Decision 4/2006 (II. 15.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition seeking posterior examination of the unconstitutionality and annulment of a statute, the Constitutional Court has – with concurrent reasoning by *Dr. Mihály Bihari, Dr. András Bragyova, and Dr. István Kukorelli*, Judges of the Constitutional Court, and dissenting opinions by *Dr. István Bagi, Dr. Árpád Erdei, Dr. Attila Harmathy, and Dr. András Holló*, Judges of the Constitutional Court – adopted the following

decision:

1. The Constitutional Court holds that the text "and on the amendment of certain Acts of Parliament related to the implementation thereof" in the preamble of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 is unconstitutional and, therefore, annuls it as of the date of publication of this Decision.
The Preamble shall remain in force with the following text: "The Parliament hereby adopts the following Act on the Budget of the Republic of Hungary for the Year 2005 on the basis of Section 28 of Act XXXVIII of 1992 on Public Finance (hereinafter: the APF):".

2. The Constitutional Court establishes the unconstitutionality of, and annuls as of the day of publication of this Decision, Sections 82, 83, 84, 85, Section 86 paras (1), (2), and (4) to (11), Section 87 paras (2) to (5), Sections 88, 89, Section 90 paras (2) and (4), Section 91 paras (20), (25), and (26), Sections 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, Section 117 para. (3) item *a*) and para. (6), as well as Section 122 paras (1) to (9) and (11) to (22) of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005.

3. The Constitutional Court holds that Section 120 paras (4) to (6) of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 are unconstitutional and, therefore, annuls it as of 31 December 2006.

4. The Constitutional Court terminates the procedure aimed at establishing the unconstitutionality of Section 86 para. (3), Section 87 para. (1), Section 90 paras (1) and (3),

Section 91 paras (1) to (19), (21) to (24), and (27) to (33), Section 110, Section 118 para. (6), Section 119 para. (1) items *m*) to *o*), Section 120 paras (3) and (10) to (17), Section 121 item *a*), Section 122 paras (10) and (23), Section 125 para. (1), Section 135 para. (1), Section 136, and Section 137 of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

It is alleged in the petition submitted to the Constitutional Court that several provisions of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 (hereinafter: the AB) are unconstitutional. The petitioner claims that in the framework of the AB the Government amended several other Acts of Parliament, with the amendments also scheduled to take effect on 1 January. The petitioner considers this practice to fundamentally violate the requirements for the legislation in a State under the rule of law, however, the petitioner holds that so far the Parliament has only practised this way of legislation on an exceptional basis, and in general, the budget Acts only contained amendments to Acts having a direct or – at least – an indirect budgetary connection or implication. However, as alleged by the petitioner, the AB now extends far over the "traditions" in terms of both extent and content, although the past practices have also been unworthy of a State under the rule of law.

As stated by the petitioner, only a half of the total pages of the normative text of the Act deals with the budget of the Republic of Hungary for the year 2005, while the remaining part of the statute contains smaller or larger amendments to 44 other Acts of Parliament.

In the petitioner's opinion, the mere fact that the annual budget Act contains not only provisions on Hungary's budget for the next year – i.e. the grand totals of the central budget expenditures and revenues, the deficit of the budget, the planned revenues and expenditures of the specific budget chapters, and the provisions closely related to and directly affecting the central budget – as the legislature amended 44 Acts of Parliament in force in the Hungarian legal system, hiding those amendments under the umbrella of the title "on the Budget of the

Republic of Hungary for the Year 2005", is in violation of the relevant provision, i.e. Article 2 para. (1) of the Constitution, as interpreted by the Constitutional Court several times.

As admitted by the petitioner, it is mentioned in the preamble of the challenged Act that the Parliament adopts the Act not only to establish the budget for the year 2005, but also to amend other Acts related to the implementation of the budget. However, in the petitioner's opinion, the title of the Act does not make this fact clear for those applying the law. According to the petitioner, the correct title of the Act should have been the following: "Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005, and on the Amendment of Certain Related Acts of Parliament". As the title is, indeed, other than the above, those applying the law may have a good ground to presume that the Act of Parliament in question only deals with the State Budget for the next year.

The petitioner is even more concerned by the fact that, in the framework of the amendment of the other 44 Acts covering various subjects, the Parliament amended several Acts that do not fall into the category referred to in the preamble ("on the budget, and related to the implementation thereof"). The petitioner holds that the statutory amendments (as listed by the petitioner) have no direct or indirect connection or any correlation at all with the provisions establishing the annual budget. These statutory provisions deal with nothing else but professional questions in the fields of various specialised policies, and "hiding" them in the AB by having them adopted together with the AB causes legal uncertainty for those applying the law, undoubtedly posing a threat on security in law, which is one of the main pillars of the rule of law.

Having regard to the above, furthermore, to Section 1 item *b*) and Section 21 para. (2) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), the petitioner proposes that the Constitutional Court declare – in respect of the 44 other Acts of Parliament amended by Sections 82 to 138 of the AB – a general principle requiring that, for the sake of security in law, the legislature should avoid the adoption of so-called "salad-bowl Acts" and, in particular, ones that do not contain a reference in their titles to the fact that the Act in question contains amendments to several other Acts related to the respective regulatory field. The petitioner holds that the above way of the legislation poses a threat on legal certainty.

The petitioner specifically proposes the constitutional review of Section 86 paras (1) to (7), Section 87 para. (1), Section 91 paras (1) to (18) and paras (29) to (32), Sections 97, 99, Section 105 paras (1) to (4), Section 107 paras (1) and (2), Section 108, and Section 111 of the AB, furthermore, in connection with the above, among the Miscellaneous and Closing Provisions, of Section 117 para. (3) item *a*) and para. (6) and Section 120 paras (3) to (6), paras (10) to (13), and para. (15) of the AB, and also the establishment of the unconstitutionality and the annulment of the above provisions in accordance with Sections 37 to 43 of the ACC. In the petitioner's opinion, the above statutory amendments are not related to the provisions of the AB establishing or affecting the budget as they actually regulate independent professional issues in the fields of specialised sectoral policies.

According to the petitioner, Sections 1 to 81 of the AB follow a well-arranged and logical structure, but from Section 82 to Section 138, the AB contains amendments to the following 44 other Acts in force, listed in the order of their appearance in the Act:

Under the heading of

PART FOUR

PROVISIONS AND AMENDMENTS OF ACTS OF PARLIAMENT SERVING THE PURPOSE OF PROVIDING FOUNDATION FOR THE APPROPRIATIONS OF THE BUDGET

- Act XCIII of 1990 on Duties,
- Act IV of 1991 on Promoting Employment and on Unemployment Benefits,
- Act XXXIV of 1991 on Gambling Operations,
- Act XXII of 1992 on the Labour Code,
- Act XXIII of 1992 on the Status of Public Servants,
- Act XXXIII of 1992 on the Status of Public Employees,
- Act XXXVIII of 1992 on Public Finances,
- Act LXXXIX of 1992 on the System of Designated and Targeted Support for Local Governments,
- Act XXIII of 1993 on the National Cultural Basic Programme,

- Act LXXIX of 1993 on Public Education,
- Act LXXX of 1994 on the Service Relations of Public Prosecutors and on Data Handling by the Public Prosecutor's Office,
- Act XXXIX of 1995 on the Sales of State-Owned Entrepreneurial Assets,
- Act XLIII of 1996 on the Service Relations of Professional Members of the Armed Forces,
- Act LXXXV of 1996 on the Administrative Service Fee of Providing Authenticated Copy of the Titles Pages in the Land Registry,
- Act CXVII of 1995 on Personal Income Tax,
- Act CXII of 1996 on Banks and Financial Enterprises,
- Act LXXXI of 1996 on Corporate Tax and Tax on Dividends,
- Act LXVII of 1997 on the Status and the Remuneration of Judges,
- Act LXVIII of 1997 on the Service Relations of Employees of the Judiciary,
- Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment,
- Act LXXXI of 1997 on Pensions under Social Security,
- Act LXXXIII of 1997 on Mandatory Health Insurance,
- Act CLIV of 1997 on Healthcare,
- Act LXXXIV of 1998 on Supporting Families,
- Act LXXIV of 1999 on the Hungarian Financial Supervisory Authority,
- Act II of 2000 on the Independent Medical Practice,
- Act XCV of 2001 on the Status of Professional and Hired Soldiers of the Hungarian Army,
- Act C of 2001 on Acknowledging Foreign Certificates and Diplomas,
- Act XV of 2003 on Preventing and Hindering Money Laundering,
- Act L of 2003 on the National Civil Basic Programme,
- Act LXXIII of 2003 on Certain Questions of the Procedure Related to Agricultural and Rural Development Supports and Other Measures, and on the Related Statutory Amendments,
- Act LXXXIX of 2003 on Environmental Charges,
- Act XC of 2003 on the Research and Technology Innovation Fund,
- Act CX of 2003 on the Registration Tax.

Among the MISCELLANEOUS AND CLOSING PROVISIONS, the following Acts of Parliament have been amended (in addition to the ones not yet listed):
- Act LXXXIV of 1992 on the Social Insurance Funds and Their Budget for the Year 1993,
- Act II of 1993 on Land Reallocation and Land Distribution Committees,
- Act XCVI of 1993 on Voluntary Mutual Insurance Funds,

- Act LXXXII of 1997 on Private Pensions and Private Pension Funds,
- Act CXXIV of 1997 on the Financial Conditions of the Religious and Public Interest Activities of Churches,
- Act LXII of 2002 on the Budget of the Republic of Hungary for the Year 2003,
- Act LV of 2003 on State Support for the Construction of the First Section of Budapest Underground Line 4 – between Budapest Kelenföld and Bosnyák Square,
- Act LXXXVII of 2003 on Supplementing Consumer Prices,
- Act CI of 2004 on the Amendment of the Acts on Taxes, Contributions and Other Budgetary Revenues.

(The Constitutional Court notes that 42 Acts of Parliament are listed while 44 of them are mentioned by the petitioner.)

As stressed by the petitioner, "The smaller or larger amendments of the above listed 44 Acts of Parliament can hardly be surveyed, as their listing is not based on any logical ground related to the contents of the regulation found therein – with the exception of their being listed more or less in the sequence of the years in which they were adopted."

According to the petitioner, most of the 44 amended Acts of Parliament are – in accordance with the preamble of the Act – actually linked in one way or another, following a broad logical basis, to the annual budget and the provisions pertaining thereto, since those provisions do, or may, have some direct or indirect budgetary implications or consequences. Despite the above, when so many Acts of Parliament are amended, and in particular when the title of the Act of Parliament does not refer to the fact that the statute – i.e. in the present case, the AB – provides for the amendment of other Acts as well, the modifications of the provisions of the relevant statutes in force can hardly be followed by those applying the law, thus endangering legal certainty as one of the preconditions of the rule of law granted in Article 2 para. (1) of the Constitution.

The petitioner holds that all the above serve as a due ground and legal basis for the Constitutional Court to make a serious warning towards the Parliament to abstain from the above way of legislation, i.e. from the adoption of so-called "salad-bowl Acts".

However, the petitioner goes beyond the above by stating that "the way of legislation where an Act contains amendments to other Acts not even linked – by a relatively freely interpreted principle – to the questions to be regulated or to other related issues, the principle of legal

certainty is considered to be violated beyond doubt, thus impairing the constitutional requirement of the democratic State under the rule of law as explained in detail several times by the Constitutional Court, and therefore the provisions adopted in the above way of legislation are unconstitutional due to the manner of codification applied by the Parliament".

In consideration of all the above, the petitioner holds that the provisions of the AB listed and detailed in the petition violate Article 2 para. (1) of the Constitution due to the way of legislation applied by the Parliament, and therefore the Constitutional Court is requested to establish this fact and to annul the unconstitutional provisions.

II

1. According to the relevant provisions of the Constitution:

"Article 2 (1) The Republic of Hungary is an independent democratic state under the rule of law."
"Article 7 (2) Legislative procedures shall be regulated by Act of Parliament, for the adoption of which a majority of two-thirds of the votes of the Members of Parliament present is required."
"Article 19 (3) Within this sphere of authority, the Parliament shall (...)
d) assess the balance of public finances, approve the State Budget and its implementation;"
"Article 8 (2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined in Acts of the Parliament; such Acts, however, may not restrict the essential contents of fundamental rights."
"Article 35 (1) The Government shall (...)
e) ensure the elaboration of social and economic policies and the implementation thereof."
"Article 35 (2) Within its sphere of authority, the Government shall issue decrees and pass resolutions, which shall be signed by the Prime Minister. Government decrees and resolutions may not conflict with Acts of Parliament. Government decrees shall be promulgated in the Official Gazette."

2. Under the ACC:
"Section 1 The competence of the Constitutional Court includes: (...)

b) the posterior constitutional examination of statutes and other legal tools of State administration;"

"Section 21 para. (2) Anyone may initiate the procedure under Section 1 item *b)*."

III

The petition is well-founded for the following reasons.

1. The Constitutional Court has started the assessment of the petition by examining the character and the nature of the Act on the State Budget.

The specific treatment of the AB is justified by its specific legal character and special constitutional role, which is based on the paramount economic and political importance of the AB. As far as its contents are concerned, the budget is the annual plan of the State's financial management. As the budget of modern States redistributes approximately a half of the society's economic performance, i.e. the gross domestic product (GDP), its economic, social and political importance grants it a special place among Acts of Parliament.

The AB shows the revenues and expenditures of the State, and in particular the main items where the revenues of the State are planned to be spent. The budget Act addresses the State organs empowered by the Act to use the budgetary appropriations allocated to them with respect to other (non-budgetary) statutes for the purpose of meeting their obligations under the law or for other lawful purposes. Being bound to a specific purpose means that the appropriations are bound to the budget Act. As far as its purpose, character and nature are concerned, the AB is different from other Acts. In legal science, this difference is often described by explaining the material and formal concepts of Acts, pointing out that the AB may only be considered an Act based on the way of its adoption, but its contents are more like a series of individual financial decisions. Due to this special character, the AB may not amend other Acts, and similarly no subsequent Act (of a non-budgetary character) may amend the AB.

Under Article 19 para. (3) item *d)* of the Constitution, the AB is to be adopted in the form of a specific independent legal act (Act of Parliament). The reference (with a particular emphasis) to this specific scope of the Act makes it mandatory (i.e. a condition of validity) for the

Parliament to pass a decision on the budget independently from other subjects. In order to exercise, by passing an individual decision, its competence specifically mentioned in the Constitution, the Parliament is required to vote on the budget individually, following a separate debate. This is necessary because in the case of a joint (package) decision, the debate on some important and fundamental questions may be neglected or even missed, or it may be connected to the adoption of decisions not related to them. Of course, in constitutional democracies, such connection goes hand in hand with political compromises, and in most cases no objections can be raised against such practice. However, an objection may be rightfully made if the Constitution requires a separate decision to be adopted in the subject concerned. This applies to the competences related to the budget – including the AB – as listed in Article 19 para. (3) item *d)* of the Constitution.

2. The order of procedure pertaining to the adoption of the AB reflects the specific treatment, the special character and the legal nature of the AB.

In accordance with the above, Article 19 para. (3) item *d)* vests a special legislative power on the Parliament, covering the determination of budget elements as well as the assessment of the balance and the implementation of the State Budget. These provisions in Article 19 of the Constitution underline the constitutional significance of adopting the AB as the Hungarian Constitution has no specific chapter on economy and finances. The Act on Public Finance (the APF) provides for more details (with a character of implementing the constitutional provisions), containing a specific chapter (Chapter III) entitled "COMPETENCES AND RULES OF PROCEDURE RELATED TO THE STATE BUDGET" which lays down the duties of the Parliament, the Government, the Minister of Finance as well as of the head of the organ supervising the relevant budget heading, and sets out in detail the order of procedure to be followed when adopting budget Acts. Consequently, the APF specifies in detail the order of procedure for adopting the AB, as an Act enjoying special treatment under the Constitution as well, thus laying special emphasis on the fact that it is a legislative subject of particular importance – to be treated as such. It is, therefore, clear that the budget Acts (i.e. the Act on the central budget, the Act on the supplementary budget, and the Act on final accounts) are to be adopted – as against the general rules of legislation – under the special provisions contained in the APF, i.e. the rules of competence and procedure laid down in Chapter III.

At the same time, the AB – containing the socio-economic policy of the country – empowers the Government to implement the budget. Under the Constitution [Article 35 para. (1) items *a)* and *b)*], on the one hand, and the AB, on the other hand, the Government is responsible for the implementation of the budget. The Act on this special subject – named in Article 19 of the Constitution – may only deal with the budget and the empowerment (appropriation) of the Government determining its duties in implementing the annual budget. The Government shall perform the duties specified in Article 35 of the Constitution not only in the preparatory phase of the AB (preparing directives, consultations, preparing and submitting the Bill), but also after the adoption of the AB, i.e. in the phase of implementation.

In the above context, the Constitutional Court underlines the following: the legislative duty of the Government (and of other legislative organs authorised to issue detailed regulations) contained in the empowerments in the AB shall be complied with separately, in accordance with the order of legislation as regulated in Act XI of 1987 on Legislation. Consequently, the provisions of an implementing character shall be separated from the system of the AB. The Constitutional Court is determined to enforce this requirement in the future.

The detailed order of procedure to be followed by the Parliament and the Government on the basis of the Constitution and the APF has been determined in Parliamentary Resolution 46/1994 (IX. 30.) OGY – amended several times – on the Standing Orders of the Parliament of the Republic of Hungary (hereinafter: the Standing Orders), in which a separate chapter (Chapter 4) deals with the "Procedure related to Bills on the budget, the supplementary budget and the final accounts", under the heading "SPECIAL PROCEDURES".

The special treatment of the Bills related to the budget – as found in the APF and the Standing Orders – reflects the special attention and focus on this legislative subject. The special manner of adoption – different than in the case of other legislative subjects – and the finely elaborated rules of procedure make it clear that the Parliament shall decide upon such issues separately. This is what follows from the order of procedure regulated in the APF and in the Standing Orders based on the Constitution. This is the reasonable way of legislation on a constitutional basis, being in accordance with the constitutional requirement for a consistent enforcement of the procedural guarantees and for full compliance with the formalised procedures. Therefore, in discussing the budget, the Parliament may not deal with any legislative subject other than the budget.

All the above features guarantee a special position for the AB among the Acts of Parliament, which implies that in examining the relevant statutory amendments, the Constitutional Court applies a different (i.e. more stringent) standard. In the present case, the Constitutional Court takes special account of the requirement to perform an individual assessment by specific aspects. "The Constitutional Court must assess in each case whether the violation of a procedural rule of legislation determined in specific Acts of Parliament are serious enough to reach the level of unconstitutionality." [Decision 30/2000 (X. 11.) AB, ABH 2000, 202, 207]

In the present case, the Constitutional Court has established that the provisions of the AB challenged in the petitions affect dozens of situations in life the subjects of which are not related to the AB as an Act having a specific subject and contents under the Constitution.

As it has been established that no other Act of Parliament – regardless of its subject – may be linked to the AB since Article 19 of the Constitution governs a precisely denominated subject, the Constitutional Court has declared the unconstitutionality of, and annulled, the relevant provisions, as in force, of the amending Acts connected to the AB having regard to the fact that those provisions shall be separated from regulating this special subject. There is yet another constitutional reason for annulling the amending Acts, as in force, linked to the AB. The order of preparing and implementing Acts of Parliament – to be actually adopted as a result of a democratic legislative process – as determined in Article 35 of the Constitution is, namely, also applicable to the Acts related to (and presently incorporated in) the AB. If those Acts of Parliament cannot be discussed (debated) separately when adopted, the conditions of the above procedure – directly deductible from the Constitution – are not considered to be granted. As in the case of the Acts of Parliament (related to the AB) examined here, there was no possibility to publicly discuss their amendments in advance, the Acts concerned were not adopted in the prescribed constitutional order.

Therefore, it is particularly stressed by the Constitutional Court that the large number of amending Acts related to – and incorporated in – the AB demonstrate a practice (followed for the past 15 years) washing away the differences between the preparation of the AB, as a special Act of Parliament falling under Article 19 para. (3) item *d)* of the Constitution, and the order of preparing other Acts incorporated therein and requiring the implementation of a democratic legislative process. The mixing of the two – clearly distinct – legislative procedures explained above poses a threat on the constitutional order of legislation even in the

case of amending or supplementing Acts of Parliament related to the subject and the contents of the AB.

Such legislation may cause difficulties in discussing the planned amendments of Acts, and it may make the legislative process a formal procedure. When assessing the circumstances of the concrete case with regard to the above, the Constitutional Court shall examine whether the constitutional order of parliamentary debate and legislation were complied with during the legislative process. In the case of the amending Acts related to the AB, the above conditions were not met as the main subject of the relevant parliamentary debates was discussing the budget, and therefore the constitutional provisions on a democratic legislative process were violated.

IV

1. With reference to the requirement of legal certainty deducted from the rule of law granted in Article 2 para. (1) of the Constitution, the petitioner requests the Constitutional Court to declare – first of all in respect of the "other" Acts of Parliament (numbering 44 as counted by the petitioner) amended by Sections 82 to 138 of the AB – a general principle requiring that, for the sake of security in law, the legislature should avoid the adoption of so-called "salad-bowl Acts" and, in particular, ones that do not contain a reference in their titles to the fact that the Act in question contains amendments to several other Acts related to the respective regulatory field. As stressed by the petitioner, the above way of legislation "poses a threat on legal certainty".

According to the petitioner, the budget Acts have so far contained amendments to other Acts of Parliament on an exceptional basis, and even this has only happened in the case of Acts directly – or at least indirectly – linked to the budget Act.
As established by the Constitutional Court, for the past 15 years (and especially for the past 7 to 8 years) it has actually become a general practice to adopt budget Acts containing an increasing number of amendments to Acts of Parliament only indirectly linked to the budget: Act CIV of 1990 contained two, Act XCI of 1991 contained eight, Act LXXX of 1992 contained five, Act CXI of 1993 contained 13, Act LX of 1994 (supplementary budget) contained 13, Act CIV of 1994 contained 16, Act LXXVII of 1995 (supplementary budget) contained three, Act CXXI of 1995 contained 27, Act CXXIV of 1996 contained 23, Act

CXLVI of 1997 contained 29, Act XC of 1998 contained 50, Act CXXV of 1999 contained 25, Act CXXXIII of 2000 (the so-called 2 years' budget) contained 30, Act LXII of 2002 contained 35, Act CXVI of 2003 contained 36, and Act CXXXV of 2004 contained amendments to 42 other Acts.

As pointed out by the Constitutional Court repeatedly, no constitutional concern may be raised against the mere fact of a single Act of Parliament providing for the amendment of several other Acts of Parliament closely linked to the subject matter of the former. In a similar fashion, it is not unconstitutional in itself – without regard to other aspects – when an Act of Parliament provides for the amendment of several other Acts of Parliament of different – not related – subjects. (This is the only feasible way to adopt Acts of Parliament implementing deregulation.)

However, the Constitutional Court emphasises the following: the way of legislation applied in the AB may not be examined by the aspects used when examining so-called "salad-bowl Acts". The subject of the AB, specifically mentioned in the Constitution and regulated in detail in the APF, requires extra protection and guarantees. This principle also applies to the adoption and amendment of Acts of Parliament the subjects and the contents of which are directly or indirectly related to the AB challenged in the petitions as well as to Acts of Parliament having completely different subject matters.

The petitioner makes a difference between the Acts of Parliament related to the AB in respect of their subjects and contents and the ones not related to it at all. According to the petitioner, the subjects of the following amendments are related to the AB:

- amendment to Act XCIII of 1990 on Duties (Section 82),
- amendment to Act IV of 1991 on Promoting Employment and on Unemployment Benefits (Section 83),
- amendment to Act XXXIV of 1991 on Gambling Operations (Section 84),
- amendment to Act XXII of 1992 on the Labour Code (Section 85),
- amendment to Act XXXVIII of 1992 on Public Finance (Section 88),
- amendment to Act LXXXIX of 1992 on the System of Designated and Targeted Support for Local Governments (Section 89),
- amendment to Act XXIII of 1993 on the National Cultural Basic Programme (Section 90),

- amendment to Act XXXIX of 1995 on the Sales of State-Owned Entrepreneurial Assets (Section 93),
- amendment to Act XLIII of 1996 on the Service Relations of Professional Members of the Armed Forces (Section 94),
- amendment to Act LXXXV of 1996 on the Amendment of Act XCIII of 1990 on Duties and on the Administrative Service Fee of Providing Authenticated Copy of the Titles Pages in the Land Registry (Section 95),
- amendment to Act CXVII of 1995 on Personal Income Tax (Section 96),
- amendment to Act LXXXI of 1996 on Corporate Tax and Tax on Dividends (Section 98),
- amendment to Act LXVII of 1997 on the Status and the Remuneration of Judges (Section 100),
- amendment to Act LXVIII of 1997 on the Service Relations of Employees of the Judiciary (Section 101),
- amendment to Act LXXXI of 1997 on Pensions under Social Security (Section 103),
- amendment to Act LXXXIII of 1997 on Mandatory Health Insurance (Section 104),
- amendment to Act LXXXIV of 1998 on Supporting Families (Section 106),
- amendment to Act LXXIV of 1999 on the Hungarian Financial Supervisory Authority (Section 107),
- amendment to Act XCV of 2001 on the Status of Professional and Hired Soldiers of the Hungarian Army (Section 109),
- amendment to Act C of 2001 on Acknowledging Foreign Certificates and Diplomas (Section 110),
- amendment to Act L of 2003 on the National Civil Basic Programme (Section 112),
- amendment to Act LXXIII of 2003 on Certain Questions of the Procedure Related to Agricultural and Rural Development Supports and Other Measures, and on the Related Statutory Amendments (Section 113),
- amendment to Act LXXXIX of 2003 on Environmental Charges (Section 114),
- amendment to Act XC of 2003 on the Research and Technology Innovation Fund (Section 115),
- amendment to Act CX of 2003 on the Registration Tax (Section 116).

The petitioner does not request the annulment of the above statutory provisions. However, the petitioner proposes in respect of the above provisions that the Constitutional Court “declare a general principle requiring that, for the sake of security in law, the legislature should avoid the

adoption of so-called “salad-bowl Acts” and, in particular, ones that do not contain a reference in their titles to the fact that the Act in question contains amendments to several other Acts related to the respective regulatory field.” The petitioner holds that the above way of the legislation poses a threat on legal certainty.

It is emphasised by the Constitutional Court that the uncertainty about familiarisation with the law in force may, in the given case, make it difficult or even impossible for the subjects of law to enforce their rights and to perform their obligations, and this fact may violate the constitutional requirement of legal certainty. Therefore, the Constitutional Court holds it an important constitutional requirement that legislation – including the amendment of statutes and their entry into force – be performed subject to reasonable rules and that amendments be transparent and easily traceable by both the subjects of law and those applying the law. [Decision 8/2003 (III. 14.) AB, ABH 2003, 74, 86]

It is to be noted that a budget Act, being a “salad-bowl Act”, has already been reviewed by the Constitutional Court based on the constitutional standard elaborated for “salad-bowl Acts”, i.e. Article 2 para. (1) of the Constitution. [Decision 108/B/2000 AB, ABH 2004, 1414; Decision 38/2000 (X. 31.) AB, ABH 2000, 303, 312-313; Decision 8/2004 (III. 25.) AB, ABH 2004, 159]

In Decision 38/2000 (X. 31.) AB, the Constitutional Court examined connecting the budget Act with various amendments to Acts of Parliament as a “way of compiling the statute”. In the present case, the review performed by the Constitutional Court is directly focused – in addition to the above aspect of examination – on whether it is legally possible to connect the AB – regulating a subject matter “denominated” and specified in Article 19 para. (3) item *d)* of the Constitution – with any amendment to other Acts of Parliament regardless of whether or not their subjects are related to the AB.

Based on the above arguments, the Constitutional Court’s answer to the above question is a definite “no”. Having regard to all the above, the Constitutional Court has established the unconstitutionality of, and annulled, all provisions in the AB amending various Acts of Parliament, with reference to partial invalidity under public law due to violation of the rules of legislative procedure. Accordingly, this decision of the Constitutional Court is based on the fact that, when adopting the AB, the Parliament violated the procedural order prescribed in

respect of the AB – as an Act having the subject matter specified in Section 19 of the Constitution – together with another violation of the Constitution by incorporating the amending provisions into the AB since in the case of these provisions, the Parliament failed to guarantee full enforcement of the provisions to be taken into account in the process of democratic legislation. Partial invalidity under public law is caused by the lack of compliance with the rules of democratic legislation in respect of the amendments extending beyond the scope of the budget, although the provisions of the AB pertaining specifically to the budget are constitutional (as they were adopted in accordance with the provisions on the way of their adoption). All this has created proper legal grounds for the Constitutional Court to perform a formal review only.

2. As emphasised by the Constitutional Court in Decision AB 62/2003 (XII.15.), "The violation of procedural rules of constitutional importance results in passing formally invalid (invalidity under public law) and illegitimate decisions. Decisions adopted by violating procedural rules based on the Constitution possess neither constitutional legality nor democratic legitimacy." (ABH 2003, 637, 647) The Constitutional Court has established that the budgetary provisions (Sections 1 to 81), the provision on putting the Act into force [Section 117 para. (1)], furthermore, Sections 212 and 124 to 138 containing provisions of empowerment in the Act on the Budget for the Year 2005 – passed by the Parliament in accordance with the regulations on adopting the AB, exercising the competence granted in Article 19 para. (3) item (d) of the Constitution – are constitutional. The unconstitutionality of the remaining provisions of the AB is caused by the fact that they were adopted by the Parliament as part of the AB. According to the Constitutional Court, this is an example of formal unconstitutionality – as against substantial invalidity – resulting in the present case in the establishment of partial invalidity under public law. [Decision 63/2003 (XII. 15.) AB, ABH 2003, 676, 683-690]

Having regard to the above, the Constitutional Court has established the unconstitutionality of, and annulled, all those provisions of the AB – in addition to the amendments challenged by the petitioner – that go beyond the scope of the budget (as a financial statement adopted by way of an Act of Parliament).

It is to be emphasised that – although the petition covers some specific Sections of the AB – the Constitutional Court has extended the formal review of constitutionality to the whole of

the AB and to all Sections contained in Chapter IV thereof, with the exception – due to their specific character – of Section 117 para. (2) and para. (3) item *b*), paras (4), (5), and (7), Section 118 paras (1) to (5), (7), and (8), Section 119 para. (1) items *a*) to *l*) and paras (2) to (4), Section 120 paras (1), (2), (7) to (9), (18), and (19), and Section 123 of the AB. In accordance with the Constitutional Court's practice elaborated in the early phase of its operation, the statutory provisions not directly affected by the petition are also examined – by virtue of their close correlation – when this is necessary for assessing the constitutionality of the provision addressed in the petition. [See for example Decision 3/1992 (I. 23.) AB, ABH 1992, 329, 330; Decision 26/1995 (V. 15.) AB, ABH 1995, 123, 124; Decision 2/1998 (II. 4.) AB, ABH 1998, 41, 46; Decision 16/1998 (V. 8.) AB, ABH 1998, 140, 153; Decision 5/1999 (III. 31.) AB, ABH 1999, 75, 77]

It follows from the nature of an exclusively formal review that – in the lack of a relevant petition – the Constitutional Court has not examined the constitutionality of the contents of the amended statutes beyond the scope of the provisions found in Part IV of the AB ordering the amendments, and therefore the annulment does not affect those statutes.

It is to be noted that some of the provisions in the AB examined by the Constitutional Court have already been repealed or amended. For example: Section 118 para. (6) was amended by Section 55 para. (4) item *f)* of Act XXVI of 2005 on the Amendment of Acts on Taxes and Contributions, Section 86 para. (3), Section 87 para. (1), and Section 120 para. (3) were repealed by Section 3 para. (2) of Act XL of 2005 on the Amendment of Act XXXIII of 1992 on the Status of Public Employees and of Act XXIII of 1992 on the Status of Public Servants, Section 122 para. (10) of the AB was repealed by Section 10 para. (1) of Act LXVII of 2005 on State Support for the Construction of Budapest Underground Line 4 – between Budapest Kelenföld Station and Bosnyák Square, Section 110 was repealed by Section 340 para. (1) point 30 of Act LXXXIII of 2005 on the Amendment of Certain Acts Related to the Entry into Force of Act CXL of 2004 on the General Rules of Public Administration Procedure and Services. Section 125 para. (1) and Section 137 of the AB were amended by Section 31 para. (14) and para. (16) of Act CXVIII of 2005 on the Implementation of the Budget of the Republic of Hungary for the Year 2004 and on the Three-Year Appropriations of Public Finances. Section 135 para. (1) of the AB was repealed by Section 183 para. (1) of Act CXIX of 2005 on the Amendment of Acts on Taxes, Contributions and Other Budgetary Revenues. Section 122 para. (23) and Section 136 of the AB was repealed by Section 87 paras (4) and (5) of Act CXXXI of 2005 on the Structural Amendment of Certain Acts Determining Duties

and Competences Related to the Environment, Nature Conservation, and Water Management. Section 91 – with the exception of paras (20), (25), and (26) – as well as Section 119 para. (1) items *m)* to *o)* and Section 120 paras (10) to (17) of the AB were repealed by Section 29 para. (2) item *a)* of Act CXLVII of 2005 on the Amendment of Act LXXIX of 1993 on Public Education. Section 90 paras (1) and (3) of the AB were repealed by Section 8 para. (1) item *f)* of Act CL of 2005 on the National Cultural Basic Programme. Section 121 item *a)* of the AB was repealed by Section 19 para. (5) item *b)* of Act CLXXXII of 2005 on the Amendment of Act LXXXIII of 1997 on Mandatory Health Insurance Services, Act XXXIV of 2001 on Mandatory Professional Health Services, and of Certain Acts Related to Healthcare.
According to the established practice of the Constitutional Court, statutory provisions out of force may only be subject to constitutional examination in two cases: in the case of a judicial initiative under Section 38 para. (1) of the ACC and in the case of a constitutional complaint under Section 48 of the ACC. Therefore, the Constitutional Court has terminated the procedure of examination related to the repealed or subsequently amended provisions of the AB as listed above, on the basis of Section 31 item *a)* of amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's provisional rules of procedure and on the publication thereof.

3. The Constitutional Court has annulled on formal grounds those amending provisions of the AB challenged in the petitions as well as the ones made by the Constitutional Court subject to examination by virtue of the close correlation in their contents which have not been repealed or amended by the Parliament in the meantime. However, it is to be repeatedly stressed that the annulment of the statutory provisions listed above does not affect the validity of the Acts of Parliament amended (modified) by the annulled Act, or the validity of other changes and amendments – with particular regard to the repealing acts – implemented in the legal system by means of the annulled statutory provisions. As the Constitutional Court has only examined on formal grounds the amending provisions of the AB challenged in the petitions as well as the ones made by the Constitutional Court subject to examination by virtue of the close correlation in their contents, the annulling decision does not affect the amended (or subsequently further amended) Acts of Parliament. The subsequent changes of the amended Acts of Parliament may only be explored by analysing their contents, which is the duty of the Parliament.

4. The Constitutional Court has established that Section 117 para. (3) item *a)* and para. (6) of the AB are provisions related to certain provisions of the AB – as rules on their entry into force – annulled above with *ex-nunc* effect. As the auxiliary provisions share the destiny of the main rule, the Constitutional Court has annulled them, too, with *ex-nunc* effect.

Section 120 paras (4) to (6) of the AB are also provisions related to certain provisions of the AB – as rules on their application – annulled with *ex-nunc* effect. However, as those provisions on application affect legal relations in process, their *ex-nunc* annulment would cause legal uncertainty.

Under Section 43 para. (1) of the ACC, statutes annulled by the Constitutional Court shall – as a general rule – not be applicable as from the day of publication of the relevant decision in the Official Gazette. At the same time, a possibility of deviation from this general rule is granted by Section 43 para. (4) of the ACC, by which the Constitutional Court may set a date different from the one specified in Section 43 para. (1) for the annulment of the unconstitutional statute or for its applicability in a concrete case if justified by the requirement of legal certainty or by a particularly important interest of the petitioner. Consequently, the Constitutional Court has annulled Section 120 paras (4) to (6) of the AB with *pro futuro* effect in order to allow adequate time for the Parliament to adopt statutes replacing the annulled provisions bearing in mind the aspect of legal certainty.

The publication of this Decision in the Official Gazette (*Magyar Közlöny*) is based on Section 41 of the ACC.

Budapest, 14 February, 2006.

Dr. Mihály Bihari
President of the Constitutional Court

Dr. István Bagi
Judge of the Constitutional Court

Dr. Elemér Balogh
Judge of the Constitutional Court

Dr. András Bragyova
Judge of the Constitutional Court

Dr. Árpád Erdei
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, Rapporteur

Dr. Péter Kovács
Judge of the Constitutional Court

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. Éva Tersztyánszky-Vasadi
Judge of the Constitutional Court, Rapporteur

Concurrent reasoning by Dr. Mihály Bihari, Judge of the Constitutional Court

I agree with the holdings of the Decision. However, judging upon the petition should have required a detailed and concrete interpretation of the concept of the budget Act in accordance with Article 19 para. (3) item *d)* of the Constitution. Therefore, I can only accept the holdings of the Decision with the following refinement and amendment of the reasoning:

1 Establishment of unconstitutionality solely under Article 19 para. (3) item *d)* of the Constitution

Unconstitutionality is fundamentally deducted in the Decision from two constitutional provisions, i.e. Article 19 para. (3) item *d)* of the Constitution, on the one hand, and Article 2 para. (1) of the Constitution, on the other hand. The former one contains special rules on approving and implementing the State Budget, while the latter one provides for the requirement of legal certainty. In my view, the establishment of unconstitutionality should have been based solely on Article 19 para. (3) item *d)* of the Constitution.

As mentioned in the reasoning of the Decision, the provisions of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 (hereinafter: the AB) "challenged in the petitions affect dozens of situations in life the subjects of which are not related to the AB as an Act having a specific subject and contents under the Constitution". The Constitutional Court has established that "as no other Act of Parliament – regardless of its subject – may be linked to the AB since Article 19 of the Constitution governs a precisely denominated subject", the provisions of the AB, as in force, amending various Acts are unconstitutional.

As also mentioned in the reasoning of the Decision, the provisions of the AB amending various Acts of Parliament are "washing away the differences between the preparation of the AB, as a special Act of Parliament falling under Article 19 para. (3) item *d)* of the Constitution, and the order of preparing other Acts incorporated therein and requiring the

implementation of a democratic legislative process." Furthermore, "The mixing of the two – clearly distinct – legislative procedures explained above poses a threat on the constitutional order of legislation even in the case of amending or supplementing Acts of Parliament related to the subject and the contents of the AB." Accordingly, the Constitutional Court has established that "the constitutional provisions on a democratic legislative process were violated".

The arguments related to the amendments incompatible with the subject specifically mentioned in Article 19 para. (3) item *d)* of the Constitution would have made it necessary for the Constitutional Court to deduct the limits of the protected subject from the Constitution. Then the Constitutional Court should have explained why it is prohibited to regulate in the same Act of Parliament subjects other than the specifically denominated one. After that, the amendments contained in the AB should have been assessed on the basis of the constitutional requirements deducted the way described above, in order to allow the Constitutional Court to establish one-by-one if they are unconstitutional. Still, the reasoning of the Decision states nothing more than that the amendments contained in the AB "shall be separated from regulating this special subject". According to the reasoning of the Decision, this was the basis upon which the Constitutional Court has established the unconstitutionality of the amendments incorporated into the AB.

Compliance with the above system of requirements would have made the constitutional reasoning based on legal certainty unnecessary. Leaving out the arguments based on Article 2 para. (1) of the Constitution would have been justified also because of the dogmatic gaps found in the relevant argumentation of the Decision. The references in the arguments to the "constitutional provisions on the democratic legislative process" should have clarified why the amendments incorporated into the budget Acts violate the principle of a democratic State under the rule of law as granted in Article 2 para. (1) of the Constitution. It is pointed out – among other things – in the reasoning of the Decision that such legislation may "cause difficulties" and it "may make the legislative process a formal procedure", furthermore, it may "make it difficult or even impossible for the subjects of law to enforce their rights and to perform their obligations". The amendments to Acts of Parliament related to budget Acts are also discussed and adopted by the legislation in accordance with the rules of legislation prescribed for the Parliament. Therefore, the procedure of legislation is not impaired at all.

The mere fact that the rights and obligations of the subjects of law are regulated in the budget Act rather than in another Act of Parliament does not result in the violation of those rights. Thus, the reasoning of the Decision should have specified the exact reason for the establishment of unconstitutionality. Having regard to all the above, the argumentation based on Article 2 para. (1) of the Constitution should have been omitted or – if still left in the Decision – elaborated in a more detailed manner.

Consequently, I hold that the reasoning in the majority decision does not adequately support the establishment of the unconstitutionality of the provisions in the AB amending other Acts of Parliament.

2 Concrete interpretation of Article 19 para. (3) item *d)* of the Constitution

In my opinion, the reasoning of the Decision should contain the following:
First of all, a concrete interpretation of Article 19 para. (3) item *d)* of the Constitution should have been made in order to assess the constitutionality of the AB. The detailed examination of this still unexplored field would have offered an opportunity for a further development of the dogmatic system related to economic constitutionality.

2.1 Article 19 para. (3) item d) of the Constitution

Under Article 19 para. (3) item *d)* of the Constitution, the Parliament shall assess the balance of public finances and approve the State Budget and its implementation. The interpretation of Article 19 para. (3) item *d)* of the Constitution from a grammatical point of view supports nothing more than the Parliament's traditional power (competence) of approving the annual budget.

This power, or competence, contains three partial elements:
- assessing the balance of public finances,
- approving the State Budget,
- approving the implementation of the State Budget.

By regulating this power (competence), the Constitution grants constitutional priority to the State Budget. The Constitution contains other (guarantee) provisions, too, to safeguard this priority subject. [See Article 28/C para. (5) item a), and Article 32/C para. (1) in terms of parliamentary control.] However, the Constitution in force is still underregulated in respect of budgetary law, and its provisions are not exact enough. Let me refer to Parliamentary Resolution 119/1996 (XII. 21.) OGY that would have specified the regulatory concept of the new Constitution, which would have contained a separate chapter on public finance of the State to fill in the gap mentioned above. The incompleteness of the constitutional regulations has not been remedied up to-day.

2.2 The budget as a priority subject of legislation

The Constitutional Court should have examined whether the special subject of legislation does enjoy any protection – and if so, to what extent – fundamentally limiting the legislators' freedom. Therefore, one should not pass over the dogmatic and systematic examination of the status of the AB in the legal system.

The budget provides for the distribution of public moneys. Formally, the budget takes the form of an Act of Parliament, in which the Parliament empowers the Government to make the expenditures specified in the budget Act. This is the so-called budgetary right of the Parliament. The budget Act is a legislative decision allowing the performance of the duties of the State. The rules on public finance and accounting determine the formal side of the decisions on public finances, and the budget Act is a part of the contents of such decisions. (See in Pétervári Kinga: *Közpénzek – magánpénzek, avagy a számvevőszéki ellenőrzés alkotmányjogi problémái*, (Public *Vs.* Private Moneys – Constitutional Law Problems Related to Control by the State Audit Office) Gondolat, Budapest, 2004, pp 25-26)

Consequently, it is important underline that there are three sharply distinguished concepts:
- budgetary law,
- the budget, and
- the budget Act.

2.2.1 Budgetary law as an independent branch of legal science

The right to adopt the budget is an important element of the Parliament's rights. In the Hungarian legal system, budgetary law consists of several legal norms. The fundamental norm of budgetary law is the Constitution itself, which determines its constitutional foundations, together with the budget Act adopted on the basis of the Constitution; other important norms are Act XXXVIII of 1992 on Public Finance (hereinafter: the APF) with its implementing decrees, as well as Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary (hereinafter: the Standing Orders).

The APF provides for the framework of budgetary law; the subject of regulation is public finance itself. According to the APF, public finance is the financial management system of the central budget, the appropriated State funds, the local governments, and the social security scheme performing and financing State duties; the APF determines the most important rules for operating and controlling this system. [Section 1 paras (1) and (2) of the APF.]
Public finance is comprised of the budgets of the central Government, the appropriated State funds, the local governments, and the social security scheme (as sub-systems) (Section 2 of the APF).

2.2.2 The budget

The State Budget is comprised of the budgets of the central Government (central budget), the appropriated State funds, and of the social security funds. The central budget forms the central level of public finance (Section 2/A, Section 3). The budget is – by the most general approach to finance and accounting – an itemised accounting of revenues and expenditures, as an important financial (practical) element of the annual budget Acts.

2.2.3 The budget Act

The annual budget Acts regulate the relation between the central level of public finance – the central budget as the most significant element of the system of public finance – and the other sub-systems of public finance.

It is an important dogmatic aspect that the budget Act is not a conduct-setting norm, and in general it does not create subjective rights. Therefore, the budget Act is only formally

considered to be a statute. (It is another question that the legal subjects empowered in the budget Act are entitled to have access to the resources allocated to them in the budget Act.) Having regard to the aforesaid, the budget Act may not stand alone; it requires a set of norms to fit into. This set of norms is made up by the rules on public finance and accounting as well as by the decrees issued by virtue of the empowerment in the budget Act.

The Parliament exercises its power (competence) granted in Article 19 para. (3) item *d)* of the Constitution by the adoption of budget Acts, i.e. assessment of the balance of public finances and approval of the State Budget and its implementation are performed in the framework of statutory regulations having special subjects and rules of procedure. This is why the budget Act should be analysed.

Fundamentally, the budget Act is an empowering Act of Parliament, the essential content of which is empowerment. The Parliament empowers the Government through the budget Act to collect the revenues prescribed (appropriated) in the central budget and to make the expenditures – in short, to implement the income and expenditure appropriations of the central budget.

In a functional sense, the budget Acts secure the implementation of the State's public duties by allocating resources thereto; their function is to determine the revenues and expenditures fixed in the central budget and to secure the implementation (realisation) of same.

The budget Acts not only empower the Government in the scope mentioned above, but they (may) also contain provisions on amending the Acts of Parliament upon which the budget (and its appropriations) are founded.

The making of income and expenditure appropriations in the central budget (State Budget) and the implementation/feasibility of those appropriations require the amendment of several statutes – mainly in the field of finance (e.g. Acts on taxes, duties etc.) – that lay the foundation for the budget appropriations and affect (secure) the implementation of certain income and expenditure appropriations.

In general, the annual budget Acts contain a separate chapter on the statutory provisions amending the Acts of Parliament which support the budget appropriations (e.g. Chapter IV of

Act CLIII of 2005 on the Budget of the Republic of Hungary for the Year 2006 contains such provisions).

Consequently, the budget itself (including the assessment of the balance of public finances, together with the approval of the State Budget in the framework of the budget Act and its implementation on the basis of the latter) is the constitutionally specified and safeguarded subject, i.e. the constitutionally protected subject may not be limited to the revenues and expenditures of the budget. The budget Acts necessarily contain amendments to other Acts of Parliament, and in particular to the Acts that support the income and expenditure appropriations of the State Budget.

3 The budget Act as a special Act of Parliament of "mixed subjects"

The next question that should have been examined with respect to legal dogmatics is whether the budget Act is to be considered a so-called "single-subject" Act of Parliament or a so-called "mixed-subject" Act.

In my opinion, the constitutional assessment of the budget Act, as an Act of "mixed subjects", and the clarification of its subject – based on a prior interpretation of Article 19 para. (3) item *d)* of the Constitution – create a solid foundation for argumentation and evaluation when judging upon the petition.

Codes, encompassing the rules of specific legal fields, are considered to be Acts of a "single subject". Such "single-subject" Acts of Parliament are, for example, the Criminal Code and the Civil Code. Such Acts of Parliament may not contain regulations pertaining to subjects other than the ones regulated by them, covering dogmatically different social relations.

As far as the Acts of "mixed subjects" are concerned, they undoubtedly have their own place in the legal system: the adoption of such Acts may be justified by deregulation or a comprehensive codification process where many statutes are to be amended at the same time bay way of a single Act of Parliament. Acts of "mixed subjects" have differentiated legal effects, they affect different social relations, and this may justify the complexity of regulation.

The budget Act is, by nature, an Act of "mixed subjects": it essentially contains empowering provisions and typically affects completely different social relations. Nevertheless, the principle of being bound to the purpose applies to budget Acts as well. The aim of adopting budget Acts is to support the income and expenditure appropriations of the State Budget. Therefore, the amendment of other Acts serving this purpose, i.e. supporting the income and expenditure appropriations of the State Budget may not be excluded form the scope of budget Acts. However, no amendment incorporated into a budget Act may serve other purposes of legal policy (e.g. the amendment of Act LXXIX of 1993 on Public Education under Sections 91 and 92 of the AB, the amendment of Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment under Section 102 of the AB, and the amendment of Act CLIV of 1997 on Healthcare under Section 105 of AB etc.).

The special character of the budget Act is also indicated by the specific features of the procedure for its adoption. Sections 120 and 121 of the Standing Orders require a special procedure for discussing and deciding upon budget Bills (including the supplementary budget and final accounts). Accordingly, each of the committees shall deliver a separate opinion on budget Bills, to be summarised and submitted to the Parliament by the Budget Committee. Only the Budget Committee is entitled to submit a proposal for amending the totals and the grand totals of revenues and expenditures under the individual budget chapters, the budget deficit or surplus, and the sum of general reserves in the central budget. In accordance with the prevailing parliamentary practice, the president of the Budget Committee is always an MP of the opposition. No request may be filed for discussing the budget Bill in an urgent or extraordinary procedure, and when it is discussed within a specific timeframe, it may not be less than 30 hours.

The Parliament discusses the budget Bill in a manner different from the general procedure: a decision shall be made until 30 November on proposals for amending the totals and the grand totals of revenues and expenditures under the individual budget chapters and the budget deficit or surplus. As a result, the Budget Committee shall prepare a proposal for amending the sum of general reserves in the central budget, the totals and the grand totals of revenues and expenditures under the individual budget chapters and the budget deficit or surplus, together with a proposal for financing the deficit (or for using the surplus) – to be decided upon by the Parliament without a delay or debate. Within three days of voting, the Budget Committee shall inform the Parliament of those parts of the budget Bill which the Parliament

has already decided upon. Following the above information, the detailed debate shall be re-opened, and within eight days of issuing the information, amendments not affecting the grand totals of revenues and expenditures under the individual budget chapters and the budget deficit or surplus may be introduced by the MPs. After closing the detailed debate, the Parliament shall make a decision – on recommendation by Budget Committee – about the proposed amendments received after re-opening the detailed debate, and final voting on the budget Bill shall take place according to the general rules of procedure.

As explained above, the order of procedure for adopting the budget Act is different from the general rules of legislation. Constitutionality requires that this special order of procedure not be used for the adoption of provisions outside the scope of the budget Act. Therefore, it is constitutionally unacceptable to transform an Act of necessarily "mixed subjects" into a "salad-bowl Act" under the pressure of various particular interests of legislation. This is to be prevented by the application of special procedural rules. Smuggling alien elements into the procedure would be considered a misuse of the legislative process. The partial invalidity of the AB under public law is, in fact, caused by such misuse. However, the argumentation based on legal certainty cannot justify the establishment of unconstitutionality. Therefore, I can only accept the holdings of the Decision subject to the amendments and refinements set out in the concurrent reasoning.

Budapest, 14 February, 2006.

Dr. Mihály Bihari
Judge of the Constitutional Court

Concurrent reasoning by Dr. András Bragyova, Judge of the Constitutional Court

This Decision of the Constitutional Court covers fundamental constitutional questions. Therefore, I hold it necessary to present my arguments and reasons in a separate framework, while I fully agree with the establishment of unconstitutionality in the holdings of the Decision.

In my opinion, the Constitutional Court has had to examine in the present case three constitutional questions that belong together although they shall be clearly distinguished at the same time. The partial unconstitutionality of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 (hereinafter: the AB) may only be established on the basis of Article 19 para. (3) item (d) of the Constitution. For this reason, all provisions in the AB not related to the *State Budget for the Year 2005* are unconstitutional.

According to the petition, the budget Act is a salad-bowl Act, and therefore the petitioner has asked for establishing the unconstitutionality of the AB. I agree with the decision in making a theoretical and constitutional distinction between budget Acts and "salad-bowl Acts" (hereinafter refined as *"mixed amending Acts"*). The latter are generally not unconstitutional, yet in some cases they might become so on constitutional grounds other than the necessary unconstitutionality of the amending Acts related to the AB.

I The question of unconstitutionality

There are two interrelated reasons to support the unconstitutionality of the provisions/Acts connected to (or packaged into) the budget Act and not containing budgetary regulations.

1 The budget Act as a denominated (special) constitutional competence

Any competence specifically defined – or denominated – in the Constitution may only be exercised by the Parliament in the form of an individual act named as such. Such acts are, for example, the adoption of the Standing Orders [Article 24 para. (4)], the signature of international treaties [Article 19 para. (3) item *f)*], the adoption of Government programmes [Article 19 para. (3) item *e)*] etc. The Acts of Parliament to be passed with a two-third majority are also similar in nature since they may only be adopted by the Parliament *as such* – i.e. not simply with a majority exceeding two-thirds of the MPs present. [This is true despite the fact that there can be two-third majority and "simple" majority provisions *within the same Act of Parliament*. See: Decision 31/2001 (VII. 11.) AB, ABH 2001, 258, 269-270, basic case: Decision 1/1999 (II. 24.) AB, ABH 1999, 39, 40-41] When several competences denominated in a specific way are exercised by the Parliament in a single legal act, i.e. a single decision, this practice is considered unconstitutional as a specific reference in the Constitution makes it mandatory for the Parliament to pass individual decisions on those

questions separately from other questions (making it a precondition of validity). In order to exercise in a constitutional way, by passing individual decisions, the competences specifically mentioned in the Constitution, the Parliament is required to vote on such subjects separately, after separate debates (save in the cases when the Parliament shall decide without a debate). This is necessary because in the case of a joint (package) decision, the debate about certain fundamental questions may be neglected or even omitted, or it may be connected to the adoption of a decision not related to the questions concerned.

Of course, in constitutional democracies, such connection goes hand in hand with political compromises, and no constitutional objection may be raised against this practice – save in the cases when the Constitution requires a separate decision to be passed (which can be the result of a compromise as well). The same applies to the competences related to the budget – including the AB – as listed in Article 19 para. (3) item *d)* of the Constitution.
According to the above, the Constitution orders to adopt the budget Act separately, in the form of an independent legal act. When – as in the case of the statute under review – other non-budgetary Acts of Parliament are connected to the budget Act, this is considered to violate the rules of legislative procedure. Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary (hereinafter: the Standing Orders) significantly restricts in many respects – as compared to the ordinary legislative procedure – contribution by the MPs to elaborating the contents of the budget Act with particular regard to the submission of proposed amendments, which approach is justified by the special characteristics of the budget Act [see: Section 120 para. (3) and Section 121 para. (7) of the Standing Orders]. However, connecting the budget Act to other subjects of legislation, i.e. usually to other competences of the Parliament, is explicitly prohibited in many constitutional States, e.g. in Section 120 para. (5) of the constitution of Germany (and earlier in the constitutions of several German states, such as in Article 25 of the Weimar Constitution), or in Article 138 of the constitution of Spain.

2 Legal character of the budget Act

The particular legal character and the special constitutional role of the budget Act justify a special treatment of the Act. In addition, the budget Act has distinguished economic and political importance. As far as its contents are concerned, the budget is the annual financial management plan of the State. There have been century-long debates in the legal literature to

clarify the *special legal character* (“nature”) of the budget Act. The works of Laband, Hänel, Jellinek, Leroy-Beaulieu, Stourm, Thoma, Anschütz, Jèze, and several Hungarian authors such as Vilmos Pál Tomcsányi and Zoltán Magyary are to be mentioned here by all means. The conclusion of these theoretical debates is that the budget Act is not a legal norm; it is an annual financial plan determining the economic and financial conditions as well as the directions of operation of the State.

The AB shows the revenues and expenditures of the State and, in particular, the items where the revenues of the State are to be spent. Consequently, the budget Act does not create subjective rights for the subjects of law, and it may not amend other Acts of Parliament simply because it is not a statutory regulation, wherefore, it may not be contrary to other Acts. As the budget Act contains nothing more than financial provisions on the revenues and expenditures of the State, its legal effect is limited to the internal relations of State organs. The budget Act never addresses subjects of law as neither rights nor obligations may be imposed on them by the AB; it is targeted exclusively at the State organs empowered by the Act to use the budgetary appropriations allocated to them by the application of, and in accordance with, *other (non-budgetary) statutes* primarily for the purpose of meeting their obligations under the law or for other lawful purposes and in other lawful manners.

The above arguments support the special character of the budget and the budget Act as compared to ordinary Acts of Parliament. In legal science, this difference is often described by explaining the material and formal concepts of Acts, pointing out that the AB may only be considered an Act based on the way of its adoption, but its contents are more like a series of individual financial decisions. Due to this special character, the AB may not amend other Acts, and similarly no subsequent Act (of a non-budgetary character) may amend the AB. The above mentioned legal character of the budget Act is sufficient in itself to explain – from a purely dogmatic aspect of law – why the budget Act may not be connected to other provisions not dealing with the revenues and expenditures of the State.

The above purely theoretical arguments of law are completed with an argument based on the constitutional significance of budget Acts. The budget Act has had a fundamental constitutional role in both Europe and Hungary ever since the beginning of constitutionality. The adoption of the budget Act primarily served, on the one hand, as a constitutional

guarantee securing, on the other hand, the dependents' and later on the citizens' participation in the affairs of the State.

Although the constitutional guarantee function of the budget Act had decreased over the years, this approach was still reflected in Section 6 of Act IV of 1848 as amended by Act X of 1867. The budget Act is, indeed, a political guarantee for constitutionality as the budget is an empowerment (appropriation) given to the Government and to other State organs – traditionally, to collect taxes, and at present, practically to make expenditures – in the absence of which the Government is deemed to be outside the scope of constitutionality (*exlex*). This means that the budget Act guarantees the dependence of the Government on the supreme body of representation, securing by that the rights of the Parliament. This function of the budget Act was developed in constitutional monarchies, and it has been changed in the parliamentary system of government. In this system, where an accord ("trust") between the Parliament and the Government is a precondition, the primary constitutional-political reason for discussing and adopting the budget Act in the Parliament is to guarantee parliamentary control over the Government and to publicly discuss the (fundamental economic and political issues related to) budget decisions. The main political role of the budget Act is to manifest the trust between the Government's majority and the Government, furthermore, to prove the governing ability of the parliamentary majority.

II The constitutionality of mixed amending Acts

The constitutionality of mixed amending Acts is to be distinguished from the question of the budget Act. The unconstitutionality of mixed amending Acts connected to the budget Act is based not on their mixed subjects and character, but only and exclusively on the fact that no other – non-budgetary – provisions can be constitutionally connected to the budget Act. It is a special feature of mixed amending Acts that they contain nothing else but provisions *amending other Acts of Parliament*. There is another usual argument about certain provisions of mixed amending Acts amending Acts of Parliament *not* linked to each other by their closely related contents or in a legal ("logical") sense.

Those Acts of Parliament *themselves are not unconstitutional*. Their practicability or usefulness might be debated, but this is within the competence of the Parliament. A constitutional question may be raised about what constitutional rights are violated by such

Acts, or what constitutional rules obliging the Parliament are impaired by them. As explained in several decisions of the Constitutional Court, the constitutional review may cover the *legislative process* aimed at the adoption of mixed amending Acts as well as the *Act adopted* as the result of the procedure. Thus, there are procedural and substantial preconditions for the constitutionality of mixed amending Acts – like in the case of other Acts of Parliament.

1 Procedural limits

1. According to the practice of the Constitutional Court, it is applicable to mixed amending Acts as well that "compliance with the individual procedural rules of the legislative process is a requirement of the rule of law regarding the validity of the Act, deductible from Article 2 para. (1) of the Constitution. Therefore, the Constitutional Court annuls the statute when during the legislative process a serious procedural breach was committed – causing invalidity of the statute under public law – which can only be remedied by the annulment of the statute." [Decision 3/1997 (I. 22.) AB, ABH 1997, 33, 39-40; Decision 29/1997 (IV. 29.) AB, ABH 1997, 122, 128; Decision 39/1999 (XII. 21.) AB, ABH 1999, 325, 349; Decision 38/2000 (X. 31.) AB, ABH 2000, 312-313] As pointed out in the holdings of Decision 52/1997 (X. 14.) AB, "a procedural violation of the Constitution committed during the legislative process – such as the basing of a law on a referendum held unconstitutionally – may lead to the nullification of the law even in the absence of an unconstitutionality of its content." (ABH 1997, 331-332) Decision 63/2003 (XII. 15.) AB provided for the annulment of an Act of Parliament based on invalidity under public law resulting from a procedural defect in the legislative process (ABH 2003, 676).]

The special criteria of constitutionality – based on the rule of law – related to the drafting of Bills as well as to the amendment of Acts are established in Decision 42/1995 (VI. 30.) AB. According to the test of constitutionality elaborated in the above mentioned decision, constitutional concerns may be raised against the structure of the Act when – among others – the Act amends "several Acts of Parliament", "not connected to each other by any identifiable logical bound", and "familiarisation with the essence of the changes is difficult because of the legal/technical mode of the amendments", and when the case is not an example of "forced exception". [ABH 1995, 186-187; subsequent application of the test in: Decision 38/2000 (X. 31.) AB, ABH 2000, 312] As established in the constitutional requirement laid down in the holdings of Decision 8/2003 (III. 14.) AB, the principle of legal certainty "requires that legislation – including the amendment of statutes and their entry into force – be made on the

basis of reasonable rules and that amendments be transparent and easily traceable by both the subjects of law and those applying the law". (ABH 2003, 74)

2. Initiating the adoption of mixed amending Acts, furthermore, the parliamentary discussion and the adoption of such Bills are not unconstitutional in themselves. However, the constitutional provisions on the legislative procedure are applicable to mixed amending Acts as well, and their violation results in the invalidity of the respective Act under public law. However, an Act of Parliament shall not become unconstitutional merely by violating a legal norm ranking below the level of the Constitution, and in particular the norms laid down in Act XI of 1987 on Legislation and the norms established in the Standing Orders.

Nevertheless, there are constitutional requirements originating from the express provisions of the Constitution which are specified in lower level norms. Their violation results in the unconstitutionality of the Act concerned. [Procedural unconstitutionality: Decision 63/2003 (XII. 15.) AB, ABH 2003, 676; unconstitutionality based on the contents (retroactive force) of the statute due to the violation of "a statutory rule of constitutional importance": Decision 34/1991 (VI. 15.) AB, ABH 1991, 173; Decision 18/1991 (IV 23.) AB, ABH 1991, 399]

3. When examining the constitutionality of the legislative process, the starting points are the concrete provisions of the Constitution and Article 2 para. (1), enshrining the principle of the rule of law. In the case of mixed amending Acts, Article 23 on the openness of parliamentary sessions, furthermore, Article 61 on the right to have access to data of public interest and to disseminate such data can have particular importance.

There are some practical and utilitarian considerations often mentioned in support of the Parliament discussing amendments of minor importance in a single procedure. At the same time, mixed amending Acts pose the greatest threat in respect of certain subjects where the MPs may pass a decision by restricting publicity, without the affected persons knowing it and having a chance to express their opinions. This legislative technique may raise significant difficulties in parliamentary discussions about planned amendments, with particular regard to the position of the opposition. In consideration of the above, the Constitutional Court – assessing the circumstances of the concrete case – shall examine whether the constitutional guarantees of parliamentary deliberation and legislation were complied with during the legislative process.

2 Further limits

Undoubtedly, when amending a statute, the legislation shall stay within the constitutional limits only related to the changing of the law, regardless of the contents of the amendment.

Some of those limits pertain to time, such as the prohibition of retroactive effect and the requirement to secure enough time for the subjects of law (the law-seeking public) to get prepared for the amendment, while the adoption of transitional rules may also become necessary. [Decision 28/1992 (IV. 30.) AB, ABH 1992, 155, 159; Decision 6/1993 (II. 15.) AB, ABH 1993, 415, 417; Decision 64/2002 (XII. 3.) AB, ABH 2002, 348, 356] The above constitutional restrictions are not violated merely by the mixed character of mixed amending Acts.

Although a mixed amending Act makes it difficult for the law-seeking citizens to follow the changes of the law, this results much more from it being an Act of Parliament amending other Acts rather than from its mixed contents. Indeed, an Act of Parliament amending another Act can – *ex hypothesi* – be interpreted and followed by anyone, including trained professionals, only together with the amended Act. This is a common feature of amending Acts without regard to what Acts of Parliament are amended by them, and how the contents of those Acts are linked to one another as those Acts can usually be interpreted only together with the amended text. The same applies even to deregulation Acts as special mixed amending Acts, with no one challenging their constitutionality. However, the Acts amending other Acts have some special features that are interesting in respect of constitutionality. Although the Acts amending other Acts are *sources of law*, they are not *independent statutes* as they do not contain independent legal norms. An Act amending other Acts can be a *derogatory statute* (or, correctly, a source of law) when it terminates the validity (force) of other norms. In such a case, the amending norm does not contain or terminate in itself any right or legal obligation. Another group of amending Acts amend valid statutes in force. They are considered derogatory norms in as much as they change some statutes in force as at the same time they repeal former statutory provisions which are contrary to the new regulation. In some cases, mixed amending Acts add to the statute a new element, which cannot be interpreted or applied in itself; such elements are not regarded as independent statutes.

According to the practice of the Constitutional Court, mixed amending Acts are only deemed unconstitutional when they violate *legal certainty* as a fundamental element of the rule of law.

The safeguarding of legal certainty is a fundamental constitutional requirement regarding the relations between the individuals, the subjects of law, and the changes of the law. It obliges the legislature to take into account the constitutionally protected interests and aspects of the individuals or the subjects of law when it changes the law in line with the Constitution. Therefore, it is a further requirement of legal certainty not to change legal norms unreasonably swiftly and in an untraceable manner. Beyond doubt, legal certainty also requires that the subjects of law have at their disposal clear information about the changes of the law relevant to their legal positions, and such information shall originate from official sources – from the legislature itself or from an authorised source. At the same time, the subjects of law shall keep in mind that the statutes they are interested in and/or pertaining to them can be changed, and the trust in the unchanged nature of the law may only be constitutionally protected if the citizens have a well founded reason to have faith in it, e.g. when it is promised by the legislation or when it follows from the nature of the relations of life regulated in the Act. An expectation of the law to remain unchanged shall enjoy much less protection in the fields where there are frequent changes which can be reasonably expected, such as in financial affairs, or in many fields of economy; changes and adaptation are part of the activity in these spheres. In such cases, the subjects of law shall be prepared to follow the amendments of the law either on their own, or, when needed, by using or hiring commercial services or consultants.

Consequently, in questions related to the unconstitutionality of amendments based on the violation of legal certainty the Constitutional Court shall, in each case, assess different – and partly colliding – aspects. There can be cases when the manner of changing an Act of Parliament does impair legal certainty, for example, when introducing changes too frequently, when changes are accumulated, or when re-amending legal provisions whose amendment has not taken effect as yet; for the case of amendments to the Act on Civil Procedure see: Decision 8/2003 (III. 14.) AB, ABH, 2003, 74, 83-87. In such cases, the legislature shall, in the interest of legal certainty, provide for *counterweights* regarding the legal uncertainty caused by the way of legislation chosen. It is up to the legislature to decide the way of implementation. For example, the full consolidated text of the amended Act as in force can be published in the Official Gazette together with the promulgation of the amending Act, or other

new technologies, and in particular the Internet can also be applied. Non-compliance with the requirement based on legal certainty may result in the unconstitutionality of the Act, making it null and void. One should also take note of the regulations under Sections 12 to 14 of Act XC of 2005 on the *Freedom of Electronic Information* – taken effect on 1 January 2006 – not only making the updated Official Gazette (*Magyar Közlöny*) accessible by anyone free of charge, but also establishing the Electronic Collection of Statutes in Force, accessible on similar terms. Most of the arguments based on legal uncertainty in familiarisation with the law are rendered unfounded by the above.

III The legal consequences of unconstitutionality

The next question to be answered by the Constitutional Court is the following: if the budget Act may constitutionally contain nothing else but the budget, what is the legal consequence of violating this requirement by the Parliament? There are practically two options:

1. *the whole* Act of Parliament (i.e. the budget, together with the Acts of mixed contents adopted at the same time) is unconstitutional; or
2. *the budget Act* is valid, but the *Acts of mixed contents* adopted at the same time are unconstitutional.

As in the present case the Constitutional Court has examined the *Budget Act* for the Year 2005, adopted as such by the Parliament – exercising the competence specified in Article 19 para. (3) item *d)* of the Constitution – in accordance with the rules pertaining to the budget Act, the constitutionality of the budgetary part of the Act is beyond doubt. The unconstitutionality of the remaining provisions – i.e. Sections 83 to 116 of the AB – is caused solely by the Parliament having adopted them as part of the AB. The unconstitutionality resulting from the violation of procedural rules – as against substantial invalidity – is referred to by the Constitutional Court both in general as well as in the present decision as "invalidity under public law" [see the so-called "Hospitals Act" case in Decision 63/2003 (XII. 15.) AB, ABH 2003, 676, 683-690], leading to "annulment on formal grounds". The general legal consequence of unconstitutionality is *annulment* by virtue of both the Constitution [Article 32/A para. (2)] and the ACC (Sections 37 to 43). As explained above, this invalidity pertains to *all* provisions in the Act falling outside the scope of the budget.

The partial invalidity of the budget Act under public law is caused by non-compliance with the rules on the legislative procedure. One should note that all the annulled provisions of the budget Act are themselves *Acts amending other Acts.* Therefore, the Constitutional Court should have considered in the present procedure – with regard to the special character of the amending Act – the legal effects of the Constitutional Court annulling *the amending Act only*. It is an important question whether the effect of annulment pertains also to the statutes *amended* by the amending provisions. In my opinion, it depends on the effect of the annulment. If the Constitutional Court applies the general rule [Section 42 para. (1) of the ACC] of *ex nunc* annulment, then it is effectuated on the day of promulgating the decision on the annulment. What is the legal consequence of annulment? In my opinion, the annulment has no direct effect on the law valid (in force) at the date of the annulment.

The legal effect of the amending Acts to be annulled by the Decision as of 14 February 2006 was effectuated on the date of the budget Act taking effect – that is, with some exceptions, on 1 January 2005 in accordance with Section 117 para. (1) of AB – and by virtue of that, the Acts of Parliament specified in the AB have been changed. The act of the Constitutional Court annulling as of 14 February 2006 those parts of the AB that do not contain budgetary provisions *may not annul* the changes already effectuated on *1 January 2005* (or at any other date specified in the AB) in other Acts of Parliament by virtue of that Act.

The amending Acts deal with nothing else but *other Acts of Parliament* (or statutes), and therefore their direct legal effect remains within the legal system. A typical amending Act reads like this: "Section X of Act Y shall be *replaced by the following* provision" or "A shall be added to Section X of Act Y". In both cases, "replacing" or "addition" was implemented by the entry into force of the Act of Parliament concerned. As a result, if the Constitutional Court annuls in February 2006 with *ex-nunc effect* the amending provision *which has taken effect as of 1 January 2005*, this does not affect the validity of the statutes thereby amended.
The only effect of the annulment is the termination of the (outdated) force of the amending Act of Parliament, which has already been enforced and which does not have any further legal effect. Thus, the legal effect of the annulment is similar to that of the provisions contained in deregulation Acts repealing Acts of Parliament already out of force. The last one of such Acts is Act VIII of 2003 on *Repealing Certain Acts and Law-Decrees*, repealing dozens of amending Acts without causing any change in the law in force at the time of its taking effect (7 of March 2003) – then repealing itself as well (in Section 3). The annulling Decision of the

Constitutional Court does the same job, i.e. it terminates the effect of certain Acts of Parliament amending other Acts as of 14 February 2006.

This is obviously true for the derogatory provisions of the budget Act. In the past years, all budget Acts contained several provisions on individual repealing. Section 107 of the budget Act contains nothing else but provisions like that. I hold that the Acts of Parliament repealed by that Section (out of force now) should not revive by the annulment of Section 107 – in the sense of becoming valid or effective again. A derogatory statute (Act of Parliament) is not a legal norm as it does not contain any rule of conduct for either the subjects of law or the State or its organs; it simply governs certain norms of the legal system.
When they amend a valid statute, the Acts amending other Acts of Parliament are necessarily derogatory rules at the same time, because the modification of a valid statute – replacing a regulation, or a part of it, by another one which is partly contrary to the former – is the derogation of a norm in force. Even in the lack of such a modifying-derogatory effect, when the amendment adds a new norm (or part of a norm) to the amended Act, the subject of the Act amending the other Act is not the conduct of the subjects of law but another statute – just like in the case of a purely derogatory Act of Parliament. According to the practice of the Constitutional Court, if the subject of review by the Constitutional Court is the unconstitutionality of the *contents* of an Act amending another Act, then the Constitutional Court always judges upon the *amended* regulation [e.g.: Decision 8/2003 (III. 14.) AB, ABH 2003, 74, 81 – amendments to the Act on Civil Procedure]. In the case of an amending Act, the Constitutional Court – acting in accordance with its established practice – always regards the amended Act as the Act to be reviewed, i.e. the text containing the legal norm in force (the same applies to other statutes as well).

According to the concept expressed in the holdings of the majority decision of the Constitutional Court (although the result of this concept is in conflict with the explanation under point IV.3 of the reasoning contained in the majority decision), the annulment of the Acts amending other Acts of Parliament results in repealing, as of 14 February 2006, the Acts of Parliament amended by the annulled Acts. However, this is not in accordance with the position – correctly – taken by the Constitutional Court when establishing the invalidity of the amending regulations connected to the budget Act. Moreover, such an interpretation of the legal effects of the annulment puts unnecessary burdens on both the law-seeking public and the legislation, imposing on them duties that could have been easily avoided. As a potential

solution, the Constitutional Court could have stated in the holdings that the annulment does not affect the validity of the Acts of Parliament *modified* by the annulled Act, or the validity of other changes and amendments – with particular regard to the repealing acts – implemented in the legal system by means of the annulled statutory provisions. In that case, the amended (or subsequently further amended) Acts of Parliament would remain in force without any change, for being outside the scope of the annulment. It would have been much more reasonable to apply the above approach as the decision passed by the Constitutional Court is the result of a posterior constitutional review of legal norms in force, and this fact shall not be disregarded for the sake of legal certainty. [The procedure for the *preliminary review of norms* would be evaluated differently, such as in the decision on the Hospitals Act (Act 63/2003 (XII. 15.) AB, ABH, 2003, 676, 693)] By a consistent application of the above concept, the Constitutional Court could have avoided disturbing the law in force and the relations (including the legal ones) based on it. Although in my opinion, the holdings of the majority decision contain an acceptable solution, a decision being of a declaratory nature as far as its result is concerned could have clarified a very important constitutional question, making it clear that in the future the Constitutional Court would annul all provisions contained in budget Acts that are deemed unconstitutional under the present Decision. This approach would not have introduced any change in the legal system that is not justifiable with a view to safeguarding the Constitution.

Budapest, 14 February, 2006.

Dr. András Bragyova
Judge of the Constitutional Court

I agree with the concurrent reasoning.

Budapest, 14 February, 2006.

Dr. István Kukorelli
Judge of the Constitutional Court

Dissenting opinion by Dr. Árpád Erdei, Judge of the Constitutional Court

I agree with points 1 and 4 in the holdings of the majority decision, but I do not agree with points 2 and 3 thereof.

I agree with establishing the unconstitutionality of the provisions of Act CXXXV of 2004 (hereinafter: the AB) as contained in points 2 and 3 of the holdings in the majority decision, but I do not accept the established legal consequences of unconstitutionality.

1. I accept the position expressed in the majority decision about the unconstitutionality of inserting into the AB any provision which goes beyond the strictly interpreted subject of the budget – such as various amendments to other Acts – as it would be out of the scope of the special order of procedure for the adoption of the AB. I also agree with establishing that, due to the primary importance of the budget, the provisions pertaining to other subjects – being of "secondary" importance in the procedure as compared to the budget – but incorporated into the budget Act might be adopted without proper preparation and discussion in the Parliament. In such a case, the legislative process becomes questionable under public law, making the provisions adopted the above way unconstitutional. In addition, with respect to the importance of having the budget Act adopted and promulgated in a due time, the provisions in the AB pertaining to other subjects (amendments to Acts of Parliament) will probably escape preliminary constitutional review. Therefore, I agree that the provisions pertaining to other subjects and included in the AB are unconstitutional on formal grounds, without regard to their contents.

2. However, I hold that in addition to establishing the unconstitutionality of the provisions in the AB amending other Acts as mentioned before, the Constitutional Court should have taken further measures besides the annulment of the provisions concerned.

It is evident that when any statutory provision on amending an Act of Parliament or another statute is deemed unconstitutional, the elements of the amended statute affected by the amendment also become unconstitutional as the (formally or substantially) unconstitutional provisions live on in the amended legal provisions when they take effect. The unconstitutionality of an unconstitutional amending provision does not lapse as a result of

being introduced into the text of the amended (incorporating) statute. Accordingly, the formal unconstitutionality of the provisions in the AB amending other Acts of Parliament makes the amended Acts unconstitutional in respect of the affected parts.

As in the present case, the Constitutional Court has established the formal unconstitutionality of the relevant provisions of the AB, unconstitutionality is independent from the extent of the amendments. Unconstitutionality is considered to exist regardless of whether the amendment only affects a single provision of the amended Act or significantly changes (or supplements) the amended Act due to its large extent. Accordingly, the provisions in the AB amending other Acts of Parliament introduced unconstitutional elements into the respective Acts in the moment of taking effect. This unconstitutionality is not eradicated by the *ex post facto* annulment – under posterior constitutional review – of the provisions in the AB amending other Acts of Parliament, no matter if being of either *ex nunc* or *pro futuro* effect. The annulment should cover the amended provisions as well.

This approach is reflected in many of the Constitutional Court decisions. According to the established practice of the Constitutional Court, "when the petitioner alleges the unconstitutionality of the content of a new provision, the Constitutional Court shall examine the unconstitutionality of the statute incorporating the new provision as a result of the amendment rather than that of the statute putting the new provision into force." [Decision 8/2003 (III. 14.) AB, ABH 2003, 74, 81; Decision 11/2003 (IV. 9.) AB, ABH 2003, 153, 160; Decision 51/2004 (XII. 8.) AB, BH 2004, 679, 683; Decision 28/2005 (VII. 14.) AB, ABK July-August 2005, 435, 438; Decision 174/B/1999 (XII. 5.) AB, ABK December 2005, 796] If the Constitutional Court transposes the examination of substantial unconstitutionality to the provisions of the amended statute, it must do the same in the case of formal unconstitutionality as well. The difference between the two cases is the following: substantial unconstitutionality can be established by examining the facts of the case, while the formal unconstitutionality of an amending provision "automatically" makes the parts of the Act affected by the amendment unconstitutional – also in a formal sense, though.

Having regard to all the above, in the present case the Constitutional Court should have also established the unconstitutionality of those parts of the legal norms that incorporate the new provisions resulting from the amendment.

The unconstitutionality – established in the majority decision – of those provisions of the AB that amend other Acts of Parliament, despite being annulled, has an ongoing effect by virtue of their incorporation into the amended Acts irrespectively of the annulment having *ex nunc* or *pro futuro* effect (in theory, in the latter case, the ongoing effect would not exist if the *pro futuro* annulment fell on a day prior to the date of the amending provision taking effect). Unconstitutionality may only be eliminated by the annulment of the amended provisions. This transmission of the unconstitutionality of the amending provisions could have only been prevented prior to their entry into force.

Having regard to the fact that the present constitutional review has taken place *ex post facto* since most of the relevant provisions of the AB entered into force, no retroactive annulment may be implemented as it would cause serious legal uncertainty. Therefore, unconstitutionality could have only been eliminated by a uniform *pro futuro* annulment of the amended or newly introduced provisions. This way, the legislature would have had an opportunity, within the timeframe available, to re-adopt in a constitutional manner and in an appropriate procedure the provisions considered unconstitutional. Formal unconstitutionality can, namely, be eliminated by the Parliament by adopting the amending provisions incorporated into the AB in the form of a new Act passed in accordance with the rules of legislative procedure – either unchanged or including the necessary modifications.

Budapest, 14 February, 2006.

Dr. Árpád Erdei
Judge of the Constitutional Court

Dissenting opinion by Dr. Attila Harmathy, Judge of the Constitutional Court

I do not agree with the holdings and the reasoning of the majority decision for the following reasons:

I

The petitioner has asked the Constitutional Court to establish the unconstitutionality of, and annul, Section 86 paras (1) to (7), Section 87 para. (1), Section 91 paras (1) to (18) and paras

(29) to (32), Sections 97, 99, Section 105 paras (1) to (4), Section 107 paras (1) and (2), Section 108, Section 117 para. (3) item *a*) and para. (6), as well as Section 120 paras (3) to (6), (10) to (13), and para. (15) of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 (hereinafter: the AB).

According to the petitioner, the provisions listed above violate Article 2 para. (1) of the Constitution. The petitioner holds that unconstitutionality is based on the fact that "the annual budget Act contains not only provisions on Hungary's budget for the next year – i.e. the grand totals of the central budget expenditures and revenues, the deficit of the budget, the planned revenues and expenditures of the specific budget chapters, and the provisions closely related to and directly affecting the central budget".

As listed in the petition, more than forty Acts of Parliament have been amended by the AB. Most of them can be linked to the budget on a broad logical basis. The petitioner has only asked for the annulment of those rules which contain "statutory amendments [...] not related to the provisions of the AB establishing or affecting the budget as they actually regulate independent professional issues in the fields of specialised, sectoral policies". As the title of the budget Act does not refer to the fact that questions other than the budget are regulated in the Act, "the modifications of the provisions of the relevant statutes in force can hardly be followed by those applying the law, thus endangering legal certainty as one of the preconditions of the rule of law".

II

1. Section 20 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC) provides that the Constitutional Court shall act on the basis of a petition submitted by an entitled petitioner.

According to Article 32/A para. (3) of the Constitution, everyone has the right to initiate proceedings before the Constitutional Court in the cases specified by law.

As granted in Section 21 para. (2) of the ACC, anyone may initiate posterior examination of the alleged unconstitutionality of a statute.

As explained in the Minister's reasoning attached to the Bill of the ACC, acting *ex officio* is – as compared to acting on the basis of a petition – only possible on an exceptional basis and within a limited scope i.e. in the case of a collision between a statute and an international treaty (Section 44) and of a unconstitutional omission of legislative duty (Section 49).

The Decision shall judge upon the petition; the Constitutional Court has therefore examined the constitutionality of the provisions challenged in the petition.

2. Article 2 para. (1) of the Constitution states that the Republic of Hungary is a democratic state under the rule of law.

According to the long-established practice of the Constitutional Court, legal certainty is an indispensable component of the rule of law. With regard to legislation, the requirement of legal certainty demands, among others, the statutes to be clear for those addressed in the norm. [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 65] The principle of legal certainty also means that the subjects of law should have an opportunity to familiarise with the statutes, allowing them to align their conduct with the rules. [Decision 25/1992 (IV. 30.) AB, ABH 1992, 131, 132]

Decision 42/1995 (VI. 30.) AB examined, based on the requirements of the rule of law and legal certainty, an Act of Parliament where the legal fields affected by the amendment were very diverse, without any logical connection between them. In that case, the Constitutional Court did not annul the challenged statute, but noted that such statutes may only be accepted in exceptional cases. In such cases, it is difficult for both the MPs and the citizens to overview the rules, to make a decision about them, and to accommodate to them. (ABH 1995, 185, 187)

The above mentioned decision was referred to in Decision 38/2000 (X. 31.) AB, stating – on examining other disputed questions of legislation as well – that the Act on the Budget for the Year 1998 may not be annulled merely on the ground of amending certain provisions of several earlier Acts of Parliament, taking into account the fact that the Constitution does not regulate in details the order of legislation. However, it noted the following: “in the given case, one cannot exclude the constitutional review – on the basis of Article 2 para. (1) of the Constitution – of the amendments of Acts placed in the budget Act, or of the Acts of Parliament covering several fields of the legal system and containing nothing more than amendments – taking into account the contents of the amendment as well”. (ABH 2000, 303, 312)

Act XC of 1998 on the Budget for the Year 1999 amended certain regulations of Act LXXXI of 1997 on Pensions under Social Security, defining the rules to replace the original provisions. Decision 39/1999 (XII. 21.) AB examined the constitutionality of these amended regulations, together with the question of any potential breach of the procedural regulations made in the course of preparing and adopting the budget Act, causing invalidity under public law. Having regard to the violation of procedural rules, the Constitutional Court established that “neglecting the provisions of the Act on legislation may only result in the establishment

of the unconstitutionality of a statute, when the statute concerned violates at the same time any provision of the Constitution". (ABH 1999, 325, 349-350)

On reviewing the Act amending in 1999 the Act on Healthcare, the Constitutional Court repeatedly took a position concerning the question of amending in a single Act certain provisions of several Acts of Parliament with unrelated contents. The fact that in such cases the changes are hard to overview by the MPs and those applying the law was held risky in respect of legal certainty. According to the Decision, "the Constitutional Court reviews the constitutionality of the Acts of Parliament containing logically unrelated amendments of various Acts, depending on the results of its examination of the case". [Decision 108/B/2000 AB, ABH 2004, 1414, 1418-1419]

Thus, in line with the practice of the Constitutional Court, one has to examine if the principles of the rule of law and legal certainty are threatened by incorporating several unrelated amending provisions into the budget Act.

III

1. According to the petitioner, it is contrary to Article 2 para. (1) of the Constitution that the budget Act contains provisions other than ones pertaining to the budget and provisions closely related to it.

Therefore, when judging upon the petition, it is to be decided whether legal certainty is impaired due to the fact of incorporating into the budget Act unrelated provisions amending different Acts, although they are not connected to the budget. The decision is to be based on both Article 2 para. (1) of the Constitution and the constitutional rule pertaining to the budget.

2. The constitutional provisions on the budget focus on the Parliament's rights in contrast with the executive power. The first provision – in Article 19 – of the chapter on the Parliament declares in paragraph (1) the status of the Parliament as the supreme body of State power and popular representation; then paragraph (2) defines the Parliament's fundamental rights and duties in respect of its executive power: the Parliament shall define the organisation, orientation and conditions of government. Paragraph (3) determines, in line with the position specified above, the scope of exclusive competence of the Parliament.

Under Article 19 para. (3) item *c)*, it is within the Parliament's exclusive competence to define the country's social and economic policy, and – according to item *d)* - the Parliament

shall assess the balance of public finances and approve the State Budget and its implementation.

The Constitution does not contain any provision on the contents of the budget, the period covered by the budget, or on the rules of procedure for adopting the budget Act. All the above are regulated in statutes of lower hierarchical level.

3. The method of adopting the contents of budget Acts is laid down in Act XXXVIII of 1992 on Public Finance (hereinafter: the APF).

The Minister's reasoning related to Sections 28 to 35 of the Bill of the APF contains the following:

"The central budget must be aligned with the aims accepted in the Government's programme, and basically it must serve the long-term policies and aims of the Government. Therefore, at the time of submitting the Bill on the budget, the Government presents its plans about the most important social and economic processes following from the implementation of the planned budget. This way, the Parliament can examine the Bill on the budget by taking into account long-term plans."

The budget Acts determine the overall amounts of the central budget revenues and expenditures, the extent of the deficit and the way of financing it, and they determine the main items of expenditure in line with the social and economic policy concepts. For example, under the following provisions of the APF:

Section 22: in the central budget, expenditure may be appropriated to other sub-systems of public finances for the performance of State duties,

Section 23 para. (1): the central budget contains itemised appropriations for the preparation and implementation of governmental investment projects and renewals of primary importance,

In the limited scope specified in Section 24 para. (1), separate appropriations must be made for the wages, social security contributions, material expenditures, and the central budgetary organs' investment projects and renewals of primary importance.

The Act on the Budget for the Year of 2005 is also based on the APF. The general reasoning of the Bill summarises – among others – the main lines of the Government's economic policy and the medium-term aims of public finances. Part One of the APF deals with the central budget, Part Two is about the provisions related to the budget of separated funds, and Part Three is on the annual budget of the financial funds of social security. It is followed by Part

Four, bearing the title "Provisions and amendments of acts of parliament serving the purpose of providing foundation for the appropriations of the budget". This part is from Section 82 to Section 116. The part containing the miscellaneous and closing provisions is from Section 117 to Section 138.
The amendments of Acts challenged by the petitioner due to the lack of any relation to the budget can be found among the more than forty amendments of Acts placed in Part Four and in the miscellaneous and closing regulations of the budget Act.

4. The provisions challenged by the petitioner:
Section 86 paras (1) to (7) amending Act XXIII of 1992 on the Status of Public Servants,
Section 87 para. (1) amending Act XXXIII of 1992 on the Status of Public Employees,
Section 91 paras (1) to (18) and paras (29) to (32) amending Act LXXIX of 1993 on Public Education,
Section 97 amending Act CXII of 1996 on Banks and Financial Enterprises,
Section 99 amending Act XLVII of 1997 on the Handling and Protection of Medical and Related Personal Data,
Section 105 paras (1) to (4) amending Act CLIV of 1997 on Healthcare,
Section 107 paras (1) and (2) amending Act LXXIV of 1999 on the Hungarian Financial Supervisory Authority,
Section 108 amending Act II of 2000 on the Independent Medical Practice,
Section 117 para. (3) item *a)* and para. (6) pertains to Act XXIII of 1992 on the Status of Public Servants,
Section 120 paras (3) to (6) pertains to Act XXIII of 1992 on the Status of Public Servants,
Section 120 paras (10) to (13) and para. (15) pertains to Act LXXIX of 1993 on Public Education.

The regulations listed by the petitioner are not directly connected to the provisions on the budget. It shall be examined whether the adoption in the budget Act of regulations with contents connected neither to each other nor to the budget justifies the establishment of unconstitutionality.

5. With regard to the budget, the Constitution provides for no regulations with the exception of declaring the exclusive competence of the Parliament. Indeed, the wording of Article 19 is quite unclear about the budget. Article 19 para. (3) item *c)* only provides that the Parliament

“assesses the balance of public finances, approves the State Budget and its implementation”. The meaning of the words “assesses” and “approves” is indefinite in comparison with the wording “define the country's social and economic policy” under point *b)*.

It is interesting to point out that as compared to the regulation presently in force, Article 10 para. (3) item *b)* of the Constitution in force in 1949 used the wording that the Parliament “determines the State Budget”. The above text was changed by Act I of 1972 on the amendment of the Constitution, resulting in the present wording. As stressed in the Minister’s reasoning attached to the Bill, the amendment increased the Parliament’s supervisory powers, as the Parliament “not only assesses the State Budget but also approves its implementation”.

Despite the changes in the role of the Parliament resulting from the transformation of the political regime in 1989, no new regulation on the budget has been introduced in the Constitution. Under such circumstances, the Parliament’s role regarding the budget must be interpreted in line with Article 19 para. (2). The most important aspect to be considered is that exercising its rights based on the sovereignty of the people, the Parliament defines the organisation, orientation and conditions of government. Accordingly, the meaning of the term “assesses” shall be interpreted according to the Parliament’s determinant and supervisory roles concerning the executive power. As a consequence, the Parliament not only assesses the balance of revenues and expenditures, authorising the Government to use the funds in line with the main appropriations of expenditure, but by approving the appropriations, it forms an opinion on the social and economic policy aims to be implemented through the appropriations of expenditure. In accordance with the Parliament’s constitutional role played in the approval of the State Budget, the statutes closely related to the budget and implementing social and economic policy aims through periods exceeding single budgetary periods are to be reviewed when approving the budget, and they are to be amended in accordance with the requirements of the given budgetary period. Such amendments are necessary for the purpose of influencing the economy through financial means.

6. Because of the incompleteness of the provisions of the Constitution, it is worth examining the historical precedents, taking into account the practices of some countries where the theory and the practice of constitutional law are well developed.

a/ In the development of the Hungarian legal regulations on the budget, Act III of 1848 on “The Establishment of an Independent Hungarian Responsible Ministry” was a significant step, Section 37 of which prescribed an obligation of “presenting” the budget and the final

accounts in each year "for the purpose of examination and approval". The next important step in legal regulation was Act XX of 1897 on State Accounting. It was an Act containing accounting rules based on the Austrian legal example as well as provisions on the budget and the financial management of public administration organs. According to some interpretations of Section 14 of the Act, it was prohibited to incorporate into the budget Act any provision that would, by nature, require the adoption of a separate Act of Parliament, which would mean the prohibition of inserting so-called mixed provisions into the budget Act. However, Zoltán Magyary explained in his book on budgetary law that this view was theoretically incorrect and also incompatible with the Hungarian legal practice. He summarised his views on the budget as follows: "In respect of public finances, the budget is much more than just a financial rule aimed at securing the balance of expenditures and revenues. ... The budget ... means the deliberation and a systematic summary of the State's duties." As pointed out by Magyary with regard to the budget Act, "under constitutional law, there is no difference between Hungarian Acts of Parliament ... Consequently, in legal terms our budget Acts are of the same quality as the other ones. Although the budget Act has special features, they do not affect its legal nature." [Zoltán Magyary: *A magyar állam költségvetési joga* (Hungarian Budgetary Law), Budapest 1923, 90, 127, 130-131]

b/ In the Federal Republic of Germany, the Constitution contains detailed rules on the budget. In the history of the budgetary law of Germany, the key question was not the development of budgetary technique but the fight between popular representation and the government. Accordingly, Article 110 of the Constitution is of fundamental importance, stating that the central budget is determined by an Act of Parliament. The Constitution sets both the contents and the term of the budget. As a result of the reform of budgetary law in the second half of 1960s, following the American example, the economic management role of the budget, i.e. planning was put into the forefront in addition to the function of controlling the government. (Maunz, Art. 110 Rdn. 1-7, in: Maunz-Dürig: Grundgesetz)

In the system of the German social market economy, the State manages the economy by using financial means, where the State expenditures play an important role. Determining the State expenditures (orders and subventions) is an important element of the budget. Earlier, the inclusion of provisions containing concrete aims beyond the scope of the budget considered in a strict sense were prohibited in order to prevent restriction of the Government's freedom of action. Due to the increased role played by the State in economic management, the bound nature of budgetary issues has gained new importance. There is a difference between the

system of short-term budgetary expenditures and longer-term economic policy decisions. Therefore, in addition to the budget Act, many Acts of Parliament are adopted that contain concrete provisions on the above economic policies closely related to the budget but covering periods longer than a given budgetary term (one year). (Badura: Staatsrecht, München 1996. 2. Aufl. 673-675, 683-686)

The balance of public finances only contains issues strictly related to financial balance. In contrast, having regard to its the economic management role, the budget Act may contain provisions determining the citizens' rights and obligations, despite the scope of the budget Act being fixed under Article 110 para. (IV) of the Constitution, and this scope would not allow the inclusion of any provision having a direct effect on the citizens. (Kisker: Staatshaushalt, in: Isensee-Kirchhof: Handbuch des Staatsrechts, Heidelberg 1999, Bd. IV. 248.).

The German Constitutional Court has passed several important decisions on constitutional questions related to the budget. It has established that the balance of public finances and the budget Act are to be examined in unity; the budget Act is a statute determining the right to dispose over the State funds under specific terms, while establishing a ground of responsibility at the same time. [BVerfGE 20, 56, (90-91.)] The Constitutional Court has emphasised that it is up to the legislation to determine the budget, and it is the constitutional duty of the Parliament to supervise the implementation of the budget by the Government. [BVerfGE 45, 1, (32)] The Constitutional Court has also stressed the economic plan character of the budget. However, it has pointed out that the budget covers a short period while economic policies are made for the long run, and therefore the rules of law securing their implementation must be enforced for a longer term; this difference may lead to tensions in legislation. [BVerfGE 79, 311, (328-331)]

The constitutional analysis of budgetary questions has highlighted the risks of decreasing the importance of the budget Act by way of economic policy Acts adopted outside the scope of the budget Act, and the Parliament's opportunities to supervise the government through the budget in respect of financial affairs might be also decreased. (Isensee: Budgetrecht des Parlaments zwischen Schein und Sein, Juristen Zeitung 2005, 977, 979)

c/ In Austria, according to Article 51 of the Constitution, the Parliament shall adopt a budget Act. Paragraph (3) contains specifications on its contents as well.

In the Austrian practice, too, the central budget is one of the tools of economic management. [Wenger (Hrsg.): Grundriß des österreichischen Wirtschaftsrechts, Wien 1990, Bd. II.

152-155] According to the interpretation adopted in the Austrian literature on constitutional law, the budget Act may not impose rights and obligations directly on the citizens. (Adamovich, Funk, Holzinger: Österreichisches Staatsrecht, Wien 1998, Bd. II. 31.)

d/ According to one of the fundamental principles of the English constitutional system, the Government may not levy taxes or spend money without the Parliament's approval. One of the important elements of the reform carried out in the 1990s was setting the budget into the service of economic policy aims. Although there is no established judicial practice about the legal character of the budget Act, there is a recent judgement based on the budget Act deciding on whether the Government used the State funds appropriately. (Daintith, The Executive in the Constitution, Oxford 1999, 104-105, 152-154,169-170, 205)

e/ In France, according to Article 34 of the Constitution, the budget is determined by the Parliament and the detailed rules on the budget are laid down in an organic Act of Parliament. The organic Act of Parliament prescribes the contents of the budget Act; inserting other provisions into the budget Act is considered unconstitutional. Here also, the budget is a tool of implementing the State's economic policy. (Martinez, Malta: Droit budgétaire, Paris 1988, 2. éd. 72-73, 103-105, 147-152)
Examining the constitutionality of the organic Act of Parliament on the budget Act, the Constitutional Council has not established the unconstitutionality of the provision in the organic Act broadly defining the contents of the budget Act. (Décision n° 2001-48 DC du 25 juillet 2001, items 69-70) The same interpretation is reflected in the Constitutional Council decision on the Act on the Budget for the Year 2006 as well. The Constitutional Council has not established the unconstitutionality of the Act amending – among others – rules on taxation, and it has only established the unconstitutionality of those rules which had no financial relevance at all. As stated in the decision, the Constitutional Council may not examine other provisions of the Act *ex officio*. (Décision n° 2005-530 DC du 29 décembre 2005, items 90, 100, 103)

The following conclusion can be drawn from the foreign regulations and practice quoted before:
- the budget Act is an important tool of the Parliament in controlling the Government's financial activities,

- the contents of the budget Act are closely related to the other tools of economic management,
- there may be a tension between the short-term budget Act containing economic policy elements and the statutes applicable in the long run and implementing economic policy aims; due to the situation prevailing in a given year, it might become necessary in connection with the budget to amend statutes that serve long-term economic policy objectives,
- in the countries where the contents and the term of the budget are set in the Constitution, inserting into the budget Act any provision not complying with the constitutional requirements is considered unconstitutional.

7. The provisions challenged by the petitioner are not related to the contents of the budget Act as part of which they have been promulgated. Those provisions are numerous and they regulate diverse legal relations in details. The title of the budget Act does not refer to the provisions concerned. The above regulatory manner is in particular misleading as due to the special role and subject of the budget Act, the subjects of law may not be held to expect that rules out of the scope of the budget might be included in the framework of this Act. The legislative method challenged by the petitioner makes it difficult for those addressed by the norm to familiarise, and to align their conduct, with the relevant rules. Therefore, the unconstitutionality of those statutes has had to be established on the basis of Article 2 para. (1) of the Constitution.

8. Upon the receipt of the petition, the following provisions of the budget Act challenged by the petitioner were repealed:
– Section 86 para. (3), Section 87 para. (1) and Section 120 para. (3) were repealed by Section 3 para. (2) of Act XL of 2005,
– Section 91 paras (1) to (18) and (29) to (32), furthermore, Section 120 paras (10) to (13) and (15) were repealed by Section 29 para. (2) item *a)* of Act CXLVII of 2005 on the Amendment of Act LXXIX of 1993 on Public Education.
The Constitutional Court may only examine the unconstitutionality of a repealed statute in the case of a judicial initiative as defined in Section 38 of the ACC or a constitutional complaint filed in accordance with Section 48 of the ACC. The case concerned does not fall into any of the above categories. Under Section 31 item *a)* of the amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court’s provisional rules of procedure and on the publication thereof, the Constitutional Court shall terminate its

procedure if the statute under review was repealed after the petition had been filed. Accordingly, the procedure has had to be terminated for Section 86 para. (3), Section 87 para. (1), Section 120 para. (3), Section 91 paras (1) to (18) and (29) to (32), as well as Section 120 paras (10) to (13) and (15) of the budget Act.

9. In accordance with the above argumentation, the statutes remaining in force have had to be declared unconstitutional and annulled. In the cases where the provisions under review deal with the modification or amendment of other statutes, the Constitutional Court shall judge upon the modified or amended statute (such as in Decision 58/B/1990 AB, ABH 1990, 211.). Consequently, in the present case, the unconstitutionality of the provisions of the Acts of Parliament amended by the challenged rules of the budget Act is to be established, and they are to be annulled.

Upon the receipt of the petition, the following provisions of the budget Act challenged by the petitioner were amended:

- the provisions in Section 99 established Section 10 para. (1) of Act XLVII of 1997 on the Handling and Protection of Medical and Related Personal Data, and the text thus established was amended by Section 44 para. (4) item *b)* of Act CLXXXI of 2005 on the Amendment of Certain Acts of Parliament Related to Health,
- the provisions in Section 105 established Section 149/A of Act CLIV of 1997 on Healthcare, and the text in Section 149/A para. (3) item *d)* thus established was amended by Section 9 of Act CLXXXI of 2005 on the Amendment of Certain Acts of Parliament Related to Health.

In the above cases, the annulment is to be appropriately declared in respect of the amended rule.

Under Section 43 para. (1) of the ACC, the statute annulled by the Constitutional Court shall not be applicable as from the day of publication of the relevant decision in the Official Gazette.

10. In my opinion, based on the above arguments, the holdings of the Decision should have contained the following:

1. The Constitutional Court establishes that the following provisions are unconstitutional, and annuls them as of the day of the publication of this decision:

- the second sentence in Section 11 para. (5), paragraph (8), Section 19 para. (5) item *c)*, Section 23, Section 26 para. (2), and Section 41 para. (1) of Act XXIII of 1992 on the Status of Public Servants;

- Section 14 para. (1) item *q)*, Section 51 para. (7), and Section 53 para. (1) of Act CXII of 1996 on Credit Institutions and Financial Enterprises;
- Section 10 para. (1) of Act XLVII of 1997 on the Handling and Protection of Medical and Related Personal Data as amended by Section 44 para. (4) item *b)* of Act CLXXXI of 2005 on the Amendment of Certain Acts of Parliament Related to Health;
- Sections 143, 146, 146/A, 146/B, 149/B, 149/C and 149/D of Act CLIV of 1997 on Healthcare; and Section 149/A thereof as amended by Section 9 of Act CLXXXI of 2005 on the Amendment of Certain Acts of Parliament Related to Health;
- Section 9 para. (3) and Section 9/C para. (6) of Act CXXIV of 1999 on the Hungarian Financial Supervisory Authority;
- Section 2 para. (10) of Act II of 2000 on the Independent Medical Practice;
- Section 117 para. (3) item *a)* and paragraph (6), as well as Section 120 paras (4) to (6) of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005.

2. The Constitutional Court terminates the procedure for Section 86 para. (3), Section 87 para. (1), Section 91 paras (1) to (18) and paras (29) to (32), as well as Section 120 para. (3), paras (10) to (13) and para. (15) of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005.

Budapest, 14 February, 2006.

Dr. Attila Harmathy
Judge of the Constitutional Court

Dissenting opinion by Dr. András Holló, Judge of the Constitutional Court

1. I agree with point 1 in the Decision on establishing the unconstitutionality of, and annulling, the text “and on the amendment of certain Acts of the Parliament related to the implementation thereof” in the preamble of Act CXXXV of 2004 on the Budget of the Republic of Hungary for the Year 2005 (AB), as well as with the relevant reasoning in the Decision.
Consequently, I share the opinion expressed in points 2 and 3 in the holdings of the Decision on establishing the unconstitutionality of other amendments to Acts of Parliament connected to the provisions of the AB pertaining directly to the State Budget.

However, I do not agree with the annulment of the amendments to Acts of Parliament specified in points 2 and 3 of the Decision.

2. Under Article 32/A para. (2) of the Constitution, when unconstitutionality is established, the Constitutional Court shall nullify the Acts of Parliament and other statutes concerned. The above strict positive rule is somewhat eased by Section 43 of the ACC, allowing the establishment of unconstitutionality and the annulment to be effectuated at different times if justified by the requirement of legal certainty or an especially important interest of the party initiating the procedure. (In practice, this shall mean that in the case of *pro futuro* annulment, until it is effectuated, the decision passed by the Constitutional Court shall function as a resolution "declaring" unconstitutionality...)

There are examples in the practice of the Constitutional Court, acting in the competence of posterior constitutional review, for a complete separation – beyond *pro futuro* effect – of the establishment of unconstitutionality and the annulment, with the decision passed establishing unconstitutionality only. ["On the basis of the petition, the Constitutional Court has had to pass a decision in respect of the annulment of Section (...) in addition to the establishment of unconstitutionality", i.e. not only about the date of the annulment: Decision 797/B/2001 AB, ABH 2003, 1437, 1440].
When applying the legal consequences of unconstitutionality as regulated in the ACC, the Constitutional Court has consistently enforced the requirement of legal certainty. As detailed in several Decisions, the requirement of legal certainty shall be enforced in the operation of the Constitutional Court itself, too: it shall be considered in each of its decisions establishing unconstitutionality what kind of decision is demanded bearing in mind the constitutional requirement of legal certainty concerning the consequences of unconstitutionality: "The consequences of the unconstitutionality of a statute must be settled in each case in a way that leads to legal certainty." (ABH 2003, 1441)

As established by the Constitutional Court in the decision referred to above, since the Act under review had been in force for more than two years, and a lot of legal relations had been established on the basis of the provisions laid down in the Act, the annulment of the statutory section concerned "... with either *ex tunc* or *ex nunc* effect would result in the review of a mass of legal relations already closed, causing uncertainty in the application of the law. The

above way of settling the consequences of unconstitutionality would impair the requirement of legal certainty. With regard to that, the Constitutional Court has rejected the petition aimed at the annulment of Section (...)." [ABH 2003, 1441 – the decision refers to three earlier decisions as well: Decision 2/1991 (I. 29.) AB, ABH 1991, 375, 376; Decision 18/1991 AB, ABH 1991, 399, 400; Decision 723/B/1998. AB, ABH 1999, 795, 799-800]

After the promulgation of the statute, the Constitutional Court adopted a decision establishing unconstitutionality due to neglecting the constitutional requirement (set by the Constitutional Court) of "reasonable time" in respect of taking force. (Decision 723/B/1998 AB, ABH 1999, 795)

The Constitutional Court adopted a declaratory decision establishing unconstitutionality during the constitutional review of a statute containing retroactive obligations (Decision 119/ B/1992. AB, ABH 1997, 567) and another one providing for an interim reduction of tax burden (Decision 64/B/1997. AB, ABH 1998, 954.). In the latter case, the Constitutional Court established that local government's decree promulgated on 27 March 1996 was unconstitutional until 31 December 1996.

The deliberations by the Constitutional Court resulting in decisions establishing unconstitutionality separately from annulment have been typically based on the standard of legal certainty, or in some cases on the standard of "reasonability", i.e. the non-application of annulment when it would not serve the purpose of legal certainty.

Deliberation by separating the establishment of unconstitutionality from annulment should have been applied in the present case, too, bearing in mind legal certainty as a fundamental standard of the rule of law, in respect of the relation between Article 32/A para. (2) and Article 2 para. (1) of the Constitution, giving priority to the latter constitutional provision.

As established in the Decision, the annulments based on partial invalidity under public law, i.e. "... the annulment of the statutory provisions listed above does not affect the validity of the Acts of Parliament amended (modified) by the annulled Act, or the validity of other changes and amendments – with particular regard to the repealing acts – implemented in the legal system by means of the annulled statutory provisions." (Section IV.3 of the Decision)

The annulment applied in the Decision is contrary to the established practice of the Constitutional Court, namely, to the joint annulment of the unconstitutional amendments as well as of the amended statutory provisions. [It is to be noted at the same time that – with reference to the reasoning on the dismissal of a petition for annulment given in an earlier

decision by the Constitutional Court (ABH 2003, 1441.) which I have already quoted – I could not have accepted the application of the former practice to the present case, either.]
As in the present case, only formal unconstitutionality has been established, it would have been enough to establish the unconstitutionality of legislation connected to the AB, without an annulment of the amending provisions. The public law function of the amending provisions has, namely, been fulfilled by incorporating the amending norms into the amended Acts of Parliament.

In a decision with such contents, it would have been reasonable to refer to the fact that in the future, invalidity under public law may result in the annulment of the amended rules of law. At the same time, the Constitutional Court decisions based solely on invalidity under public law (formal unconstitutionality) may not neglect the time lapsed and the existence of the legal relations established and realised, as the key factors to be considered when deciding on annulment.

3. Furthermore, attention should have been paid to the obligation of co-operation between the constitutional organs [Decision 8/1992 (I. 30.) AB, ABH 1992, 54; Decision 52/1997 (I. 14.) AB, ABH 1997, 345], as a secondary factor of assessment in judging upon the petition, having regard to the fact that the Constitutional Court has established the unconstitutionality of a legislative procedure which "for the past 15 years (and especially for the past 7 to 8 years) … has actually become a general practice..." (point IV.1 of the Decision). This was the first time to set – by virtue of Article 19 para. (3) item *d)* of the Constitution – the standard of special constitutional protection of the AB for the approval of the State Budget. The application of so-called "deferred legal consequence" is a potential solution for the definition of a new ground for the establishment of formal unconstitutionality in the practice of the Constitutional Court. [Decision 29/1997 (IV. 19.) AB, ABH 1997, 122] This shall have the consequence that formal unconstitutionality – as defined in the present Decision – established in the future in respect of the budget Act will constitute a ground for annulment.

Budapest, 14 February, 2006.

Dr. András Holló
Judge of the Constitutional Court

I second the above dissenting opinion.

Dr. István Bagi
Judge of the Constitutional Court

Constitutional Court file number: 76/B/2005

Published in the Official Gazette (*Magyar Közlöny*) MK 2006/16