

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition seeking posterior constitutional examination of a statute, the Constitutional Court has adopted the following

decision:

The Constitutional Court rejects the petition seeking establishment of the unconstitutionality and annulment of Section 12 of Act XXIV of 2004 on Firearms and Ammunitions.

Reasoning

I

1. The Constitutional Court has received a petition seeking establishment of the unconstitutionality and annulment of Section 12 of Act XXIV of 2004 on Firearms and Ammunitions (hereinafter: the AFA). According to the petitioner, the firearms dealers' obligation of data recording violates the right to the protection of personal data granted in Article 59 para. (1) of the Constitution. The petitioner argues that by way of such records, the firearms dealers obtain personal data the secure handling of which they cannot guarantee. In addition – so the petitioner holds – the unauthorised access to the data of persons holding licensed firearms is a serious threat to public safety.

In the supplemented petition, the petitioner demonstrates a report sheet to be filled in according to the Annex to Government Decree 253/2004 (VIII. 31.) Korm. on Firearms and Ammunition. It is underlined by the petitioner in this context that personal data are not in safety when possessed by firearms dealers. According to the petitioner, the recording of the personal data of firearms owners should only be performed by the authorities.

During its procedure, the Constitutional Court has obtained the opinion of the Minister of the Interior.

2. The following statutory provisions have been taken into account during the examination of the petition:

2.1. The relevant provision of the Constitution is the following:

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

2.2. The relevant provision of the AFA is as follows:

“Section 12 (1) When selling firearms or ammunition, the firearms dealer shall record the data of the buyer, the seller (supplier), or the ordering party, as well as the identification data of the firearm and the ammunition, to verify the identification of the buyer, the seller (supplier), or the ordering party on the basis of a certificate issued by an official authority, to verify the validity of their license, and to forward the data contained in paragraph (2) into the central registry of firearms.

(2) The firearms dealer shall record the following:

(a) identification data of the firearm;

(b) data allowing the identification of the ammunition;

(c) natural personal identifiers, citizenship, place of residence, and number of the official certificate verifying personal identification of the buyer, seller (supplier), or the ordering party, furthermore, the number of the license and the name of the organisation who issued the license;

(d) the company name of the buyer, seller (supplier), or the ordering party, the number of the official certificate verifying personal identification of the trade representative of the above, as well as the number of the license and the name of the organisation who issued the license.”

II

The provision challenged by the petitioner, i.e. Section 12 of the AFA contains provisions on data handling with regard to firearms dealers (collection of data, registry of data, and data forwarding) as in force since 1 May 2004.

According to Section 23 of the AFA, the Act is based on EC Council Directive 91/477/EEC on control of the acquisition and possession of weapons (hereinafter: the Directive) in line with Section 3 of Act I of 1994 on the promulgation of the Europe Agreement signed in Brussels on 16 December 1991 establishing an association between the Republic of Hungary and the European Communities and their Member States.

The Treaty of Accession to the European Union was promulgated by Act XXX of 2004. According to Article 2 of the Act concerning the conditions of accession and the adjustment to the Treaties on which the European Union is founded, from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding for and – under certain conditions – applicable the new Member States.

Directives, as the so-called secondary legislation of the Union, bind the Member States to adopt, in their own processes of legislation, regulations complying with the contents of the respective directives. Moreover, in line with Article 3 of the Directive, the Member States may, in their national legislation, adopt regulations more severe than the provisions of the respective directives.

In Decision 17/2004 (V. 25.) AB, the Constitutional Court examined the preliminary question of the relation between the statute adopted by the Parliament for the implementation of certain regulations of the Commission of the European Union and the legislation of the European Union. As concluded by the Constitutional Court, the provisions of the domestic statute examined do not qualify as a translation or publication of the regulations of the Union, as they implement the aims of the regulations by using the tools of Hungarian law. The Constitutional Court pointed out that “the question about the provisions challenged in the petition concerns the constitutionality of the Hungarian legislation applied for the implementation of the EU regulations rather than the validity or the interpretation of these rules.” (ABK May 2004, 388, 391)

Also in the present case, the Constitutional Court performed the constitutional review of the Hungarian statute based on the Directive, without affecting the validity of the Directive or the adequacy of implementation.

The petition is unfounded.

1. The Constitutional Court has already examined on several occasions the constitutionality of certain provisions related to the keeping, sale and use of firearms, but the previous reviews did not directly address the questions of the right to informational self-determination related to holding of, or trading in, firearms. However, the former decisions of the Constitutional Court contain important statements on the conditions of restricting fundamental rights relevant to the present case as well.

As was emphasised by the Constitutional Court at the very beginning of its operation, the use of firearms might seriously endanger public order and, therefore, the restriction or prohibition of the sale and use of firearms on a smaller or wider scale did indeed support the protection of the constitutional order. [Decision 22/1991 (IV. 26.) AB, ABH 1991, 408, 410] The Constitutional Court also underlined that it was the obligation of the State to set administrative limitations in fields where the enforcement of the right to life and health was highly threatened. (Decision 677/B/1995 AB, ABH 2000, 590, 597) According to Decision 201/B/1995 AB, the liberty of keeping a firearm cannot be deducted from any of the fundamental rights. On the contrary: allowing the unrestricted purchase of firearms would entail – as demonstrated by foreign statistical data – an increase in the number of arbitrary deprivations of the human right to life, since firearms can be used not only for self-defence but for unlawful attacks as well. Pursuant to Article 40/A para. (2) of the Constitution, the protection of public safety – including human life and dignity – is the “fundamental duty of the police”. (ABH 1995, 774, 775)

Thus, the practice of the Constitutional Court has always connected the issue of keeping firearms to the question of public safety, and in general to the dangerous situation the possessing of firearms necessarily entails. That is why it is particularly important to guarantee the identification of those who own (possess) firearms (ammunition).

2. The content of the right to informational self-determination was explained by the Constitutional Court in detail in its Decision 15/1991 (IV. 13.) AB (hereinafter: the CCD). Accordingly, “the right to the protection of personal data, as guaranteed by Article 59 of the Constitution, means that everyone has the right to decide about the disclosure and use of his or her personal data. Hence, approval by the person concerned is generally required to register

and use personal data; the entire route of data processing and handling shall be made accessible to everyone, i.e. everyone has the right to know who, when, where and for what purpose uses his data. In exceptional cases, an Act may exceptionally require the compulsory supply of personal data and prescribe the manner in which these data may be used. Such an Act restricts the fundamental right to informational self-determination, and it is only constitutional if it is in accordance with the requirements specified in Article 8 of the Constitution.” (ABH 1991, 40, 42)

The Constitutional Court established in the CCD that “being bound to the purpose to be achieved is a condition of and, at the same time, the most important guarantee for exercising the right to informational self-determination. It means that personal data may only be processed for a clearly defined and lawful purpose. Each phase of data processing must comply with the notified and authentically recorded purpose. The purpose of data processing must be communicated to the data subject in a manner making it possible for him to assess the effect of data processing on his rights, to decide with due basis on the disclosure of data, and to exercise his rights in the case of the use of data for a purpose other than the specified one. For the same reason, the affected person shall be informed on changing the purpose of data processing. Data processing for a new purpose without the consent of the data subject is only lawful if it is expressly provided for in an Act of Parliament with respect to the specific data and data processor. It follows from the principle of adherence to the purpose to be achieved that collecting and storing data without a specific goal, "for the purpose of storage", for an unspecified future use are unconstitutional.

The other basic guarantee is the restriction on the forwarding and publication of data.” (ABH 1991, 40, 42)

3. Recording and collecting personal data qualify as data handling. Personal data may only be handled if the data subject agrees thereto or if it is ordered by an Act of Parliament or a local government decree on authorisation by an Act of Parliament, within the scope defined therein. In the case of mandatory data handling, the aim and the conditions of data handling, the scope of and the access to the data to be handled, the term of data handling, and the person handling the data shall be defined in the Act of the Parliament or the local government decree ordering the handling of data.

Section 12 para. (1) of the AFA provides for the purpose and the conditions of data handling; paragraph (2) contains the scope of data to be handled; Sections 13 to 18 contain the rules guaranteeing accessibility to the data to be handled; Section 13 and Section 18 para. (1) specify the term of data handling; and Section 12 para. (1) provides for the person of the data handler.

According to Section 12 of the AFA, data handling by the firearms dealer pertains to certain personal data of the buyer, the seller (supplier) and the ordering person. Restricting the right to informational self-determination of the affected persons as granted in Article 59 para. (1) of the Constitution is based on the necessity to link the sale and the purchase of certain firearms (ammunition) to identifiable persons. The uncontrolled trade in firearms and ammunition would impair the safeguarding of life and public safety and, at the same time, it would indirectly threaten the efficiency of criminal law enforcement.

The Constitutional Court has also established the proportionality of restricting the fundamental right, with regard to the limited scope of the data affected by data handling, as well as the traceability and the limited time of data forwarding. According to Section 12 para. (1) of the AFA, the firearms dealer may only handle the data of the affected persons to the extent absolutely necessary for achieving the desired objective of the restriction. In order to guarantee the traceability of data forwarding, the data handler must keep a record on data forwarding [Section 14 para. (2), Sections 15 to 18]. Data may not be handled for an unlimited time, as according to Section 13 of the AFA, this may only be done for up to five years from entering the record on selling the firearm.

In view of the above, the Constitutional Court has established that the regulatory content under Section 12 of the AFA does not violate the requirements on restricting the right to informational self-determination. The restriction is necessary with regard to the controllability of the trade in firearms, and – being limited to the scope of the data needed to the foregoing – it is also proportionate.

4. In accordance with the petition, the Constitutional Court has specifically examined Section 12 of the AFA as to whether the safe handling of personal data by the firearms dealers is secured or not.

Since firearms dealers qualify as data handlers, the provisions on data security pertain to them, too. The data handler or the data processor shall provide for the security of data within their own scopes of activity. In addition, the data handler shall take all technical and organisational measures and form the procedural rules necessary for enforcing the regulations on the protection of data and secrets. Data shall be safeguarded in particular against unauthorised access, changing, forwarding, disclosure, deletion or destruction, as well as against unintentional destruction or damaging.

Accordingly, in the scope of data recording under Section 12 of the AFA, the firearms dealer shall grant the conditions of safe data handling. When the firearms dealer is a legal entity, the above obligation binds the representative of the legal entity directly. When data handling is partly or fully performed by a person other than the firearms dealer or the representative thereof, the manager or the employee of the shop shall comply with the rules of safe data handling.

5. In view of the above, the Constitutional Court has established that Section 12 of the AFA does not violate Article 59 para. (1) of the Constitution and, therefore, it has rejected the petition.

Budapest, 1 February 2005.

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President of the Constitutional Court

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