Decision 12/2006 (IV. 24.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of petitions seeking posterior examination and annulment of the unconstitutionality of a provision in the Standing Orders as well as examination of an unconstitutional omission of a legislative duty, the Constitutional Court has – with dissenting opinions by *dr. Mihály Bihari* and *dr. Péter Paczolay*, Judges of the Constitutional Court – adopted the following

d e c i s i o n :

1. The Constitutional Court establishes that Parliament has caused an unconstitutional omission of legislative duty violating Article 2 paras (1) and (2) and Article 20 of the Constitution by its failure to define the regulatory guarantees for providing appropriate speaking time to the Members of Parliament (hereinafter: the MPs) to express the essence of their opinions in line with Section 23 item b), Section 47 paras (4) and (6) as well as Section 75 para. (3) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary.

The Constitutional Court calls upon Parliament to meet its legislative duty by 15 December 2006.

2. The Constitutional Court rejects the petition seeking establishment of the unconstitutionality and annulment of the phrase “and regarding the time limits for speeches” in Section 47 para. (4) and Section 23 item b), furthermore, of the entire Section 47 para. (6) and Section 75 para. (3) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

The petitioner has requested the Constitutional Court to examine the constitutionality of certain provisions affecting the available total speaking time and the length of contributions and speeches in Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the

Republic of Hungary (hereinafter: the Standing Orders). The petitioner has also made an alternative petition based on the same constitutionality issue seeking examination and establishment of an unconstitutional omission.

1. The petitioner is of the opinion that the right of speech granted to MPs may be deduced from the rule specified in Article 2 para. (2) of the Constitution on the right of the people to exercise their sovereign rights through elected representatives and the provisions in the Constitution on Parliament and on the Members of Parliament. The functions of Parliament defined by the Constitution may not be carried out unless the MPs are granted the right of speech, and therefore the contents of the regulations governing (and, in certain cases, limiting) the right of speech represent a significant guarantee. The MPs' right of speech (as a right guaranteed by the Constitution) has a direct effect on securing that the Parliament operates in accordance with the Constitution. The petitioner has explained that the Standing Orders limit the length of speaking in two different ways. On the one hand, the Standing Orders define the length of different speech types (for example, the two-minute contribution specified in Section 50 para. (4) of the Standing Orders) and, on the other hand, the Standing Orders regulate and allow debate limited by overall time limits (when each faction has a certain (limited) amount of time per subject in accordance with Section 53 of the Standing Orders). The petitioner's position is that the Standing Orders include no other types of limitations and therefore they do not specify any other regulations governing such limitations. Therefore, there is no specific and unambiguous provision on the length of the most important type of speeches, i.e. the individual speeches made by MPs. Under the challenged Section 23 item b) of the Standing Orders, the House Committee makes a proposal concerning the time limits for speeches and Parliament decides on the proposal in accordance with Section 47 paras (4) and (6) with a simple majority of votes, and no debate is held. The petitioner is of the opinion that the proposals made by the House Committee clearly restrict the MPs' right of speech as they define time limits, and in practice these provisions of the Standing Orders are interpreted in a way that it may result in the suspension of the right of speech (that is, silencing the MP, which is most severe type of restriction of the right of speech) if these time limits are exceeded. The petitioner holds that not only do the specified resolutions of the Standing Orders violate the right of speech granted to the MPs by the Constitution but they also allow multiple and conflicting interpretations.

Based on the above, the petitioner has requested annulment of the phrase "and regarding the time limits for speeches" from Section 23 item b) and Section 47 para. (4) as well as annulment of the entire Section 47 para. (6).

2. The petitioner has pointed out that under Article 24 para. (4) of the Constitution, Parliament establishes its rules of procedure and speaking order in the Standing Orders passed by a majority of two-thirds of the votes of the MPs present. As several provisions in the Standing Orders restrict the MPs' right to speak, it is reasonable to expect that the specific overall time limits are defined in a resolution passed by a two-thirds majority of the MPs' votes. That is the reason why the Standing Orders must include detailed regulations on the length of speeches in Parliament. As the specification of speech length by definition restricts the right to speak in Parliament, there are no significant statutory guarantees if time limits for speeches are specified in recommendations and proposals case by case. The petitioner believes that the restrictions of the right to speak in Parliament must be based on reliable regulations in the Standing Orders rather than on case-by-case decisions that may even include the sanction of suspending the right to speak (silencing the MP) and that are passed by a simple majority of votes. The petitioner has explained that for similar reasons the Constitutional Court has established an unconstitutional omission in Decision 4/1999 (III. 31.) AB due to the lack of regulations passed by a two-thirds majority in the Standing Orders concerning the rules of procedure and speaking order. Therefore, should the Court reject the petition for posterior review, the petitioner has also requested establishment of an unconstitutional omission.

3. The petitioner has also requested examination of Section 75 para. (3) of the Standing Orders. This provision of the Standing Orders refers to the work of committees when declaring that the "committee may restrict the length of speeches by setting equal time limits for each faction". The petitioner has claimed that by not setting a minimum speaking time the committee stage of the process may be completed without holding a real debate. The petitioner has cited the example of a committee that has set a two-minute limit for speaking for each faction by a simple majority of votes. In respect of Section 75 para. (3) of the Standing Orders, the petitioner has also requested annulment of the provision, or, alternatively, establishment of an unconstitutional omission concerning the provision.

Finally, as indicated by the petitioner for the case the Constitutional Court believes that unconstitutionality may be eliminated by specifying a constitutional requirement concerning the challenged provisions, the petitioner requests establishment of such a constitutional requirement.

II

1. The provisions of the Constitution relevant to the present case are the following:

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

(2) In the Republic of Hungary the supreme power is vested in the people, who exercise their sovereign rights directly and through elected representatives.”

“Article 20 para. (2) Members of Parliament shall carry out their duties in the public interest.”

“Article 24 para. (4) Parliament shall establish its rules of procedure and speaking order in the Standing Orders.”

“Article 61 para. (1) In the Republic of Hungary everyone has the right to freely express his opinion and, furthermore, to have access to, and distribute information of public interest.”

2. Under the relevant provisions of the Standing Orders:

“Section 23 The House Committee shall

a) take a position on the session and weekly work schedule of Parliament;

b) make a proposal for the orders of the day, their length and the time limits for speeches;

c) discuss the independent motions concerning the operation of Parliament, and take a position on them;

(…)”

“Section 26 para. (1) The Speaker presides over and convenes the sessions of the House Committee. The Speaker may convene the House Committee during the sessions of Parliament.

(…)

(3) The House Committee makes its decisions by consensus. If the House Committee fails to reach a consensus, matters referred to in Section 23 items a), f), g) and m) shall be decided by Parliament, and in other matters the Speaker of Parliament shall make a decision.”

“Section 47 para. (1) The orders of the day shall be proposed by the Speaker based on the recommendation of the House Committee. This proposal shall be sent two days in advance to the MPs and to the persons listed in Section 45 para. (1).

(2) The expected time of voting (with the exception of votes which are impossible to schedule in advance such as voting on procedure) shall be indicated in the proposal for the orders of the day.

(3) Until the beginning of the session, the Government or at least fifteen MPs may introduce a reasoned motion to amend the proposal for the orders of the day.

(4) At the sessions, the Speaker shall present the House Committee proposal for the orders of the day, any other proposals for the orders of the day, as well as the House Committee proposal for the duration of the proceedings and the time limits on speeches.

(5) If there is a bill or a proposed resolution related to a report or there is a proposed resolution to a bill, the motions shall be discussed in Parliament jointly.

(6) Parliament shall make a decision without debate on the proposals defined in paragraph (4). The first decision shall be made on the proposal to amend the orders of the day.

“Section 75 para. (1) The agenda of the committee shall be determined by the committee itself following the opening of the committee meeting on the basis of the written proposal of the chairman forwarded in advance in writing to the committee members. Before the meeting, any member of the committee may forward further proposals on the agenda to the chairman, who shall send the same to the other members of the committee before the committee meeting.

(2) The committee may amend the agenda in the course of the meeting, but it may only supplement it if more than two-thirds of its members present approve of it.

(3) The committee may restrict the length of speeches by setting equal time limits for each faction.”

III

In historical and international comparison, three methods for regulating and restricting the right to speak has evolved, namely the prohibition of multiple speeches by the same person, the introduction of time limits for the individual and bringing the parliamentary debate to an end at a moment when there are still MPs who have requested to deliver a speech (cloture). In the present case, the petitioner has raised constitutionality concerns regarding the second type of restrictions described above, that is, the time limits of individual speeches. The entire issue has a long history in Hungary and the foreign solutions may also serve as a basis for making a decision in the present case. Therefore, the Constitutional Court has first reviewed the historical outline of the relevant regulations under public law and also the provisions certain foreign parliaments apply in this issue.

1.1. The issues concerning the speaking time in Parliament are included in the first written standing orders in Hungary passed in 1848. The Standing Orders of the House of Representatives prohibited multiple speeches in the same topic (“no contributions shall be made more than once to the basic principles and the essence of the given topic") and reading the speeches from paper. These prohibitions are reiterated in standing orders adopted later. During the period of the dual monarchy, the

regulation concerning speaking time was a critical issue. In spite of the debates in Parliament, the standing orders did not regulate speaking time until the turn of the century. In the history of standing orders, the 1875 amendment of the standing orders allowed the speaker to suspend the speech of the Member of Parliament and the same amendment provided that any speech commenced had to be finished during the same session and it was not possible to resume it the next session. However, the amendment also declared that "if a member who is registered to speak is granted a chance to speak a quarter of an hour before the scheduled end of the session, such member may request the extension of the session to finish the speech or may request the postponement of the speech until the next session (…)" (the 1875 Standing Orders of the House of Representatives, Section 142 and later the 1899 Standing Orders of the House of Representatives, Section 163). Hence this rule did not limit the length of the speeches; instead, it recognised that a reasonable and acceptable minimum length of a speech is "a quarter of an hour".

The last major amendment of the standing orders took place in 1913. These standing orders also failed to regulate the time limit of individual speeches made by MPs and included no authorisation either to regulate it. However, several rules limited the number of speakers mainly in procedural issues not affecting the debates over the essence of bills (for instance, only 4 MPs were granted the right to speak in the issue of merging certain phases of a debate in detail) but the general rule of no time limits for speeches remained. (The 1913 Standing Orders of the House of Representatives, Section 202) The standing orders only restricted the length of individual speeches by MPs during the budget debate. These regulations allowed the Speaker to close the debate on the 20th day of the annual budget session regardless of any more MPs wishing to contribute to the debate and the Speaker was granted the right to put the then-debated part of the budget to vote, including the relevant modifications (cloture). When the Speaker exercised this right, the speaking time of the MPs during the debate on the budget following the 20th day was limited to a period of 30 minutes. (The 1913 Standing Orders of the House of Representatives, Sections 230 to 233) This rule marks the first restriction of individual MP speeches in the history of parliamentary standing orders in Hungary. However, it must be emphasised that this limitation only applied to the budget debate.

1.2. The new regulations in the 1924 Standing Orders of the National Assembly meant two types of restrictions affecting speaking time. On the one hand, the cloture was extended to all bills as opposed to the solution of the 1913 Standing Orders when the cloture had only applied to the budget debate. However, the restrictions were mild and therefore they did not hinder the discussion of the bills in detail. On the other hand, while the standing orders provided that in the general debate all MPs could

speak without any time limits, they set the duration of the debate in detail. Section 212 para. (2) of the 1924 Standing Orders of the National Assembly declared that ”no speech during the debate in detail may last longer than fifteen minutes. Nevertheless, the MP on the floor may be granted the right to continue the speech if he/she specifically determines the exact length of the speech.” [Save for a few exceptions, the 15-minute time limit was applicable to procedural issues – see Section 212 para. (3)].

The amendment of the standing orders in 1928 included new provisions regulating speaking time in both the general debate and the debate in detail. Section 149 para. (1) of the new standing orders stated the following: “Unless otherwise provided by the standing orders, no individual speech may last longer than one hour during the general debate. The person making the speech may request the extension of his/her speaking time once; the extension granted may not exceed one hour. Regarding the debate in detail, the 15-minute rule applied earlier was upheld with the additional provision that the extension was also limited to another 15 minutes [Section 150 para. (1)]. The 1928 Standing Orders also introduced time limits in the committee procedure, which was unprecedented in the history of standing orders. These provisions set 15-minute and 10-minute speaking time limits for individual speeches in the general and the detailed debate, respectively. These limits were extendable (twice by 15 minutes and once by 10 minutes, respectively) [Section 49 .para (2)].

The next in line, the 1939 Standing Orders incorporated more precisely detailed and more restrictive rules on speaking time. The new standing orders introduced the position of faction speakers and granted them a one-hour period for speaking in the general debate and 30 minutes for any other MPs. These periods were also extendable (by 60 minutes and 30 minutes, respectively). [The Standing Orders of the House of Representatives, Section 147 para. (1)] However, the detailed plenary debate was abolished. In Section 150 para. (1) the following was declared: "The House shall vote on the text of the individual sections in the bills as set by the committees without holding a debate. The readers shall present the (...) modifications accepted in the committee and, following the presentation, the Speaker will put the sections to vote one by one." The 1939 Standing Orders explicitly specified the overall time limits for the MPs in the committee phase. Under these provisions, the length of speeches was maximised at 15 minutes but it was extendable by 10 minutes. During the detailed committee debate, each MP was only allowed to contribute to the debate over a single section maximum three times but the length of these additional contributions was limited to 5 minutes each. (Section 49) The 1939 Standing Orders set a specific time limit for all speech types in Parliament (generally 10 or 15 minutes).

The new Standing Orders passed in 1946 by the post-war democratic Parliament was similar to the 1928 Standing Orders regarding the time limits of speeches in the plenary sessions. The time limit in

case of a general debate was one hour and it was possible to extend it by another hour. During the debate in detail, the MPs had 15 minutes to speak and it was possible to allow an extension of maximum 15 minutes. [The 1946 Standing Orders of the National Assembly, Section 76 para (3) and Section 84] Regarding the committee phase, the 1946 Standing Orders by and large adopted the solution introduced by the 1939 Standing Orders. The difference in the committee phase was that the 1946 document allowed 30 minutes and 10 minutes for speaking for the individual MPs in the general debate and the debate in detail, respectively [Section 37 para. (1) and Section 38 para. (2)]. This time was extendable by the same period by request of the MP and if the Assembly voted in favour of granting additional time. Finally, similarly to the 1939 rules, the 1946 Standing Orders established a time limit for short speeches before the orders of the day and also for other speech types.

This short overview on the Hungarian history of standing orders in the Modern Age reflects the fact that setting the overall time limit and establishing time limits for individual speeches are a relatively new development and that speaking time was not substantively restricted for a significant period and even the introduction of the limitations was gradual; they first affected the debate in detail, then the general debate and finally the committee speaking time. Moreover, when the limitations were introduced (incidentally, later than in Western Europe at the time), the provisions of the standing orders remained accurate and reliable. It can be concluded that in the history of Hungarian standing orders, the limitation of MP speeches was an issue regulated by standing orders.

1.3. Prior to the transformation of the political regime, Parliamentary Resolution 9/1985-1990 OGY on parliamentary procedures was modified by Parliamentary Resolution 1/1989 (I. 24.) OGY and the latter also promulgated the consolidated text of the procedural regulations. Parliamentary Resolution 8/1989 (VI. 8.) OGY passed soon after was entitled "amendment to the Standing Orders of Parliament and the consolidated text thereof". Regarding speaking time, both resolutions included the same rule stating that the Speaker or any MP may propose and Parliament may set time limits for speeches [Parliamentary Resolution 8/1989 (VI. 8.) OGY, Section 47 para. (1)]. Also, the resolution established the legal institution of the so-called two-minute speech for the purpose of commenting on any speeches made earlier [Parliamentary Resolution 8/1989 (VI. 8.) OGY, Section 44 para. (3)]. However, there are no limits similar to the abovementioned ones concerning the speaking time for MPs in the committee phase. Parliamentary Resolution 8/1989 (VI. 8.) OGY had been modified on nine occasions until the current Standing Orders were passed in 1994. New provisions with a significant effect on speaking time were only introduced by Parliamentary Resolution 46/1994 (IX. 30.) OGY, the resolution challenged in the current case.

2. The following conclusions may be drawn based on a brief overview of the provisions on debates concerning bills and resolutions in the standing orders of certain foreign countries:

2.1. In the lower house of the Parliament of the United Kingdom of Great Britain and Northern Ireland (the House of Commons) there is no general limit for the length of speeches, but the Speaker may deny the right to speak from a MP if he/she changes the subject. The duration of the debates may, however, be limited through other types of procedures. Such other procedures types include the programme motion submitted by the Government, in which the House of Commons establishes the schedule for the phases of the debate and the allotted time (this means of bringing the debate to an end is applied frequently: in 2002 and 2003 for instance, 71 programme motions were submitted). Another means of closing the debate also at the disposal of the executive is the so-called guillotine (allocation of time motion, see Article 81 of the Standing Orders). The purpose of the guillotine motion is to bring the debate of a bill to an end within a specified time period (in hours and days). The time allotted for debate on the guillotine motion is 3 hours, and in case the motion is passed, the MPs set a schedule for closing the debate regardless of the then-current phase. If the motion is passed, a committee called the Business Committee allots debate time periods to the individual parts of the bill (Article 82 of the Standing Orders).

Under the Rules of the House of Representatives in the United States of America, the representatives may not occupy more than one hour in debate on a question (Rule XVII clause 2) but in practice this "one-hour rule" is seldom applied in debates. A committee called Committee on Rules plays a key role in determining the time allotted for debate on bills. Nine members of the committee are appointed by the majority party and four by the minority party.

In Canada, the provisional Standing Orders of the House of Commons (applicable until the 60th day in session of the lower house to be elected in 2006 at the latest) set a generally applicable 20-minute speaking time limit in Article 43 para. (1) of the Standing Orders. Following a 20-minute speech, a period not exceeding ten minutes shall be made available, if required, to allow MPs to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto. The time allotted to replies to the 10-minute speech is 5 minutes [Article 43 para. (1) items b) and c)].

2.2. Section 95 para. (2) of the Standing Orders of the French National Assembly (*Assemblé Nationale*) specifies restrictions concerning the length of speeches in the debate in detail. Under this rule, the MPs are only allowed 5-minute speeches during the debate of the individual phases and the Speaker may close the debate when two MPs with contradictory opinions finish their speeches.

Sections 103 to 107 allow the application of a so-called simplified procedure. In this case, the speeches are limited and their length is precisely defined (the rapporteur of the relevant committee has 15 minutes, while the MPs selected by other committees have 5 minutes to speak). In 1999 a specific time limit for the debate over procedural motions was also introduced.

Under the Standing Orders of the Spanish Congress of Deputies (*Congreso de los Diputados*), an opportunity must be granted for stating both the supporting and the opposing opinions in any given issue (unless provided otherwise). In case of debates, the time limit is 10 minutes (unless provided otherwise). The Speaker has the right to close the debate early (cloture) under Section 76 of the Standing Orders. A faction leader may also submit a motion for the early closure of the debate. In this case, a 5-minute supportive and a 5-minute dissenting speech is allowed before the debate is closed.

Under Section 57 para. (1) of the Standing Orders of the Austrian National Council (*Nationalrat*), a 20-minute time limit is applicable in debates (unless provided otherwise). In certain cases, the National Council may allow longer speeches by the recommendation of the President of the Council. Under Section 57 para. (2), the National Council or the President of the National Council (based on the opinion provided by the Presidential Conference) may set time limits that are shorter than 20 minutes. The Standing Orders require a minimum speaking time of 10 minutes in these cases. Also, the National Council and the President of the National Council may limit the speeches to 5 minutes for the representatives from a faction following the third speech from the particular faction. Under Section 57 para. (3), the President (based on the opinion of the Presidential Conference) may decide to set time limits for the representatives in individual factions to contribute to the debate. There are special regulations applicable to certain parliamentary procedures. For example, according to Section 74 paras (2) and (3) a debate on the motions may only be opened during the third reading of the bill (the debate on textual coherence) if the National Council approves and each person may only speak for five minutes.

Under Section 35 of the Standing Orders of the Federal Diet of Germany (*Bundestag*), unless the Diet resolves otherwise, each person may only speak for 15 minutes during the debate. The factions may put forward a motion to allow a designated member of their faction to speak for maximum 45 minutes. The president of the Diet may extend the time limits if it is required due to the nature of the item on the agenda or the debate. A vote may only be held on the motion for cloture under Section 25 para. (2) if all factions have contributed to the debate at least once.

The Standing Orders regulating the organisation and the procedures of the Chamber of Deputies (*Camera dei Deputati*) in Italy specify speaking time in the same section with the general rules of debate. Under Section 39 para. (1), unless the standing orders define a shorter period, the length of the

individual speeches in any debate on any motion may not exceed 30 minutes and under Section 43, each MP may only contribute to the debate once. These time limits are double in case of certain legislative topics (amendment of the Constitution, election statutes etc.) and the president of the Chamber of Deputies may extend the time limit for one or more MPs from each faction with regard to the significance of the bill. Under Section 41 para. (1), in procedural issues, one MP may speak for 5 minutes for and one MP may speak for 5 minutes against the motion in addition to the person forwarding the motion.

IV

1. It may be established based on the historical and the international comparative studies that the regulation of the MPs' speaking time is required for striking an appropriate balance between enforcing the individual MP rights on the one hand and securing efficient parliamentary work on the other hand. The regulation must enable Parliament to play its role in discussing public affairs, that is, the MPs need to be provided sufficient time to express their opinions in a way that obstruction or any other actions that render parliamentary work impossible are prevented.

It is a constitutional requirement to strike this balance under the effective text of the Constitution of the Republic of Hungary. On the basis of the Constitution and the Constitutional Court practice, the MPs' freedom of speech in Parliament is protected by the Constitution and so is the constitutional principle of efficient parliamentary work.

In Decision 34/2004 (IX. 28.), the Constitutional Court has established the following: "The freedom of speech in Parliament is an essential component of the freedom of expression protected under Article 61 para. (1) of the Constitution. The Parliament is a place of primary importance for the enforcement of the freedom of expression, where the Members of Parliament make decisions on matters directly affecting the future of the country, after asserting arguments and counterarguments in a debate. The publicity of parliamentary debate and the freedom of speech of Members of Parliament are indispensable for constitutional legislation." (ABH 2004, 490, 498)

In Decision 27/1998 (VI. 16.) AB, the Constitutional Court has declared the following in connection with the efficiency of parliamentary work (as one element of the rule-of-law principle): "Whereas the authorisation granted in the Constitution for passing the Stranding Orders only applies to establishing procedural rules and debate regulations [Article 24 para (4)], the requirement of efficient parliamentary work is more than a technical requirement; it is a constitutional principle." (ABH 1998, 197, 202) This finding has been confirmed by another decision as follows: "The efficiency of parliamentary work is a

constitutional principle under the practice of the Constitutional Court". [Decision 4/1999 (III. 31.) AB, ABH 1999, 52, 63]

2. The regulations in the Standing Orders defining the speaking time available for MPs fall into three categories:

a) The first category of such rules includes minute-long speeches that require quick reactions. For example: in case a motion of urgency is submitted, the proposer may specify his/her reasons in two minutes [Section 46 para. (2)]; the Standing Orders allow two-minute speeches during debates to comment on previous speeches [Section 50 para. (4)]; in issues that are not included in the orders of the day but are pressing, the faction leader is entitled to deliver a maximum 5-minute speech [Section 51 para. (1)]; following the orders of the day, 5-minute speeches are allowed [Section 51 para. (4)] etc. (In addition, the Standing Orders include specific time-limit regulations in 20 cases altogether.) It may be concluded based on these provisions that the drafters of the Standing Orders intended to establish calculable speaking times which are guaranteed partly by the fact that they are regulated in the Standing Orders.

b) The second category is the debate with overall time limits, which is a right reserved to the factions (Section 53). Although debates with overall time limits may be initiated by the House Committee regarding any issue that is not included among the orders of the day (this not regularly used in Parliament), the Standing Orders include special provisions regarding the duration of debates (by request of 15 MPs). It is required, for example, that in case of the Government's programme, a motion of no-confidence or the budget bill, the general debate may not be shorter than 30 hours and in case of a debate on the execution of the budget and on the budget of the social security funds, the general debate may not be shorter than 15 hours [Section 53 para. (4)]. This category includes the rule that at least ninety minutes shall be provided for proceedings with interpellations and questions [Section 115 para. (3)] and at least sixty minutes shall be ensured per week for asking and answering questions directly [Section 119 para. (1)]. Therefore, in case of speeches in the first category, the Standing Orders specify a time limit for the individual speeches of the MPs, while in case of the second category, a minimum designated time is specified for the particular subject.

c) The third category includes the definition of time limits for speeches under the Standing Orders without statutory limits. The time limit for speeches as a legal institution is different from the debates with overall time limits detailed above. Whereas the debates with overall time limits (if initiated at all) define the minimum duration of the debate on the given subject or bill, the time limits for speeches regulate a different element of speaking in Parliament as they define the speaking time of individual

MPs in all cases when Parliament specifies time limits for speeches at the same time when it accepts the orders of the day. While the Standing Orders regulate the debates with overall time limits in detail (Section 53), they establish regarding time limits for speeches that these proposals are prepared by the House Committee [Section 23 item b)]; the House Committee (presided over by the Speaker and the members are the deputy speakers and the faction leaders as defined in Section 24) makes its decisions by consensus and if the House Committee fails to reach a consensus, the Speaker of Parliament shall make a decision regarding the time limits for speeches [Section 26 para (3)]. During the session, the Speaker presents the proposal of the House Committee concerning the time limits for speeches [Section 47 para. (4)] and Parliament decides on the proposal without holding a debate [Section 47 para. (6)]. This third category includes the provision that committees when declaring that the committee may restrict the length of speeches by setting equal time limits for each faction [Section 75 para. (3)].

The Constitutional Court has reviewed the regulations from the aspect of constitutionality in this third category.

3. Under Article 2 para. (1) of the Constitution, “the Republic of Hungary is an independent democratic state under the rule of law”, and Article 2 para. (2) defines the principle of popular sovereignty, that is, the people exercise power both through their elected representatives and directly. In the course of interpreting the relationship between the first two paragraphs of Article 2, the Constitutional Court has developed the content of the adjective “democratic” concerning the rule-of-law concept. The Constitutional Court is of the opinion that it is only the power under Article 2 para. (2) that may be regarded as the democratic source and realisation of public power. [Decision 16/1998 (V. 8.) AB, ABH 1998, 140, 146] As declared by the Constitutional Court, “the constitutional requirements of a democratic state under the rule of law determine the framework and the limits of exercising sovereign authority and, in particular, the actions of Parliament and Government”. [Decision 30/1998 (VI. 25.) AB, ABH 1998, 220, 233] One element of the constitutional requirements of exercising power in a democratic manner is defined by Article 20 para. (2) of the Constitution, establishing that “Members of Parliament shall carry out their duties in the public interest.” The requirements of a democratic state under the rule of law includes the task of the MPs to discuss the public affairs. [Decision 50/2003 (XI. 5.) AB, ABH 2003, 566, 576] The fulfilment of this task is a precondition of exercising several fundamental rights. The Constitutional Court has explained in connection with the freedom of expression that this freedom "is not merely a subjective fundamental right, but the recognition of its objective, institutional aspect concurrently means the protection of public opinion as a fundamental political institution”. [Decision 30/1992 (V. 26.) AB, ABH 1992, 167,

178] In addition to one's individual right to the freedom of expression, the formation and free development of public opinion that are indispensable for a democracy must also be considered. [Decision 30/1992 (V. 26.) AB, ABH 1992, 167, 178]

3.1. The Constitutional Court is of the opinion that the activities of the MPs in the interest of the public involve the freedom of debate on public affairs in Parliament (as an indispensable element of democratic legislation) and the provision of information to the electors so that they may take part in political life with sufficient background information. [see Decision 50/2003 (XI. 5.) AB, ABH 566, 576] The most significant institution available for such debates is Parliament. It must be operated efficiently and in line with the requirements of a democratic state under the rule of law and the parliamentary speaking time of MPs needs to be regulated in accordance with the same principles. In its Decision 62/2003 (XII.15.) AB, the Constitutional Court has established a set of requirements concerning legislation in a democratic state under the rule of law. As declared by the Constitutional Court, "for a democratic state under the rule of law procedural rules accepted in a democratic manner are required and it is necessary to pass decisions based on such procedural rules." (ABH 2003, 637, 647) This decision specified the passing of such procedural rules based on the Constitution and the compliance with these rules as a prerequisite of establishing a democratic state under the rule of law. (ABH 2003, 637) When the Constitutional Court was examining the so-called "Hospitals Act" from the aspect of constitutionality, it referred to the principle that it was a necessary condition of exercising power through elected representatives under Article 2 para. (2) that legislative work must be conducted in accordance with the regulations determined in advance ("the convention of the session in accordance with the relevant rules and the disclosure of the proposals for the orders of the day in a timely manner"). [Decision 63/2003 (XII. 15.) AB, ABH 2003, 676, 685]

It follows from the above that the requirements under the principle of the democratic state under the rule of law represent a complex set of criteria for the protection of efficient parliamentary work. The constitutional requirements of exercising power in a democratic manner include the efficient work of the institutions (in our case, Parliament) in a state under the rule of law and the protection under the Constitution of the MPs' work in the interest of the public and based on popular sovereignty. It is the essence of parliamentary activities to examine issues from all aspects possible and to provide a forum for diverse opinions. As a conclusion, the institution for exercising power through representatives [specified by Article 2 Section (2) of the Constitution] at a national level is Parliament and this power is exercised in the decision-making process (typically legislation). In this process, the preparation of decisions and the debate over bills (the MP's right to speak) have a dominant role.

3.2. The Constitutional Court holds that the MPs must be provided sufficient time to speak in sessions of Parliament and in committees in order to explain their positions, otherwise they are unable to fulfil their duties in accordance with Article 2 paras (1) and (2) and Article 20 of the Constitution. This follows from the requirement that power must be exercised under the rule of law.

In the present case the Constitutional Court concludes that the Standing Orders include no provision on the statutory criteria for establishing the time limits of individual speeches by MPs related to the orders of the day. With regard to the sessions of Parliament, it is the task of the House Committee [or of the Speaker if the Committee fails to reach a consensus, Section 26 para. (3)] under the Standing Orders to make a proposal on the time limits for speeches [Section 23 item b)] and Parliament decides on the proposals by a simple majority of votes [Section 47 para. (4) and (6)], while the committees are also allowed to limit the duration of speeches [Section 75 para. (3)]. Based on these regulations, the time limits for speeches are, therefore, determined by the majority of votes in Parliament and the Standing Orders include no minority protection provisions regarding speech time limits. [It must be noted that the session regulations examined in Decision 4/1999 (III. 31.) AB (ABH 1999, 52) have been adopted with a similar content, that is, without minority protection regulations, and it is still in practice despite the fact that it is not included in the Standing Orders. Under Section 23 item a) of the Standing Orders, the House Committee adopts its position on the weekly work schedule and Parliament decides on the proposal with a simple majority of votes if no consensus is reached in the House Committee. The Constitutional Court has declared that as a guarantee these provisions must be included in the Standing Orders as they implement provisions of the Constitution.]

The Constitutional Court wishes to point out that minority protection provisions in the procedural rules are significant guarantees. The role of the given majority and minority in Parliament is determined by different interests. Whereas the majority in general favours a Parliament that is able to make fast decisions, the minority intends to criticise decisions to be made and to make the process more cautious. It follows from this tendency that the minority views need enhanced protection as the minority parties may lose their most important right in a parliamentary democracy from the aspect of the freedom of expression, that is, their right to express well-founded criticism and to discuss public affairs if the minority parties are also affected by the self-regulatory efforts of the majority parties (such as the time limits for speeches in this case or the self-regulation in committees). The guarantees specified in the Standing Orders have been developed for the protection of the minority in Parliament. These regulations are meant to ensure efficiency in addition to securing the traditional rights of the minority parties that have evolved (see section III/1 of the reasoning above). The Constitutional Court feels that the method of defining speaking time for the MPs is not just a formality as the discretion of

Parliament in regulating these issues may only be exercised in line with the Constitution. This is because the restriction of speaking time has a profound effect on the quality and the content of what is said; if there is no sufficient time available for the MP to explain his/her opinion, this results in a substantial restriction of the speech in case of all MP opinions that are not voiced because the MP is silenced and is not able to explain his/her opinion coherently. Due to the reasons detailed above, the speaking time regulations (minority protection, efficient parliamentary work and the possibility of a detailed debate on public affairs) in the Standing Orders have increased significance. In case of defining time limits for speeches, regulations in the Standing Orders that allow the majority position to prevail [Section 23 item b), Section 47 paras (4) and (6) as well as Section 75 para. (3) affecting speech in committees] lack the requisite guarantees.

3.3. Under Section 49 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), an unconstitutional omission of legislative duty may be established if the legislature has failed to fulfil its legislative duty mandated by a legal norm, and this has given rise to an unconstitutional situation. In accordance with the established practice of the Constitutional Court, the legislature shall be obliged to legislate even when there is no concrete mandate given by a statute if the unconstitutional situation – the lack of legal regulation – is the result of the State's interference with certain situations of life by way of a statute, thus depriving some of the citizens of their potential to enforce their constitutional rights. [Decision 22/1990 (X. 16.) AB, ABH 1990, 83, 86] The Constitutional Court also establishes an unconstitutional omission of legislative duty in the case of the lack of the statutory guarantees necessary for the enforcement of a fundamental right. [Decision 37/1992 (VI. 10.) AB, ABH 1992, 227, 231]

The Constitutional Court establishes an unconstitutional omission not only in the case of there being no regulation at all on a given subject [Decision 35/1992 (VI. 10.) AB, ABH 1992, 204, 205] but even if there is no statutory provision with a content deducible from the Constitution within the regulatory concept concerned. [Decision 22/1995 (III. 31.) AB, ABH 1995, 108, 113; Decision 29/1997 (IV. 29.) AB, ABH 1997, 122, 128; Decision 15/1998 (V. 8.) AB, ABK, May 1998, 222, 225]

The Constitutional Court has examined the issue of unconstitutional omission in the Standing Orders in several decisions with the presumption that guarantees provided in the Constitution are not regulated in the Standing Orders. [the guarantees of the right to initiate the preliminary review of statutes were examined in Decision 29/1997 (IV. 29.) AB (ABH 1997, 122); the committee membership of independent MPs and the guarantees of the right to participate for all MPs and the guarantees of proportional representation in committees in Decision 27/1998 (VI. 16.) AB (ABH 1998, 197) and the

procedural guarantees of the sittings during regular sessions in Decision 4/1999 (III. 31.) AB (ABH 1999, 52)].

The Constitutional Court is of the opinion that the provisions of the Standing Orders governing time limits for speeches [the regulations in Section 23 item b) and Section 47 para. (4) on time limits and the regulation requiring a vote passed by a simple majority on time limits in Section 47 para (6)] do not include guarantees that protect the right of the MPs to make speeches and, as a result, they provide a basis for defining such time limits that would practically deprive the MPs' right to express their opinions in political issues. This may lead to a violation of the principle of a democratic state under the rule of law. As explained above, there is a requirement under Article 2 paras (1) and (2) and Article 20 para. (2) that the MPs need to be granted sufficient time to explain their positions while following the orders of the day. The Constitutional Court holds that it is a procedural requirement affecting legislation and the source of which is the Constitution that in addition to providing for the efficiency of parliamentary work, the minimum length of speeches by individual speeches must be defined and protected (that is the smallest duration of a speech during which the MP's speech may not be interrupted by the Speaker on the sole basis of the lapse time). Although the MP’s right to speak again in Parliament later is not prohibited by the Standing Orders, this violation of the MPs' right to make a speech is not remedied as without the regulation of time limits in the Standing Orders (that is, the minimum protected speech time) and under the current procedural rules it is possible that such low time limits are specified that deprive the MPs from exercising their speaking rights. In this case even the possibility of making speeches later is not a sufficient guarantee for enabling the MP to express his/her position (possibly not even an outline of it).

Section 75 para. (3) of the Standing Orders restricts speeches in the committees. This provision allows the majority to restrict the length of speeches “by setting equal time limits for each faction”. From the aspect of restricting speech time by faction, this provision affecting committee work is similar to the overall time limit debates (Section 53 of the Standing Orders) with the difference relevant in the present case that while in case of overall time limit debates the Standing Orders define minimum speech time available to factions [Section 53 para. (3) item d) and para. (4) of the Standing Orders], the minimum length of speeches in committees are not defined by the Standing Orders. That is why due to this diversity (the lack of setting a minimum guaranteed speech time available) the restriction of speech time in committees is similar to the definition of time limits for speeches, as the majority decision limiting the time available for speeches to equal periods per faction lacks the guarantees in the committee work that would protect the minority MPs, in the same way as the session regulations on time limits for speeches in the Standing Orders. In case of committee contributions, the restriction

allowed in Section 75 para. (3) of the Standing Orders is also unconstitutional, similarly to the provisions affecting the time limits for speeches in sessions of Parliament as both sets of provisions lack minority protection regulations. The Constitutional Court wishes to point out that it is important with regard to the forums of committee work and the preparation for debate and decision-making in the sessions of Parliament that the individual speeches of MPs are only restricted in exceptional cases and not simply by majority decisions and appropriate guarantees must provided in the Standing Orders.

The Constitutional Court has referred to the fact that the incorporation of time limits for speeches in the Standing Orders (and thus providing that the MPs' speaking time is guaranteed) is not simply a precondition of exercising the MPs' right to speak but it is a precondition of implementing the provisions in Article 2 paras (1) and (2) and Article 20 para. (2) of the Constitution. It has already been explained that the efficiency of parliamentary work may be a constitutional reason for restricting the MPs' right of speech. Consequently, the length of available speech time can be defined. Therefore the MPs' right of speech is a "debate right" that can be restricted. This right is meant to ensure that the MPs' freedom of speech is exercised equally. As a consequence, it needs to be regulated by legislation, in this case, by the Standing Orders. The proportional restriction of the MPs' right of speech must be combined with relevant guarantees in the Standing Orders.

The solution applied by the Standing Orders and its challenged provisions in itself is inadequate with regard to Article 2 paras (1) and (2) and Article 20 para. (2) of the Constitution. The Constitutional Court is of the opinion that the regulations affecting speaking time in Parliament must include (in addition to rules providing for efficient parliamentary work) such guarantees that protect the speaking time and enable the MPs to express the essence of their views. There are no such guarantees in the Standing Orders.

3.4. Finally, the Constitutional Court has examined the relationship between the regulations concerning the time limits for speeches and Article 24 para. (4) of the Constitution. It is declared in Article 24 para. (4) of the Constitution that "The Parliament shall establish, by a majority of two-thirds of the votes of the Members of Parliament present, its rules of procedure and speaking order in the Standing Orders." Under the practice of the Constitutional Court, the terms "speaking order" and "procedural rules" mean that the subjects in the Standing Orders that are directly connected to the constitutional function of Parliament must be accepted by a qualified majority (including the relevant guarantees). For example, in Decision 27/1998 (VI. 16.) AB, the Constitutional Court ordered the establishment of regulations in the Standing Orders to enable the participation of independent MPs in the work of standing and temporary committees (ABH 1998, 197). Also, in Decision 4/1999 (III. 31.) AB, the Constitutional Court required the session regulations to be included in the Standing Orders

(ABH 1999, 52). In the present case, the issue of whether the authorisation specified in Article 24 para. (4) of the Constitution applies to the inclusion of guarantees concerning speaking time is connected to the constitutional role of Parliament in the debate on public affairs.

In connection with the Standing Orders, the Constitutional Court has already passed several decisions in cases when Parliament has regulated such issues in the form of committee statements that otherwise should be regulated in the Standing Orders. In these decisions, the Constitutional Court stressed that the committee statements of positions and the “parliamentary practice" developed by statements of positions may not replace the guarantees missing from the Standing Orders. [Decision 29/1997 (IV. 29.) AB, ABH 1997, 122, 129; Decision 50/1997 (X. 11.) AB, ABH 1997, 327, 329; Decision 4/1999 (III. 31.) AB, ABH 1999, 52, 60, 63] Therefore, the practice of the Constitutional Court is consistent as in issues that should be regulated in the Standing Orders it does not accept committee recommendations and proposals due to the fact that they violate Article 24 para. (4) of the Constitution, not even if the solution incorporated in these recommendations or proposals otherwise comply with the rest of the Constitution. This practice is consistent because these rules adopted by a simple majority of votes become in effect rules of the Standing Orders without compliance with the guarantee specified in the Constitution that requires a qualified majority for adopting the Standing Orders. It is for the same reason that the Constitutional Court has refused to accept the parliamentary practice concerning session regulations. [Decision 4/1999 (III. 31.) AB] In another decision, the Constitutional Court has already declared that “living law” (customs in this case) will not suffice and normative regulation is required. [Decision 31/1997 (V. 16.) AB, ABH 1997, 154, 158] With regard to the Standing Orders, the Constitutional Court has pointed out the following: “As Parliament exercises its powers in session, the so-called session regulations are indispensable elements of the operation and debate order of Parliament, and therefore Parliament must adopt self-regulations by a qualified majority of votes as a guarantee. The current regulations applicable to the work schedule allows the specification of certain fundamental rules governing the operation and the debate order of Parliament, such as the order of sessions (subsequent sessions) by a simple majority although the adoption of the Standing Orders require a qualified majority of votes.” (ABH 1999, 52, 62)

In the opinion of the Constitutional Court, based on the same reasoning an unconstitutional omission may be established under Article 24 para. (4) of the Constitution regarding the authorisation provisions in the Standing Orders on setting (restricting) time limits for speeches in connection with the orders of the day. Without providing appropriate guarantees in the Standing Orders, the time limits for speeches adopted by a simple majority of Parliament on the proposal of the House Committee (or, if the House Committee fails to reach a consensus, on the proposal of the Speaker) and the recommendations

interpreting the binding nature of these time limits would violate Article 24 para. (4) even if the time limits set were acceptable (that is, it does not limit the MP's speaking rights disproportionately) or if the recommendation did not include the rule that compliance with the time limits set by a simple majority is obligatory Recommendation 17/2002–2006 of the Procedural Committee, the one before the currently effective Recommendation 26/2002–2006 of the Procedural Committee, included such a rule). The Constitutional Court is of the opinion that the terms "speaking order" and "procedural rules" (defined by Article 24 para. (4) of the Constitution as subjects of regulation requiring a qualified majority) mean that the time limits for speeches for individual MPs must be set in the Standing Orders for the sessions of Parliament and the committee sessions as well.

3.5. Based on the findings above, the Constitutional Court has established that Parliament has caused an unconstitutional omission of legislative duty by its failure to define such regulations regarding the time limits for speeches in connection with Section 23 item b), Section 47 paras (4) and (6) and Section 75 para. (3) of the Standing Orders that would serve as guarantees for preventing the unlimited restriction of the set time available for MPs as specified case by case to explain their positions. The omission to adopt these guarantee regulations violates Article 2 paras (1) and (2) and Article 20 para. (2) of the Constitution.

Under Section 49 para. (1) of the ACC, the organ responsible for the omission shall be instructed by the Constitutional Court to comply with its legislative duty within the specified deadline. In the present case, the Constitutional Court has declared that this deadline for compliance with the legislative duty is 15 December 2006. In the course of the constitutionality review of the Standing Orders, the Constitutional Court has noticed at several points (in its competence under Section 1 item e) of the ACC) that the deadlines specified for the amendment of the Standing Orders have passed without any amendment. As a result, certain guarantee regulations specified by the Court are still missing that should be included in the Standing Orders according to the Constitution [Decision 27/1998 (VI. 16.) AB, ABH 1998, 197; Decision 4/1999 (III. 31.) AB, ABH 1999, 52; Decision 50/2003 (XI. 5.) AB, ABH 2003, 566].

3.6. The Constitutional Court rejects the petition seeking establishment of the unconstitutionality and annulment of Section 23 item b), the phrase "and regarding time limits for speeches" in Section 47 para. (4) and also Section 47 para. (6) and Section 75 para. (3) of the Standing Orders. The Constitutional Court is of the opinion that the provisions of the Standing Orders challenged by the petitioner do not violate Article 2 paras (1) and (2) and Article 24 para. (4) of the Constitution. The Constitutional Court has established unconstitutionality due to the lack of guarantees in the Standing Orders. If regulations protecting the length of MP speeches (that is, guarantees protecting the

"minimum length" of speaking time) are incorporated in the Standing Orders, the provisions of the Standing Orders on the definition of time limits may be applied without any violation to the Constitution. If Parliament complies with its legislative duty specified in the present resolution, appropriate guarantees will be provided to the procedures specified in Section 23 item b), Section 47 paras (4) and (6) as well as in Section 75 para. (3) of the Standing Orders, and these guarantees will also provide sufficient flexibility to set the speech lengths in each case.

On this ground, the Constitutional Court has rejected the petition for posterior constitutionality review.

The Constitutional Court has ordered the publication of this Decision in the Hungarian Official Gazette with regard to the importance of the matter.

Budapest, 24 April 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, Rapporteur
Dr. László Kiss Judge of the Constitutional Court	Dr. Péter Kovács Judge of the Constitutional Court
Dr. István Kukorelli Judge of the Constitutional Court	Dr. Péter Paczolay Judge of the Constitutional Court

Dissenting opinion by Dr. Mihály Bihari, Judge of the Constitutional Court

I do not agree with establishing an unconstitutional omission of legislative duty (as specified in point 1 of the holdings) with regard to Section 23 item b), Section 47 paras (4) and (6) as well as to Section 75 para. (3) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary based on Article 2 paras (1) and (2) and Article 20 para. (2) of the Constitution. I agree that point 2 of the holdings rejects the petition seeking establishment of the unconstitutionality and annulment of Section 23 item b), the phrase "and regarding time limits for speeches" in Section 47 para. (4) and also Section 47 para. (6) and Section 75 para. (3) of the Standing Orders.

It is essential to decide with regard to the constitutionality issue raised in the petition whether the MPs' right of speech (which means that the Member of Parliament may express his or her opinion in

any given topic regarding any motion in any length in Parliament, that is, both at the plenary session and in committee sessions) is protected by the Constitution directly or the protection of the MPs' right of speech derives directly from a provision of the Constitution. It depends on the answer to this question how and to what extent the individual right of the MPs may be restricted.

I

The purpose of restricting the MPs right of speech

It was pointed out as early as 1848 by József Eötvös in the debate of the standing orders for the national assembly at that time that “effective standing orders enable the national assembly to pass excellent laws in the shortest possible time”. Modern Parliaments are similar, especially today: they are rationally organised decision-making bodies that on the one hand have powers under parliamentary sovereignty and on the other hand they represent the current political divisions and distributions. The most general and significant task of the standing orders in modern parliaments is to secure a rational and democratic decision-making process and to make sure that quality laws are passed. The standing orders of modern parliaments therefore need to be stable and flexible at the same time as they must be able to provide continuity and to defer to the current situation.

1. It follows from the comparative historical analyses in the majority decision and in the relevant literature that the main reason for curbing the MPs’ speech rights is to prevent obstruction, that is, the arbitrary delay of the parliamentary decision-making process. As referred to by Sándor Pesti concerning the regulation of speaking time in the dual Monarchy, “When regulating speaking time, the fundamental principle of parliamentary work must be taken into consideration, that is, a balance must be struck between the individual rights of the MPs and the efficient operation of the assembly. This means in our case that the regulations must make sure that the issues on the agenda may be discussed in detail, the regulations must grant the opposition sufficient time to criticise government decisions and to present an alternative and also they must ensure that the public is informed. However, the standing orders must prevent pointless debates, playing for time and obstruction and they must enable the majority parties to exercise the rights they are granted as the majority. Nevertheless, in practice it is challenging in some cases to separate the rightful exercising of individual MP rights from obstructing the assembly in the manifestation of its will." (Pesti, Sándor: The Hungarian Parliament in the Modern Age. Budapest: Osiris, 2002, p. 232)

Parliaments have applied several methods to restrict the MPs’ right of speech. These methods have often changed in history, some have disappeared while others have re-emerged. Such methods include the prohibition of multiple speeches in the same topic, the prohibition of reading the speeches from paper, the prohibition of changing the original subject, the setting of time limits for speeches or the

number of speakers in case of certain speech types and the cloture (that is, closing the debate despite the fact that there are still MPs who have requested to deliver a speech in the debate).

A number of these methods are included in the Standing Orders currently in effect (for example, the prohibition on changing the subject) but it allows certain phenomena banned in earlier standing orders (EG multiple speeches). In connection with other restrictions, the current regulations are different from the previous solution (for instance the time limits for speeches are regulated in another way).

The duties delegated to Parliament have changed to a large extent in recent years. Due to the rapid development of information technology and mass communication, the role of the MP's right of speech has changed. For example, the number of Acts of Parliament passed by Parliaments before the Communist era and after 1990 are quite different. Also, nowadays, the parliamentary debate is not the only forum available for the MPs to inform the general public on their views but they may hold press conferences or publish them on their websites etc. In addition, the few hours of parliamentary debate broadcast by the television or the radio are particularly significant.

2. There are several schemes of restricting the MPs' right of speech "Generally, the procedural rules regarding speech time are permissive (dispositive) regulations, that is, Parliament may adopt special regulations as the case may be. In such cases it is very often the Speaker who may initiate the adoption of such special regulations, generally following an agreement between the factions. The general time limits may be both increased or reduced in the special regulations." (Szente, Zoltán: An introduction to parliamentary law. Budapest: Atlantisz, 1998, p. 245)

The standing orders generally regulate the minimum or maximum time available for speeches, but the actual regulations are wide-ranging. For example, in the United States House of Representatives, a one-hour limit is set, while in Sweden any MP is allowed a four-minute period for speaking if the MP does not specify the expected length of his/her speech and even this four-minute period may be reduced.

To sum up, it is safe to say that there are several models for restricting speaking time in Parliament and there is no one constitutional model that is universally accepted.

II

The MPs' right of speech: is it protected by the Constitution itself or is it an issue to be regulated by Parliament at its discretion?

In Part IV section 1 of the majority Decision, it is established that "on the basis of the Constitution and the Constitutional Court practice, the MPs' freedom of speech in Parliament is protected by the Constitution (…)" and the majority decision concludes based on various provisions of the Constitution

that this protection derives from the Constitution directly. As I see it, it is not possible to conclude that the MPs' right of speech is protected by the Constitution directly.

1. The connection of the right of speech and the freedom of speech in Parliament

To support its holdings, the majority Decision refers to Article 61 para. (1) of the Constitution (a provision the petitioner has not cited) and Decision 34/2004 (IX. 28.) AB of the Constitutional Court. However, the MPs' right of speech and the freedom of speech in Parliament are two different concepts. As Zoltán Szente put it: "The parliamentary right of speech means that the MP may participate in debates and the right of speech enables the MP to express his/her opinion. The freedom of expressing this opinion is guaranteed by the freedom of speech." (Szente p. 178) The quoted Constitutional Court decision only includes the finding that "the publicity of parliamentary debate and the freedom of speech of Members of Parliament are indispensable for constitutional legislation." The formal aspects of the right of speech in Parliament are not discussed in the decision and it is not analysed whether the right of speech is granted to each MP in all issues without any time limits or it is an abstract right that may be restricted from all three aspects in line with the relevant regulations.

As I see it, the direct constitutional protection of the MPs' right of speech may not be derived from Article 61 para. (1) of the Constitution since the MPs' right of speech and the freedom of speech are not identical terms.

2. The right of speech and the freedom to shape public opinion; the free debate of public affairs in Parliament and the requirement of exercising power is a democratic manner [Article 2 para. (1) and Article 20 para. (2) of the Constitution]

The right of speech as exercised by the MPs is only one method of shaping the public opinion. Its significance is diminishing as the mass media and information technology are developing and new, more effective methods for shaping the public opinion evolve to take its place (this is particularly true in case of committee debates that are only open for the press under the current Standing Orders, and therefore the public may only gain information on committee work through the media).

When examining free debate over public affairs in Parliament, it is to be kept in mind that this principle is implemented not only in the legislative procedure but also in speeches before the orders of the day and also in the instruments available of checking on the Government (for example the interpellation) and partly on days available for political debates. In these cases, the Standing Orders set specific time limits.

The MP may influence the decision through speaking but he/she has more important instruments at her disposal: MPs may initiate legislation as guaranteed by the Constitution and they may also submit proposals for modifications under Section 94 para. (1) of the Standing Orders. When initiating

legislation or submitting a proposal for modification, the MP has an obligation to specify his or her reasons for both. The MP may specify his/her reasons at any length and may speak in support of the regulation method favoured by him/her without any time limits.

3. The right of speech as an individual right for MPs

The right of speech as an individual right reserved for MPs as individuals should be distinguished from rights that are granted to MPs as members of a given faction and also from the rights that are reserved for the faction as a whole. The rights reserved for individual MPs (regardless of whether they are members of a government faction or of an opposition faction or they are independent MPs) are granted to all MPs and they may only be restricted in a way securing that such restriction applies to each MP. Since the right of speech is a right granted to MPs as individuals, it is not affected by the government/opposition factor and as a result it is pointless to declare that the lack of minority protection regulations is a problem from a constitutional aspect. Since the restrictions apply to all MPs, they may not be regarded as unconstitutional. [The Standing Orders include supplementary regulations to govern cases when there is a realistic chance that individual rights of opposition MPs may be curtailed by opposition MPs. For instance, under Section 98 para. (5) of the Standing Orders, the faction leader may request the motion of an MP to be included in the orders of the day if the committee has rejected to do so (the faction leader may exercise this right maximum six times in each session). The purpose of the regulations in Section 106 paras (1) and (2) is the same. Under this provision, voting must be held on proposed modifications if the faction leader has requested so (maximum on three occasions during the decision-making procedure).]

4. The possible restrictions of the right of speech and the nature of "silencing" (suspending the right to speak of) the MPs

Upon the request of the Procedural Committee chair, Zoltán Szente has prepared a comprehensive study on time limits for speeches and debates from an international perspective. (See: Dr. Zoltán Szente: Time limits for debates and speeches – an expert study. Prepared by request of the Procedural Committee chair in September 2003, document number: URB-31-1/2003) In this study, Dr. Szente has come to the conclusion by analysing standing orders that “it is a tendency in parliamentary regulations around Europe that they give priority to factions. (…) Due to this tendency, it is misleading to presume that the MPs’ right of speech is unlimited. What is more, the individual MPs' right to contribute to each item in the orders of the day is not secured either. This is true even when the Constitution of a country (unlike in Hungary) specifically includes the MPs' right of speech. (…) Nevertheless, there are types of speeches when all MPs may contribute (for instance if the topic concerns them personally) or when

procedural proposals are made. But in case of discussing the orders of the day, this right is more like a legal institution and not an individual right". (Szente pp. 18-19)

In general, the individual right of speech for MPs may be restricted in debates over the orders of the day if two conditions are met. First, if the restriction is generally applicable (that is, it applies to all MPs and not just to a part or one of them) and if all factions are given the option to explain their positions in the debate.

The silencing of MPs is not a method of restricting the right of speech; it is rather a disciplinary measure and a sanction that may be applied in case an MP commits a disciplinary offence specified by the Standing Orders. Such disciplinary offences include the case when the MP does not comply with the Parliament's decision on setting a specific time limit for speeches in the debate of a particular bill or a resolution. If the MP exceeds the set time limit, he/she contravenes a(n individual) decision of Parliament (that is in effect equivalent to the application of a provision in the Standing Orders). This violation is required to be sanctioned by silencing the MP.

III

The constitutional foundations and the nature of the currently effective regulations

Article 24 para. (4) of the Constitution provides that Parliament shall establish, by a majority of two-thirds of the votes of the Members of Parliament present, its rules of procedure and speaking order in the Standing Orders excluding certain basic provisions in the Constitution. Parliament is granted considerable discretion in phrasing the Standing Orders. Its freedom of self-regulation is a power protected by the Constitution and the Constitutional Court may only limit this freedom in exceptional cases when the Constitution is flagrantly violated and if the reasons for such interventions are compelling.

Neither the Constitution, nor the Standing Orders specify the MPs' right of speech. However, under the general provisions of the Standing Orders, the MPs may contribute to any item in the orders of the day and at any length. There are three types of exceptions from this general rule.

1. First, the Standing Orders allocate specific time limits for certain speech categories. {Such limitations apply for instance in case of speeches before the orders of the day, [5 minutes, Section 51 para. (1)], speeches on procedural motions [1+2+2 minutes, Section 52 para. (1)] and interpellations [3+4+1 minutes, Section 115 para. (3)], etc.}

2. Second, the Standing Orders provide detailed regulations for proceeding with any order of the day within set overall time limits (Section 53). In such a case, the House Committee (or, failing to reach a consensus, the Speaker) makes a proposal and then the plenary session of Parliament decides how much time is granted for the given order of the day (based on the proposal). By setting the overall

time limit, Parliament (with a simple majority of votes) decides how much time each faction has at their disposal for speaking. As a result, the factions themselves may decide on the specific limitations of the individual MPs' right of speech based on agreements (faction regulations) in each faction.

3. Finally, the Standing Orders allows the regulation of the length of speeches concerning certain items in the orders of the day [Section 23 item *b)* and Section 47 para. (4)].

When defining the length of speeches concerning certain items on the agenda, Parliament has chosen a specific regulatory model by a two-thirds majority of votes. The main characteristics of the model are the following:

a) the length of contributions to individual items is not limited in general, and therefore under the Standing Orders there are no time limits for these speeches,

b) In case these speech lengths are to be limited for any reason (e.g. to prevent obstruction or to provide that the MPs have equal time during the period of television coverage), the House Committee prepares a proposal for the specific time limits for individual speeches. All factions are represented in the Committee and the Committee makes its decisions unanimously.

c) If the House Committee fails to reach a unanimous decision, the Speaker makes the final decision on the proposal (in the issue of whether he/she will make a proposal and, if so, on the specific lengths).

d) Regardless of whether the proposal on the time limits for speeches [submitted to the plenary session by the Speaker under Section 47 para. (1) of the Standing Orders] is based on the decision of the House Committee or the Speaker, it is Parliament that decides on the proposal on time limits eventually (a simple majority of votes is required for passing the decision on the proposal).

As it has been established in Part I, there are several regulatory models in use, and there is no one “universal” solution in Constitutions around the world regarding the restriction of the MPs' right of speech. It has also been verified that the model presented above and included in the Standing Orders is not unconstitutional and it does not violate Article 2 para. (2) and Article 24 para. (4) of the Constitution originally specified in the petition. Also, there is no contrast between the Standing Orders regulations and Article 2 para. (1), Article 20 para. (2), and Article 61 para. (1) of the Constitution also included in the examination by the Court. [The latter provision (as confirmed in Part II section 1) protects the freedom of speech in Parliament, that is, the essence of the MPs' right of speech, which means that the MPs are entitled to express their opinions in any topic. However, this protection is not formal and it does not mean that the MP may speak at any time, at any length and regarding any topic. First of all, it is limited by the fact that Parliament itself has to follow its orders of the day (“coming to the point”; Section 54 of the Standing Orders) and there are also various time limits (for example, the

time limit of speeches before the orders of the day or when time limits apply in the debate and the allocated time is distributed among the MPs by the factions).]

There are various models used for setting the time limits for individual speeches (and these models may be analysed in the light of the regulatory framework in Hungarian Constitutional law). Based on one of these models, the standing orders may define the time limits for individual speeches in debates of bills and motions for resolutions (for example, the time available for the person submitting the bill and the time available in the first reading and during later readings of the bill) and Parliament or the person presiding over the session may decide to increase or decrease the time limit. Another constitutional model is the model currently applied in Hungary. Naturally, it is in the discretion of Parliament to change the current model at any time. It may set minimum or maximum speech lengths for individual speeches etc. It is the exclusive right of Parliament to select one of these models. The Constitutional Court has no power to force Parliament to adopt a particular model.

Does it follow from the Standing Orders adopted by a two-thirds majority of the MPs present that a two thirds majority in Parliament is required for deciding in every single detail, including the time limits?

Under Article 24 para. (4) of the Constitution, Parliament establishes (by a majority of two-thirds of the votes of the Members of Parliament present) its rules of procedure and speaking order in the Standing Orders. This does not mean that every detail of the regulations needs to be set in the Standing Orders. The Standing Orders currently in effect require a decision by Parliament in plenary session in several procedural issues in connection with the general operation of Parliament and these questions are to be decided by a simple majority of votes in a Parliament holding a quorum (such issues include, for example, the decision on the orders of the day (regardless of whether the original proposal received by the MPs or a modified version is voted on), which is one of the most significant procedural decisions of any decision-making entity, including Parliament). It should be stressed that these decisions passed by a simple majority of votes are not only supported by the given majority voting in favour of the decision but they are also supported by those provisions of the Standing Orders that are adopted by a two-thirds majority of MPs present and that allow the plenary session to make decisions in these issues case by case. The legitimacy of these decisions are, therefore, secured by the Standing Orders.

It is the element of the self-regulation power granted to Parliament by Article 24 para. (4) of the Constitution that (by a consensus of two-thirds of the MPs present required for passing the Standing Orders) in the interest of making the process more flexible and rational Parliament may choose to allow certain procedural decisions to be passed by a simple majority of those participating in the vote.

Parliament may not be deprived of the right (and therefore it is not an unconstitutional solution) to allow (by a two-thirds majority of votes of the MPs present) certain (procedural) issues to be decided by a simple majority of votes. In Part IV section 3.1 of the majority decision, the Constitutional Court has made a reference to Decision 62/2003 (XII.15.) AB which declared that "a democratic state under the rule of law is required to have procedural rules accepted in a democratic manner and to pass decisions based on such procedural rules." It is an indispensable element of the state under the rule of law to have procedural rules derived from the Constitution and to comply with these regulations. I believe that the current regulations comply with these requirements: the acceptance of the specific time limits for speeches by a simple majority of votes in Parliament is backed by the authorisation specified in Article 24 para. (4) of the Constitution concerning the autonomy and the self-regulation of Parliament.

The Standing Orders also allow the passing of other types of decisions that restrict the rights of MPs by a simple majority of votes. The application of the cloture means that the essence of speech rights is restricted. This is, nevertheless, not unconstitutional even though it is less foreseeable than the time limits for speeches (as in case of the latter, the MP is informed on the time he/she has available to speak) and the cloture affects the speech rights of a specific group of MPs (the MPs registered to speak and expecting to express their opinions) and not the speech rights of each and every MP.

The MPs' right of speech and the rational decision-making process

The fact that certain decisions regarding the operation of Parliament are delegated to the plenary session under the Standing Orders [such as the establishment of the orders of the day in Section 47 para. (6) or the early closing of the debate in Section 59 para. (2)] and that such decisions are decided by a simple majority of votes enables Parliament to handle any conflicts that may arise with flexibility and to ensure the rationality of the decision-making process. (For example, through the cloture or the vote on the orders of the day mean that any obstruction may be prevented.) This includes the definition of time limits for speeches.

The decision on the length of speeches concerning certain orders of the day (bills or motions for resolutions) depends on the particular issue to be debated. A speech of the same length may be regarded as obstruction in case of certain motions but in other cases it is only enough to explain some of the arguments. Moreover, in case of parliamentary speeches there are special periods (for example the ones broadcast by the television or the periods followed by the largest audience on the radio) when all factions must be granted equal chances to express their opinions. All these reasons make it necessary to define speech lengths by Parliament with regard to the nature of the given motion. Even though it is

most democratic to reach a consensus in the House Committee over the proposal to be submitted to Parliament, it does not violate the principle of the democratic state under the rule of law if no consensus is reached and the Speaker makes the proposal to Parliament because in both cases a decision by Parliament is needed to make sure the MPs are bound by the contents of the proposal.

It is advisable and inevitable to decide on the necessity and the length of the time limits for speeches with regard to the nature of the specific motion to be discussed. Otherwise Parliament may become inoperative and the danger of obstruction may emerge or it is also possible no time remains to discuss issues that are particularly significant. [Let us suppose that each of the 386 MPs speaks once and for only two minutes in the debate of a bill (that is, not once in the general and once in the detailed debate). this means a 772-minute-long debate, which is almost 13 hours. This is unnecessarily long in cases of bills that for example include only minor modifications of bills while in case of the budget debate, a period of 13 hours seems too short and insufficient.

The issue of majority and minority in case of setting the time limits for speeches

It is an unquestionable principle of the Standing Orders that the will of the majority in specific votes must be implemented and at the same time the minority in Parliament must be protected, even through positive discrimination at times [for example in Section 75 para. (3), the same time limit is set for each faction regardless of the number of MPs in the given faction]. Nevertheless, it is not the purpose of these provisions to help the minority parties prevent the implementation of the majority decision. Instead, these regulations are meant to help the minority opinion be considered in the decision-making process and to grant the minority parties an opportunity to have their views accepted by the majority. The current regulations challenged by the petitioner has nothing to do with the majority/minority dimension as the time limits for speeches apply to all MPs equally regardless of whether they are government or opposition, whether they are members of large or small factions (or whether they are independent MPs). Also, the number of MPs allowed to speak is not limited, and therefore there is a possibility that more MPs from the minority in Parliament (the opposition parties) wish to speak and their total contribution to the debate is consequently longer than the government parties. The challenged provisions require all MPs (equally) to explain their messages in the given topic briefly, focusing on the main points and in line with the specified time limit. This does not violate the requirements of democracy but it supports the process of reasonable decision-making to a great extent. (The minority/majority factor in this case is not equivalent to the opposition/government factor but rather to the verbose speakers/brief speakers factor.) Based on the above, it is not an unconstitutional regulatory model to grant authorisation in the Standing Orders (adopted by a two-thirds majority of the MPs present) to the simple majority of the MPs to decide whether they wish to limit the length of

speeches equally in the plenary debate for all MPs regarding a particular item included in the orders of the day.

The constitutionality of Section 75 para. (3) of the Standing Orders

I am of the opinion that Section 75 para. (3) of the Standing Orders declaring that "the committee may restrict the length of speeches by setting equal time limits for each faction" is not unconstitutional. This provision in effect protects the minority in Parliament by setting equal time limits for each faction regardless of the faction size. This actually means that the same speaking time is available for the faction that delegates 1 member and for the faction that delegates 13 members to the same committee (see for example the Committee on Constitutional and Justice Matters between 2002 and 2006). This rule provides discretion to parliamentary committees for self-regulation. It is intended to help the reasonable decision-making process and to prevent obstruction, similarly to the time limits for speeches and the overall time limits for debates. This regulation may be of importance when the preparation of a significant bill is in progress in the committees with a large number of motions for modifications submitted and the decisions to be made are based on political priorities (such as the budget bill). Even if this notion is disregarded, the solution of the majority Decision is questionable as it considers the regulations limiting the speeches in the plenary and the committee sessions similar in essentials. I am of the opinion that Section 75 para. (3) of the Standing Orders should have been dealt with separately from Section 23 item b) and Section 47 para. (4) and the reasoning should have been more detailed with regard to the differences between the two cases. The two cases should have been examined separately since Section 75 para. (3) of the Standing Orders as opposed to the other two provisions quoted from the Standing Orders limits the speaking time of factions and not of individual MPs (therefore it is similar to the overall time limit for debate in Section 53) and since the decision is not made by the plenary session of Parliament but by the committees themselves. The committees have various functions and it is only one of their many roles to prepare the motions for modification for decisions as they are also obliged to hear the report of the ministers every year etc. It is the very nature of the committee work to decide on the motions for modifications based on the recommendations made. In case of a significant bill, there may be hundreds or thousands of such recommendations. It is clear that by allowing the MPs to exercise their right of speech without any restrictions the committees would become inoperative and as a result decision-making in the plenary session would be delayed as no voting may take place on the motions for modifications until the recommendations are made.

It is apparent based on the petition that the parliamentary debate (concluding in the petition to the Constitutional Court) was a result of the changing practice in Parliament of the MPs. Under this new practice, the MPs have very often exceeded the time limits for speeches and they have been denied the

right to speak. The procedural committee of Parliament has passed two generally applicable resolutions that contradict [Resolution 17/2002–2006 ÜB. (30 April 2003) and Resolution 26/2002–2006 ÜB. (adopted on 10 December 2003)]. In the present case, the Constitutional Court (based on its earlier practice) is not entitled to examine the resolution as it only serves interpretation purposes and does not complement the Standing Orders.

IV

In addition to my general observations above, I specifically disagree with the following holdings of the majority Decision:

1. I do not consider it justifiable that to support its holdings, the majority Decision has used provisions of the Constitution the petitioner has not cited [Article 2 para. (1), Article 20 para. (2) and Article 61 para. (1), the latter only briefly mentioned] in the examination process and it has established the unconstitutional omission largely based on these provisions not quoted by the petitioner.

2. The reasoning of the majority Decision regarding Section 47 para. (6) of the Standing Orders and establishing unconstitutional omission with regard to that provision is not convincing. This is because this provision of the Standing Orders stipulates only with reference to another rule in the Standing Orders that Parliament decides on the time limits for speeches by a simple majority without a debate. Therefore, I believe that the petitions for establishing both the unconstitutionality and the unconstitutional omission should have been rejected even under the reasoning of the majority Decision.

3. I do not agree with the new interpretation of the "sufficient time" requirement specified in Part IV section 3.2 of the majority Decision that contradicts the standing practice of the Constitutional court as it does not consider it a quantitative requirement. The issue of "sufficient time" is to be resolved by Parliament and should not have been decided by the Constitutional Court. In case of the bills it is Parliament to decide whether it needs to set time limits for speeches and it is Parliament to set these limits.

4. It is a common tendency that the speaking time of MPs in modern parliaments is decreasing. Accordingly, the currently effective Standing Orders set brief time limits in discussing issues of national importance (e.g. the speeches before the orders of the day or the time limits for interpellations, questions and instantaneous questions).

5. In Part IV Section 2 of the reasoning, the majority Decision analyses the regulations concerning the overall time limits for debates and the time limits for speeches in connection with the overall time limits for debates, which both have a profound effect on the speaking rights of MPs. Although the reason for applying overall time limits for debates is to define a specific time limit for parliamentary debate that may not be exceeded and shares this time between the factions, the majority decision

declares that the overall time limits "define the minimum duration of the debate on the given subject". However, overall time limits do not define the minimum length for debates. Instead, they define the maximum length of the debate that cannot be exceeded, otherwise the Speaker will silence the given MP [see Section 54 para. (4) of the Standing Orders]. It is a minority protection rule in the Standing Orders that at least 30 minutes is allocated for each faction. It is also a provision protecting the minority that in case 15 MPs request so in writing, the overall time limit for debate of certain bills may not be less than the number of hours specified in the Standing Orders. The basic regulations of the procedure for setting the overall time limits for debates and the time limits for speeches are the same (the House Committee makes a recommendation and if no consensus is reached, the Speaker makes the recommendation and Parliament makes the decision by a simple majority. The Constitutional Court has failed to examine the actual practice of Parliament between 2002 and 2006 but the petitioner claims that the time limits for speeches was applied frequently while overall time limits for debates were seldom set in the same period. However, based on this it is not justifiable to conclude that the time limits for speeches have become general practice (overriding the principle of the Standing Orders that MPs' speaking time has no set limits).

Based on all of the above, I do not agree with the holdings in the majority Decision concerning the establishment of an unconstitutional omission. As I see it, there is no unconstitutional situation and there is no violated constitutional provision or right. Consequently, both the annulment and the establishment an of unconstitutional omission are not justified. By establishing the unconstitutional omission and thus indirectly declaring the regulatory model unconstitutional, the Constitutional Court restricts the self-regulatory rights of Parliament (that is, the right of Parliament to establish its own regulations for operation) specified in Article 24 para. (4) of the Constitution without appropriate reasons.

Budapest, 24 April 2006

Dr. Mihály Bihari
Judge of the Constitutional Court

I concur with the dissenting opinion:

Dr. Péter Paczolay
Judge of the Constitutional Court

Constitutional Court file number: 245/B/2004

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