrict the right to defence granted in Article 57 para. (3) of the Constitution, and in particular the defence performed personally by the defendant, and the tools of defence; actually, the legislature provides for a negative legal consequence in relation to choosing a certain form of defence. The acts specified in the second part of item b) of Section 383 para. (3) of the ACP may form part of the right to defence, however, they may also be the defendant's acts completely independent from that right.

The constitutional fundamental right to defence is realised in the rights determining the defendant's procedural position [cf. Decision 25/1991 (V. 18.) AB, ABH 1991, 414, 415; Decision 6/1998 (III. 11.) AB, ABH 1998, 91, 93-94]. Defence performed personally may in part be effectuated in the course of interrogating the defendant, and in part in the form of exercising rights related to certain procedural acts or acts of taking evidence. They can be enforced jointly as well: exercising the right to remain silent during interrogation does not prevent the defendant from exercising his other rights of being present, being informed, making remarks or putting forward motions.

Although the right to defence is of paramount importance to the defendant, it is not a fundamental right that may not be restricted; the Constitution does not guarantee a right to use any tool of defence. Judging the constitutionality of the provisions restricting the above right must also be based on the so-called general test of necessity and proportionality pertaining to fundamental rights, developed within the framework of Article 8 paras (1) and (2) of the Constitution during the operation of the Constitutional Court, even when – as in the present case – this right is restricted indirectly, in the form of exclusion from compensation.

According to the permanent practice of the Constitutional Court, the State may only use the tool of restricting a fundamental right if it is the only way to secure the protection or the enforcement of another fundamental right or liberty or to protect any other constitutional value, if it is justified by some constitutional objective, furthermore, if it is the only way to achieve the desired protection or goal. The constitutionality of restricting a fundamental right

also requires that the restriction comply with the criterion of proportionality; the importance of the desired objective must be proportionate to the restriction of the fundamental right concerned. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose.

Restricting the contents of a right without a forcing cause or pressing public interest is unconstitutional, i.e. if it is not unavoidably necessary in the interest of some other fundamental right or constitutional objective, or if it is necessary, but the weight of the injury of rights caused by the restriction is disproportionate to the purported objective [see most recently: Decision 65/2002 (XII. 3.) AB, ABH 2002, 357, 361-362].

2. In the opinion of the Constitutional Court, the cause of exclusion specified in Section 383 para. (3) item a) of the ACP is not unconstitutional; the right to defence is not violated by the provision of the ACP on excluding compensation for pre-trial detention or temporary forced medical treatment in the case of those hiding away, escaping or attempting to escape from the authority.

The Constitutional Court has explained in several decisions the rights and obligations of the State related to its punitive power. In a democratic State under the rule of law, punitive power is the – constitutionally limited – public law right of the State to punish those who commit crimes. Criminal acts represent the violation of society's legal order, and the State is entitled to exercise the right of punishment. The exclusive right to punish criminals is at the same time an obligation to meet the demand for punishing criminal acts, and holding perpetrators liable under criminal law is a constitutional obligation of the State. Exercising this punitive power necessarily affects the constitutional fundamental rights of individuals. It follows from the State's obligation deducible from the Constitution that the organs exercising the State's punitive power shall have effective tools for the execution of their duties even if such tools are essentially of a seriously repressive nature. [cf.: Decision 40/1993 (VI. 30.) AB, ABH 1993, 288; Decision 715/D/1994 AB, ABH 1997, 584; Decision 49/1998 (XI. 27.) AB, ABH 1998, 372; Decision 5/1999 (III. 31.) AB, ABH 1999, 75; Decision 19/1999 (VI. 25.) AB, ABH 1999, 150; Decision 26/1999 (IX. 8.) AB, ABH 1999, 265; Decision 13/2001 (V. 14.) AB, ABH 2001, 177, 186-187].

In the criminal procedure, the defendant may be forced to appear before the court exercising punitive power and he may also be forced to co-operate in examinations by experts and in certain procedures of taking evidence. As established by the Constitutional Court in the constitutional review of the conditions and the causes of pre-trial detention, in order to enforce the demand of the State for the punishment of criminal acts, it is constitutionally justified and necessary for protecting society and for the sake of public interest to allow the State to temporarily deprive the defendant of his liberty so as to prevent the frustration of the procedure of enforcing criminal liability [Decision 26/1999 (IX. 8.) AB, ABH 1999, 265, 276].

The Constitutional Court holds that the right to defence does not include hiding away or escaping; the right to defence is restricted by the procedural coercive measures securing the appearance and the presence of the defendant. Thus, the legislature does not violate any constitutional fundamental right when it excludes compensation for pre-trial detention or temporary forced medical treatment in the case of those who have given ground for a procedural coercive measure by hiding away, escaping or attempting to escape.

In view of the above, the Constitutional Court has rejected the petition seeking the establishment of the unconstitutionality of Section 383 para. (3) item a) of the ACP.

3. According to the Constitutional Court, Section 383 para. (3) item b) of the ACP is unconstitutional. The first part of the provision unnecessarily restricts the right to defence by applying a not adequately differentiated regulation to excluding the compensation of those who have tried to deceive the authority for the purpose of preventing successful investigation. The proportionality that inevitably belongs to the constitutionality of restricting the right to personal freedom is violated by the second part of the relevant provision, by excluding those who have attributably given ground to the suspicion of having committed the criminal offence. As the regulation is not adequately differentiated, the titles of compensation become emptied, and thus the subsequent remedying of the injury caused by an unfounded deprivation of liberty becomes impossible, leading to the violation of the rule of law, too.

3.1. In order to elaborate its position, the Constitutional Court has examined the historical development of the legal institution of compensation.

In the history of the legal institutions of both Hungary and other European countries, compensation became in the second part of the 19th century an acknowledged institution of remedy with respect to pre-trial detention, custody during investigation and punishment suffered innocently.

According to Act XXXIII of 1896 on Criminal Court Procedure (hereinafter: the CCP), only actually (materially) innocent persons had the right to receive compensation for pre-trial detention. The causes of excluding compensation reflected the same approach. The causes of exclusion served the purpose of preventing compensation in any case when an actually innocent person was liable for a wilful act causing the court to arrest him, as he escaped or attempted to do so; made a false self-incrimination or a false confession, or tried to remove the traces of the act, persuade a witness or fellow-defendant to make a false testimony, or an expert to render a false opinion, or to prevent them from making a testimony or rendering an opinion (Sections 576-577 of the CCP).

Act III of 1951 on Criminal Court Procedure and Act V of 1954 amending the former one maintained compensation linked to proven innocence. However, the latter Act (Section 232) did not use an exact listing of the causes excluding compensation, and it defined, in addition to escaping, the cases of excluding compensation in a more general manner, granting a broader scope of discretion to the courts, as they are regulated today in Section 383 para. (3) item b) of the ACP. The same regulation was applied by Law-Decree 8/1962 on Criminal Procedure, too (Section 293).

The original Section 383 of the ACP widened the scope of the conditions of compensation by acknowledging the claim for compensation in cases where the defendant was acquitted by the court on the ground of the lack of evidence. The process continued. From 1985 on, compensation became available in cases where the court closed the procedure upon dropping charges on the basis of the proven innocence of the defendant or the lack of evidence (Section 3 of Law-Decree 20/1984 on the amendment of Act I of 1973 on Criminal Procedure). From 1988 on, the causes excluding punishability were included among the titles of compensation, with the exception of the limited dangerousness of the act to society and the lack of a private complaint. From then on, compensation could also be based on a resolution closing the investigation on the basis of the lack of evidence (Section 67 of Act IV of 1987 on the amendment of Act I of 1973 on Criminal Procedure). In 1995 again, the legislature widened

the scope of the titles of compensation by acknowledging the claim for compensation in cases where punishability was excluded on the basis of the lack of a private complaint, and extended the scope of compensation to the expiry of the period of limitation from among causes terminating punishability, and to the earlier judgement of the act with final force from among obstacles to the criminal procedure (Section 20 of Act XCII of 1994 on amending the Act on Criminal Procedure).

In 1984, the legislature justified the expansion of the scope of compensation with the need to resolve contradictions within the regulation, while in 1987, expansion was justified with the theoretical incorrectness of the regulation and with the inequities in the relevant practice, in particular with regard to acquitting the defendant on the ground of justifiable defence. In 1994, the amendment was justified with the need to harmonise the regulation in force with Article 6 point 2 of the Convention.

The expansion of the titles of compensation was not accompanied by the modification of the causes excluding compensation. The reasoning attached to Section 20 of the amendment of the ACP in year 1994 only examined the causes excluding compensation with regard to the presumption of innocence, establishing that the presumption of innocence was not violated by the exclusion of compensation when the deprivation of liberty was attributable to the defendant himself. Thus, the regulation in force have exactly the same wording as the provisions specified in Act III of 1951 on Criminal Court Procedure.

3.2. Upon the analysis of the titles of compensation specified in Section 383 para. (1) of the ACP and the cause of exclusion defined in the first part of item b) of Section 383 para. (3), one can conclude that the latter covers those acts of the defendant that fall into the scope of the freedom of defence. This is the result of the failure of the legislature to harmonise the titles of compensation and the exclusion of the State's liability for damages when it widened the legal basis of compensation. The regulation may lead to an unconstitutional restriction of the fundamental right to defence during the application of the law.

3.2.1. It follows from the guarantee principles of the criminal procedure that the defendant has the right to remain silent regardless of the motive and the purpose thereof. The defendant may refuse to make a testimony irrespective of his guiltiness, and he is not obliged to state the

reason for such refusal [Section 87 paras (2) and (3) of the ACP]. Nor is the defendant obliged to tell the truth.

In this respect, the limitations of defence are basically determined by the provisions of substantive criminal law. According to Act IV of 1978 on the Criminal Code (hereinafter: the CC), making false charges, misleading an authority, invitation to perjury, obstructing justice, non-disclosing an exculpatory circumstance, harbouring a criminal (Sections 233, 237, 242, 242/A, 243, and 244), or forging official or private documents (Sections 274 and 276) are to be punished – even if committed by the given person as a defendant. In other cases, the Act provides for the primacy of the right to defence. For example, a defendant presenting a false document or false physical evidence in a criminal case cannot be punished [Section 238 para. (3) of the CC].

The specific acts that qualify as criminal offences against the administration of justice may – under certain circumstances – constitute grounds for procedural coercive measures resulting in the deprivation of liberty [collusion: Section 92 para. (1) item b) of the ACP and Section 129 para. (2) item c) of the new ACP]. The cause of exclusion specified in the first part of item b) of Section 383 para. (3) of the ACP, and the acts to be punished may in some cases overlap. Therefore, with regard to the present review, the provisions of the Criminal Code can be interpreted as the external limits of the right to defence.

The ACP provides for a wider scale of possibilities for the exclusion of the State's liability for damages. Just like the scope of acts justifying procedural coercive measures is wider than the scope of acts qualifying as criminal offences, the causes of exclusion also cover certain acts of the defendant not excluded by substantive criminal law from the fundamental right to defence. In the present case, with regard to such acts, it is justified to examine whether the cases of excluding compensation can be considered necessary and proportionate restrictions of the right to defence.

3.2.2. The expansion of the titles of compensation has led to covering more and more cases where criminal liability is excluded on the basis of the principles of the criminal procedure (lack of evidence, prohibition of more than procedure for the same act), or where the commission of a punishable act has been proven, but the application of punishment is prevented by a cause of a criminal law nature (causes excluding punishability, expiry of



period of limitation). Parallel to the expansion of the titles of compensation, necessarily more and more acts considered to be acts of defence as part of the fundamental constitutional right of the person subject to the criminal procedure have been covered by the cases defined for the purpose of preventing the compensation of persons held in custody as actually innocent ones but acting in bad faith (making a false self-incrimination, giving an intendedly false confession etc.).

All this is clear from the comparison of the cause excluding compensation and the titles of compensation. It is only in the case of persons who have actually not committed the punishable act that the defendant's conduct aimed at misleading the authority in order to prevent the successful investigation of the case does not form part of the freedom of defence, as in their case there is no story to be revealed successfully by the authority and against which the defendant could use defence by misleading the authority. However, such conduct forms part of the right to defence when the procedure is terminated, the defendant is acquitted or the charges are dropped on the basis of the lack of evidence, or the procedure is terminated on the basis of the lack of a private complaint, the expiry of the period of limitation of punishability, or the conduct having been judged upon with final force.

In the case of a defendant with unsound mind, the special features of applying the sanction are to be taken into account, too. Compensation is to be paid for temporary forced medical treatment (Section 98 of the ACP) if the court does not order forced medical treatment (Section 74 of the CC). However, when pressing charges or applying a measure, the public prosecutor and the court take account of such circumstances as, for example, the threat of repeated crime, or whether a punishment more severe than imprisonment for one year would be justified if the defendant were punishable. Naturally, the defendant may not be even indirectly restricted in applying any tactical defence in order to mislead the authority.

3.3. In the opinion of the Constitutional Court, in the second part of item b) of Section 383 para. (3) of the ACP, the legislature has, again, failed to harmonise the situation when expanding the legal basis of compensation. One can conclude upon comparing the text "or has otherwise attributably given ground to the suspicion of having committed the criminal offence" in the relevant provision with the titles of compensation that the cause excluding compensation does, in fact, empty the legal basis of compensation in all cases other than the cases of persons who have actually not committed a certain conduct specified in the Special

Part of the CC. The regulation concerned prevents the practical enforcement of compensation as a tool of remedying an injury – caused by the procedural coercive measure – to the fundamental right to personal freedom. This way, the principle of the rule of law, granted with a normative content in Article 2 para. (1) of the Constitution, is injured, and the criterion of proportionality prescribed – with the mutual interpretation of Articles 55 para. (1) and Article 8 paras (1) and (2) of the Constitution – for the constitutionality of restricting personal freedom is not met.

3.3.1. In the present case, too, the Constitutional Court has performed an analysis of the relations between the cause of exclusion and the titles of compensation in order to create the basis for its opinion.

It follows from the term “otherwise” that any wilful conduct by the defendant may lead to exclusion from compensation if that conduct – although not aimed at misleading the authority – is suitable for serving as the basis of a simple conclusion of probability concerning the commission of a criminal offence, by the court deciding on the question of compensation. Those negligent acts of the defendant that later on justify the “simple” suspicion of the criminal offence for the court deciding on the question of compensation belong to the scope of attributability. Nevertheless, procedural coercive measures may only be applied – subject to further conditions – against persons who are subject to the investigation authority’s firm (or, in the wording of the new ACP, well-founded) suspicion of having committed the criminal offence concerned.

Thus, when determining the cause of exclusion, the legislature established a link between the defendant’s conduct and the suspicion of having committed a criminal offence, rather than between the preconditions of ordering procedural coercive measures and the defendant’s conduct. That is to say, the claim for compensation is not acknowledged by the Act not if the defendant’s attributable (wilful or negligent) conduct renders probable the threat of e.g. escape, hiding, collusion or committing another criminal offence, but if the defendant performs any wilful or negligent act which is, in the opinion of the court judging upon the claim for compensation, suitable for raising the “simple” suspicion of the defendant having committed the criminal offence. However, the suspicion of a criminal offence only justifies the launch of the criminal procedure, but it is not sufficient for enforcing the criminal liability

of a specific person, and in particular for applying a procedural coercive measure, restricting personal freedom, against the person in question.

The regulation results in the fact that if the formation of the well-founded suspicion of a criminal offence is partly attributable to the defendant's wilful or negligent conduct, the cause of exclusion becomes applicable to almost any title of compensation.

On this ground, compensation can be excluded with great probability when the procedure is terminated, the defendant is acquitted or the charges are dropped on the basis of the lack of evidence. As far as the causes excluding punishability are concerned, it can be plausible in cases of justifiable defence, extreme necessity, error, constraint and menace that the defendant "attributably" gives ground to the suspicion of having committed the criminal offence, e.g. by confessing an otherwise punishable conduct. The cause of exclusion is, in itself, controversial and non-interpretable in cases where the enforcement of criminal liability is prevented by the lack of the victim's private complaint, the expiry of the period of limitation of punishability, or the prohibition of more than one procedure for the same act. The reason for this is that the defendant cannot be expected to perform defence without any legal fault. Due to the special features of forced medical treatment, it is not justified to exclude the defendant's compensation if he admits or even confesses the commission of an act which is otherwise punishable.

3.3.2. As the constitutional issues related to the legal basis of compensation are not subject to the present review, the Constitutional Court does not form an opinion in this Decision about the provisions specifying the legal basis of compensation. However, two past decisions of the Constitutional Court are relevant with regard to judging the constitutionality of the causes of exclusion.

During the constitutional review of the provisions on the costs of the criminal procedure, the Constitutional Court established the following about the liability of the State for damages: "Undoubtedly, the rule of law declared in Article 2 of the Constitution results in serious requirements concerning the method of exercising the punitive power of the State, still, it does not directly follow from the principle of the rule of law that, in lawfully exercising its punitive power, the State would be obliged to undertake objective liability for damage caused to the individual." (Decision 401/B/1992 AB, ABH 1994, 528, 530) Nevertheless, the institution of

compensation can, in the most general manner, be traced back to the rule of law declared with a normative content under Article 2 para. (1) of the Constitution. The State's obligation of compensation is based not upon the unlawful nature of the procedural coercive measure (or the punishment), but upon the responsibility of the State under the rule of law following from the exercise of its punitive power in cases where, during the administration of justice under criminal law, the sanction suffered by someone has been formally lawful, but actually unfounded.

In the case of procedural coercive measures (or punishments) involving the deprivation of liberty, the institution of compensation also follows – in addition to the rule of law – from the constitutional requirements that can be determined through the mutual interpretation of Article 55 para. (1) and Article 8 paras (1) and (2) of the Constitution. As pointed out by the Constitutional Court in its Decision 66/1991 (XII. 21.) AB, considering whether there are guarantees for the adequate mitigation of the unavoidable injuries that might be caused by the restriction is part of the evaluation of the proportionality of the provisions restricting personal freedom. Without proper guarantees, the constitutionality of the statutes allowing the deprivation of liberty may become questionable (ABH 1991, 342, 347). Therefore, ensuring, in the realm of the State's liability for damages, the adequate elimination of the injuries caused in the case of an error by the court is a necessary element of the proportionality of the deprivation of liberty related to the exercise of punitive power.

The Constitutional Court holds that the regulation under review fails to comply with the above requirements. In Section 383 of the ACP, the legislature provides for a wide scope of titles of compensation, open for the defendant in any criminal procedure closed without the establishment of guiltiness. However, the excessively generalised wording of the cause of exclusion created for the purpose of preventing mala fide profiteering by actually innocent persons results in limiting – without clear constitutional justification – the practical possibilities of remedying judicial errors in the case of all other defendants.

3.4. In view of the above, the Constitutional Court has established the following: due to the fact that compensation claims against the State may be enforced also by defendants other than those proven innocent, the cause of exclusion defined in the first part of item b) of Section 383 para. (3) of the ACP covers conducts that form part of the defendant's freedom of

defence. In such cases, the exclusion of compensation leads to an unnecessary, and thus unconstitutional, restriction of the constitutional fundamental right to defence.

In addition, it follows from the lack of harmony between the titles of compensation and the cause excluding compensation that the cause of exclusion defined in the second part of item b) of Section 383 para. (3) of the ACP leads to an unconstitutional restriction violating the requirements of the State's liability for damages, as deduced from the rule of law and the constitutional fundamental right to personal freedom.

Accordingly, the Constitutional Court has annulled Section 383 para. (3) item b) of the ACP. At the same time, the Constitutional Court does not hold it unconstitutional if the legislature applies an appropriately differentiated regulation corresponding to the titles of compensation in order to exclude the compensation for pre-trial detention or temporary medical treatment of those whose wilfully mala fide conduct has caused the court to order or to extend the procedural coercive measure.

4. In the opinion of the Constitutional Court, it does not qualify as an unconstitutional restriction of the right to defence if the defendant's compensation for imprisonment, education in a reformatory institution or forced medical treatment served on the basis of a final judgement is excluded due to the fact that in the original case, he had withheld facts or evidence on which the judgement in the retrial was based.

Although not specifically stated in the Act, it is evident that this cause of exclusion can only be interpreted in connection with a retrial based on Section 276 para. (1) item a) of the ACP. The term "withheld" clearly means conscious and wilful conduct with respect to facts or evidence relevant for determining guiltiness and imposing punishment. Section 384 para. (2) item a) of the Act provides for the exclusion of compensation in cases where the court would not have established the defendant's guiltiness at all or the sanction applied would have been significantly lighter, had the court been aware of the fact of proof withheld by the defendant.

Imprisonment, education in a reformatory institution, and forced medical treatment result in the actual deprivation of personal freedom – the most severe restriction of the constitutional fundamental right specified in Article 55 para. (1) of the Constitution. It is a constitutional interest that imposing the punishment of imprisonment and the application of measures

involving the deprivation of liberty may only be performed in the cases and in the manner specified in the Act. With regard to the above purpose, it is not considered an unnecessary and disproportionate restriction of the right to defence to provide for the exclusion of compensation for an unfounded deprivation of liberty if it is clearly attributable to the defendant's wilful conduct, i.e. withholding relevant facts and evidence known by him. Therefore, the Constitutional Court has rejected the petition seeking the establishment of the unconstitutionality and the annulment of Section 384 para. (2) item a) of the ACP.

### C

The Constitutional Court holds that a failure by the defendant to exercise his right of appeal may not serve as a cause excluding compensation.

According to Section 384 para. (2) item b) of the ACP, the defendant who has himself acknowledged the judgement shall not be entitled to claim compensation later on. According to the judicial practice, compensation is excluded even if a procedure of second instance was held on the basis of an appeal by the public prosecutor or the defence counsel. Non-exercise of the right of appeal does not mean that the defendant has contributed to the mistake made by the court, but that he has basically accepted the erroneous judgement. The ground of excluding the compensation claim is not the wilfully mala fide or attributable negligent conduct of the defendant, but his intention not to exercise one of his rights. Various motives may induce the defendant to do so. He might not wish to be subject to further procedures, or he might not hope for better results from further procedures etc.

The defendant's right to legal remedy is a constitutional fundamental right. A posterior sanctioning of the failure to exercise the fundamental right by the exclusion of compensation is an unnecessary restriction of the defendant's constitutional freedom of self-determination, and it changes the right to legal remedy into an obligation to exercise that right. According to the practice of the Constitutional Court, the constitutional freedom of self-determination deduced from human dignity [Decision 8/1990 (IV. 23.) AB, ABH 1990, 42, 44] is a constitutional fundamental right the restriction of which is only allowed within the limits set in Article 8 para. (2) of the Constitution. The right to self-determination includes refraining from exercising rights, i.e. the right not to act [cf.: Decision 1/1994 (I. 7.) AB, ABH 1994, 29, 35-36].

In the opinion of the Constitutional Court, there is no constitutional justification for the legislature restricting the defendant's discretion (Decision 1320/B/1993 AB, ABH 1995, 683, 686) – as a procedural aspect of the freedom of self-determination – by means of exclusion from compensation. The cause of exclusion justifies the dismissal of a claim for compensation when the resolution of first instance has been erroneous, independently of the defendant's conduct, concerning the determination of guiltiness or the imposition of punishment.

Accordingly, the Constitutional Court has annulled Section 384 para. (2) item b) of the ACP.

#### D

As the provisions on compensation in the new ACP to be put into force on 1 July 2003 are identical with the rules of the ACP in force, the opinion formed on the constitutionality of the causes excluding compensation applies to the relevant provisions of the new ACP, too. The Constitutional Court has established that Section 580 para. (2) item a) and Section 581 para. (2) item a) of the new ACP are not unconstitutional, and therefore it has rejected the corresponding parts of the petitions. At the same time, it has established the unconstitutionality of, and annulled Section 580 para. (2) item b) as well as Section 581 para. (2) item b) of the new ACP. In accordance with Section 42 para. (2) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), the above statutory provisions shall not enter into force.

#### E

Section 21 para. (3) of the ACC specifies the organisations and persons entitled to initiate the review of the collision of a statute with a treaty under international law. As the petitioners do not fall into the scope specified in the Act, the Constitutional Court has refused the relevant parts of the petitions on the basis of Section 29 item c) of Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's provisional rules of procedure and the publication thereof.

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

Budapest, 30 June 2003

Dr. János Németh  
President of the Constitutional Court

Dr. István Bagi  
Judge of the Constitutional Court

Dr. Mihály Bihari  
Judge of the Constitutional Court

Dr. Ottó Czúcz  
Judge of the Constitutional Court

Dr. Árpád Erdei  
presenting Judge of the Constitutional Court

Dr. Attila Harmathy  
Judge of the Constitutional Court

Dr. András Holló  
Judge of the Constitutional Court

Dr. László Kiss  
Judge of the Constitutional Court

Dr. István Kukorelli  
Judge of the Constitutional Court

Dr. János Strausz  
Judge of the Constitutional Court

Dr. Éva Tersztyánszky-Vasadi  
Judge of the Constitutional Court

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

I agree with the holdings of the Decision, but in my opinion, contrary to the explanation in the Decision, the constitutional basis of points 1 and 2 of the holdings is Article 55 para. (3) of the Constitution. My arguments are the following:

1. The constitutional review of the petition necessitates the analysis of Article 55 of the Constitution.

According to Article 55 para. (1) of the Constitution:

“In the Republic of Hungary everyone has the right to freedom and personal security; no one shall be deprived of his freedom except on the grounds and in accordance with the procedures specified by law.”

The above rule of the Constitution specifies one of the fundamental rights, but there is a separate rule covering the legal consequences to be applied in the case of the violation of this right. It is contained in Article 55 para. (3):

“Any individual subject to illegal arrest or detainment is entitled to compensation.”



The above two rules were included in the Constitution by Act XXXI of 1989 on the amendment of the Constitution. According to the Minister's reasoning attached to the Bill, these provisions were to be included in the Constitution on the basis of Hungary's obligation to acknowledge general human rights, undertaken by joining the international treaties on human rights. The Act defined the above-mentioned fundamental right introduced into the Constitution in the spirit of such international treaties, including the International Covenant on Political Rights.

2. In 1989, the said provisions of the Constitution and other relevant Hungarian statutes were only partly harmonised with the international treaties on human rights.

Although Law-Decree 8/1976 on the Promulgation of the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations at its Session XXI on 16 December 1966 (hereinafter: the Covenant) formally incorporated the rules on human rights into the legal system of Hungary, in fact they were not integrated by way of related statutes.

Article 9 of the Covenant contains the following provisions:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

According to Article 14 paragraph 6 of the Covenant:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

The incomplete integration of the said rules into the legal system of Hungary is demonstrated by the fact that, from the aspect of the examination of the petition, the Hungarian rules have showed differences from the rules of the Covenant in two respects:

- on the one hand, the text of Article 55 para. (3) of the Constitution as set out in 1989 [then as Article 55 para. (2)] only reflects Article 9 paragraph 5 of the Covenant, and it does not express Article 14 paragraph 6 on compensation based on judicial error,
- on the other hand, according to the text of Section 385 para. (4) of Act I of 1973 on Criminal Procedure (hereinafter: the ACP), as in force at the time of amending the Constitution in 1989, “(4) Upon procuring the statement of the public prosecutor, the court shall examine whether the preconditions for the compensation claim exist, then it shall forward the files to the Minister of Justice who shall – if he finds the claim to be well-founded – pay compensation from the State’s budget to the defendant or his relative entitled to receive maintenance.” This provision made compensation dependent on the Minister’s discretion.

Act XL of 1990 on the amendment of the Constitution reflected an endeavour to eliminate the discrepancy. Section 37 of the Act introduced into the Constitution – under Article 55 para. (2) – the rule that any individual held in detention shall be either released or brought before a judge within the shortest possible period of time, providing at the same time for an immediate decision about his release or putting into pre-trial detention (the resulting numbering of the paragraphs of Article 55 is still in force). According to the Minister’s reasoning attached to the Bill, this rule can be found in any state under the rule of law for the purpose of guaranteeing personal freedom, but the wording of the Act had to “take into account the Act on Criminal Procedure that is in line with the present capacity of the courts and public prosecutors’ offices”. This Act on the amendment of the Constitution did not supplement the compensation rule under Article 55 with a reference to judicial errors.

Act XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (hereinafter: the Convention) and the related eight Additional Protocols, similarly to the Covenant, separately provides, in Article 5 paragraph (5), for compensation based on unlawful arrest or detention, and, in Article 3 of the Seventh Additional Protocol, for compensation to be paid for punishment suffered due to a judicial error. Article 55 of the Constitution was not changed in connection with the promulgation of the Convention.

3. Decision 66/1991 (XII. 22.) AB also reviewed the rules on compensation in the ACP. There, the Constitutional Court annulled the rule in the ACP that had provided for compensation on the basis of the Minister's discretion. The reasoning of that decision pointed out the connection between Article 55 of the Constitution and the provisions of the Covenant. It reinforced the right to compensation by referring to the possibility of enforcing liability for damages under civil law, and – with reference to Article 70/K of the Constitution – to the possibility of enforcing claims at the court (ABH 1991, 342, 346-347).

When examining the reimbursement of costs incurred during the criminal procedure, the Constitutional Court also pointed out in Decision 401/B/1992 AB that compensation may be provided in two different ways: through liability for damages under civil law, or based on the rules of the ACP on compensation (ABH 1994, 528, 530).

4. In accordance with the situation in 1989, the text in Article 55 para. (3) of the Constitution only partly reflected the provisions of the Covenant. The subsequent amendment of Article 55, the incorporation of the Convention and its additional protocols into Hungarian law, transformation in line with the principles of the rule of law, and the acknowledgement in the practice of the Constitutional Court of the existence of two ways (liability for damages under civil law and compensation based on the ACP) of enforcing compensation claims for violation of the right to personal freedom constitute due grounds for an interpretation of Article 55 para. (3) of the Constitution taking into account the changed circumstances.

The right to compensation as specified in Article 55 para. (3) of the Constitution includes both the right to damages on the basis of the liability set out in the Covenant (and the Convention), and the right to compensation for injuries caused by a judicial error. The relevant provision of the Constitution does not repeat the rules of specific branches of law on liability for damages, but it contains a right to compensation with regard to the violation of the fundamental right to personal freedom, which right to compensation appears at the level

constitutional law and has a constitutional basis. It is this constitutional right that is to be enforced at the level of the specific branches of law (civil law, criminal law) by the provisions formed in accordance with the particular regulatory systems and principles of the branches of law concerned.

Thus, when the rules specified at the level of the particular branches of law provide for a restriction of compensation, the constitutional review of such provisions is to be based on the right to compensation as set out under Article 55 para. (3) of the Constitution, interpreted in harmony with the Covenant and the Convention, as detailed above.

Budapest, 30 June 2003

Dr. Attila Harmathy  
Judge of the Constitutional Court

I second the above concurring reasoning:

Dr. Mihály Bihari  
Judge of the Constitutional Court

Dr. István Kukorelli  
Judge of the Constitutional Court

Constitutional Court file number: 548/B/1999

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