

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of petitions jointly submitted by the Ombudsman for Civil Rights and the Ombudsman for the Rights of National and Ethnic Minorities seeking an interpretation of the Constitution and the establishment of an unconstitutional omission of legislative duty – with concurrent reasoning by Dr. Ottó Czúcz and Dr. László Kiss, Judges of the Constitutional Court, and dissenting opinions by Dr. István Bagi and Dr. András Holló, Judges of the Constitutional Court – the Constitutional Court has adopted the following

decision:

1. Having interpreted Article 70/E of the Constitution, the Constitutional Court establishes the following:

According to Article 70/E para. (1) of the Constitution, the right to social security entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits. Guaranteeing the minimum livelihood shall not result in concretely defining specific rights – such as the “right to have a place of residence” – as constitutional fundamental rights. In this respect, no obligation, and hence no responsibility of the State may be established.

According to Article 70/E para. (2) of the Constitution, the State should establish, maintain and operate a social security system and social security institutions in order to ensure that citizens may exercise their rights to benefits which they require to sustain themselves. In establishing the system of social benefits securing the minimum livelihood, the protection of human life and dignity is a fundamental constitutional requirement. Accordingly, the State is obliged to secure the fundamental conditions of human life – in case of homeless people it means the securing of a shelter to offer protection from a danger directly threatening human life.

2. The Constitutional Court rejects the petition seeking the determination of an unconstitutional omission in respect of the “right to have a place of residence”.

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

Reasoning

I

The petition jointly submitted by the Ombudsman for Civil Rights and the Ombudsman for the Rights of National and Ethnic Minorities alleged an unconstitutional omission by the State of legislative duties specified in Articles 15, 16, 17 as well as Article 70/E of the Constitution.

According to the petitioners, neither the statutory provisions on social benefits nor the ones on social security “cover completely the regulatory duties allocated on the State by the constitutional provisions referred to, as in their opinion, the right to have a shelter (a place of residence) is an inalienable part of the fundamental right to social security, as the lack of residence shall result in preventing all social measures reaching their goal.”

Moreover, the petitioners hold that the provisions of Act LXV of 1990 on Local Governments and those of Act LXXVIII of 1993 on certain rules related to the rent and the sale of flats and premises do not specify in line with the relevant constitutional provisions the State tasks in the management of welfare flats and the division of tasks between the State and the local governments. On the one hand, the legislation in force provides that “the enforcement of the State responsibility” related to the management of welfare flats is in the exclusive competence of local governments but, on the other hand, a significant part of local governments “are unable to perform such tasks”. This might lead to regional differences in securing civil rights, resulting in discrimination.

In the petitioners’ opinion, to solve this problem “it is absolutely necessary to interpret the constitutional contents of the fundamental right to social security in relation with the right to have a place of residence as well as to define the constitutional foundations and the scope of the State responsibility regarding the fundamental right to social security and the management of flats.”

Taking into account all the above, the primary aim of the petition was to obtain an interpretation of Article 70/E of the Constitution, asking the following questions:

- does the right to have a place of residence form part of the constitutional fundamental right to social security, and what is the scope of this right [Article 70/E para. (1) of the Constitution];
- does the State bear any responsibility for securing the enforcement of the right to have a place of residence [Article 70/E para. (2) of the Constitution]?

Secondly, the petitioners requested the establishment of an unconstitutional omission based on the failure of the State to create a set of regulations and institutions related to securing the “right to have a place of residence” originating from the fundamental right to social security .

II The petitioners asked for the interpretation of the following provision of the Constitution:

“Article 70/E para. (1) Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, in case of sickness, disability, or being widowed or orphaned, and in case of unemployment through no fault of their own.

(2) The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions.”

Further constitutional provisions referred to by the petitioners:

“Article 15 The Republic of Hungary shall protect the institutions of marriage and family.”

“Article 16 The Republic of Hungary shall make special efforts to ensure a secure standard of living, instruction and education for the young, and shall protect the interests of the young.”

“Article 17 The Republic of Hungary shall provide support for those in need through a wide range of social measures.”

III

1. As far as the first part of the petition is concerned, the Constitutional Court has acted in the scope of competence defined in Section 1 item g) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC). According to Section 1 item g) of the ACC, the interpretation of

the provisions of the Constitution falls into the competence of the Constitutional Court. Section 21 para. (6) of the ACC provides that the procedure specified under Section 1 item g) may be initiated by a) the Parliament or a standing committee thereof, b) the President of the Republic, c) the Government or a member thereof, d) the president of the State Audit Office, e) the president of the Supreme Court, or f) the Prosecutor General. According to Section 21 para. (8) of the ACC, others may also be empowered in an Act of Parliament to initiate a procedure of interpreting the Constitution. Section 22 item e) of Act LIX of 1993 on the Ombudsman for Civil Rights empowered the Ombudsman to initiate an interpretation of the Constitution. Therefore, the petition was filed by a person entitled to do so.

According to the standing practice of the Constitutional Court [first: Decision 31/1990 (XII. 18.) AB, ABH 1990, 136, 137; last: Decision 652/G/1994 AB, ABH 1998, 574, 576] the following are to be taken into account in case of an initiative for the theoretical interpretation of the Constitution as provided for in Section 1 para. g) of the ACC. The petition shall originate from a person or organisation specified in Section 21 para. (6) of the ACC; the procedure shall be initiated not in general terms but in the aspect of a concrete problem of constitutional law; it shall ask for the interpretation of a concrete provision of the Constitution. Finally, the specific problem in constitutional law shall be derived directly from the Constitution, without the interposition of another legal rule. The Constitutional Court has established that the petition meets the above requirements.

2. The Constitutional Court points out that in the petitioners' opinion, the "right to have a place of residence" is part of the contents of the right to social security. This was the basis upon which (although the primary aim of their petition was, actually, to clarify by way of interpreting the Constitution whether the right to social security has such a content, what the scope of that is, and what the related obligations of the State are) the petitioners claimed that the State violated its obligations resulting from the existence of the "right to have a place of residence" as alleged by the petitioners.

In the opinion of the Constitutional Court, the petitioners' claim to establish the unconstitutional omission may only be examined after interpreting Article 70/E of the Constitution. Therefore, the Constitutional Court has examined the claim to establish the unconstitutional omission depending on the interpretation of the Constitution, nevertheless in a single procedure.

IV

In its competence of posterior review, the Constitutional Court has been engaged in interpreting Article 70/E of the Constitution several times. In an early decision, the Constitutional Court also pointed out that “social security means neither a guaranteed income, nor that the achieved living standard of citizens could not deteriorate as a result of the unfavourable development of economic conditions. The obligations of the State in respect of the social security of its citizens are defined in a general manner by the provisions of Article 70/E para. (1) of the Constitution.” [Decision 32/1991 (VI. 6.) AB, ABH 1991, 146, 163]

Then the Constitutional Court argued that “according to Article 70/E para. (2) of the Constitution, it only follows that the State should establish, maintain and operate a social security system and social security institutions in order to ensure that citizens may exercise their rights to benefits which they require to sustain themselves. However, the Constitution does not contain any fundamental principles and aspects related to the operation of such systems.” The Constitutional Court pointed out in relation to Article 70/E of the Constitution that “according to the Constitution, the only requirement is that the social security system and the social security institutions should realise the entitlement to benefits necessary for sustenance.” [Decision 26/1993 (IV. 29.) AB, ABH 1993, 196, 199]

It was repeatedly established by the Constitutional Court in Decision 38/1994 (VI. 24.) AB (ABH 1994, 429, 433) in relation to Article 70/E of the Constitution that “as pointed out in Decision 26/1993 (IV. 29.) AB, it follows from the relevant provision of the Constitution that the State shall establish, maintain and operate a social security system and social security institutions in order to ensure that citizens may exercise their rights to benefits which they require to sustain themselves (ABH 1993, 196).”

As held by the Constitutional Court, “the legislature enjoys relatively great liberty in determining the methods and degrees by which it enforces constitutionally-mandated State goals and social rights. A violation of the Constitution may arise only in borderline cases when the enforcement of a State goal or the realisation of a protected institution or right are clearly rendered impossible by either interference by the State or, more frequently, by its omission. Above that minimum requirement, however, there are no constitutional criteria –

except for the violation of another fundamental right – to determine whether or not legislation serving a State goal or a social right is constitutional.” [Decision 28/1994 (V. 20.) AB, ABH 1994, 134, 140]

In its Decision 43/1995 (VI. 30.) AB, the Constitutional Court pointed out in respect of changing the level of social benefits that “the State is deemed to have met its obligation specified in Article 70/E if it organises and operates a system of social security and welfare benefits in order to ensure social support. Within this, the legislature may itself determine the means whereby it wishes to achieve its social policy objectives.” In this regard, it was emphasised that “the State has a wide range of powers with respect to changes within the system of social benefits”. At the same time, the Constitutional Court established that as a result of withdrawals, the extent of welfare benefits as a whole may not be reduced below a minimum level which may be required according to Article 70/E”. (ABH 1995, 188, 191-192)

The above decision is quoted in Decision 731/B/1995 AB of the Constitutional Court as well: “It does not follow from this provision of the Constitution that citizens would have a subjective right to State support in acquiring a flat, nor is the State obliged to secure a specific form and system of support for housing.

The relevant provision of the Constitution merely provides for the operation of the State’s social policy, setting the constitutional requirement that the extent of welfare benefits as a whole should not be reduced below the minimum level defined in Article 70/E.” (ABH 1995, 801, 803).

In its Decision 32/1998 (VI. 25.) AB, the Constitutional Court took – in connection with the determination of characteristics and requirements regarding the fundamental right to social security – a position in respect of the quality of the minimum level of benefits stating that “the right to social security contained in Article 70/E of the Constitution entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits necessary for the realisation of the right to human dignity.” (ABH 1998, 251, 254).

Thus – by way of reference to the right to human dignity – the abstract constitutional standard specified in Article 70/E para. (1) (maintaining the system of social benefits for securing the minimum livelihood) has become concrete in terms of quality as well: the benefits to be offered in the framework of social institutions should secure a minimum level guaranteeing

the enforcement of the right to human dignity. In case of services not reaching the above minimum level, the right to social security may not be deemed enforced.

As far as social rights are concerned, the minimum livelihood should be guaranteed by the whole of partial entitlements under the system of social benefits. This must, as a whole, comply with the general standard, the right to human dignity, which is – in the interpretation of the Constitutional Court – an “unrestrictable and undividable fundamental right in unity with the right to human life as well as the source and the condition of many other rights.” [Decision 23/1990 (X. 31.) AB, ABH 1990, 88, 93] In relation with the right to human life, the Constitutional Court established the “objective and institutionalised life protection duty of the State”, according to which the “obligation of the State based on the right to life goes beyond its obligation not to violate the individual's subjective right to life and to employ its legislative and administrative measures to protect this right, but it shall protect human life in general and the conditions thereof.” [Decision 48/1998 (XI. 23.) AB, ABH 1998, 333, 342]

V

1. In the theory of constitutional law, the differentiation between the so-called first and the second generation of human and civil rights has already been accepted as a traditional approach. Accordingly, the first generation comprises the classic freedoms that set limits upon the State organs exercising public authority in order to protect individual liberty. The second generation includes economic, social and cultural rights. Such rights may only be enforced through the activities of the State. Clearly, guaranteeing these rights depends upon the prevailing economic capabilities of society. This also applies to the right to social security specified in Article 70/E of the Constitution.

2. According to Article 70/E para. (1) of the Constitution, the right to social security entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits. Guaranteeing the minimum livelihood shall not result in concretely defining specific rights as constitutional fundamental rights. The State enjoys a high degree of liberty in defining the actual tools of guaranteeing social security. If the Constitutional Court established certain partial rights (e.g. the right to have a place of residence, the rights to proper nutrition, cleaning or dressing) and enforced such rights with the strictness of fundamental constitutional rights, this would lead to the acknowledgement of more and more new elements of social benefits as

fundamental constitutional rights. Such an interpretation would not take into account the right of the constitution-making authority to define fundamental constitutional rights. It would also neglect the constitutional requirement that the legislature should enjoy a high degree of liberty in defining the actual tools of guaranteeing social security. This way, the Constitutional Court would compel the legislature to guarantee certain concrete forms of benefits without due account to the prevailing capacities of the national economy. Consequently, the State obligation to increase the level of social benefits in proportion to the capacity of the national economy would not be realised as the State would only be compelled to secure certain concrete forms of support on a constant basis. Taking all the above into account, the Constitutional Court shall not acknowledge certain concrete partial rights as fundamental constitutional rights, although it establishes the responsibility of the State to guarantee benefits in general in order to secure human life and dignity in line with the capacity of the national economy. Consequently, no obligation, and hence no responsibility of the State may be established for guaranteeing the “right to have a place of residence”.

In order to protect the right to human life and dignity specified as the constitutional requirement of the minimum livelihood according to Article 70/E para. (1) of the Constitution, the State shall secure the preconditions for human life. Accordingly, in case of homelessness, the State obligation to provide support shall include the provision of a shelter when an emergency situation directly threatens human life. The State obligation to provide shelter does not correspond to guaranteeing the “right to have a place of residence”. Thus, the State shall be responsible for securing a shelter if homelessness directly threatens human life. Therefore, only in case of such an extreme situation is the State obliged to take care of those who themselves cannot provide for the fundamental preconditions of human life.

3. In the opinion of the Constitutional Court, no unconstitutional omission may be established regarding the guaranteeing of “the right to have a place of residence”, as such a legislative obligation to adopt concrete legal provisions does not follow from Article 70/E of the Constitution. Based on the aforementioned reasoning, the petition seeking a declaratory judgment of an unconstitutional omission of the duty to legislate has been rejected in part by the Constitutional Court.

4. In relation to interpreting Article 70/E of the Constitution, the Constitutional Court points out that Act III of 1993 on Social Administration and Social Benefits and Act XXXI of 1997

on the Protection of Children and the Administration of Guardianship regulate in details State obligations in providing benefits including the placement of those in need. Among others, the State provides for homeless people heated premises during the day, provisional accommodation and night shelter, as well as accommodation-like services in the form of homes and rehabilitation institutes for homeless people. In addition, local governments may provide support for maintaining flats, which may be used obviously by those who have a flat but are unable to earn as much as needed to maintain the flat they live in. The Act on the Protection of Children regulates the institutions of supporting one's effort to have his own home, provisional homes for families, provisional care of children and follow-up care. As far as these forms of support are concerned, the Constitutional Court points out repeatedly that the State should, with due account to the prevailing capabilities of the national economy, endeavour to increase the level of support and to expand the scope of social benefits in line with the capacity of the society.

5. Although no constitutional fundamental right to have concrete benefits follows from Article 70/E of the Constitution, the State shall – on the basis of its general obligation to provide support – strive for securing the widest possible range of social benefits. This is necessitated by the international obligations of the State, too. In this respect the Constitutional Court refers to its previous statement about “the obligation of the constitutional State under the rule of law to regulate the fundamental rights originating from the unity of human life and dignity with due regard to relevant international treaties and fundamental legal principles, serving the community's and individual rights specified in the Constitution.” [Decision 23/1990 (X. 31.) AB, ABH 1990, 88, 93]

Among others, the obligations of securing social security by the State under the rule of law are specified in the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations at its Session XXI on 16 December 1966, promulgated in Hungary in Law-Decree 9/1976, as Article 9 of the Convention provides for the following: “The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.” Article 11 point 1 of the above Covenant provides for more details, emphasising in particular the State's continuous active actions aimed at securing the specific preconditions of existence in order to improve living conditions: “The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the

continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.” Similar obligations are specified for the States Parties in Section 16 of Act C of 1999 on the promulgation of the European Social Charter, providing for the wide-scale implementation of protecting the social, legal, and economic interests of the family: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.”

VI The Constitutional Court has not dealt with Articles 15, 16, and 17 of the Constitution as referred to in the petition, since the request was aimed at the interpretation of Article 70/E, and, in relation to the interpretation of the Constitution initiated by the petitioners, it was not necessary to take into account Articles 15-16 due to a lack of interrelatedness with respect to subject. As far as the social measures contained in Article 17 of the Constitution are concerned, the Constitutional Court has already stated repeatedly that “examining the item found among the scope of “general provisions” shall be performed in the light of the constitutional provisions under “general rights and obligations” – as a result of their close interrelation” (Decision 3/D/1998 AB, ABH 1999, 642, 644). Accordingly, in the interpretation of Article 70/E of the Constitution, the Constitutional Court has not specifically mentioned the provisions of Article 17.

2. The publication of the Decision of the Constitutional Court in the Hungarian Official Gazette is based upon Section 51 para. (2) of the ACC.

Budapest, 7 November 2000

Dr. János Németh

President of the Constitutional Court

Dr. István Bagi

Judge of the Constitutional Court

Dr. Mihály Bihari

presenting Judge of the Constitutional Court

Dr. Ottó Czúcz
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. István Kukorelli
Judge of the Constitutional Court

Dr. János Strausz
Judge of the Constitutional Court

Dr. Éva Tersztyánszky-Vasadi
Judge of the Constitutional Court

Concurring reasoning by Dr. Ottó Czúcz, Judge of the Constitutional Court

Although I agree with all elements of the Decision and the reasoning thereof, I wish to point out and put more emphasis in my concurring reasoning on the importance of the life-protecting aspects of the decision.

1. In my opinion, the holdings of the Decision contain a constitutional requirement of exceptional importance, namely that “the State is obliged to secure ... a shelter to offer protection from a danger directly threatening human life”. On the one hand, this requirement clearly reflects the experience (that can be justified by analysing theoretical models, too) that populations having no appropriate mechanisms for the protection of their members whose lives are in danger are at a competitive disadvantage as compared to other communities and they are threatened by extinction. In addition, I believe that this requirement also follows undoubtedly from comparing the provisions of Articles 70/E and 54 para. (1) of the Constitution, and its wording is in full compliance with the practice of the Constitutional Court followed so far when interpreting questions related to the protection of life.

2. Everyday experience shows that there may be special situations in life when – usually as a result of a natural disaster, human tragedy, decease, or because of any other unforeseeable cause – the lack of a certain element of the fundamental necessities of life (e.g. enough food, appropriate clothes, accommodation) may lead to a direct threat of the affected person’s life.

Pursuant to Article 70/E para. (1) of the Constitution, “Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in the case of sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own.” Paragraph (2) adds that “The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions.”

The reasoning of the Decision is right in quoting earlier decisions of the Constitutional Court detailing that the legislature enjoys a relatively great liberty concerning the tools and the extent of enforcing social rights, and that the State has a wide scale of powers to implement changes within the system of welfare benefits. However, in cases when someone’s life becomes endangered due to the lack of a certain element necessary for life, the structure of State obligations becomes modified. Then it is not enough to merely maintain various welfare institutions and operate them (in line with the prevailing concepts of social policy), in such cases the State is obliged to reallocate the resources available in order to have the measures necessary for eliminating the concrete danger at the disposal of those in need - in time, and to the extent needed for eliminating the threat. In this respect, reference is to be made to Decision 64/1991 (XII. 17.) AB of the Constitutional Court pointing out that “Article 54 para. (1) of the Constitution states that, on the one hand, the right to life is guaranteed to every human being and, on the other hand, in accordance with Article 8 para. (1), the protection of human life shall be »the primary obligation of the State«. 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.” [64/1991 (XII. 17.) ABH 297, 302] Decision 60/1993 (XI. 29.) AB as well as Decisions 28/1994 (V. 20.) and 58/1994 (XII. 14.) AB argue similarly.

It is made clear by the above that the State obligations are transferred into another dimension when among usual welfare problems there arises a case where the lack of a certain element of the preconditions of survival causes an immediate threat to the life of the person concerned. Then the life-protecting function of the State makes its obligations more intense and “denser” than usual.

One should note that increasing intensity does not result in making the structure of these obligations absolute, in the sense that the State would be bound to provide support merely on

the grounds of a simple claim submitted by someone who feels his life is in danger. Nevertheless, in such cases the State should regulate with due care the criteria and the procedure to be applied in assessing whether the lack of accommodation does in the given circumstances endanger the life of the person concerned (if necessary, some reasonable rules of behaviour may be prescribed for the person concerned, and he may be called upon to cooperate in an expectable manner in order to eliminate the dangerous situation as soon as possible).

On the other hand, the application of such preconditions pertaining to procedure and content should not be of such weight and extent as to make the life protection obligations of the State meaningless. This entails that persons in such a situation should be offered only the measures and means of protection that are otherwise available for citizens who have social problems but whose life is not threatened directly. However, the constitutional assessment of such detailed rules could only be rendered in the framework of an individual review based on a relevant petition.

3. I also agree with the holdings in respect of the Constitutional Court not establishing an unconstitutional omission of the legislature in guaranteeing the “right to have a place of residence”. However, this does not mean that the legislature may not have regulatory tasks of a wide scale related to offering adequate accommodation needed for the elimination of a danger directly threatening human life. In this regard, it is presumably necessary to check whether the rules in force comply with the above requirements. These issues are, however, beyond the scope of the matters dealt with by the Constitutional Court in the present case.

Budapest, 7 November 2000

Dr. Ottó Czúcz
Judge of the Constitutional Court

I concur with the concurrent reasoning:

Dr. László Kiss
Judge of the Constitutional Court

Dissenting opinion by Dr. István Bagi, Judge of the Constitutional Court

I

I agree with the provisions under the first paragraph of point 1 and the first sentence of the second paragraph of point 1, and point 2 of the holdings of Decision 5/G/1998 adopted in the procedure aimed at the interpretation of the Constitution as well as at the establishment of a default of the legislation.

However, I fundamentally disagree with the statement made in the second paragraph of the holdings about the State responsibility to guarantee a shelter for homeless people in order to eliminate a danger directly threatening human life.

Although I accept the moral and sociological truth behind the above concept, I agree at the same time with the statement of the Decision holding that no concretely defined partial rights may be deducted from Article 70/E para. (1) of the Constitution which guarantees the minimum livelihood.

In my opinion, the same applies to the interpretation of Article 70/E para. (2) of the Constitution, and therefore concrete “partial rights” – including the State obligation to secure “accommodation” – may not be deducted directly from the Constitution, having regard also to the fact that the definition of any concrete obligation could be interpreted as a norm.

The competence of the Constitutional Court covers the so-called abstract interpretation of the Constitution. It is not possible to define the exact contents of the concept “accommodation” – merely a roof for protection, or more than that, e.g. heating in cold weather, food supply in case of an emergency threatening life, or other measures necessary in case of an emergency – in my opinion, this kind of interpretation of the Constitution may not be considered an abstract one.

An interpretation on the contrary, representing a position according to which the securing of accommodation is interpreted as a clear and concrete obligation should be declared by the legislature in the competence of creating a legal norm, possibly by an amendment of the Constitution.

II

I hold that Article 70/E para. (2) – the right to benefits is satisfied through social insurance and the system of social security institutions in the Republic of Hungary – has been interpreted adequately and in an abstract manner by the Constitutional Court in its earlier decisions as referred to in the present Decision, and declaring a concrete obligation of the State would mean “adding words” to the Constitution.

Too broad interpretations of “homelessness” and “danger directly threatening life” would allow for certain possibilities but as the latter definition is used in other branches of the law as well, it would harm the abstract nature of the concept.

I would have dispensed with pronouncing the obligation of the State, which I consider a concrete obligation, in the interpretation of Article 70/E para. (2) of the Constitution.

Budapest, 7 November 2000

Dr. István Bagi
Judge of the Constitutional Court

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

1/ I agree with point 2 of the Decision, the rejection of the petition aimed at the establishment of an unconstitutional omission in respect of the “right to have a place of residence” as well as with point 1, except for its last sentence, of the Decision on interpreting Article 70/E of the Constitution. However, I raise objections to the following sentence: “Accordingly, the State is obliged to secure the fundamental conditions of human life – in case of homeless people it means the securing of a shelter to offer protection from a danger directly threatening human life.”

In my opinion, with the above interpreting sentence, the Constitutional Court has exceeded the scope of an abstract interpretation of the Constitution and it has determined a concrete task for the State that falls within the competence of the legislature, together with the concrete condition of performing the task concerned.

The concrete task of the State referred to above may not be linked with determining force directly to the contents of Article 70/E of the Constitution as explained and interpreted in earlier decisions by the Constitutional Court.

2/ So far the Constitutional Court has interpreted Article 70/E of the Constitution in its scope of competence concerning the posterior review of the unconstitutionality of a statute and it has explained the contents of the Article concerned by gradually unfolding it in several decisions.

According to the prevailing interpretation of the Constitutional Court, the right to social security means the State obligation to establish and operate a system of welfare benefits securing the constitutional minimum level of the right to benefits absolutely necessary for the enforcement of the right to human dignity. Point 1 of the Decision actually transfers this interpretation to the level of an abstract interpretation of the Constitution with the addition of the sentence I have criticised.

In Decision 32/1998 (VI. 25.) AB, the Constitutional Court established a constitutional requirement stating that the constitutional standard of the minimum level of benefits was the enforcement of the right to human dignity, thus expanding the interpretation of Article 70/E of the Constitution. Here, human dignity as a general standard is not “one of the forms” of the general personality right (Decision 8/1990 (IV. 23.) AB). The so-called “partial rights” corresponding to human dignity may not be deducted from the right to social security. In case of social rights, the whole of partial rights within the system of benefits and a given concrete form of benefit together with other benefits (Decision 32/1998 (VI. 25.) AB, ABH 1998, 254) shall comply with the general standard, the enforcement of the right to human dignity in the general sense as defined in Decision 64/1991 (XII. 17.) AB, as a determining factor of human status: “Human dignity and human life are inviolable of anyone who is a human being, irrespective of physical and intellectual development and condition and irrespective of the extent of fulfilment of the human potential and the cause therefor. We cannot even talk of a human being's right to life without positing that person's individual subjective right to life and dignity”. (ABH 1991, 309).

Consequently, the constitutional minimum of the right to social security defined in Article 70/E of the Constitution as the right to benefits necessary for living – determined by the constitutional requirement of enforcing the right to human dignity – means all of the

components of the human status, the preconditions for human life (the forms of aids and benefits) that must be secured by the State through the legislation as subjective rights or rights depending on need.

Let me quote Decision 28/1994 (V. 20.) AB of the Constitutional Court to support my position: “Social rights are implemented by both by the formation of adequate institutions and the rights of individuals to have access to them, which rights are to be specified by the legislature” (ABH 1994, 134, 138). No directly denominated constitutional obligation about the extent and the manner of such rights may be deducted from the Constitution. (Decision 698/B/1990 AB: reference to Decision 1449/B/1992 AB, ABH 1994, 561, 563)

3/ In my opinion, one must differentiate between the (abstract) competence of the Constitutional Court to interpret the Constitution – revealing the contents of the given constitutional norm – and the determination of the theoretically possible variations of the legislative (executive) tasks resulting therefrom (the interpreted constitutional norm). The sentence I have criticised is the determination of the concrete task of the State that can be theoretically deducted from the interpretation of Article 70/E of the Constitution as summarised in the Decision – including the conditions thereof – and as such it is not part of the contents of Article 70/E of the Constitution. The concrete “denominated” obligations of the State resulting from Article 70/E of the Constitution shall be defined by the legislature and not by the Constitutional Court. “The implementation of the constitutional provisions – depending on many conditions – is a constantly changing and continuing task of the legislature, the judiciary, local governments and society”. (Decision 1558/B/1991 AB, ABH 1994, 510, 511)

Budapest, 7 November 2000

Dr. András Holló
Judge of the Constitutional Court

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