DECISION 3/2004 (II. 17.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the motion of the Prosecutor General requesting the interpretation of the Constitution, the Constitutional Court has adopted the following

d e c i s i o n :

By interpreting Article 27 of the Constitution referring to the possibility of addressing interpellation to the Prosecutor General, the Constitutional Court has ruled as follows:

1. Under Article 27 of the Constitution, the interpellation addressed to the Prosecutor General may aim at any matter falling within his scope of duties, including decisions or measures taken within the framework of the application of the law in individual cases.
The Prosecutor General is bound to give answer to the interpellation addressed to him within the scope of his duties. Nevertheless, the substance of his answer is limited by the Constitution, and above all, by the scope of his duties determined by the Constitution.
When answering to an interpellation, the Prosecutor General is bound to respect the Constitution, especially the fundamental rights enshrined in the Constitution, and other laws. In addition, his answer may not endanger the performance of the constitutional duties of the Prosecution Service as an independent constitutional body.
The Prosecutor General may answer only within these limits to the interpellations, including to those aiming at decisions or measures taken within the framework of the application of the law in individual cases.
These substantial limits relating to the answers of the Prosecutor General must be taken into consideration both when answering to interpellations and at committee hearings.

2. The Prosecutor General, who is elected by Parliament, is not politically accountable to the Parliament for individual decisions taken by him while performing his duties. Consequently, the rejection of his answer given to an interpellation does not affect his status under public law. Due to the constitutional status of the Prosecutor General and the constitutional functions

of the interpellation, he may not be held responsible for the fact that his answers have been rejected.

3. The Prosecutor General and the Prosecution Service are not subordinated to the Parliament. Thus, the Prosecutor General may not be instructed either directly or indirectly to take or to modify any individual decision with a predefined content.

4. The lack of political responsibility of the Prosecutor General does not affect his responsibility under public law towards the Parliament. His public law responsibility encompasses his responsibility for the performance of his duties and tasks as described in Article 51 of the Constitution; his general obligation to report annually; his obligation to appear before the parliamentary committees and to give answer to questions there; his constitutional obligation to answer to the interpellations and questions directed to him. As to interpellations and questions, he is only bound – within the limits stated in paragraph 1 – to give explanation and information.

The Constitutional Court shall publish this decision in the Official Journal of Hungary.

R e a s o n s

I

[...]
In his motion [...], the Prosecutor General asked the Constitutional Court to take position on the following two questions:
“1.) May interpellations directed by MPs to the Prosecutor General relate to decisions or measures taken by prosecutors in individual cases, within their scope of duty to apply the law?
2.) May an interpellation, a rejection of an answer to it, or any other position taken by the Parliament in connection with an interpellation contain any direct or indirect instruction for the Prosecutor General within the scope of his duty to apply the law?”
In his view, [...] it is timely to ask for interpretation since “many interpellations have recently been addressed to the Prosecutor General in individual cases, in which the MPs demanded

explanations for the application of the criminal as well as the civil substantial and procedural law in particular cases. Following the rejections of the answers given to the interpellations, in the parliamentary committee's discussions it was indicated that the prosecutor of the case should have had to decide otherwise. Under the Standing Orders relating also to the interpellations directed to the Prosecutor General it cannot be excluded that the competent committee of the Parliament will draw up a plan of measures to be taken in these individual cases". [...]

IV.

1. First and foremost, the Constitutional Court looked over the legal institution called "interpellation" in the context of foreign and Hungarian law, by examining its regulation, nature and history.

1.1. The interpellation as well as the question (requiring immediate answer) are equally connected to the parliaments' supervisory function over the executives. Both of them provide the possibility for the MPs to publicly receive information or explanation about certain issues, before the plenum of the Parliament. The aim of a question (immediately answered) is to receive information, while the aim of an interpellation is rather to receive explanation about an issue from the person in charge. Both the interpellation and the question are instruments to make an issue or a problem known to the wider public, and to launch a political debate over the issue/problem raised.

1.2. The interpellation and the question differ not only in their objectives, but in their consequences as well. An interpellation may result in a real political debate, but a question is generally inapt to directly generate such a debate (once an answer is given to a question, the MP has no right to verbally react to it; there is no voting on the answer). Rules relating to the interpellation are stricter than those to the question: once the answer is given to an interpellation, the MP has the right to react to the answer verbally and to declare that he/she accepts the answer or not. If the MP does not accept the answer, the Parliament decides on the acceptance by voting. If the Parliament rejects the answer, there may be further consequences: the addressee of the interpellation may be obliged to prepare a new answer within a fixed time

limit; the Parliament may formulate recommendations for the addressee; or the issue may be handed over to a committee (with an obligation to report) for further debate, etc.

The withdrawal of the confidence from a Minister or from the Government itself may also be a consequence of the rejection of the answer (which is nowadays quite rare, but see e.g. the Belgian solution).

1.3. The provisions defining the scale of persons to whom interpellation may be addressed also show diversity. Since the interpellation serves the control of the Executive, in all systems where the notion of interpellation is known, interpellation may be addressed to the Government and any Member of the Government. Beyond that, the range of persons to whom interpellation may be addressed is determined variously in the different Constitutions and Standing Orders of Parliaments. Persons who fall within this range might be the President of the State Audit Office, the President of the National Bank, or the commander of the armed forces (Estonia).

1.4. The original text of Act XX of 1949 on the Constitution of the People's Republic of Hungary (hereinafter: Constitution #1) at the time of its promulgation (20 August 1949) did not mention the interpellation, but it did the other instrument of parliamentary control, i.e. the question. Under Article 27 paragraph 3, questions were allowed to direct to the Council of Ministers, its President or any of its members in matters falling within their competence. The person to whom the question was addressed had to answer it before the plenary of the Parliament.

Act I of 1972 on the amendment of Constitution, which was promulgated and entered into force on 26 April 1972 (hereinafter referred to as Amendment #1), modified Constitution #1 in such a way that the range of persons to whom a question was allowed to direct was widened. Under Article 27 questions were allowed also to the Presidential Council of the People's Republic of Hungary, to the Council of Ministers and to any member of the Council of Ministers, to the secretaries of State, to the President of the Supreme Court and to the Prosecutor General in all matters falling within their competence. The person to whom the question was directed had to answer it before the Parliament.

Act XXXI of 1989 on the amendment of the Constitution, which entered into force on 23 October 1989 (hereinafter referred to as Amendment #2), re-established the legal institution of the interpellation that had already existed prior to Constitution #1. It also changed the range of

persons to whom a question was allowed to direct. Under the amended text of Article 27, questions were allowed to address to the President of the Republic, to the Parliamentary Ombudsman for Civil Rights, to the President of the State Audit Office and to the President of the National Bank in any matter falling within their competence. Not only questions, but also interpellations were permitted to the Council of Ministers, to any member of the Council of Ministers and to the Prosecutor General. Act XL of 1990 amended Article 27 of the Constitution again. This Act established the text that is still effective today. Due to this amendment, no question may be directed to the President of the Republic any more, but question may be addressed also to the Parliamentary Ombudsman for the Rights of National and Ethnic Minorities.

2. Secondly, the Constitutional Court took a short overview concerning the Prosecutor General's status under public law, his constitutional and legal status, as well as the relevant changes. The Court had special regard to the specific continuity of the wording of the Constitution of 20 August 1949 as to the responsibility of the Prosecutor General towards the Parliament. This wording has remained practically unchanged ever since, though the substance of this responsibility has altered.

2.1. In Constitution #1, Articles 42-44 formed the Chapter on the Prosecution Service. Under Article 43 the Parliament elected the Prosecutor General for a term of six years and it was empowered even to dismiss him. Article 43 paragraph 2 contained a wording almost identical with the current one, saying that the Prosecutor General is accountable to the Parliament and obliged to report on his activities.

Due to Amendment #1, the Chapter on the Prosecution Service was transferred to Articles 51-53. Under the new provisions, the Parliament elected the Prosecutor General for a term of four years.

Article 1 paragraph 4 of Act I of 1975 amended the provision of the Constitution on the election of the Prosecutor General in such a way that the Parliament on its first session elected him for a term which lasted until the first session of the next Parliament.

Under Amendment #2 the Prosecutor General was elected by the Parliament upon the recommendation of the President of the Republic, but this Act did not, however, stipulate his term of office. This matter was settled by another Act of Parliament.

2.2. In the period of the constitutional changes in 1989, the following compromise was reached concerning the legal status of the Prosecution Service and the Prosecutor General:

1. The Prosecutor General is elected by the Parliament;

2. His term of office is 6 years, which differs from the term of the Parliament that elects him;

3. He may not be dismissed;

4. Neither the Prosecutor General, nor the Prosecution Service is subordinated to the Government or to the Minister of Justice; but

5. The Prosecutor General becomes a person to whom interpellations may be addressed (so any MP may ask him to give explanation on individual cases), and

6. The provision of the Constitution declaring in general terms the accountability of the Prosecutor General towards the Parliament remains unchanged;

7. The Prosecution Service remains an independent body of the administration of justice, and it is subordinated only to the law;

8. The Prosecutor General and the prosecutors may not be members of political parties and may not engage in political activities. This incompatibility with politics is the guarantee of their professional independence and autonomy.

Under Amendment #2, the Prosecutor General became a person to whom interpellation may be addressed, but the provisions relating to his term and dismissal were removed from the Constitution. Even Act V of 1972 on the Prosecution Service of the Republic of Hungary (hereinafter referred to as PP Act) remained unchanged. This Act contained dispositions on the term of office and on the dismissal of the Prosecutor General, providing in the same way as the Constitution did before Amendment #2.

From Amendment #2 until the adoption of the amendment of the PP Act, the Parliament had the possibility – similarly to the motion of no confidence against the President or a member of the Council of Ministers – to withdraw its confidence from the Prosecutor General under Article 20 of the Act. Under these provisions, the Prosecutor General was responsible to the Parliament in an expressly political way. However, the Prosecutor General of the time was not removed from his office under Article 20, but upon his own request, by Resolution No. 26/1990 (III. 13.) of the Parliament. Article 19 paragraph 3/k of the Constitution stipulated that the Prosecutor General was elected by the Parliament. The Parliament based his Resolution on the latter provision, since the termination of the office of the Prosecutor General was not regulated at the time.

It was Act XLV of 1989 which, by conceptually amending the PP Act (hereinafter referred to as PP Amendment), re-regulated the status of the Prosecutor General under public law, in

accordance with the Constitution in force. It defined his term of office in 6 years and abolished the possibility of his dismissal against his will by the Parliament. In the Act's explanatory note the Parliament emphasised that the longer term of office of the Prosecutor General than that of the Parliament may be an essential factor in guaranteeing the continuity of the rule of law. These provisions did not come into force until the inaugural session of the first freely elected Parliament on 2 May 1990. This solution gave the opportunity to the democratically elected Parliament to elect a Prosecutor General who enjoyed its confidence.
The PP Amendment inserted – on 27 December 1989 – a new paragraph 5 into Article 20 of the PP Act. This paragraph, which partly is still in effect, declares that the Prosecution Service is independent and it is subordinated only to the law. This paragraph also reiterates the most important incompatibility provisions of the Constitution, namely those which prohibit prosecutors' from political activities and membership in political parties.
Act LXXX of 1994 on the status of public prosecutors and on the treatment of their data (hereinafter referred to as SPP Act) abrogated the provisions of the PP Act concerning the appointment of prosecutors, the Prosecutor General's election, term and legal status (the latter one was a simple duplication of the text of the Constitution). All the provisions relevant to these issues are now contained in the SPP Act. The independence of the Prosecution Service was further strengthened through a specific provision also inserted in the SPP Act, which gives the Prosecutor General the right to appoint military prosecutors independently, i.e. without the consent of the Minister of Interior and the Minister of Defence.

3. The Constitutional Court proceeded to the question of the responsibility, in the wider sense of the term, of the public officials elected by Parliament. The Court in its analysis regarded it as a starting point that it is essential to distinguish between the public officials' so-called *political* responsibility (towards the Parliament), and their other forms of responsibility (for criminal offences, disciplinary offences, damages, etc).

3.1. Solely the fact that the Parliament elects someone for a public function does not mean that this person is automatically responsible *politically* to the Parliament in the meaning of the constitutional law.

There are public officials who, and institutions the head of which, though elected by the Parliament, do not have an obligation even to report to the Parliament (e.g. the President of the Republic, the President of the Supreme Court). Others, like the President of the National

Radio and Television Board etc., have to report annually on the activities of the institution led by them. The Parliament decides on the acceptance of the report, although a rejection has no consequences. There is a third group of heads who are obliged to deliver reports to the Parliament and to whom a question may be addressed by MPs (e.g. Parliamentary Ombudsman for Civil Rights). The Prosecutor General belongs to a forth group, since he is obliged to report, and not only questions, but also interpellations may be addressed to him, but he has no *political* responsibility towards the Parliament in the meaning of the constitutional law. And finally, a fifth group is formed by the Government and its members. They have to report regularly to the Parliament, both questions and interpellations may be addressed to them, and once the political confidence has broken in them, there is a possibility – by using the specific constitutional instrument, i.e. the motion of no confidence – to withdraw the Prime Minister's mandate (together with the whole Government).

3.2. Merely the obligation to report to the Parliament does not mean that the independence of the obliged person or that of the institution led by him (e.g. the Prosecutor General or the Prosecution Service) is restricted. The obligation to report is purely a device for the purpose of ordinary control, for receiving information on the activities of an organisation. Such obligation to report is prescribed by the Constitution for the parliamentary ombudsmen (Article 32/B paragraph 6), for the President of the National Bank of Hungary (Article 32/D paragraph 3), and naturally for the Government and its members (Article 39 paragraphs 1 and 2).

Beyond this, several acts of Parliament establish obligation to report to the Parliament or any of its committees: for instance, the President of the National Radio and Television Board, the President of the Hungarian News Agency Corporation, the Director General of the Hungarian Nuclear Energy Authority, the President of the Office for Economic Competition are obliged to furnish annual reports.

A similar obligation can be found in Article 32/C paragraph 2 of the Constitution for the State Audit Office: the Office is obliged to inform the Parliament in a report on the auditing activities it has carried out. The President of the State Audit Office is responsible for the submission of this report. Though the State Audit Office is subordinated to the Parliament and it may be ordered to investigate, the Office is subject only to the law while carrying out such an investigation, and it may not be ordered to make or alter individual decisions.

3.3. The Constitution itself rarely defines the content and the boundaries of the responsibility of the public officials in the wider sense of the term, or the procedure to follow to establish such responsibility. Only the impeachment procedure against the President of the Republic is regulated in details. Article 31/A of the Constitution guarantees, on the one hand, the immunity of the person of the President of the Republic and, on the other hand, it provides the possibility for one-fifth of the MPs to initiate an impeachment procedure against the President of the Republic if he violates the Constitution or any other law.

3.4. Conversely, Article 39/A of the Constitution provides the possibility for establishing the *political* responsibility of the Prime Minister and each Minister. In this case, the Constitution provides purely about the *political* responsibility of the Prime Minister and the Government. The other forms of their responsibility (e.g. responsibility for damages) are dealt with by the Act on the status of Members of the Government and by other acts relating to all citizens.

3.5. The Constitution is quite laconic when it defines the responsibility of the Prosecutor General before the Parliament: "The Prosecutor General shall be accountable to the Parliament and shall provide a report on his activities." (Article 52 paragraph 2). This is the provision that establishes the specific constitutional connection between the Prosecutor General and the Parliament and that outlines the system of responsibility. The content of both of them is defined by the Constitution in the following way: the Prosecutor General is obliged to report on his activities to the Parliament; he is obliged to answer to the MPs' interpellations and questions. To meet these obligations, he is required to be present in the sittings of the Parliament or its committees.

3.5.1. It is clear from the historical changes of the relevant dispositions of the Constitution that the Parliament framing the Constitution has come to the following decision: the responsibility of the Prosecutor General towards the Parliament must be limited to the fulfilment of his obligations and duties defined by Article 51 of the Constitution and by the PP Act (obligations and duties to report, to give explanation or answer, to be present), and his political responsibility must cease to exist. Amendment #2 and the subsequent amendment of the PP Act broke deliberately with the concept of *real political* responsibility of the Prosecutor General towards the Parliament, in order to create a Prosecution Service operating exclusively on the basis of professional considerations, and to ensure and strengthen the professional independence of the Prosecutor General and the Prosecution Service.

3.5.2. The Constitution and the PP Act define several duties of various types for the Prosecution Service. The Prosecutor General and the Prosecution Service ensure the protection of the rights of the individuals and prosecute to the full extent of the law all acts that violates or endangers the constitutional order, the security and the independence of the country. The Prosecution Service exercises various powers in connection with the investigation, its members represent the prosecution in court proceedings; and they supervise the legality of the execution of punishments. The Prosecution Service helps to ensure the application of the law, the respect of the constitution, and that everyone comply with the law. When the law is violated, the Prosecution Service intervenes in the interest of the law. Beyond that, the Prosecution Service contributes to the correct application of the law in the court proceedings. It fosters that the state organs other than the courts, all organisations of the society as well as the citizens observe the law (supervision of legality). Therefore, the Prosecution Service exercises powers in three main fields: criminal law, administrative law (supervision of legality) and civil law (supervision).

3.5.3. The Constitutional Court has already analysed in its several decisions the constitutional concept relating to the administration of justice in its wider sense, and to the role of the Prosecution Service in the system of criminal justice. (e.g., Constitutional Court decisions No. 52/1996 (XI.14.), ABH 1996, 159 and No. 14/2002 (III.20.), ABH 2002, 101.). One of the components of the independence of the Prosecutor General and the Prosecution Service led by him consists in the fact that they have the right and the duty under Article 51 paragraph 2 of the Constitution to prosecute and to represent the Prosecution before the courts. In its decision No. 52/1996 (XI.14.) the Constitutional Court pointed out that “the participation in the administration of justice is a constitutional obligation of the Prosecution Service” (Constitutional Court decision No. 52/1996 (XI.14.), ABH 1996, 159, 161.).
Therefore, in the system of the administration of justice in its wider sense the Prosecution Service has the right and the duty to perform its tasks specified by the Constitution. Within the system of the administration of justice the functions of accusation, defence and sentencing are separated. It follows from its public prosecution [“accusateur public”] function that the Prosecution Service has the exclusive right to decide whether to prosecute or not, i.e. whether to bring the case before the court or not, and whether to drop the case in the court phase or not. (The only exceptions are certain offences specified by law, which may be privately prosecuted.) Any other organs, either the Parliament or any of its (inquiry) committees, are

not empowered to revise the decision taken by the Prosecution Service, or to force the Prosecution Service to change its decision.

3.5.4. According to Article 53 paragraph 3 of the Constitution, the Prosecution Service is led and directed by the Prosecutor General. The Prosecution Service is an independent organisation, which – in comparison with the courts – does not form a separate branch of power, but it is still an independent organisation existing on the basis of the Constitution.
The laws on the status of the political leaders (ministers, political secretaries of State) do not prescribe professional or educational conditions to fulfil these posts. On the other hand, a head or a member of a professional organ (e.g. President of the Supreme Court, President of the State Audit Office, and member of the Constitutional Court) must be a person who meets specified and strict professional and other requirements. Only such a person can be elected Prosecutor General who has the required professional qualifications and meets the requirements prescribed by the PP Act. Accordingly, the Prosecutor General is the professional leader of the organization led by him, and not the political one.

3.5.5. Under the Constitution in force, the Prosecutor General and the Prosecution Service are not subordinated to any other constitutional organ. Article 20 paragraph 5 of the PP Act says that "the Prosecution Service shall be independent and subject only to the law". The Prosecution Service and the Prosecutor General may not be instructed by other organs in the course of performing their duties, and they are subject only to the law. However, the Prosecutor General has to report on the activities of the Prosecution Service (and on his own activities as well) to the Parliament.
The Prosecutor General powers and duties inferred from the Constitution and defined in the PP Act are exercised through the independent organization led by him. The relevant provisions also give expression to such principles as the autonomy of the separated organs and to such obligations as the mutual respect of the full exercise of their respective powers. The Prosecution Service is a hierarchical organisation, operating on the basis of a strict internal hierarchy, at the top with the Prosecutor General, who leads and directs the whole organization. In order to be able to fulfil his duties, the Prosecutor General disposes of a very wide range of powers, which serve as the guarantees of his organisational and functional independence. Although his deputies are appointed by the President of the Republic, it is the Prosecutor General himself who proposes them. It is also him who has the exclusive right to appoint prosecutors or to promote them to any higher position (chief prosecutor, court of

appeal prosecutor, higher executive post, etc.), and he is the person who exercises the employer's rights over all prosecutors (this latter may be partially conferred by him to prosecutors in executive position).

3.5.6. As it was already stated, the responsibility of the Prosecutor General towards the Parliament is restricted to the obligations to *report,* to give *explanation*, to *answer* and to *appear* at sessions, and to the obligation to perform his tasks determined by the Constitution. In the meaning of the constitutional law, the Prosecutor General is not responsible *politically* to the Parliament. As a result, under the provisions of the Constitution in force, the Parliament is not in a position to dismiss the Prosecutor General, even if the Parliament's professional or political confidence in him has lost. Therefore, there is no constitutional possibility to dismiss the Prosecutor General because of the loss of political confidence. His removal from office may only take place under Article 20 paragraph 8 of the SPP Act, namely if the Prosecutor General

a) a) does not perform his duties for any reason imputable to him, or
b) b) is finally convicted for an offence, or
c) c) becomes otherwise *unworthy* of his office.

The main point in this regard is the question of *unworthyness*. This question may not be raised by the Parliament itself, but only by the President of the Republic. The termination of the office of the Prosecutor General before serving his full term may only occur on the grounds and under the procedure specified by law, namely upon:

a) a) *relief* of his office*,* if he is unable to perform his duties for any reason which is not imputable to him;
b) b) *deprivation of office*;
c) c) declaration of *conflict of interest*;
d) d) a *final judgement* with a specific content;
e) e) obtainment of or appointment to *other* specified *function*;
f) f) *resignation*;
g) *g)* reaching the *age of 70;*
h) h) his *death*.

Points g) and h) are issues of fact, points e) and f) are decided by the Prosecutor General, and point d) depends on the judgement of the court. The Parliament may decide in cases defined in points a)-c), but only on the proposal of the President of the Republic.

3.5.7. The independence of the Prosecutor General and the Prosecution Service is ensured also through the right of the Prosecutor General to draw up the Prosecution Service's chapter in the Central State budget, which the Minister of Finance shall present it in its unchanged form to the Parliament.

3.5.8. For determining the status of the Prosecutor General under public law, it is also essential to determine what is *not* included in his responsibility towards the Parliament under the constitutional dispositions.

a) a) There is no provision in the Constitution stating that the Prosecution Service shall be *subordinated* to the Parliament or to any other organ (e.g. to the Government or the Minister of Justice). In fact, the PP Act expressly declares the independence of the Prosecution Service. Therefore, under the Constitution in force, the Prosecutor General is not subordinated to any other organ.

b) b) As the subordination of the Prosecutor General and the Prosecution Service does not follow from the Constitution, it is evident that the Prosecutor General may not be instructed by any other organ or public official. Similarly, it is also evident that none of the organs (e.g. the Parliament) or public officials have the power to direct the Prosecutor General and, through his person, the Prosecution Service.

c) c) The Parliament has two ways to control the activities of the Prosecution Service: through the annual report of the Prosecutor General and through the obligation of the Prosecutor General to answer to the questions directed to him. In the current constitutional context, in which the Prosecution Service is an independent constitutional organ of the administration of justice, any other additional ways of control would be incompatible with the principle of the separation of powers as well as with the respect of the separate and independent operation of the constitutional organs.

d) d) Solely the fact that an organ or its head has the obligation to report to the Parliament does not mean in any circumstances that the independence of the organ or its head is restricted (See, IV. 3. 2.).

It follows form the foregoing that in the course of fulfilling their duties the Prosecutor General and the Prosecution Service have to respect only the Constitution and the law. They are not subordinated to any other organ or public official, and they may not be directed by them. Prosecutors may be instructed only by prosecutors superior to them or by the Prosecutor General. The Prosecutor General himself may not receive instruction from anyone. The Parliament may supervise the Prosecutor General only through the annual report and by using the right of the MPs to direct interpellations or questions to him.

3.6. It clearly follows from all this that the constitutional position and the legal status of the public officials to whom interpellation may be addressed under Article 27 of the Constitution (Prime Minister, Members of the Government, Prosecutor General) are largely different. At the same time, the rejection of their answer given to an interpellation equally does not result in the establishment of their political responsibility, not even in the case of the Prime Minister or the Members of the Government.

3.7. The means of the parliamentary control over the Prosecution Service and the Prosecutor General may never be used, not even in the context of the interpellation, as an instrument to control the decisions taken by prosecutors in individual cases. Interpellations and questions may be directed to the Prosecutor General, but he is not accountable for the content of the professional decisions taken in individual cases, and he may not be instructed to take a decision with a predefined content. This would be incompatible with the professional independence of the administration of justice (and with that of the Prosecution Service as part of it), and with the principle of the separation of powers enshrined in the Constitution.
A decision taken in an individual case by the Prosecutor General (or by the Prosecution Service) may not result in his removal by the Parliament. The Constitution does not allow such removal. The deprivation of his office may only be initiated by the President of the Republic if he has proved unworthy of his office for some reasons. The Parliament has only one way to influence the Prosecution Service, and this is its *legislative* powers. By using that, the Parliament – by its powers to amend the Constitution - may even change the constitutional position and the status of the Prosecutor General and the Prosecution Service.

4. The question/interpellation as determined by Article 27 of the Constitution has an outstanding importance regarding the enforcement of the right to access to information of public interest defined in Article 61 paragraph 1 of the Constitution.

4.1. Under Article 27 of the Constitution, a MP may ask a question or submit an interpellation in any matter falling within the competence of the person to whom the interpellation or the question is addressed. This provision of the Constitution also determines the most important limits of the interpellation/question, which must be respected by both the person addressing the interpellation/question and the person answering them. The interpellation/question may aim only at matters that fall within the *scope of duties* of the person to whom the interpellation/question is addressed. A question that falls outside the scope of duties of the addressee shall be refused to answer.

Consequently, merely the fact that the interpellation is aimed at a decision or a measure taken in a particular case in the course of the application of the law, or at an ongoing individual case, does not constitute an excuse for the Prosecutor General to refuse to answer. The Constitution defines the fundamental duties of the Prosecutor General and the Prosecution Service (See, IV./3.5.2.). In connection with these basic duties, the PP Act confers further duties and rights on the Prosecution Service.

When applying the individual provisions of the Constitution one has to bear in mind that these provisions only rarely are enforceable alone, because they may often affect or prejudice other constitutional provisions.

Due to its nature, the interpellation may affect the provisions of the Constitution on the right to human dignity (Article 54 paragraph 1), the right to the protection of personal data (Article 59 paragraph 1) or the fundamental rights enumerated in Article 54 paragraphs 1-2.

Beyond the fundamental rights guaranteed by the Constitution, both the interpellating MP and the addressee of the interpellation have to respect the laws and all other legal rules as well.

Thus, the Prosecutor General in his answer to the interpellation shall not violate the fundamental rights guaranteed by the Constitution and the law. In case the answer would violate a fundamental right laid down in the Constitution or any other law, the person to whom the interpellation was directed may refuse to give answer. However, this does not release him from the obligation to answer in part to the interpellation, if a partial answer does not result in the violation of the rights or laws stated above .

The interpellation – as stated in point IV./1.1 – is a device of parliamentary control to receive information and explanation. Since the interpellations and the answers to them are delivered

before the plenum of the Parliament, they inevitably fall into the focus of political crossfires and debates.

MPs may receive information and explanation not only publicly, i.e. before the plenum of the Parliament through interpellations/questions. They may ask questions in written form, which are answered in the same way, without becoming part of the Minutes of the Parliament (like in the case of written interpellation). Such a written answer constitutes only an archival appendix to the Minutes, and it is never distributed amongst the MPs. Consequently, written questions have much less publicity. Act LV of 1990 on the status of the MPs prescribes in its Article 8 paragraph 1 that all state organs have to provide information necessary for the work of the MPs. This right is ensured also by Article 8 paragraph 2 of the Act, which prescribes that a member of a parliamentary inquiry committee, under specified conditions, is entitled to get into the possession of state secrets without any special permission.

4.2. Beyond the requirement that it may not violate fundamental rights enshrined in the Constitution and other laws, the answer of the Prosecutor General to the interpellation has another substantial limit: it may not endanger the performance of the constitutional duties of the Prosecution Service. Article 51 of the Constitution determines the duties of the Prosecution Service as an independent constitutional organ. Under this Article, the Prosecutor General and the Prosecution Service have the constitutional duty, inter alia, to prosecute any act that violates or endangers the democracy and the interests of the Republic of Hungary, and to ensure and protect the legality. The Prosecution Service represents the prosecution in court proceedings, supervises the legality of the execution of punishments and exercises specified rights in connection with investigations. To fulfil these duties is the constitutional obligation of the Prosecutor General and the Prosecution Service. Amongst the answers given to interpellations or questions by the Prosecutor General, especially his answers that concern ongoing cases endanger potentially the accomplishment of the constitutional duties of the Prosecution Service. Ongoing cases fall within the sphere of the administration of justice not only in the field of criminal law, but in the field of administrative law as well: they may be cases that have not been closed by a final judgement or by a decision of the prosecutor yet, or they may be re-opened cases. For example, the disclosure before the Parliament – thus before the public – of data, information, investigative measures or other actions, evidence etc. relating to an ongoing case may seriously endanger the investigation and the success of the future investigating measures and, last but not least, the possibility of bringing the case before the court, and representing successfully the prosecution there.

Thus, the substance of the answer of the Prosecutor General given to an interpellation is limited by the requirement that the answer, i.e. the information contained in it, may not endanger the accomplishment of the constitutional duties of the Prosecution Service. Before giving his answer, the Prosecutor General is obliged to consider whether the answer would endanger his duties determined by the Constitution. It is the constitutional responsibility of the Prosecutor General to correctly assess the danger that may affect the performance of his duties. In each case, it is up to the Prosecutor General to decide whether his answer to an interpellation aimed at an ongoing case endangers the performance of the constitutional tasks of the Prosecution Service or not. When answering, however, he is required to take into consideration not only the obligation to perform his duties as determined by Article 51 of the Constitution, but also his obligations under Article 27 and Article 52 paragraph 2 of the Constitution.

4.3. As it was stated above, the Prosecution Service and the Prosecutor General are independent, and they are subject only to the Constitution and the law when exercising their functions. There is no other organ that may exercise supervision or control over them, or may give orders or instructions to them. It is the prosecutors' free discretion and professional responsibility to evaluate the facts, information etc. in any individual case and to draw conclusions from them. A MP or the Parliament may only ask whether the criticized decision of the prosecutor was legally possible on the basis of the particular elements of the case. No explanation may be asked for about the professional debates, considerations and arguments that led to a particular decision. Therefore, if the decision criticized in the interpellation has a legal basis, the Prosecutor General is not bound to justify the decision from other points of view.

4.4. The Constitution determines the range of persons to whom and by whom interpellation may be addressed, as well as the issues that may be raised in it. The details (including the consequences of rejecting the answer) are regulated by the Standing Orders of the Parliament. Under Article 117 paragraph 4 of the Standing Orders, if the Parliament rejects the answer, the interpellation has to be handed over to the competent committee. This committee draws up a report, and the Parliament may

a) a) subsequently approve the answer given to the interpellation;

b) b) accept the answer as completed at the committee hearing by the person to whom the interpellation has been addressed;
c) c) confirm its previous rejection and request the committee to prepare a proposal for the measures to be taken.

As under Article 68 paragraph 1 of the Standing Orders the committee hearings are open to the press, the violation of the law stated in point 4.1. may also occur there. The independence of the Prosecutor General and the Prosecution Service means that at the committee hearings the Prosecutor General may not be questioned about the reasons of their lawful decisions; similarly, it is not allowed to examine why a different decision has not been taken. All this belong to the discretionary power and the responsibility of the Prosecution Service and the Prosecutor General. The latter is not obliged to disclose the reasons other than the legal ones to the parliamentary committees.

4.5. Solely the fact that the Prosecutor General refuses to give answer on the ground that his answer would violate the law, fundamental rights, or it would endanger the performance of the constitutional duties of the Prosecution Service does not make impossible for the MPs to exercise their rights to information and explanation. Both the MPs and the Prosecutor General are expected to observe the law. Especially the addressee of the interpellation should keep this in mind, since he may foresee that his answer, if given, would inevitably cause such violation or danger. Therefore, if the answer to be given to a particular interpellation cannot be formulated in general terms or in a way that it does not cause such violation or danger, the addressee of the interpellation may, in this respect, refuse to give answer.

On the basis of all this, the Constitutional Court ruled on the substantial limits of the answers given by the Prosecutor General to interpellations, as stated above in point 1 of this decision.

5. Point IV/3.5. gives a detailed analyses on the constitutional position of the Prosecutor General and the Prosecution Service and states that neither the Prosecutor General nor the Prosecution Service are subordinated to any other organ: they are subject only to the law (individual prosecutors are subordinated to the Prosecutor General and their superior prosecutors). The obligations of the Prosecutor General towards the Parliament are restricted to the obligation to report, to appear, to explain and to answer.

It results from the independence of the Prosecutor General that he may not be instructed by the Parliament to take or modify a particular decision, and he is not responsible politically to the Parliament.

Neither the Prosecutor General nor a Member of the Government may be ordered through an interpellation to take or to alter a particular decision. Therefore, the Prosecutor General may not be instructed through an interpellation to take or to modify a particular decision. Under Article 117 paragraph 4 of the Standing Orders, the rejection of the answer given to an interpellation has the consequence that the competent committee must discuss the interpellation and the issue it is aimed at. In the committee's debate there is more chance to expound the views of each side (unlike in the plenary debate, the addressee of the interpellation is not under the constraint of a strict time limit). If the report presented by the committee results invariably in the rejection of the answer by the Parliament, the committee works out a plan in which it proposes measures to be taken. It should be emphasized, however, that the committee as well as the Parliament may only take measures that are permitted for them under the Constitution and other laws. Thus, they may not order the addressee of the interpellation to take or to alter his decision with a particular content. If they would do so, they would act *ultra vires*, i. e. they would deprive an independent organ of its competence and tasks determined by the Constitution. Consequently, such a measure, order or instruction would be incompatible with the rule of law.

On the basis of all this, the Constitutional Court ruled on the possibility of instructing the Prosecutor General as stated above in point 3 of its decision.

6. In point IV/3. the various types of political responsibility towards the Parliament are dealt with. In point IV/3.5. it is drawn the conclusion that in the current constitutional system the Prosecutor General has no political responsibility towards the Parliament, since the two basic components of the political responsibility, i.e. the accountability and the sanctionability, are lacking. The Parliament has no constitutional possibility to remove or dismiss the Prosecutor General. The deprivation of his office may be initiated only by the President of the Republic in cases precisely defined by the SPP Act (among which the loss of political confidence is not enumerated).

Of course, the fact that the Prosecutor General has no political responsibility does not mean that he is not under the obligation to comply with his duties towards the Parliament, since if the latter would be the case, it would be against the Constitution and other laws. In fact, the

Prosecutor General does have constitutional and public law responsibility towards the Parliament. On the one hand, he has to comply with his general obligation to report annually, on the other hand, he has the obligation to appear before the Parliament as well as its committees and to give answers there within the limits specified in point 1 of this decision.

On the basis of all this, the Constitutional Court ruled on the issue of the political responsibility of the Prosecutor General as stated in points 2 and 4.

The Constitutional Court ordered the publication of this decision in the Official Journal, according to Article 51 paragraph 2 of the Constitutional Court Act.

Budapest, 16 February 2004

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President of the Constitutional Court

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presenting Judge of the Constitutional Court

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