

DECISION 8 OF 1990: 23 APRIL 1990
ON TRADE UNION REPRESENTATION
(Sólyom, V.-P., Ádám, Kilényi, Solt
and Zlinszky, JJ.)

The petitioner sought a ruling on the constitutionality of a 1967 Labour Code provision giving trade unions the right to represent employees without their authorisation.

The petitioner submitted that representation of employees had previously fallen within the exclusive competence of the trade union in the particular sector of the economy. Under the Labour Code, s.15(2), the trade union in employment-related issues had the right to act in the interests, in the name and on behalf of the employees in the absence of any special authorization to do so. Following the process of transformation, the representation of employees' interests had been placed on a more pluralist basis, reflected in the Constitution, Arts. 4 and 70/C(1). As a result, he contended, representation by trade unions was permissible only in respect of their members without special authorization and not non-union member employees unless so authorized.

Held, granting the petition:

(1) The Labour Code, s.15(2) was unconstitutional as it could potentially infringe an employee's right of disposal which formed an integral part of the right to human dignity in the Constitution, Art. 54(1). It was not inconceivable that the trade union might choose to exercise its right of representation in spite of an employee's explicit request to the contrary. Such potential infringement of the employee's right of disposal could not be alleviated by taking into account the employee's interest which could only be assumed by the union. Indeed the risk of infringing the

employee's interests was at its greatest where the personal matters of non-member employees were concerned. Once the disputed provision had been annulled, the Labour Code would then retain consent as the sole basis for representation (page 00, line 00 - page 00, line 00).

(2) The right to human dignity in Constitution, Art. 54(1) was a natural right of which no one could be deprived. Such right included, *inter alia*, the right to free personal development, to self-determination, to privacy or the general freedom of action. It was a "mother right", a basic fundamental right which might be relied upon to protect an individual's autonomy when no particular, specified fundamental right was applicable (page 00, line 00 - page 00, line 00).

IN THE NAME OF THE REPUBLIC OF HUNGARY!

Concerning the petition of Mr. Zoltán Szaller (resident at 6 F?st M. Street, Budapest) petition to abolish the right of trade unions to represent employees without authorization, to do so the Constitutional Court of the Republic of Hungary has made the following

DECISION.

The Constitutional Court found unconstitutional sentence 2 in art. 15(2) of Act II of 1967 on the Labour Code, which states that in employment-related issues the trade union "has the right to act in the interest of, in the name of and on behalf of the employees in the absence of a special authorization to do so" - and therefore hereby invalidates it.

The invalidated provision becomes ineffective on the day when this Decision is published in the *Hungarian Official Gazette*.

REASONING

I

In the petitioner's opinion the right of the trade unions to represent employees without authorization is a product of a socio-economic environment where the representation of employees fell within the exclusive competence of the trade union of the related sector. This situation, however, has radically changed as part of the political transformation process, and the representation of the employees' interests has now been placed upon a pluralistic basis. These changes are also reflected in two of the provisions of the Constitution as amended by Act XXXI of 1989. According to Art. 4 of the new Constitution, "Trade unions and other organizations for the representation of interests shall protect and represent the interests of employees, members of co-operatives and entrepreneurs." Article 70/C (1) says that: "Everybody shall have the right to form an organization with others with the aim to protect their economic and social interests or to join such an organization."

According to the petitioner, it follows from the new regulations that trade unions are empowered to represent the interests only of their members in the absence of specific authorization, and they may not represent employees other than their members unless authorized to do so.

II

The Constitutional Court invited the Presidents of the State Wages and Labour Office, the National Federation of Hungarian Trade Unions and the Democratic League of Independent Trade Unions, respectively, to express their opinion on the subject.

1. The President of the State Wages and Labour Office did not consider the disputed provision to be unconstitutional. At the same time he admitted that the provision in question is the product of the former system of management, consequently it is difficult to fit it into the evolving system of the reconciliation of interests. Based on this he concluded only that the disputed provision is discreditable, and that it should be subjected to revision in the new Labour Code at the time when re-regulating trade union rights.

2. The President of the National Federation of Hungarian Trade Unions pointed out that only the Federation Council, which would meet in April, was empowered to render an opinion on the matter on behalf of the organization. Considering that judgment of the question on its merits was not prevented by the absence of this opinion, the Constitutional Court decided not to wait for it.

3. According to the opinion of the Democratic League of Independent Trade Unions, the challenged provision of the Labour Code is unconstitutional because it may infringe upon employees' rights of disposition inasmuch as it allows trade unions to act in the name and on behalf of employees even in spite of an explicit request to the contrary.

When formulating its opinion, the Constitutional Court gave consideration to the following:

Article 15(2) of the Labour Code governs two kinds of representation rights of the trade unions. The first sentence empowers trade unions to exercise their representation right before the courts, other authorities and bodies in questions related to the employees' living and working conditions. Though it is not provided explicitly in the text of the Act, the context of the second sentence makes it clear that this representation is based on consent. There is reference to this in art. 67(1)(f) of the Civil Code, which says that the trade union may act as a representative in the legal proceedings of its own members, and in legal proceedings specially defined in a legal rule. Consent is also required for representation within the framework of trade union legal assistance. On the other hand, in employment-related issues, the disputed provision empowers trade unions to act in the interests of, in the name of and on behalf of employees in the absence of a special authorization. Therefore, this broader representation right of trade unions actually means statutory representation, not limited to the matters of the particular trade union's members but including the matters of all employees.

The Constitutional Court did not find the disputed provision unconstitutional either under Art. 4 or Art. 70/C(1) of the Constitution: Art. 4 extends the trade unions' right to engage in the protection of interest and representation, which appears also in the former Constitution, to other organizations formed for the protection of interests. Neither this rule nor the provision of Art. 70/C(1) pertaining to the freedom of forming trade unions and other organizations for the representation of interests prescribe what interest protection and representation activities include.

On the other hand, the trade union's right under the disputed provision of the Labour Code to undertake the representation without authorization may infringe upon the employees'

right of disposal, which is an integral part of the right to human dignity declared in Art. 54(1) of the Constitution as a natural right of which no one may be deprived.

On the basis of the disputed provision, it may not be ruled out that the trade union may choose to exercise its right of representation in spite of an employee's explicit request to the contrary. This potential infringement upon the right of disposal may not be eliminated even by the fact that a representation without authorization must take into account the employee's interest, since the interests of the individual employees are only presumed by the trade union.

The course of the application of the disputed provision, the risk of infringing upon the employee's interest is at its greatest when the non-trade-unionist employee's personal matters are concerned. That was the primary reason why the provision in question had to be annulled. As a result of this annulment, however, the Act has retained only consent as a way of trade union representation. If the right of trade unions to represent their members either without authorization or in capacities which employees may not effectively estop seems justifiable, such a gap should be overcome by creating new legal regulations.

The Constitutional Court renders ineffective the disputed provision on the day when the decision on the invalidation is published in the *Hungarian Official Gazette*, as the Constitutional Court did not find a justified reason for departing from the schedule set forth in ss. 42(1) and 43(1) and (2) of the Act on the Constitutional Court.

The Decision of the Constitutional Court is based on the interpretation of the right to human dignity. This right at the beginning of the section about fundamental rights and obligations in Art. 54(1) of the Constitution is declared as a natural right. The Constitutional Court regards the right to human dignity as another phrase for a "general right to personhood." In modern constitutions and in the practice of constitutional courts, the general right to personhood

encompasses various aspects, such as the right to free personal development, the right to free self-determination, general freedom of action or the right to privacy. The general right to personhood is a "mother right" - *i.e.*, a foundational fundamental right which may be relied upon at any time by both the Constitutional Court and other courts for the protection of an individual's autonomy when none of the concrete, named fundamental rights are applicable for a particular set of facts.