

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of petitions seeking a posterior examination of the unconstitutionality of a statute and the establishment of an unconstitutional omission of legislative duty, the Constitutional Court has adopted the following

decision:

1. The Constitutional Court holds that the Parliament has caused an unconstitutional situation by its failure to adopt rules on duties that exclude the violation of the right to fair trial and the restriction of the essential content of the right to defence through providing for a duty payable – by the defendant, the defence counsel and the lawful representative of a juvenile defendant – for copies of documents created during the criminal proceedings.

The Constitutional Court calls upon the Parliament to comply with its legislative duty by 31 December 2005.

2. The Constitutional Court rejects the petition seeking the establishment of the unconstitutionality and the annulment of Section 74 para. (3) item b) of Act XIX of 1998 on Criminal Procedure.

3. The Constitutional Court rejects the petition seeking the establishment of the unconstitutionality and the annulment of Section 37 para. (3) of Act XCIII of 1990 on Duties and Title IV point 1 of the Annex thereof.

4. The Constitutional Court rejects the petitions seeking the establishment of the unconstitutionality and the annulment of Section 5 para. (5) of Minister of Justice, Minister of the Interior and Minister of Finance Joint Decree 10/2003 (V. 6.) IM-BM-PM on the Issue of Copies of Documents Created during Criminal Proceedings.

5. The Constitutional Court terminates the procedure for the establishment of an unconstitutional omission of legislative duty concerning Section 119/B of Act I of 1973 on Criminal Procedure.

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

## Reasoning

### I

1. Several petitions have been submitted for the constitutional examination of the statutory regulations on the issue of copies of documents created during criminal proceedings. The Constitutional Court has consolidated these petitions and judged them in a single procedure.

1.1. One of the petitioners requests the establishment of the unconstitutionality and the annulment of the provision in Section 5 para. (3) of Minister of Justice and Minister of the Interior Joint Decree 4/1991 (III. 14.) IM-BM on the Issue of Copies of Documents Created during Criminal Proceedings. The challenged statutory provision is as follows: “With consideration to Section 42 para. (3) of Act XCIII of 1990 on Duties, duty shall be paid for the copy in the form of a stamp duty in the amount specified in Title IV of the Annex of the Act; the stamp duty shall preferably be stuck onto the document copied.”

According to the petitioner, the obligation to pay duty specified in Section 5 para. (3) is contrary to the right to defence enshrined in Article 57 para. (3) of the Constitution, the right to fair trial deduced from Article 57 para. (1) and the principle of “equal arms” constituting an element thereof. In his argumentation, the petitioner refers to the Decisions of the Constitutional Court examining the right to defence in respect of access to the documents of the criminal proceedings [Decision 25/1991 (V. 18.) AB, ABH 1991, 414; Decision 6/1998 (III. 11.) AB, ABH 1998, 91], to Article 14 para. 3 subpara. b) of the International Covenant on Civil and Political Rights adopted at Session XXI of the General Assembly of the United Nations on 16 December 1966 and promulgated in Hungary in Law-Decree 8 of 1976 (hereinafter: the Covenant), and to Article 6 para. 3 subpara. b) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and promulgated in Hungary in Act XXXI of 1993 (hereinafter: the Convention). In his

supplement to the petition, the petitioner explains that – although he considers the obligation to pay duty as unconstitutional regardless of the amount of such duty – the raising of the amount of the duty of copies by five times (from HUF 20 to HUF 100 as of 1 January 1999) constitutes a serious obstacle to effective defence.

In the petitioner’s opinion, the regulations are unconstitutional on formal grounds as well: they violate Article 8 para. (2) of the Constitution, according to which fundamental rights may only be directly and significantly restricted in Acts of Parliament.

1.2. Another petitioner also requests the establishment of the unconstitutionality and the annulment of Section 5 para. (3) of Minister of Justice and Minister of the Interior Joint Decree 4/1991 (III. 14.) IM-BM. In his opinion, the obligation to pay duty and the disproportionately high amount of the duty violate, in respect of the defendant and the defence counsel, the presumption of innocence defined in Article 57 para. (2) of the Constitution and the right to defence enshrined in Article 57 para. (3), and, in respect of the defendant, the defence counsel, the injured party, the private prosecutor and the private party, they violate the fundamental rights – guaranteed in Article 57 para. (1) of the Constitution – to the judicial protection of rights, equality before the law and fair trial, including the principle of “equal arms”.

The petitioner objects to the fact that the duty payment obligation is completely based on Section 5 para. (3) of the Joint Decree, as Title IV of the Annex to Act XCIII of 1990 on Duties does not pertain to the criminal procedure. Thus, the regulations – disproportionately and unnecessarily – restricting fundamental rights are not contained in an Act of Parliament, therefore they are contrary to Article 8 para. (2) of the Constitution as well.

The petitioner requests the establishment of an unconstitutional omission of legislative duty in relation to Section 119/B of Act I of 1973 on Criminal Procedure (hereinafter: the “ACP of 1973”), as the Act does not specify “a guaranteeing rule on the number of copies of official documents subject to the right of access that must be available at the authority in charge. Due to the lack of such a statutory guarantee, persons entitled to have access to and copy documents might not be able to exercise these rights in certain phases of the proceedings.” This legislative omission endangers the full enforcement of the “equality of arms”, the right to fair and just trial [Article 57 para. (1) of the Constitution] and the right to defence [Article 57

para. (3) of the Constitution]. To support his petition, the petitioner refers to several Decisions of the Constitutional Court concerning the right to defence, the right to fair trial and the State's obligation of institutional protection.

1.3. The third petitioner claims the unconstitutionality of Section 5 para. (3) of Minister of Justice and Minister of the Interior Joint Decree 4/1991 (III. 14.) IM-BM on the basis of it violating the right to defence and the prohibition of discrimination contained in Article 70/A para. (1) of the Constitution. In his opinion, the obligation to pay duty restricts the right to defence, and the regulations are discriminative because only wealthy persons can have access to copies.

1.4. The regulations were modified after the submission of the petitions. Minister of Justice and Minister of the Interior Joint Decree 4/1991 (III. 14.) IM-BM on the Issue of Copies of Documents Created during Criminal Proceedings was repealed by Section 7 para. (2) of Minister of Justice, Minister of the Interior and Minister of Finance Joint Decree 10/2003 (V. 6.) IM-BM-PM on the Issue of Copies of Documents Created during Criminal Proceedings (hereinafter: the Decree). On the basis of Section 2 para. (6) of Act XXII of 2002 on the Definition of the Seat and Area of Competence of the Appeals Courts and Public Prosecutor's Offices of Appeal, Act XIX of 1998 (hereinafter: the ACP) entered into force as of 1 July 2003. Section 605 para. (7) of the ACP repealed the ACP of 1973.

As the regulations in force on the issue of copies of the documents of the criminal proceedings are essentially the same as the former regulations, the petitioners have maintained their claims, challenging Section 5 para. (5) of the Decree. However, the petitioner who had requested the establishment of an unconstitutional omission of legislative duty regarding Section 119/B of Act I of 1973 did not specify a similar deficiency in the ACP.

1.5. Another petitioner requests the establishment of the unconstitutionality and the annulment of Section 74 para. (3) item b) of the ACP. The petitioner claims – without reference to any specific provision of the Constitution – that Section 74 para. (3) item b) of the ACP, providing that the defendant and the [appointed] defence counsel may only have duty-free access to copies of documents if the defendant has been granted personal exemption from the payment of costs, violates equality before the law and the right to defence, and it is seriously

discriminative. To support his opinion, the petitioner refers to Article 6 para. 3 subpara. b) of the Convention.

1.6. Another petitioner requests the examination of Section 37 para. (3) of Act XCIII of 1990 on Duties, Title IV point 1 of the Annex thereof, and Section 5 para. (5) of the Decree. According to the petitioner, these provisions are contrary to Article 57 paras (1) and (3) of the Constitution; to support his opinion, he refers to Decision 6/1998 (III. 11.) AB (ABH 1998, 91). At the same time, he requests the Constitutional Court to establish an unconstitutional omission in respect of Section 57 para. (2) and Section 62 para. (1) of Act XCIII of 1990 on Duties. As alleged by the petitioner, the unconstitutional restriction of the right to defence and the violation of the principle of equal arms result from the Parliament's failure to provide – at the time of adopting the Act on Duties – a possibility for the defendant and the defence counsel to have duty-free access to copies of the documents of the criminal proceedings or to have access to such copies in exercise of a right of prenotation of duty.

2. During its procedure, the Constitutional Court obtained the opinion of the Minister of Justice and that of the Prosecutor General.

## II

The statutory provisions referred to by the petitioners and the ones relevant for the evaluation of the petitions are as follows:

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

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

“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 57 para. (1) In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law.

(2) In the Republic of Hungary no one shall be considered guilty until a court has rendered a final legal judgment determining criminal culpability.

(3) Individuals subject to criminal proceedings are entitled to legal defense at all stages of the proceedings. Defense lawyers may not be held accountable for opinions expressed in the course of the defense.”

“Article 70/A para. (1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.

(2) The law shall provide for strict punishment of discrimination on the basis of Paragraph (1).

(3) The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.”

“Article 70/I All natural persons, legal persons and unincorporated organizations have the obligation to contribute to public revenues on the basis of their income and wealth.”

2. The relevant provisions of the ACP are as follows:

“Section 70/B para. (1) The court, the public prosecutor or the investigating authority before which the criminal proceedings are under way shall, on request by the persons participating in the criminal proceedings, issue copies of the documents created during the criminal proceedings – including ones obtained by the court, the public prosecutor or the investigating authority as well as those submitted or attached by the persons participating in the criminal proceedings – in accordance with paras (2)-(7), not later than within eight days upon submitting the request.

(2) Until completion of the investigation, the suspect, the defence counsel, the lawful representative of a juvenile person, the injured party and his or her representative may receive a copy of the expert opinion and of the documents created during investigative acts in the case of which the law allows the presence of these persons; copies of other documents may be issued when this is not contrary to the interests of the investigation. The injured party may receive copies of other documents created during the investigation after being interrogated as a witness.

(3) The person reporting the offence – if he or she is not one of the persons listed in para. (2) – may only receive a copy of the reporting of the offence.

(4) If the interrogation of the defendant as per Section 179 para. (1) or the appointment of or the provision of a power of attorney to the defence counsel occurs after the creation of the document, the defendant shall be entitled to receive a copy of the document as per para. (2) after receipt of the summons for the first interrogation, and the defence counsel shall be entitled to receive it after receipt of the resolution on appointment or after submitting the power of attorney.

(5) After completion of the investigation

a) the defendant, the defence counsel and the lawful representative of a juvenile person may receive a copy of those documents of the investigation to which they are entitled on the basis of Section 193 para. (1),

b) the injured party and his or her representative may receive a copy of those documents of the investigation to which they are entitled on the basis of Section 229 para. (2).

(6) In the court proceedings, the issue of copies to the defendant, the defence counsel, the lawful representative of a juvenile person, the injured party, the private prosecutor, the private party and the representatives of such persons may not be restricted, save if provided otherwise in this Act.

(7) Other affected persons and their representatives may receive copies of the documents pertaining to them. Witnesses may receive copies of the minutes or parts of the minutes containing their testimonies.”

“Section 74 para. (3) If the defendant is expected to be unable to pay the costs of the criminal proceedings as a result of his or her limited income and property, and he or she has verified this fact as defined in a separate statute, the court or the public prosecutor shall decide, on the basis of a request submitted by the defendant or his or her defence counsel, on granting personal exemption from the payment of costs to the defendant. In the case of granting personal exemption from the payment of costs

a) the court, the public prosecutor or the investigating authority shall appoint a defence counsel on request by the defendant [Section 48 para. (2)],

b) the defendant and his or her appointed defence counsel shall receive copies of the requested documents of the criminal case free of duty on one occasion,

c) the fee and the verified expenses of the appointed defence counsel shall be paid by the State.”

“Section 451 The lawful representative shall have access to the documents of the case after completion of the investigation. During the investigation, the lawful representative may have access to the documents of the procedural acts at which he or she could be present. In other respects, the lawful representative’s rights concerning presence, comments, inquiries, motions and legal remedy shall be identical with the relevant rights of the defence counsel.”

3. The relevant provision of the Decree is as follows:

“Section 5 para. (5) If the defendant is not granted personal exemption from the payment of costs, and if Act XCIII of 1990 on Duties (hereinafter: the AD) does not provide otherwise, the amount of duty specified in Title IV of the Annex to the AD shall be payable.”

4. The relevant provisions of the AD are as follows:

“Section 37 para. (3) Save if provided otherwise in this Act, the provisions of Title IV of the Annex shall apply to the duty on the copies of documents made by the court or, in a criminal case, by the investigating authority.”

“Section 52 para. (1) In proceedings based solely on private prosecution, the duty on reporting an offence is HUF 5000, the duty on appeal is HUF 6000, and the duty on a request for retrial or a motion for review is HUF 7000.

[...]

(4) No duty shall be payable in the procedural phase in which prosecution is represented by the public prosecutor.”

“Section 53 para. (1) If a civil law claim is enforced in the course of criminal proceedings, duty under this title shall only be payable for submission of the claim and for appeal. This duty shall be payable in addition to the duty of the criminal proceedings, in accordance with the rules on duties in civil proceedings.

(2) The rules pertaining to duties in civil proceedings shall apply to the duty of the proceedings aimed at the enforcement of a claim of compensation against the State in connection with criminal proceedings.”

“Section 54 para. (1) If the request is not presented verbally immediately after the hearing or if it is not presented during the execution of a punishment of imprisonment, a duty of HUF 2000 shall be payable in the case of

a) a request for the postponement of the commencement of the execution of imprisonment or community service or for the interruption of community service,

b) a request for postponing the payment of a fine, a subsidiary punishment of paying a fine, criminal costs payable to the State, a value subject to seizure, property advantage or a disciplinary fine, or a request for payment in instalments.

(2) A duty of HUF 5000 shall be payable for a request for clemency and for exemption by the court.

(3) In the case of a request to the Minister of Justice for cancellation of a legal sanction related to property, the amount of the duty shall be 1% of the debt requested to be cancelled, but at least HUF 5000 and not more than HUF 20 000.”

“Section 56 para. (3) Copies of minutes and other documents made by the court are duty-free for the guardian ad hoc and for the guardian ad litem.”

“Section 57 para. (2) In criminal cases, no duty shall be payable in the following cases:

a) in the proceedings specified in Section 52 para. (1), appeal, request for retrial or a motion for review by the defendant and the defence counsel;

b) the proceedings specified in Section 52 para. (1), if the proceedings are terminated by the court before the commencement of the personal hearing, or if the termination of the proceedings is due to the exercise of clemency;

c) the request specified in Section 54 para. (2), if it is submitted by the convicted person or the defence counsel;

d) the procedure aimed at obtaining personal exemption from the payment of costs.”

“Section 59 para. (1) A person having a right of prenotation of duty shall be exempted from paying the duty in advance. In such cases the duty shall be paid by the person obliged by the court to do so.”

“Section 62 para. (1) The parties shall have a right of prenotation of duty regardless of their income and property

[...]

c) in the case of a claim for the compensation of damage – excluding damage caused to human life, physical integrity or health – resulting from a criminal offence or an administrative infraction;

[...]

l) in a lawsuit for the enforcement of a compensation claim against the State in relation to criminal proceedings;”

“Annex to Section 29 para. (4) of the Act on the specific duties payable for the various procedures of public administration”

“IV Duty for copies and extracts

1. The duty on attested and non-attested copies or extracts made in a public administration procedure – save if provided otherwise in this Annex – is HUF 100 per page of copies in the Hungarian language and HUF 300 per page of copies in a foreign language. The duty on non-attested photocopies is HUF 100 per page.”

5. The relevant provision of the Covenant is as follows:

“Article 14 para. 3 In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

[...]

b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;”

6. The relevant provision of the Convention is as follows:

“Article 6 para. 3 Everyone charged with a criminal offence has the following minimum rights:

[...]

b) to have adequate time and facilities for the preparation of his defence;”

### III

To form the basis of its Decision, the Constitutional Court reviewed its earlier statements on the constitutionality of the obligation to pay duty and of the regulation of criminal costs. In the evaluation of the position of the procedural actors involved in defence, it reviewed its practice concerning the rights to fair trial and defence as well as the conclusions that can be drawn from the case law of the European Court of Human Rights relevant to the present case.

1. The constitutional basis of prescribing an obligation to pay duties is Article 70/I of the Constitution. The duty payable for copies of documents created during criminal proceedings is one of the procedural duties intended to provide partial or full compensation for the costs to be borne by the budget in relation to the procedures and services of the authorities.

None of the petitioners refer to the constitutional provision that forms the basis of the statutory determination of duties, namely Article 70/I of the Constitution providing for the obligation of the proportional sharing of public burdens in line with one’s income and property status. However, in the present case, the constitutional provisions specified by the petitioners, the right to fair trial and the right to defence are to be compared with the obligation of paying duties originating from the obligation contained in Article 70/I. Therefore, the Constitutional Court’s examination includes the interpretation of Article 70/I of the Constitution.

From the Decisions examining the obligation to pay duties and the issue of related exemptions and preferences, the ones relevant in the present procedure are primarily those dealing with the relation between duties and the obligation of sharing public burdens as defined in Article

70/I of the Constitution, as well as between duties and the right to the judicial way enshrined in Article 57 para (1).

The obligation of paying duties is part of the individual's share of public burdens for the purpose of financing the performance of the State's functions. As established by the Constitutional Court in several Decisions: Article 70/I of the Constitution does not specify the titles under which the State may provide for payment obligations, therefore the legislator has a wide scale of discretion in choosing various economic resources as the basis of sharing public burdens, and, accordingly, in determining the subjects of public burdens. It only follows from Article 70/I that contributions to public burdens are to be determined in a proportional manner, in line with one's income and property status. However, the general requirement of proportionality and the principle of the proportional sharing of public burdens does not exclude the possibility of the legislator fixing a duty at a specific single amount. [Decision 61/1992 (XI. 20.) AB, ABH 1992, 280, 28.; Decision 66/B/1992 AB, ABH 1992, 735, 737; Decision 821/B/1990 AB, ABH 1994, 481, 487; Decision 620/B/1992 AB, ABH 1994, 539, 540-541; Decision 44/1997 (IX. 19.) AB, ABH 1997, 304, 306-307; Decision 522/D/1992 AB, ABH 2001, 755, 758]

As the legislator has a wide scale of discretion in regulating payments contributing to public revenues, it has considerable freedom in providing for duties and in determining the subject, basis and extent thereof. It is beyond the competence of the Constitutional Court to examine the expediency of the legislator's considerations and the basis of statutory regulations in terms of finance, law and economic policy; it may only examine whether the legislator has violated the Constitution when exercising its right of discretion. Naturally, in this field as well, the limits of the freedom of legislation are set by the restrictions resulting from the constitutional fundamental rights. (Decision 574/B/1996 AB, ABH 1996, 628, 629; Decision 1106/B/1997 AB, ABH 2003, 1018, 1021)

The relation between Article 57 para. (1) of the Constitution and procedural duties has been examined by the Constitutional Court in several Decisions in relation to civil procedure. As established in these Decisions, it does not follow from Article 57 para. (1) that the operational costs of the administration of justice and the expenses incurred by the parties cannot be claimed from the parties. However, as a result of the obligation of institutional protection [Decision 64/1991 (XII. 17.) AB, ABH 1991, 297, 302] stemming from Article 8 para. (1) of

the Constitution, it follows from Article 57 para. (1) of the Constitution that the State is obliged not only to provide a judicial way for legal disputes of persons but also to secure the concrete conditions of turning to the court. This includes the setting up of a system of support also covering the costs necessary for using the judicial way and related to litigation. (Decision 1074/B/1994 AB, ABH 1996, 452, 453-454)

In connection with examining the constitutionality of the rules of civil procedure, the Constitutional Court pointed out that the judicial procedural duty is part of the court costs, and the legislator has a wide scale of discretion in defining the concept, conditions and rules of settlement of court costs (Decision 1518/B/1991 AB, ABH 1993, 570, 571). The regulations on court costs can be brought into relation with Article 57 para. (1) of the Constitution if the use of the judicial way becomes impossible for a specific category of persons due to the rules on bearing costs. (Decision 181/B/1993 AB, ABH 1994, 588, 589; Decision 1074/B/1994 AB, ABH 1996, 452, 454; Decision 574/B/1996 AB, ABH 1996, 628, 629; Decision 539/B/1997 AB, ABH 1998, 734, 735; Decision 1106/B/1997 AB, ABH 2003, 1018, 1023)

2. In the criminal procedure, the procedural duty – as an expense – is part of criminal costs [Section 74 para. (1) of the ACP].

As established by the Constitutional Court in Decision 401/B/1992 AB on the examination of the constitutionality of procedural rules related to the advancing and bearing of criminal costs, the costs of maintaining and operating the system of prosecuting crime and administering justice that exercises the State's punitive power – as this is a constitutional obligation of the State – constitute a public burden, consequently, such costs are to be borne as general criminal costs by the State budget and indirectly by the entire society. In order to secure the unhindered conduct of the criminal proceedings, the State immediately advances the criminal costs incurred in the specific cases, as soon as they become necessary. However, persons becoming defendants on the basis of a well-founded suspicion of having committed a criminal offence may have costs partly in relation to the exercise of procedural rights and partly due to the obligation of personal participation. According to the Decision, it does not constitute a violation of the principle of equality before the law or an unconstitutional discrimination that the State advances the costs of the appointed defence counsel but the defendant pays the costs of the defence counsel with a power of attorney. Moreover, the advancing of the fee and expenses of the appointed defence counsel by the State provides a financial basis for securing

equal rights, for eliminating inequalities of opportunity, and thus for the enforcement of the right to defence. (ABH 1994, 528, 529-531)

During the constitutional review of the regulations on bearing criminal costs, the Constitutional Court pointed out in Decision 34/B/1996 AB in relation to the criminal costs to be paid by the private prosecutor that according to the law, proceedings are to be instituted and urged by the injured party in the case of criminal offences subject to private prosecution. The court starts the proceedings upon the initiative of the injured party as private prosecutor, and in respect of representing prosecution the injured party practically exercises the same rights as a public prosecutor. The injured party is required to exercise his or her rights of private prosecution upon consideration and when justified; the unjustified pressing of charges causes an unnecessary increase in the workload and costs of the courts. The rule challenged at that time is intended to ensure compliance with the above requirement: the private prosecutor has to bear part of the costs caused by his or her unjustified prosecution. (ABH 2001, 849, 853)

3. In the practice of the Constitutional Court, fairness, an essential part of which is the effective enforcement of the defendant's right to defence, is an unrestrictable feature of the criminal procedure in a state under the rule of law.

The right to fair trial, as an unrestrictable fundamental constitutional right, provides complex protection for the defendant [Decision 14/2004 (V. 7.) AB, ABK May 2004, 363, 371]. According to the position in principle elaborated in Decision 6/1998 (III. 11.) AB (hereinafter: the CCDec), the requirement of fair trial is a quality factor that may only be judged by taking into account the whole of the proceedings and all of their circumstances. However, in the procedure of the Constitutional Court, it is only possible to establish the general criteria of fair trial. (ABH 1998, 91, 95)

According to the consistent practice of the Constitutional Court, the right to defence provided for by Article 57 para. (3) of the Constitution is embodied in the rights of the defendant and the defence counsel. The defendant is entitled to defend himself and to use the services of a defence counsel freely chosen by him. The constitutional interpretation of the right to defence may only be based on the joint consideration of the rights of the defendant and the defence counsel. (CCDec, ABH 1998, 91, 93)

In the CCDec, the Constitutional Court examined the requirements of the right to defence ensuring effective and appropriate preparation, and – in that context – the requirements of fair trial manifesting itself in the principle of equal arms with regard to the regulations restricting access to and possession of documents of the criminal proceedings containing state secrets or official secrets.

As established by the Constitutional Court: “The possession of the data necessary for the defence includes the making of copies and taking them away, i.e. using them out of court. For the sake of effective defence in respect of the charges and any document at the disposal of the prosecutor and the court, it is necessary – in order to secure preparation for the defence – to allow the defendant and the defence counsel to examine such documents not only at the court, by using the copies at the disposal of the authorities, but by receiving and being free to take away a copy thereof to be used exclusively by them.” (ABH 1998, 91, 95)

The Constitutional Court stated for the first time in the CCDec that the principle of “equal arms” is a generally accepted and uncontested element of fair trial, although it is not specified in the texts of conventions and constitutions. This principle ensures in the criminal procedure that the prosecution and the defence have equal chances and potentials to form and express their opinions on factual and legal questions. The principle of equal arms does not entail in each case the rights of the prosecution and the defence to be completely the same; however, it requires that the rights of the defence should be of comparable weight in relation to those of the prosecution. A precondition to the equality of arms is securing equal chances for the prosecution, the defendant and the defence counsel to have access to the relevant data of the case in the same completeness and depth. This is where the principle of fair trial is linked to the requirements of the effectiveness of the right to defence and the need to allow adequate time and facilities for the preparation of the defence. (ABH 1998, 91, 95-96) The Constitutional Court established that “The right to defence and the principle of equal arms are [...] applicable to the possession and free use of all documents available to the prosecution as well.” (ABH 1998, 91, 100)

4. As pointed out by the Constitutional Court in the CCDec, according to the practice of the Covenant and the Convention the limit of the right to inspect the documents has been set by allowing it to include free possession of the documents. “It was only in respect of *ex officio*

service that both the Commission of Human Rights in the case of the Covenant and the European Court of Human Rights in the case of the European Convention of Human Rights rejected the requests that claimed *ex officio* service for the defence of the documents used by the prosecution in addition to the charges (O.F. vs. Norway, B 158/1983, § 5.5, and Kremzow case, 21 September 1993, Séries A 268-B), therefore the issue of documents if so requested has remained within the scope protected by the conventions.” (ABH 1998, 91, 96)

The European Court of Human Rights has explained in several decisions that the principle of equal arms – as an element of fair trial in the broad sense – requires a “fair” balance between the parties. All parties must have adequate opportunities to act in their case under circumstances not putting them at a disadvantage in comparison with their adversaries. The principle of equal arms does not depend on the existence of any further injury resulting from the inequality in the proceedings; what is essential for the defence is to receive all data and documents in the possession of which it can assess necessary further steps in a well-founded manner. [For example: Eur. Court H.R., Bulut v. Austria judgment of 22 February 1996, Reports 1996-II; Eur. Court H.R., Foucher v. France judgment of 17 February 1997, Reports 1997-II.; Eur. Court H.R., Kuopila v. Finland judgment of 27 April 2000; Eur. Court H.R., Josef Fischer v. Austria judgment of 17 January 2002]

In the practice of the Court, the right to defence enshrined in Article 6 para. 3 of the Convention is a special aspect of the right to fair trial granted in general in Article 6 para. 1, therefore the two provisions are to be examined together [Eur. Court H.R., Foucher v. France judgment of 17 February 1997, Reports 1997-II; Eur. Court H.R., Kuopila v. Finland judgment of 27 April 2000]. In the cases related to access to the documents of the criminal proceedings, the Court has not specifically dealt with domestic regulations allowing the defence to have access to copies at its own cost.

#### IV

The petitions are, in part, well-founded.

#### A

First, the Constitutional Court took a stand in respect of the formal constitutionality of the regulations. It has established that the obligation to pay duty originates from Section 37 para. (3) of the AD rather than from Section 5 para. (5) of the Decree as challenged by the petitioners, and consequently the annulment of the challenged provision would not result in the termination of the obligation to pay duty. Thus, as the obligation to pay duty for copies of documents created during criminal proceedings is regulated in an Act of Parliament, the violation of Article 8 para. (2) of the Constitution cannot be established concerning the level of regulation.

As pointed out by the Constitutional Court in its Decision on the constitutionality of the manner of regulating duties pertaining to civil proceedings, “legal certainty is not violated by the fact that duties pertaining to court proceedings [...] are contained in the AD rather than in the Act on Civil Procedure regulating court proceedings. The codex on duties encompassing the entire legal system is – in the opinion of the Constitutional Court – fully in line with the requirements of legal certainty [...]. According to the reasoning of the Bill, the adoption of the AD was justified by the very fact that the former regulations – on two levels: Act of Parliament and ministerial decree – had not been ‘in harmony with the requirements specified in the Act on State Finances and the Act on Legislation, namely that taxes and liabilities of a tax nature, including duties, are to be completely regulated in Acts of Parliament.’” (Decision 268/B/1999 AB, ABH 2003, 1099, 1102)

It clearly follows from Section 37 para. (3) of the AD that a duty is payable for copies made by the criminal court and the investigating authority; the extent of such duty is as defined in the Annex regulating the specific duties payable for the various procedures of public administration”. Undoubtedly, Section 5 para. (5) of the Decree does not exactly specify the statutory provision serving as a basis for the payment of duty, i.e. it does not refer to Section 37 para. (3) of the AD, but it merely refers in general to the defendant’s personal exemption from the payment of costs on the basis of the ACP and to the exceptions that may be defined in the AD. This does not mean, however, that the obligation to pay duty for copies of documents created in criminal proceedings originates from the joint ministerial decree rather than from the Act. In this respect the AD contains an adequately interpretable and applicable rule.

Nevertheless, the comparison of Section 5 para. (5) of the Decree and Section 37 para. (3) of the AD may result in a question about the existence of a statutory basis for the duty payable for copies made by the public prosecutor/public prosecutor's office as the third authority involved in the criminal proceedings in addition to the court and the investigating authority.

The provisions on the investigating authority, the public prosecutor and the court were contained in Chapter II of the ACP of 1973 entitled "Authorities Acting in Criminal Cases", and Title I of that Chapter entitled "Authorities in Charge". The rules pertaining to the investigating authorities specified that the police and the public prosecutor's office were general investigating authorities [Section 16 para. (2) of the ACP of 1973]. The ACP does not use the word "authority" as an umbrella term, but it refers in every provision to the court, the public prosecutor and the investigating authority.

This technical change in codification (originating from shifts of focus concerning the procedural model and the procedural functions) does not result in the modification of the statutory obligation to pay duty for copies prepared by the "authorities" involved in the criminal proceedings. According to Section 37 para. (3) of the AD, duty is payable – save if provided otherwise in an Act of Parliament – for copies issued in the course of criminal proceedings by the court, the public prosecutor/public prosecutor's office or the investigating authority.

The same conclusion can be drawn from the rules of the ACP. Pursuant to Section 70/B para. (1) of the ACP, "the court, the public prosecutor or the investigating authority" before which the criminal proceedings are under way shall issue copies on request by the persons participating in the criminal proceedings. This may be done without the payment of duty [Section 74 para. (3) item b) of the ACP] and is subject to the right of prenotation of duty [Section 343 para. (3) item b) of the ACP] only in the case of personal exemption from the payment of costs.

In respect of the public prosecutor/public prosecutor's office, the legislator has failed to harmonise Section 37 para. (3) of the AD with the conceptual system of the ACP changed with regard to the references to the authorities acting in the proceedings. This failure by the legislator, however, does not result in an unconstitutional situation violating Article 8 para. (2) of the Constitution.

## B

The Constitutional Court has established that due to the legislator's omission the regulations in force are unconstitutional in respect of the defendant, the defence counsel and the lawful representative of a juvenile defendant, because they violate the right to fair trial deduced through the mutual interpretation of Article 57 para. (1) and Article 2 para. (1) of the Constitution, more specifically the requirement of equal arms, and because they unnecessarily restrict the right to defence granted in Article 57 para. (3) of the Constitution.

1. Upon comparison of the rules contained in the ACP, the AD and several ministerial decrees, the position of the persons acting in the function of defence (the defendant, the defence counsel and the lawful representative of a juvenile defendant) in respect of the obligation to pay duty on copies can be summarised as follows:

a) In the case of granting personal exemption from the payment of costs, the defendant and the appointed defence counsel receive copies of the requested documents of the criminal case free of duty on one occasion. [Section 74 para. (3) item b) of the ACP; Minister of Justice, Minister of the Interior and Minister of Finance Joint Decree 9/2003 (V. 6.) IM-BM-PM on the Application of Personal Exemption from the Payment of Costs in the Criminal Procedure]

b) The verified expenses of an appointed defence counsel, including the costs of copies, are advanced by the State. The costs of copies also include – as appropriate, and in the absence of any provision to the contrary – the amount payable as duty for such copies.

The expenses of the appointed defence counsel, including the costs of copies, are advanced by the authority in the procedure of which the costs have been incurred.

Accordingly, if the defendant is not granted personal exemption from the payment of costs, the appointed defence counsel must pay duty for copies, but he or she may request the reimbursement thereof – as a verified expense – from the authority (investigating authority, public prosecutor's office, court) issuing the copies. [Minister of Justice Decree 7/2002 (III. 30.) IM on the Fees and Costs Payable to the Supportive Counsel and the Appointed Defence Counsel; Minister of Justice, Minister of the Interior and Minister of Finance Joint Decree 21/2003 (VI. 24.) IM-BM-PM on Advancing Criminal Costs]

c) Following from the above points, the duty on copies of documents is borne, in any case until making a decision on bearing criminal costs (Section 338-339 of the ACP), by:

- the defendant, if he or she is not granted personal exemption from the payment of costs,
- the defence counsel with a power of attorney (thus the defendant), regardless of whether defence is obligatory in the proceedings,
- the lawful representative of a juvenile defendant, and the rights of such a representative are identical with those of a defence counsel whose participation in the proceedings is obligatory.

2. In the present case, the Constitutional Court reinforces its position elaborated in the CCDec, according to which the opportunity to have access to and to possess the documents of the criminal proceedings belongs to those rights of the defence that must be ensured in a fair trial in any case. For the sake of effective defence, it is necessary – in order to ensure appropriate preparation for defence – to allow the defendant and the defence counsel to receive copies of all documents at the disposal of the public prosecutor and the court. The right to defence and the principle of equal arms are applicable to the possession and free use of all documents available in such a manner for the prosecution as well. Restricting the rights of the defendant and the defence counsel to freely possess and use copies of the documents is unconstitutional if the prosecution is free to possess and use the same documents (ABH 1998, 91, 95-96).

The requirement to pay duty for copies of the documents of the criminal proceedings is a form of charging part of the actual operative costs of the punitive power to the defendant and the defence counsel. Like any procedural duty, it is intended to compensate part of the State's costs incurred during the proceedings of the authorities, and to set reasonable limits to the exercise of rights by private individuals.

However, the requirement to pay duty, regardless of the actual income and property status of the persons acting in the function of defence and independently from the amount of the duty is, in any case, disadvantageous for the defence. The obligation to pay duty in itself necessarily constitutes a financial restriction for the defence with regard to obtaining, possessing and using the documents as effective and adequate tools for preparation. The restriction and the potential disadvantage may, in a particular case – depending on the amount of the duty payable and the financial potential of the defence – make it impossible to prepare effectively for defence.

Although the right to defence is a fundamental right of primary importance, it is not unrestrictable; the constitutionality of the provisions restricting this right must be evaluated on the basis of the so-called general fundamental rights test of necessity-proportionality elaborated in the framework of Article 8 paras (1)-(2) of the Constitution [Decision 41/2003 (VII. 2.) AB, ABH 2003, 430, 438-439; Decision 14/2004 (V. 7.) AB, ABK May 2004, 363, 371].

According to the permanent practice of the Constitutional Court, the State may only use the tool of restricting a fundamental right if it is the only way to secure the protection or the enforcement of another fundamental right or liberty or to protect any other constitutional value, if it is justified by some constitutional objective, furthermore, if it is the only way to achieve the desired protection or goal. The constitutionality of restricting a fundamental right also requires that the restriction comply with the criterion of proportionality; the importance of the desired objective must be proportionate to the restriction of the fundamental right concerned. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose. Restricting the contents of a right without a forcing cause or pressing public interest is unconstitutional, i.e. if it is not unavoidably necessary in the interest of some other fundamental right or constitutional objective, or if it is necessary, but the weight of the injury of rights caused by the restriction is disproportionate to the purported objective.

Consequently, in the present case, the Constitutional Court had to take a position on the question whether the proportional sharing of public burdens provided for in Article 70/I of the Constitution, more specifically the proportional contribution to the costs of the tasks performed by the State, provides constitutional justification for the legislator restricting one of the mandatory elements of the right to defence through a payment obligation.

The prosecution of crime and the administration of justice in criminal matters are functions of the State traditionally financed on the basis of sharing public burdens. However, the constitutional restrictions and characteristic features of the enforcement of the punitive demand – such as the principle of legality and that of acting *ex officio* applicable to the operation of State organs, the State's risk related to the enforcement of such demand, the restrictive nature of the system of tools applied in the criminal proceedings [cf.: Decision 11/1992 (III. 5.) AB, ABH 1992, 77, 85; Decision 42/1993 (VI. 30.) AB, ABH 1993, 301,

303-305], as well as the statutory restrictions upon the right of disposal of the private individuals in the criminal proceedings, in particular that of the defendant [Decision 14/2004 (V. 7.) AB, ABK May 2004, 363, 371] – result in the legislator’s significantly limited discretion in determining the rules on the administration of justice in criminal cases as a financial resource of public revenues. Although the prohibition of the legislator providing for an obligation of paying duty in criminal cases cannot be deduced from the provisions of the Constitution, in fact, the discretion of the State is considerably limited – in the process of enforcing its punitive demand – in applying procedural duties in criminal proceedings, i.e. in providing for financial consideration as a condition to the exercise of rights by the persons participating in the criminal proceedings.

The Constitutional Court has established that the obligation of the proportional sharing of public burdens based on Article 70/I of the Constitution is not a forcing cause justifying the State’s act of making the enforcement of the fundamental procedural rights protecting the individual against the punitive power of the State dependent upon the performance of an obligation of paying duty. The exercise of punitive power in concrete cases and the operation of the system of prosecuting crime and administering justice are to be ensured by society. Part of the costs of operation may be charged after deciding on criminal liability with final force, on the basis of the rules on bearing criminal costs. However, in the criminal proceedings, making the exercise of the fundamental constitutional rights of the defence conditional upon the payment of duty is a restriction necessitated neither by the protection of another fundamental right nor by the requirement of the proportional sharing of public burdens, i.e. the constitutional obligation of contribution to public revenues.

If the defendant, the defence counsel, or the lawful representative of a juvenile defendant considers it necessary for preparation to possess and use copies of the documents, the receipt of such copies may not depend on whether they can pay the duty for such copies. The more documents are made during the criminal proceedings, the more important it may be to possess and use such documents personally, but the obligation to pay a higher amount of duty in proportion with the increased number of documents to be copied may hinder adequate preparation for defence. It is not only for the “convenience” of the defence but it is an actual condition to the enforcement of the right to defence that the persons on the side of the defence have access to copies of the documents if they request so, without an obligation to pay duty.

Thus, providing for a duty on copies is an unnecessary restriction of the right to defence, not justified by any constitutional objective.

The violation of the equality of arms is a logical consequence of imposing a duty on copies. The equality of arms requires not only that the defence have access to all documents and data available to the prosecution and the court, but also that the subjects of the defence should not be, in the course of preparation, in a situation more difficult than absolutely necessary. The duty on document copies violates the equality of arms not only because the public prosecutor's office – in its function of public prosecution – as a budgetary authority enjoying personal exemption from the payment of costs [Section 5 para. (1) item c) of the AD] possesses the documents of the proceedings “free of charge”, but also because providing for a consideration payable for obtaining copies may result – without any constitutional justification – in a situation where, in the absence of document copies, the defence has to fulfil its function under much less favourable circumstances than the prosecution.

The unnecessary and thus unconstitutional restriction of the right to defence is not counterbalanced by the fact that the defendant and the defence counsel may receive copies of documents free of charge on one occasion in the framework of personal exemption from the payment of costs. The imposition of a duty by the legislator with reference to the constitutional obligation of sharing public burdens, in a manner hindering or preventing access to document copies by the persons on the side of the defence, is excluded not by the low income or lack of property of the defendant, but by the requirement of the efficient enforcement of the right to defence. Where the legislator provides for access by the actors of the defence to copies of the documents of the criminal proceedings, equal conditions are to be ensured for everyone, independently of their actual income and property status.

3. Upon evaluation of the system of rules the combined effect of which is the unconstitutional restriction of the right to defence and the violation of the equality of arms, the Constitutional Court has established – taking account of the wide legislative freedom resulting from Article 70/I of the Constitution and the consequences thereof regarding the detailed rules of the law on duties – that none of the provisions can be regarded as unconstitutional in itself. As Section 5 para. (5) of the Decree is merely a rule containing a reference, the evaluation had to be made in respect of the AD and the ACP.

In view of the legislator's right of discretion concerning the subject of the duty, Section 37 para. (3) of the AD, providing for the duty on document copies issued by the courts and in criminal cases by the investigating authority (public prosecutor's office), cannot be regarded as unconstitutional in itself. The Constitutional Court – in line with its practice followed in the constitutional review of the statutes on duties – considers that the amounts of the duty – specified in Title IV point 1 of the Annex, and, in respect of the duty on photocopies, reaching five times the price applied at the time of judging the case – are also within the legislator's discretion, therefore it has not examined them separately.

It has become clear in the course of the constitutional review that the unnecessary and unconstitutional restriction of the right to defence affecting the essence thereof and the violation of fair trial is the combined result – due to the internal system and structure of the law on duties – of the obligation to pay duty as specified in Section 37 para. (3) of the AD and the regulations on exemptions and preferences related to the criminal proceedings (Sections 56-57 and 59-62 of the AD, Section 74 para. (3) item b), Section 343 para. (3) item b) of the ACP). When defining exemptions and preferences, the legislator set undifferentiated rules resulting in a situation where the defendant, the defence counsel and – in proceedings against a juvenile defendant – the lawful representative of the defendant can only obtain copies of the documents of the criminal proceedings upon the payment of duty, even though these persons are entitled to have access to such documents on the basis of Section 70/B and Section 70/C of the ACP.

Undoubtedly, according to the consistent position of the Constitutional Court, no one has a constitutional subjective right to be exempted from the constitutional obligation resulting from Article 70/I of the Constitution or to benefit from any preference in that regard. The legislator also has a wide scale of discretion in determining exemptions and preferences. During the constitutional review of the statutory provisions pertaining to preferences, the Constitutional Court may only examine whether the legislator has violated any provision of the Constitution when exercising its right of discretion. [Decision 61/1992 (XI. 20.) AB, ABH 1992, 280, 281]

However, according to the consistent position of the Constitutional Court, the State duty to respect and protect fundamental rights is, with respect to subjective fundamental rights, not exhausted by the duty not to encroach on them, but incorporates the obligation to ensure the

conditions necessary for their realisation. To this end, the legislator must adopt regulations securing the enforcement of fundamental rights to the greatest possible extent. [Decision 12/2004 (IV. 7.) AB, ABK April 2004, 291, 295] In the present case, this requires the development of a system supporting the enforcement of the right to defence and the right to fair trial, more specifically, the adoption of differentiated provisions on exemption from the payment of duty and the right of prenotation of duty.

In the opinion of the Constitutional Court, the legislator has failed to perform this obligation of institutional protection and caused an unconstitutional situation by not providing in the ACP or in the AD – among preferences related to the payment of duties – for a possibility for the defendant, the defence counsel, and the lawful representative of a juvenile defendant to obtain document copies without paying duty.

According to Section 49 para. (1) 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. The legislature is obliged to legislate even when there is no concrete mandate given by a statute if the unconstitutional situation 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. An unconstitutional omission of legislative duty may also be established when the content of the legislation is inadequate, resulting in an unconstitutional situation. [Decision 9/2003 (IV. 3.) AB, ABH 2003, 89, 123-124; Decision 12/2004 (IV. 7.) AB, ABK April 2004, 291, 295]

Accordingly, the Constitutional Court has established an unconstitutional omission in respect of the regulations reviewed, and has called upon the Parliament to perform its legislative duty, setting a deadline in accordance with Section 49 of the ACC. In setting the deadline, the Constitutional Court has taken into account that the Parliament needs sufficient time to assess the budgetary consequences of the constitutional regulations to be adopted.

4. It is within the legislator's discretion to decide whether to provide for an exemption from the payment of duty (Sections 56-57 of the AD) for the defendant, the defence counsel and the lawful representative of a juvenile defendant in respect of obtaining copies or to regulate preference in the form of the right of prenotation of duty (Sections 59-62 of the AD). This is

why the Constitutional Court has not established the unconstitutionality of Section 74 para. (3) item b) of the ACP – according to which, in the case of granting personal exemption from the payment of costs, a copy is to be made free of duty on one occasion – on the basis of it violating equality before the law and the prohibition of discrimination. The importance of this rule lies in the fact that the costs of obtaining copies do not become criminal costs, i.e. the defendant does not have to bear them even if his guiltiness is established, provided that this is justified by the income and property status of the defendant. If the legislator decides not to apply the obligation to pay duty, this provision becomes unnecessary, but in other cases it may contribute to the equality of rights, the elimination of the inequality of opportunities, and thus to the enforcement of the right to defence.

No unconstitutionality can be established in respect of the legislator providing for a duty payable in the case of issuing further copies of the documents of the criminal proceedings in addition to issuing them on one occasion, or in the case of issuing them to other defence counsels in addition to the chief defence counsel if there are several defence counsels [Section 44 paras (2)-(3) of the ACP].

5. As the Constitutional Court has established that Section 37 para. (3) of the AD, Title IV point 1 of the Annex, Section 74 para. (3) item b) of the ACP and Section 5 para. (5) of the Decree are not unconstitutional in themselves, it has rejected the petition seeking the establishment of their unconstitutionality and their annulment in respect of the subjects of defence.

As the Constitutional Court has established that the legislator's omission constitutes an unconstitutional obstacle to the enforcement of the right to defence and a violation of the principle of equal arms as an element of fair trial, it has not examined – in accordance with its standing practice – whether the challenged regulations violate Article 57 para. (2) and Article 70/A of the Constitution. [Decision 6/2005 (III. 11.) AB, Official Gazette (*Magyar Közlöny*) 2005/31, 1507, 1510]

## C

1. The petition objecting to the duty payable for copies of the documents of the criminal proceedings from the point of view of the injured party, the private prosecutor and the private

party refers to Section 5 para. (5) of the Decree as an unconstitutional statutory provision violating the right to the judicial protection of rights and the right to fair trial; the petitioner requests the establishment of the unconstitutionality of this provision in terms of content as well as the annulment thereof.

The Constitutional Court has established in the present Decision that the obligation to pay duty for the documents of the criminal proceedings originates not from Section 5 para. (5) of the Decree but from Section 37 para. (3) of the AD, and consequently the annulment of the challenged provision would not result in the termination of the obligation to pay duty. However, the rules of the AD are not specifically referred to by the petitioner.

Section 5 para. (5) of the Decree – as a provision of reference – is not unconstitutional in itself in respect of the injured party, the private prosecutor or the private party. Therefore, the Constitutional Court has also rejected the petition concerning the participants of the proceedings as injured parties, private prosecutors and private parties.

The Constitutional Court – based on its being bound to the petition according to Section 20 and Section 22 para. (2) of the ACC – has not examined the rules of the AD in respect of the injured party, the private prosecutor and the private party. Accordingly, it has not taken a position in the present procedure on whether the duty payment obligation of the injured party, the private prosecutor and the private party for copies of the documents of the criminal proceedings violates the fundamental rights – enshrined in Article 57 para. (1) – to the judicial protection of rights, equality before the law and fair trial, including the right to the “equality of arms”.

2. The Constitutional Court has not examined the petition seeking the establishment of an unconstitutional omission of legislative duty by the Parliament in relation to Section 119/B of Act I of 1973 on the basis of its failure to provide in the Act that the documents of the criminal proceedings are to be produced in a number of copies ensuring the enforcement of the right of private individuals participating in the proceedings to have copies of the documents.

As a general rule, only the posterior review of statutes in force belongs to the competence of the Constitutional Court. The constitutionality of a repealed statute may only be examined by

the Constitutional Court on the basis of a judicial initiative as per Section 38 of the ACC or a constitutional complaint as per Section 48 thereof, i.e. exceptionally [Decision 54/2004 (XII. 13.) AB, ABK December 2004, 960, 1001]. As the petition is neither a judicial initiative nor a constitutional complaint, the Constitutional Court has terminated the procedure in view of Section 20 of the ACC and Section 31 item a) of amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's provisional rules of procedure and on the publication thereof.

The Constitutional Court has ordered the publication of this Decision in the Official Gazette (*Magyar Közlöny*) in view of the importance of and the public interest in the matter.

Budapest, 26 April 2005

Dr. András Holló  
President of the Constitutional Court

Dr. István Bagi  
Judge of the Constitutional Court

Dr. Mihály Bihari  
Judge of the Constitutional Court

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Dr. László Kiss  
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