

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of objections to a resolution passed by the National Electoral Committee on the authentication of the sheet of signatures related to an initiative directed at a national referendum, the Constitutional Court has adopted the following

decision:

The Constitutional Court upholds Resolution 131/2002 (VII. 11.) OVB of the National Electoral Committee.

The Constitutional Court publishes this Decision in the Hungarian Official Gazette.

Reasoning

I

Acting on behalf of the movement entitled "*Hajrá Magyarország!*" ("Forward, Hungary!"), Béla Glattfelder, Imre Boros and Béla Turi-Kovács submitted to the National Electoral Committee (hereinafter: the NEC) a specimen of the sheet of signatures for the purpose of initiating a decisive national referendum on the following question:

"Do you agree with granting a right of pre-emption in the first place for family estate farmers – as defined in Act LV of 1994 on Arable Land as in force on 15 June 2002 – when buying arable land or a farm?"

The NEC established in the course of its procedure that the sheet of signatures was compliant with the statutory regulations in force, the subject of the referendum fell into the competence of the Parliament, holding a referendum on the questions concerned was not excluded according to Article 28/C para. (5) of the Constitution, the wording of the questions was in line with the provisions under Section 13 para. (1) of Act III of 1998 on National Referenda and Popular Initiatives (hereinafter: the ANR), and the sheet of signatures met the formal requirements contained in Section 118 paras (3) to (5) of Act C of 1997 on the Election

Procedure (hereinafter: the AEP). In view of the above, the NEC authenticated with its Resolution 131/2002 (VII. 11.) OVB the specimen of the sheet of signatures and the questions contained therein.

II

1. According to one of the objections to its resolution, the NEC should have refused the authentication of the sheet of signatures on the basis of Section 13 para. (1) of the ANR as the question concerned cannot be answered with a definite “yes” or “no”. According to the petitioner, the question cannot be answered without a certain knowledge, which is, however, generally not possessed by voters. Such parts of the question are the reference to Act LV of 1994 on Arable Land (hereinafter: the AAL) and the terms “arable land”, “family estate farmer” and “right of pre-emption”.

2. According to the other petitioner, the question authenticated by the NEC cannot be the subject of a referendum on the basis of Section 10 item a) of the ANR and Article 28/B para. (1) of the Constitution. Article 8 para. (2) of the Constitution sets a clear-cut limit to the competence of the Parliament and thus to the scope of subjects that may be put to a referendum. The petitioner claims that as the Parliament has no competence to unnecessarily and disproportionately restrict a fundamental right, the Hungarian system of public law does not allow the holding of a referendum aimed at the restriction of a fundamental right. According to the petitioner, the right of pre-emption is a right of property value covered by the protection of property granted in Article 13 para. (1) of the Constitution.

The rules of the AAL in force before 22 February 2002 had provided for a right of pre-emption for leaseholders, half-and-half tenants and sharecroppers in the case of the sale of arable land. However, Act CXVII of 2001 on the Amendment of the AAL re-classified the above persons when listing the rights of pre-emption, dropping them from the first to the sixth place, giving priority even to persons appointed by the Hungarian National Land Fund Non-Profit Company owned by the Hungarian State. The petitioner claims the above to violate the right to property, as “re-classification to the sixth place of the priority list actually constitutes a deprivation of a former property right, making the exercise of the right of property value conditional upon approval by the State.” Act XXIII of 2002 on the Amendment of Act CXXXIII of 2000 on the Budget of the Republic of Hungary for the Years of 2001 and 2002 modified the above list, and put leaseholders, half-and-half tenants and sharecroppers to the first place in the priority list pertaining to the right of pre-emption. The petitioner claims that

the legislation following from the question to be put to a referendum (i.e. granting the first place for family estate farmers in the priority list pertaining to the right of pre-emption) would violate the fundamental right to property, and therefore the NEC should have denied approval. On the basis of the above arguments, the petitioners raising the objections asked the Constitutional Court to annul the resolution of the NEC on the authentication of the sheet of signatures and to oblige the body to start a new procedure. The Constitutional Court has consolidated the petitions filed within the statutory deadline and compliant with the statutory requirements, and judged them on the merits in a single procedure.

3. The Constitutional Court has examined the objections to Resolution 131/2002 (VII. 11.) OVB of the NEC on the basis of the following provisions of the Constitution, the ANR, and the AEP:

Constitution

“Article 8 para. (2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by law; such law, however, may not restrict the basic meaning and contents of fundamental rights.”

“Article 13 The Republic of Hungary guarantees the right to property.”

“Article 28/B para. (1) The subject of national referenda or popular initiatives may fall under the jurisdiction of the Parliament.”

“Article 28/C para. (3) If a national referendum is mandatory, the result of the successfully held national referendum shall be binding for the Parliament.”

ANR

“Section 10 The National Electoral Committee shall refuse the authentication of the sheet of signatures when

- a) the issue concerned is outside the Parliament’s competence,
- b) no national referendum may be held on the issue,
- c) the wording of the question does not comply with the statutory requirements,
- d) the sheet of signatures does not comply with the requirements set in the Act on the Election Procedure.”

“Section 13 para. (1) The specific question put to a referendum shall be one to which a definite answer can be given.”

AEP

“Section 130 para. (1) Objections – to be addressed to the Constitutional Court – to the resolution of the National Electoral Committee on the authentication of a sheet of signatures or of a specific question may be filed with the National Electoral Committee within fifteen days of publishing the resolution.

(2) Objections – to be addressed to the Constitutional Court – to the resolution of the Parliament on ordering a referendum or on refusing the ordering of a referendum to be ordered obligatorily may be filed with the National Electoral Committee within eight days of publishing the resolution. The National Electoral Committee shall, without delay, inform the speaker of the Parliament on filing the objection, and it shall inform the President of the Republic, too, on any objection raised against a resolution ordering a referendum.

(3) The Constitutional Court shall judge upon the objection with priority. The Constitutional Court may uphold or annul the resolution of the National Electoral Committee or the Parliament, and it may order the National Electoral Committee or the Parliament to start a new procedure.”

III

1. The competence of the Constitutional Court in the present case is defined in Section 130 of the AEP in line with Section 1 item h) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC).

According to Section 130 paras (1) and (2) of the AEP, objections to the resolution of the National Electoral Committee on the authentication of a sheet of signatures or a specific question, as well as to the resolution of the Parliament on ordering a referendum or on refusing the ordering of a referendum to be ordered in obligatorily may be filed with the Constitutional Court. The Constitutional Court shall examine on the basis of the contents of the NEC’s resolution and the objection whether the NEC acted in compliance with the Constitution and the relevant statutes in the process of authenticating the sheet of signatures, and whether the NEC was right or wrong in concluding that in the question concerned, a referendum may or may not be held. [Most recently in Decision 63/2002 (XII. 3.) AB, ABK December 2002, 718] In the process of judicial remedy the Constitutional Court acts in compliance with its constitutional status and its functions. [Decision 25/1999 (VII. 7.) AB, ABH 1999, 251, 256]

2. The Constitutional Court first examined the objections concerning the unambiguity of the question to be put to a referendum. According to the criteria established in Decision 52/2001 (XI. 29.) AB, a question to be put to a referendum is deemed to be unambiguous when it can be answered without doubt, and in the case of a yes-no question, a “yes” or “no” answer can be given. The question must be a clear one, which can only be interpreted in one way. It is not a requirement, however, that in wording the question the initiator should use the terms of specific branches of law, or the technical terms of certain professional fields. (ABH 2001, 399, 403)

As pointed out by the Constitutional Court in Decision 62/2002 (XII. 3.) AB, the inexact use of the terminology of certain professional fields in the wording of a question is, in itself, not a violation of Section 13 of the ANR. (ABK December 2002, 716, 717) In the opinion of the Constitutional Court, the (technical) terms – such as “arable land”, “family estate farmer”, and “right of pre-emption” – used in the question do not disturb the clarity of the question as a whole. The question to be put to a referendum is comprehensible and complies with the requirements under Section 13 of the ANR.

In the present case, the initiator of the referendum seeks the voters’ support for repeatedly granting a right of pre-emption in the first place for a family estate farmer – as defined in Act LV of 1994 on Arable Land as in force on 15 June 2002 – in the case of the sale of arable land or a farm. The note inserted in the question renders it more precise and provides further information, clarifying that the initiator uses the definition of a family estate farmer as specified in the Act on Arable Land as in force on 15 June 2002. Pursuant to Section 3 item i) of the Act on Arable Land, family estate farmer means a person under whose name a family homestead is registered in the registry of the county (Budapest) agricultural bureau responsible for the place where the center of operations of the family homestead is situated, and 1) who, as the head of the family homestead, is the subject of the rights and obligations arising in connection with the aforementioned operations, 2) who is a career professional in the field of agricultural activities, whether full time or part time in addition to secondary activities, 3) who has an educational degree in agricultural or forestry activities or, in the absence of such, is able to prove as being engaged in agricultural activities, whether full time or part time in addition to secondary activities, for at least three years, and has produced revenues by such activities, 4) whose registered residence is in the municipality where the center of operations of the family homestead is located.

As referred to by the Constitutional Court in Decision 63/2002 (XII. 3.) AB, the statutes adopted by the Parliament and other legislative bodies are available for everyone upon their

publication in the Official Gazette. Therefore, citizens who sign the sheet in support of the question to be put to a referendum can learn the contents thereof. Furthermore, in the present case, upon putting to a referendum the question about obtaining the ownership of arable land, the contents of the AAL shall be subject to public debate – in the manner regulated in the AEP – , which will also help voters become informed. (ABK December 2002, 718, 720) On the basis of the above, the Constitutional Court has rejected the objections concerning the unambiguity of the question.

3. One of the petitioners claims that the question obliges the Parliament to adopt an unconstitutional Act. The petitioner holds that Article 8 para. (2) of the Constitution – providing that not even an Act of Parliament may restrict the essential contents of a fundamental right – sets a clear-cut limit to the competence of the Parliament, and thus to the scope of subjects that may be put to a referendum.

The main task of the Constitutional Court is to ensure the primacy of the Constitution over legislation. The enforcement of constitutional aspects may be performed in advance, before adopting the legal norm, or in a posterior manner, upon the promulgation of the statute. It could, however, happen that on the basis of the question to be put to a referendum, for example in the case of a decisive referendum initiated successfully by two hundred thousand voters, the legislature shall be obliged to adopt a statute undoubtedly and seriously violating a certain fundamental right or causing a large-scale injury of individuals' rights. In such a case, adequate protection can be offered, in the process of authentication, by the preliminary constitutional examination of the question to be put to a referendum.

In the opinion of the Constitutional Court, it usually cannot be established on the basis of the question to be put to a referendum what exactly the contents of the legal norm to be adopted by the legislature shall be. In order to avoid the adoption of an unconstitutional norm, the legislature shall adopt the statute with contents that comply with both the requirements specified in the question and the provisions of the Constitution.

In the Hungarian legal system, there are several legal institutions that support the constitutional exercise of the fundamental political right to referendum. However, the enforcement of constitutional provisions, and in particular of the fundamental rights enjoying constitutional protection on the basis of Article 8, may not depend on whether the entitled

institutions exercise, in later stages of the referendum process, their rights granted in the Constitution or the ACC, and turn to the Constitutional Court.

It can be concluded on the basis of the whole of the Constitution and upon the complex examination of the provisions thereof, including their interrelations [primarily Article 8 para. (2), Article 28/C para. (3) and Article 77 para. (2) of the Constitution] that the Constitutional Court may – in line with its constitutional function, within the limits of the objection and the decision of the NEC – also examine the question as to whether the referendum to be held on the basis of the question would obviously oblige the legislature to adopt a statute violating the essential contents of a fundamental right.

In the present case, however, the contents of the legal norm to be adopted cannot, in the opinion of the Constitutional Court, be deduced from the question concerning the family estate farmer's right of pre-emption. Upon putting the question to a referendum, and in the case of having a majority of "yes" votes, the legislature may adopt a statute that shall not result in the violation of the Constitution. The legislature shall remain within the constitutional limits if, on the ground of public interest, it restricts the fundamental right to property in proportion to the desired objective.

Consequently, the Constitutional Court has rejected the objections and upheld Resolution 131/2002 (VII. 11.) OVB of the National Electoral Committee.

The Constitutional Court, in view of the publication of the NEC's resolution in the Official Gazette, has ordered the publication of the present Decision in the Official Gazette.

Budapest, 14 April 2003

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