Decision 15/2007 (III. 9.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of an objection against a decision rejecting authentication of the specimen of the sheet of signatures underlying an initiative for referendum, the Constitutional Court has – with a concurrent reasoning by *dr. András Holló*, Judge of the Constitutional Court, and a dissenting opinion by *dr. András Bragyova*, Judge of the Constitutional Court – adopted the following

decision:

The Constitutional Court annuls Resolution 566/2006 (XI. 20.) OVB of the National Electoral Committee and orders the National Electoral Committee to repeat its procedure.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

1. In its Resolution 566/2006 (XI. 20.) OVB, the National Electoral Committee (hereinafter: the NEC) refused authentication of the specimen of the sheet of signatures underlying the initiative for a national referendum submitted by Fidesz – Hungarian Civic Union and the Christian Democrat People's Party.

The sheet of signatures contains the following question:

"Do you agree that students in state-subsidised higher education should be exempt from the payment of training contribution?

In the opinion of the NEC, with due respect to Article 28/C para. (5) item *f)* of the Constitution and to the hidden character of the question aimed at the amendment of the Constitution, no national referendum may be held in the relevant question.

As referred to in the reasoning of the NEC's decision, Article 28/C para. (5) item *f)* of the Constitution excludes the holding of a referendum on the Government's programme, and according to the NEC, the constitutional prohibition applies to holding a referendum on both the totality and the

individual essential and clearly distinguishable elements of the programme. As established by the NEC in the course of its procedure, the question mentioned in the initiative for a referendum is explicitly contained in the Government's programme.

As further established by the NEC, it is not possible to determine by virtue of the constitutional provisions in force on holding a referendum for how long the Parliament would be bound by the result of the referendum, and thus the success of a national referendum regarding the question concerned might lead to a hidden amendment of the Constitution.

The decision of the NEC was published in Vol. 144/2006, dated 24 November 2006, of the Official Gazette.

2. The initiators submitted an objection against the decision. The objection was received by the Constitutional Court at 13.20 hours on 8 December 2006. Under Section 130 para. (1) of Act C of 1997 on the Election Procedure (hereinafter: the AEP), the deadline for filing an objection was fifteen days, until 16.00 hours on 9 December 2006. The objection was received within the statutory deadline. The Constitutional Court has judged upon the objection with priority, in line with Section 130 para. (3) of the AEP.

According to the objection, the prohibition laid down in Article 28/C para. (5) item *f)* of the Constitution means that no referendum may be held on the totality of the Government's programme since a referendum on the Government's programme would practically mean a vote of confidence. As argued in the objection, the Constitution prohibits the holding of a referendum on the Government's programme since a referendum like that would, in fact, imply a voting on the person of the Prime Minister, which is not allowed under Article 28/C para. (5) item *d)* of the Constitution.

The objection refers to the fact that with regard to some of the prohibited subjects defined under Article 28/C para. (5) of the Constitution – such as items *a)* and *b)* – the following terms are used: it is prohibited to hold a national referendum on the contents of the Acts of Parliament on the budget, the implementation of the budget, the types of central taxes and duties, customs, the central conditions of local taxes, the obligations resulting from the international treaties in force, and on the contents of the Acts of Parliament governing these obligations. As concluded in the objection, Article 28/C para. (5) item *f)* of the Constitution prohibits the holding of a referendum on the Government's programme rather than on the contents of the Government's programme, and while the totality of the Government's programme may not be the subject of a referendum, it is possible to hold a referendum on certain elements of it.

In addition, according to the objection, the reference in the Government's programme to the introduction of posterior training contribution to tuition costs is not connected in any way to the proposed referendum question as it is not about the payment of posterior training contribution. Therefore, it is not prohibited to put this question to voters in the referendum even if it is prohibited to hold a referendum on the individual elements of the Government's programme.

Finally, as mentioned in the objection, the regulatory deficiency of any legal institution may not be the subject of examination in the authentication process of a question to be put in the referendum; therefore, the holding of a concrete referendum may not be jeopardised due to a potential constitutional problem incurred when regulating the institution of popular referendum.

II

The following statutory provisions have been taken into account when judging upon the objection:

1. The relevant provisions of the Constitution are as follows:

"Article 2 (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 28/C (...)

(2) A national referendum shall be held if so initiated by at least 200,000 voting citizens. (...)

(3) If a national referendum is to be held, the result of the successfully held national referendum shall be binding for the Parliament. (...)

(5) National referendum may not be held on the following subjects:

f) the Government's programme, (...)

33. § (…)

(3) The Prime Minister shall be elected by a majority of the votes of the Members of Parliament, based on the recommendation made by the President of the Republic. The Parliament shall hold the vote on the election of the Prime Minister and on the passage of the Government's programme at the same time."

2. The relevant provisions of AEP are as follows:

"Section 130 (1) Objections against the resolution of the National Electoral Committee on the authentication of a signature-collecting sheet or on the concrete question may be filed at the National

Electoral Committee – addressed to the Constitutional Court – not later than within fifteen days upon the publication of the resolution. (...)

(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."

3. The relevant provisions of Act XVII of 1998 on National Referendums and Popular Initiatives (hereinafter: the ANR) are as follows:

"Section 10 The National Electoral Committee shall refuse the authentication of the signature-collecting sheet when (...)

b) no national referendum may be held on the issue, (...)

Section 13 para. (1) The concrete question put to the referendum shall be one to which a definite answer can be given."

III

The objection is well-founded.

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). In the above scope of competence, the procedure by the Constitutional Court is of a legal remedy nature. The Constitutional Court shall examine based on the contents of the NEC's resolution and the objection whether the NEC acted in compliance with the Constitution and the relevant statutes when authenticating the sheet of signatures. [Decision 63/2002 (XII. 3.) AB, ABH 2002, 342, 344] Also in this scope of competence, the Constitutional Court shall act in accordance with its constitutional status and function. [Decision 25/1999 (VII. 7.) AB, ABH 1999, 251, 256]

2. According to the reasoning by the NEC, "the initiative was dismissed primarily since the question concerned was explicitly aimed at creating a regulation with a content contrary to the clear-cut contents of the Government's programme, and in particular to a significant element of the social reforms planned by the Government and laid down under the heading »Reform in Education - Competitive and Quality Higher Education«". Although the wording of the referendum question refers to the "training contribution" introduced in Sections 8 and 18 of Act LXXIII of 2006 on the Amendment of Act

CXXXIX of 2005 on Higher Education rather than to the Government's programme – or any element of it – as mentioned in the reasoning of the NEC's decision, having regard to the reasoning by the NEC quoted before, the Constitutional Court has first examined whether the question is one of the prohibited referendum subjects.

The prohibited subjects specified in Article 28/C para. (5) of the Constitution are interpreted by the Constitutional Court in a strict sense. As established in Decision 51/2001 (XI. 29.) AB, "it follows from the constitutional listing that a closed and strict interpretation of the prohibited subjects is in accordance with the prominent importance of the constitutional regulation". (ABH 2001, 392, 394)

In interpreting the prohibited subject specified in Article 28/C para. (5) item *f)* of the Constitution, the special features of the form of government shall be taken into account. In the Hungarian parliamentary system, the Government's mandate is closely connected to the Prime Minister's mandate. As reflected in Article 33/A of the Constitution, if the mandate of the Prime Minister is terminated due his resignation, death, disfranchisement or upon declaration of a conflict of interest, this implies the end of the Government's mandate. According to Article 39/A para. (1) of the Constitution, a motion of no-confidence in the Prime Minister is considered a motion of no-confidence in the Government as well.

The relation between the Prime Minister's mandate and the Government's mandate is also reflected in Article 33 para. (3) of the Constitution stating that the Parliament shall elect the Prime Minister and vote on the passage of the Government's programme at the same time. In the practice of the Hungarian Parliament, the candidate Prime Minister submits to the Parliament the draft resolution on the Government's programme. By making this decision the Parliament exercises a right – in accordance with its legal status defined in Article 19 para. (2) of the Constitution – based on the sovereignty of the people, setting the orientation of government. Exercising the institution of direct democracy in the above case, and allowing the voting citizens to decide on supporting or rejecting the Government's programme would, in the constitutional structure, influence the relation between the Prime Minister and the Government. This is why no referendum may be held on the Government's programme under Article 28/C para. (5) item *f)* of the Constitution.

As under Article 33 para. (3) of the Constitution, the Parliament elects the Prime Minister and votes on the passage of the Government's programme at the same time, a successful decisive referendum on the Government's programme would necessarily affect the person of the Prime Minister. This would be contrary to Article 28/C para. (5) item *d)* of the Constitution, according to which no referendum may be held on personnel matters falling into the Parliament's competence. Thus the prohibited subject

specified in Article 28/C para. (5) item *f)* of the Constitution shall essentially mean the exclusion of holding a referendum on the person of the Prime Minister.

Article 28/C para. (5) item *f)* of the Constitution shall mean the prohibition of holding a referendum on the totality of the Government's programme. However, this provision of the Constitution does not exclude the holding of a referendum on certain elements in the Government's programme not affecting the relations between the Government and the Parliament, or decision-making on the person of the Prime Minister.

Still, according to the reasoning in the NEC's decision, no popular referendum may be held on "the individual essential and clearly distinguishable elements" of the Government's programme either. Consequently, the NEC and the Constitutional Court would be obliged to examine in each case related to referendum questions whether the given question is essential for the Government's programme embodying the policy of the Government, and only in questions deemed "insignificant" from this aspect could a popular referendum be held. This would, however, be contrary to the constitutional role of the institution of popular referenda.

In view of the above, the Constitutional Court holds that the question to be answered in the referendum does not violate the prohibited subject under Article 28/C para. (5) item *f)* of the Constitution, and therefore the authentication of the specimen of the sheet of signatures may not be refused on the basis of Section 10 item *b)* of the ANR.

3. According to the consistent practice of the Constitutional Court, "the exercise of rights arising from popular sovereignty, by referendum as well as by Parliament, may only proceed in accordance with the provisions of the Constitution. The question submitted to a referendum may not contain a disguised constitutional amendment". [First in: Decision 2/1993 (I. 22.) AB, ABH 1993, 33] Likewise, as established in Decision 25/1999 (VII. 7.) AB, "no popular referendum shall be held on popular initiative in any question aimed at the amendment of the Constitution when the referendum binding the Parliament would curtail the Parliament's competence of establishing the Constitution". (ABH 1999, 251, 262)

In the present case, a hidden constitutional amendment implied in the referendum initiative is seen by the NEC in the fact that it is not possible to determine by virtue of the constitutional provisions in force on holding a referendum for how long the Parliament would be bound by the result of the referendum. According to the NEC's decision, in the question to be answered in the referendum, "a successful referendum with an affirmative answer to the question would impose on the Parliament a legislative moratorium of an indefinite term the constitutional basis of which could only be secured by

amending the Constitution's provisions in force pertaining to representative democracy and direct democracy. Therefore, the National Electoral Committee (...) has rejected the question also because of its hidden character aimed at the amendment of the Constitution".

However, the Constitutional Court holds that in the present case, the question is not aimed at the amendment of the Constitution. A successful referendum would not impose on the Parliament any legislative duty necessarily implying the amendment of the Constitution.

Accordingly, the Constitutional Court has not established any disguised amendment of the Constitution as the potential result of the question to be answered in the referendum.

4. In view of the above, the Constitutional Court has decided as contained in the holdings of the decision. 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, 8 March 2007

Dr. Mihály Bihari
President of the Constitutional Court

Dr. Elemér Balogh
Judge of the Constitutional Court

Dr. András Bragyova
Judge of the Constitutional Court

Dr. Árpád Erdei
Judge of the Constitutional Court

Dr. Attila Harmathy
Judge of the Constitutional Court

Dr. András Holló
Judge of the Constitutional Court

Dr. László Kiss
Judge of the Constitutional Court

Dr. Péter Kovács
Judge of the Constitutional Court

Dr. Péter Paczolay
Judge of the Constitutional Court, Rapporteur

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

I agree with the holdings of the Decision, the annulment of Resolution 566/2006 (XI. 20.) OVB of the National Electoral Committee, and with ordering a new procedure.

However, I do not agree with the reasoning of the Decision in respect of Article 29/C para. (5) item *f)* of the Constitution not excluding the possibility of holding a referendum in a question that forms part of the Government's programme.

I maintain my position explained in my concurrent reasoning attached to the Constitutional Court's decision reviewing Resolution 567/2006 (XI. 20.) OVB of the National Electoral Committee, namely that – by virtue of the Constitution – no popular referendum may be held either on the totality of the Government's programme [Article 29/C para. (5) item *f)* of the Constitution] or on any element thereof (Article 28/B).

However, as I pointed out in the concurrent reasoning mentioned before, certain elements of implementing the Government's programme falling into the scope of competence of the Parliament – typically as a result of legislation restricted by Article 29/C para. (5) of the Constitution – may be the subject of a popular referendum.

And this is the case here as well: the question is related to the judgement of the following specific statutory provision on the payment of the training contribution introduced by Section 18 of Act LXXII of 2006 on the Amendment of Act CXXXIX of 2005 on Higher Education (hereinafter: the AHE Amendment): "Section 125/A (1) Unless otherwise provided by an international treaty, state-funded students are bound to pay training contribution as from the third semester in undergraduate courses or one-tier programmes, or for all terms of study in graduate courses..."

Consequently, the reasoning of the decision should have drawn the attention of the National Electoral Committee to the requirement that in the course of the new procedure, the question must have been assessed as a referendum initiative on the Act of Parliament referred to above. The AHE Amendment was promulgated on 19 October 2006, prior to the date (14 October 2006) of submitting the initiative aimed at the popular referendum.

Budapest, 8 March 2007

Dr. András Holló

Judge of the Constitutional Court

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

I do not agree with the majority Decision as the Constitutional Court should have approved the NEC's resolution based on its reasoning or, possibly, on partly different reasons.

There are three separate reasons for not allowing a referendum on training contribution: (1) under Article 28/C para. (5) item *f)* of the Constitution as the question affects the Government's program; (2) under Article 28/B of the Constitution as the question is out of the competence of the Parliament; and finally (3) under Article 28/C para. (5) item *a)* of the Constitution as training contribution is a question related to the contents of the Act on the Budget. Since these questions have been raised in several cases of popular referenda judged upon today, my views explained in this dissenting opinion are applicable to those cases as well.

1. It is a difficult task to interpret the Constitution's provisions on popular referenda. Certain provisions are to be interpreted together with other constitutional provisions as otherwise the interpreter of the Constitution may draw unjustifiable conclusions. These referendum questions are the first cases in the practice of the Constitutional Court when it has had to interpret Article 28/C para. (5) item *f)* of the Constitution. Under that provision, no national referendum may be held on the "Government's programme". According to the majority Decision, this shall mean that no referendum may be held on the totality of the Government's programme, but it is possible to hold separate referenda on specific parts of it.

1.1. I agree with the majority Decision in stating that when interpreting the relevant provision, the "special features of the form of government" shall be taken into account. However, I hold it justified to draw a completely different conclusion from the above: the parliamentary form of government – "parliamentary democracy" as termed in the preamble of the Constitution – excludes the holding of a referendum on any question contained in the Government's programme.

There are many arguments to support this point. The close connection between the Parliament's majority and the Government – i.e. in the traditional constitutional terminology: confidence – is a distinguishing feature of the parliamentary system. The Parliament's confidence in the Government means that the majority of the Parliament shall support those Bills submitted by the Government without which the Government is not able to implement its programme. The "Government's programme", as a constitutional-political concept, is incorporated as such into the Constitution, and it is

the ground of its interpretation, too. The Government's programme is mentioned in the Constitution three times: (1) in Article 19 para. (3) item *e)*; (2) in the second sentence of Article 33 para. (3); and finally (3) in Article 28/C para. (5) item *f)*. The Government's programme and confidence in the Government are interdependent: when the Parliament has no confidence in the Government – i.e. it does not support the Government – than it does not support the Government's programme either. Therefore, according to the Constitution, no popular referendum may be held on the constitutional tools – such as the budgetary and financial laws, or determination of the organisation of public administration – necessary for the implementation of the Government's programme, including the Acts and other resolutions by the Parliament absolutely necessary for the implementation of the Government's programme. The Parliament's majority shall support the Government's programme until confidence (i.e. the promise of future support) is withdrawn from the Government in the manner specified in Article 39 of the Constitution. In a parliamentary democracy, the Government's programme is a constitutional bridge between the Parliament and the Government, representing the constitutional-political contents of "confidence", in the implementation of which the Government is supported by the majority of the Parliament, which shall – in a legal sense – mean a decision passed by the Parliament [Article 24 para. (2) of the Constitution].

Even the possibility of voting "against" any element of the Government's programme in a popular referendum is incompatible with the parliamentary form of government, which may only operate in a representative system. This system is based on the cooperation between the majority of the Parliament set up through elections and the Government: a conflict between the Government and the majority of the Parliament necessarily ends up in the defeat of the Government. Thus, the fate of the Government is in the hands of the Parliament: when the majority of the Parliament fails to vote for the Acts necessary for the implementation of the Government's programme, this is a warning sign of the Government losing the confidence of the Parliament. Such a conflict can only be resolved by the Government's resigning, by a vote of confidence, or by a motion of no confidence. In a parliamentary-representative form of government, all the above issues fall into the competence of the Parliament, as reinforced in Article 28/C para. (5) items *d)*, *e)*, and *f)* of the Constitution. Article 39 para. (1) of the Constitution – "... the Government is responsible for the Parliament" – interpreted together with the above regulations under Article 28/C makes it clear that no popular referendum may be held on any element of the connection between the Parliament and the Government. This is in line with a principle long established by the Constitutional Court, i.e. the primacy of representative democracy. [Decision 2/1993 AB, ABH 1993, 33]

Under the Constitution, the result of the referendum shall bind the Parliament. The free mandate of the representatives is a principle of representative democracy. [Decision 27/1998. AB, ABH 1998, 197] It means that no MP shall be legally bound to vote as required. There is no obligation like that for the MP even if the Parliament as an organ of the State is bound by the Constitution [under Article 28/C para. (3)] to pass a decision contrary to the Government's programme supported by the Parliament. This obligation is only binding upon the Parliament, but it may not bind the individual MPs – due to the prohibition of an imperative mandate – to vote as required. Therefore (in this sense), the result of the referendum creates for the Parliament a politically binding obligation just like the Government's programme itself (which is legally not binding either).

Holding a referendum on certain important elements picked out of the Government's programme is risky, as the success of the referendum initiative would oblige the majority of the MPs to pass a decision contrary to the political obligation they undertook by voting for the Government's programme. The Government, that is in practice the Prime Minister, may propose that the vote on the question to be answered in the referendum, i.e. the proposal related thereto, be simultaneously considered a vote of confidence [Article 39/A para. (4) of the Constitution]. This way, the Parliament would impose a constitutional obligation on the majority of the MPs supporting the Government – and implicitly, *ex definitione*, the Government's programme – to vote for no confidence in the Government, implying under [Article 39/A para. (4) of] the Constitution the mandatory resignation of the Government.

Consequently, holding a referendum on any essential element of the Government's programme would be against parliamentary democracy. Indeed, it is not easy to apply the constitutional rule excluding the holding of a referendum on the Government's programme. It takes much deliberation to assess whether a certain referendum question is related to the Government's programme. However, to assess this question is not more complicated or more complex than to judge upon the "unambiguity" of a referendum question [see for example Decision 51/2001 AB, ABH 200, 392], or to assess whether or not it is of a budgetary nature. So far, the Constitutional Court has not abstained from such deliberation, as it is made inevitable by the text of the Constitution as well as by the duty of the Constitutional Court to safeguard the Constitution.

1.2. In addition to the substantial arguments detailed above, the proposed interpretation is supported also by the fact – rightfully pointed out in the majority Decision – that Article 28/C para. (5) item *d)* of the Constitution explicitly excludes the holding of a referendum on the person of the Prime Minister as, according to Article 33 para. (3) of the Constitution, it would necessarily be a referendum on the totality of the Government's programme (save in the special case of a Prime Minister elected with a

constructive motion of no confidence under Article 39/A para. (1) of the Constitution, where the debate on the Government's programme may be separated from the election of the Prime Minister).

The presumption of the rationality of the legislature is a fundamental principle of interpreting the law, including that the text of a legal norm is never of a self-repeating or self-contradictory nature. Consequently, in a listing – here: in the list of the subjects excluded from the referendum – every item has its own independent meaning different from the others. In the present case, it means that Article 28/ C para. (5) item *d)* may not include the meaning of item *f)* since it would imply the latter being meaningless. As this interpretation leads to an unreasonable result, the other possible interpretation is to be considered the right one: the one separating the meanings of items *d)* and *f)*. This is only possible by accepting the prohibition on holding a referendum on certain elements of the Government's programme having regard to the fact that holding a referendum on the totality of the programme has already been excluded in item *d)*.

2. The other main argument supporting the prohibition on holding a referendum on training contribution applies to all questions related to the prohibition of a decision with a content determined for the Parliament. (This argument is used – although in a slightly different form – in the NEC's resolution as well.)

2.1. It is – as it shall be – out of the scope of the Parliament's competence to prohibit (or even to make it more difficult, for example by requiring a majority of two-thirds) for itself or for any other subsequent Parliament the passing of Acts with specific contents. Consequently, the Parliament may not constitutionally adopt any Act prohibiting for all future Parliaments the introduction of visiting fee. The Parliament is similar to the other organs of the State in respect of having a scope of competence with subjects determined in the Constitution, although the Parliament's scope of competence is of a relatively wide scale. Legislation is one of these competencies, and the "right" – i.e. the competency – to legislate is vested on the Parliament according to Article 25 para. (2) of the Constitution. In this scope of competence, i.e. in a question falling into the Parliament's scope of competence, a referendum may be constitutionally held as against a question which is out of the Parliament's scope of competence. Since the Parliament may not validly restrain exercising the legislative competence of future Parliaments, this is a decision beyond its scope of competence.

To prove the above argument, let us suppose the Parliament passing an Act on "banning" the introduction of training contribution. This Act of Parliament could then be amended by means of another Act, but that would be unlawful as the "banning" Act would have prohibited – in accordance

with the referendum question – to ever require "students in state-subsidised higher education" to pay a contribution to their training. This would only be possible if the Parliament not only repealed the relevant provision of the Act in force today – which is in its scope of legislative competence – but also prohibited to itself, i.e. to all future Parliaments, the reinstitution of training contribution. However, doing this is out of the Parliament's scope of competence as it is not part of its right of legislation; on the contrary, it would imply the withdrawal of legislative competence.

2.2. Regardless of the above arguments, any question resulting in a prohibition for the Parliament would be unconstitutional due to not being a "question" within the meaning of Article 28/B para. (1) of the Constitution. The "question to be answered in the referendum" within the meaning of Section 13 of Act III of 1998 on Referenda and Popular Initiatives – i.e. an interrogative sentence – is not identical with the definition of a "question" as used in the provision of the Constitution quoted before. A "question" within the meaning of Article 28/B para. (1) of the Constitution is a matter falling into the Parliament's scope of competence in which the Parliament is entitled to decide. Thus, the question to be answered in the popular referendum is a question about a question, i.e. a question on how the Parliament should decide in a matter in which it may otherwise decide another way. This interpretation is based on Article 28/C para. (3) of the Constitution, according to which "... the result of the successfully held national referendum shall be binding upon the Parliament." Therefore, the "decision made through the referendum" results in an obligation for the Parliament, i.e. it requires the Parliament to pass a decision in a matter within its own scope of competence. This is important as in the Hungarian constitutional law – unlike in the law of many other countries – the decision (resolution) made in the referendum is not a source of law (or a fact constituting the law): the subject of the referendum is in a strict sense a decision made on a decision falling into the Parliament's scope of competence, and its result constitutes an obligation for the Parliament to make that decision. Consequently, the referendum does not constitute the law but creates a constitutional obligation for the Parliament to make a specific decision in a matter falling into its scope of competence.

Under public law, scope of competence shall mean the totality of the decisions that may be lawfully (validly) passed by an organ of the State. Decision-making shall mean a choice from several options that exclude one another. Accordingly, the Parliament's scope of competence means the decisions that might be passed by the Parliament, i.e. all the questions in which the Parliament may choose from various options. Thus, passing a decision in any question within the Parliament's scope of competence is always making a choice from specific options of decision-making. A successful referendum determines the above choice. It is not allowed to use a referendum question obliging the Parliament not

to do something – i.e. not to make a decision – as the referendum question may restrain the Parliament's scope of competence only with regard to specific individual decisions but not in respect of an indefinite number of future decisions on undefined subjects. The subject of the referendum is always aimed at deciding a specific "question", i.e. matter. This is why the referendum question shall always specify a single event obligation, which could be performed by a single act of the Parliament. This is only possible by putting a referendum question implying a positive decision-making obligation for the Parliament. With the Parliament having performed the obligation resulting from the referendum, the obligation resulting from the referendum shall cease to exist. If the referendum question could – as in the present case – result in a prohibition, it would be impossible to determine the act through which the Parliament could perform its obligation under the referendum, as it is impossible to "perform" a prohibition.

3. Independently from the above, the referendum on training contribution would be related to a prohibited subject under Article 28/C para. (5) item *a)* of the Constitution. As indicated by the relevant question, training contribution is, namely, a form of payment by students performing studies subsidised by the State (from the budget). This is the way how students in higher education pay for a part of their tuition costs (with the other part financed from the State budget). Consequently, it is beyond doubt that training contribution is revenue of the State budget as defined in Section 53 para. (1) of Act CXXXIX of 2005 on Higher Education. This feature is not affected by the fact that under Section 14 para. (4) of the Act on the Budget for the Year 2007 (Act CXXVII of 2006), training contribution shall be accounted as a budgetary revenue of the higher education institutions concerned. By that, neither the title of the budgetary revenue nor the budgetary restrictions on using the training contribution received are changed.

Budapest, 8 March 2007

Dr. András Bragyova
Judge of the Constitutional Court

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