

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of petitions seeking the posterior examination of the unconstitutionality and the annulment of a statute, the Constitutional Court has adopted the following

decision:

The Constitutional Court holds that the text “designating a thirty-day period of resignation” in Section 7 of Act LXXIX of 1997 on the Legal Status and Responsibility of Members of Government and Undersecretaries of State is unconstitutional and, therefore, annuls it.

As a result of the annulment, Section 7 of Act LXXIX of 1997 on the Legal Status and Responsibility of Members of Government and Undersecretaries of State shall remain in force as follows: “Section 7 The Prime Minister or the Government may resign by a written declaration made to the Speaker of the Parliament via the President of the Republic. The President of the Republic shall forward the declaration of resignation at the latest on the third day following receipt thereof. The Speaker of the Parliament shall inform the Parliament thereon at the latest on the next day of session following receipt of the declaration. A statement of acceptance is not required for the resignation to be valid.”

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

Reasoning

I

The Constitutional Court has received four petitions seeking the establishment of the unconstitutionality of the text “designating a thirty-day period of resignation” in Section 7 of Act LXXIX of 1997 on the Legal Status and Responsibility of Members of Government and Undersecretaries of State (hereinafter: the Act). The Constitutional Court has consolidated the petitions, as they have the same subject.

1. According to the petitioners, the normative text requested to be examined is contrary to several provisions of the Constitution. On the one hand, it is contrary to Article 33/A item b) of the Constitution, according to which the mandate of the Government ends if the Prime Minister or the Government resigns. On the other hand, it is contrary to Article 39/B, which specifies that if the mandate of the Government ends, the Government shall remain in office until the formation of the new Government, but it will act as an interim Government with limited powers. Thirdly, it is contrary to Article 39/C para. (1) of the Constitution on the interim Prime Minister in the case of the resignation of the Government or the Prime Minister. According to one of the petitioners, the thirty-day period of remaining in office as a Government and Prime Minister with full powers prescribed by the Act widens the powers of the resigned Prime Minister in violation of the above rule of the Constitution, and it poses a threat to the democratic order of the Republic of Hungary. As a further argument, another petitioner claims that the Prime Minister's right of resignation results not from Section 7 of the Act but from the Constitution, according to which it is within the discretion of the Prime Minister to set the date of his or her resignation. The petitioner states that resignation "is part of his or her fundamental constitutional right to personal self-determination". "No one may be forced to lead the country as Prime Minister against his or her free will." According to the petitioner, the Constitution takes this into account when providing for the interim Prime Minister and Government – with limited powers – as a direct consequence of the resignation, until the election of the new Prime Minister and the formation of the new Government, respectively [Article 39/B, Article 39/C para. (1)]. Furthermore, the petitioner argues that a constitutional concern is raised by the thirty-day period of resignation specified in Section 7 of the Act also because it provides the possibility of submitting a motion of no confidence against the resigned Prime Minister. In the opinion of the petitioner, there may not be more than one reason for the termination of the Government's mandate.

Further petitions with the same content as the ones referred to above have been submitted for the constitutional examination of the provision on the thirty-day period of resignation defined in Section 7 of the Act.

Three petitions request the retroactive annulment of the text to be examined, and one petition contains no request to that effect.

2. Upon request by the Constitutional Court, the Minister of Justice has delivered an opinion on the petitions.

II

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

“Article 33 para. (3) The Prime Minister shall be elected by a majority of the votes of the Members of Parliament, based on the recommendation made by the President of the Republic. The Parliament shall hold the vote on the election of the Prime Minister and on the passage of the Government’s program at the same time.”

“Article 33/A The Government’s mandate shall end -

- a) upon formation of the newly elected Parliament;
- b) upon resignation of the Prime Minister or the Government;
- c) upon the death of the Prime Minister;
- d) upon disfranchisement of the Prime Minister,
- e) upon establishment of a conflict of interest on the part of the Prime Minister, or
- f) if the Parliament passes a motion of no-confidence in the Prime Minister and elects a new Prime Minister in accordance with the provisions of Par. (1), Article 39/A.”

“Article 39/A para. (1) A motion of no-confidence in the Prime Minister may be initiated by a written petition, which includes the nomination for a candidate for the office of Prime Minister, by no less than one-fifth of the Members of Parliament. A motion of no-confidence in the Prime Minister is considered a motion of no-confidence in the Government as well. Should, on the basis of this motion, the majority of the Members of Parliament withdraw their confidence, then the candidate nominated for Prime Minister in the motion shall be considered to have been elected.

(2) The debate and vote on the motion of no-confidence shall be held no earlier than three days from the date of proposal and no later than eight days from the date of proposal.

(3) The Government, via the Prime Minister, may propose a vote of confidence in accordance with the period of time specified in Paragraph (2).

(4) The Government, via the Prime Minister, may propose that the vote on the motion it has made simultaneously be considered as a vote of confidence.

(5) Should the Parliament fail to give the Government a vote of confidence in accordance with the provisions of Paragraphs (3)-(4), the Government shall resign.

Article 39/B Should the mandate of the Government end, the Government shall remain in office until the formation of the new Government and shall continue to exercise the rights accorded to it; the Government, however, may not conclude international treaties and may only issue decrees with the express authorization of a law, in cases when delay is not permissible.

Article 39/C para. (1) If the term of the Prime Minister is terminated upon formation of the newly elected Parliament or upon the resignation of the Prime Minister or the Government, the Prime Minister shall remain in office as an interim Prime Minister until the new Prime Minister is elected, but may not motion for the nomination or dismissal of ministers and may only issue decrees upon the express authorization of law in urgent cases.

(2) If the term of the Prime Minister is terminated due his death, disfranchisement or upon declaration of a conflict of interest, the minister appointed by the Prime Minister for his office shall hold, with the restrictions defined in Subsection (1), the Prime Minister's office until the new Prime Minister is elected; or the minister appointed on the first place if more than one minister have been appointed.”

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

“The Prime Minister

Section 6 The termination of the Prime Minister's mandate shall coincide with the termination of the Government's mandate (Article 33/A of the Constitution).

Section 7 The Prime Minister or the Government may resign by a written declaration made to the Speaker of the Parliament via the President of the Republic, designating a thirty-day period of resignation. The President of the Republic shall forward the declaration of resignation at the latest on the third day following receipt thereof. The Speaker of the Parliament shall inform the Parliament thereon at the latest on the next day of session following receipt of the declaration. A statement of acceptance is not required for the resignation to be valid.

Section 8 If the termination of the Prime Minister's mandate is based on Article 33/A items b)-d) of the Constitution, this fact shall be communicated to the Parliament by the Speaker of the Parliament.

Section 9 In the case of the termination of the Prime Minister's mandate – save if the Parliament has withdrawn confidence from the Prime Minister and elected a new Prime Minister [Article 39/A para. (1) of the Constitution] – the President of the Republic shall make a proposal on the person of the new Prime Minister within thirty days.”

III

During the constitutional examination of the text “designating a thirty-day period of resignation” in Section 7 of the Act, the Constitutional Court has reviewed the relevant provisions of the Constitution on the status of the Prime Minister and the Government.

1. The provisions of the Constitution link the formation and the termination of the mandate of the Government to the person of the Prime Minister.

Concerning the formation of the Government, Article 33 para. (3) of the Constitution provides that the President of the Republic shall make a recommendation on the person of the Prime Minister, and the Parliament shall elect the Prime Minister by the majority of its members and shall vote on the passage of the Government's program at the same time. The coincidence of the dates has a constitutional significance: it determines the relation between the Prime Minister and the Government to be formed. The elected Prime Minister decides on the personal composition of the Government: pursuant to Article 33 para. (4) of the Constitution, the Ministers are appointed and dismissed by the President of the Republic, based on the recommendation made by the Prime Minister. Article 33 para. (5) of the Constitution provides that the Government is formed upon appointment of the Ministers. The established Government acts (with regard to the content of governance) on the basis of the program accepted concurrently with the election of the Prime Minister.

2. The Constitution links immediately applicable transitional rules to the cases of the termination of the Government's mandate specified in Article 33/A of the Constitution. The

constitutional provisions on transition apply in the case of all causes of termination until the election of the new Prime Minister.

2.1. According to Article 33/A item a) of the Constitution, the mandate of the Government ends upon formation of the newly elected Parliament. As provided for in Article 39/C para. (1) of the Constitution, in this case the Prime Minister remains in office – with limited powers – as an interim Prime Minister until the new Prime Minister is elected.

Article 33/A item b) of the Constitution refers to two cases related to the termination of the Government's mandate: the resignation of the Prime Minister and that of the Government. The Constitution does not specify any conditions for the resignation of the Prime Minister (e.g. about the date or cause of the resignation). The resignation of the Government is related to the rules included in Article 39/A paras (3) and (4) of the Constitution. According to these provisions, the Government, via the Prime Minister, may propose a vote of confidence or, via the Prime Minister, it may propose that the vote on the motion it has made simultaneously be considered as a vote of confidence. Pursuant to Article 39/A para. (5) of the Constitution, if, in such cases, the Parliament fails to give the Government a vote of confidence, the Government shall resign.

The above causes of termination contained in Article 33/A items a) and b) of the Constitution are related to legal facts, namely the formation of the new Parliament and the resignation of the Prime Minister or the Government. Article 33/A items a) and b) of the Constitution are related to Article 39/C para. (1) of the Constitution. According to this provision of the Constitution, in such cases of the termination of the mandate the Prime Minister remains in office as an interim Prime Minister until the new Prime Minister is elected. The Constitution provides for the status of the interim Prime Minister – with specific limitations, until the election of the new Prime Minister – as a mandatory task. The provisions of the Constitution pertaining to transition (until the election of the new Prime Minister) are as follows: the interim Prime Minister may not motion for the nomination or dismissal of ministers and may only issue decrees upon the express authorisation of law (Act of Parliament) in urgent cases [Article 39/C para. (1) of the Constitution]; the Government shall continue to exercise the rights accorded to it, however, it may not conclude international treaties and may only issue decrees with the express authorisation of a law (Act of Parliament), in cases when delay is not permissible [Article 39/B of the Constitution]. Consequently, the transitional rule to be

applied immediately after the resignation of the Prime Minister or the Government is the institution of the interim Prime Minister [Article 39/C para. (1) of the Constitution] and that of the Government remaining in office with limited powers [Article 39/B of the Constitution]. According to the Constitution, the resignation of the Prime Minister has the same legal effect as that of the Government. The Constitution does not allow the conclusion that the Prime Minister or the Government remains in office with full powers after the resignation of the Prime Minister. This is also excluded by the constitutional rule providing for the Government with limited powers: the introductory part of Article 39/B of the Constitution provides: “Should the mandate of the Government end”, and one of the causes thereof is – on the basis of the first part of Article 33/A item b) of the Constitution – the resignation of the Prime Minister.

2.2. The other cases of the termination of the Government’s mandate and the related consequences emphasise the “immediacy” of the effects. Pursuant to Article 33/A item c), item d) and item e) of the Constitution, the mandate of the Government ends upon the death of the Prime Minister, upon disfranchisement of the Prime Minister, and upon establishment of a conflict of interest on the part of the Prime Minister, respectively. Article 39/C para. (2) of the Constitution [similarly to Article 39/C para. (1) in the case of the causes defined in Article 33/A items a) and b)] provides clear rules to be applied in such cases: the minister appointed by the Prime Minister for his office shall hold – with the restrictions applicable to the interim Prime Minister – the Prime Minister’s office until the new Prime Minister is elected. In this respect, the rule of the Constitution pertains to the Minister acting as a deputy of the Prime Minister, but the Government remains in office with limited powers in such cases as well, in line with Article 33/A of the Constitution [Article 39/B of the Constitution]. Thus, Article 39/C para. (2) of the Constitution defines a rule directly applicable in the case of the causes contained in Article 33/A items c)-e) and related to the person of the Prime Minister: the minister appointed by the Prime Minister for his office shall hold – with the restrictions applicable to the interim Prime Minister – the Prime Minister’s office.

Finally, according to Article 33/A item f) of the Constitution, the mandate of the Government terminates as a result of a successful motion of no confidence. As Article 39/A para. (1) of the Constitution establishes the institution of the constructive motion of no confidence, evidently there is no need for a transitional rule similar to the one contained in Article 39/C of the Constitution: when the majority of the Members of Parliament express no confidence, they

elect a new Prime Minister at the same time. Therefore, Article 39/A para. (1) of the Constitution is a rule connected to Article 33/A item f) of the Constitution.

3. Based on the above, it can be concluded that the Constitution provides for a closed system of integrally related rules in respect of the termination of the mandate of the Prime Minister and that of the Government. Although Article 39 para. (2) of the Constitution authorises the legislature to regulate the legal status, remuneration and liability of Members of Government and Undersecretaries of State, naturally, this authorisation only applies to matters not regulated in the Constitution. Consequently, the above rules determining the status of the Government and that of the Prime Minister are norms to be defined at the level of the Constitution. The specific provisions of the Constitution pay particular attention to the constitutional value of the stability of the Government's work; this is manifested in the fact that the Constitution regulates all important elements of the transition. Therefore, the institution of the interim Prime Minister and that of the interim Government as regulated in the Constitution as well as the date from which their limited powers apply have a guaranteeing role.

The thirty-day period of resignation provided for in Section 7 of the Act under review is contrary to the provisions of the Constitution on the termination of the Government's mandate in several respects:

3.1. The provision of the Act under review assumes that in the case of the Prime Minister's resignation the Prime Minister and the Government remain in office with full powers for thirty days upon resignation. This is contrary to Article 33/A item b), Article 39/C para. (1) and Article 39/B of the Constitution.

Pursuant to the Act, the Prime Minister may resign by a written declaration made to the Speaker of the Parliament via the President of the Republic, "designating a thirty-day period of resignation", as provided for in the text under review. This provision separates the date of resignation from its entry into effect, which is contrary to the constitutional provisions on the interim Prime Minister and the Government with limited powers. In Article 39/C para. (1) of the Constitution – as detailed above – the commencement of the status of the interim Prime Minister is linked to the fact of resignation without allowing any deviation, and since – according to Article 33/A of the Constitution – in such a case the mandate of the Government

also ends, the Government becomes an interim one, in accordance with Article 33/B of the Constitution. It follows from these provisions of the Constitution that the resignation takes effect immediately upon the submission thereof. Section 7 of the Act, assuming that the Prime Minister and the Government remain in office with full powers for thirty days, is unconstitutional because – as referred to above – it sets rules to be defined at the level of the Constitution, i.e. it supplements the rules on transition at the level of legislation. If the Constitution reckoned with any period of time between the act of resignation and its entry into effect, it would have to be regulated in the Constitution itself together with the procedure to be followed.

Consequently, the thirty-day period of resignation specified in Section 7 of the Act restructures the provisions of the Constitution on the Prime Minister and the Government with full powers and the ones with interim mandate. All causes included in Article 33/A of the Constitution are linked to specific dates, and Articles 39/C and 39/B of the Constitution define the immediate consequences thereof. These provisions of the Constitution – not allowing any deviation – ensure the stability of the Government’s work in the transitional period.

Accordingly, it would not be constitutional, either, if the Act provided for a period of resignation of “not more than” thirty days, similarly to the case of the resignation of ministers (see Section 13 of the Act). In that case, too, the date of resignation and its entry into effect could be separated, which would be contrary to the provisions of the Constitution on the interim Prime Minister and the Government with limited powers, similarly to the rule under review. The same follows from the Prime Minister’s position under public law as defined in the Constitution, and the from the fact of linking the termination of the Government’s mandate to the resignation of the Prime Minister.

The provision in Section 9 of the Act according to which in the case of the termination of the Prime Minister’s mandate – with the exception of a successful vote of no confidence – the President of the Republic shall make a proposal within thirty days on the person of the new Prime Minister is to be evaluated differently from Section 7 of the Act. This thirty-day rule of the Act – in contrast with the provision of Section 7 under review – does not alter the provisions of the Constitution on the transformation of the Government with full powers into an interim Government, instead it defines the time limit of the operation of the interim Prime Minister and the Government with limited powers, for a constitutionally justified purpose: to

ensure that the new Prime Minister is elected and the new Government is formed as soon as possible.

3.2. Following from the Constitution, it is theoretically impossible to submit a motion of no confidence against a resigned Prime Minister who – by virtue of the Constitution – has become an interim Prime Minister. According to the Constitution, a motion of no confidence may only be submitted against a Prime Minister and not against an interim Prime Minister. The institution of the Prime Minister (with full powers) and that of the interim Prime Minister are sharply distinguished in the Constitution. Besides grammatical interpretation, another reason for the impossibility of submitting a motion of no confidence against the interim Prime Minister is that the status of the interim Prime Minister presupposes the termination of the Government's mandate on the basis of Article 33/A item a) or item b). The motion of no confidence is a motion of no confidence against the Government as well, and evidently it cannot be submitted with the purpose of terminating the already ended mandate of the Government for a second time. According to Section 7 of the Act, in the case of resignation, the Government remains in office with full powers for thirty days, therefore this provision of the Act in force sustains the possibility of the occurrence of a new reason for the termination of the Government's mandate, in violation of the rules of the Constitution.

Consequently, the statutory provision of the Act containing a date with regard to the commencement of transition in deviation from the provisions of the Constitution violates the exclusivity of regulation in the Constitution, the stability of governance based on the Constitution, and the predictability of the operation of legal institutions.

4. The petitioners also request the review of the provision on the thirty-day period of resignation under Section 7 of the Act on the basis of Article 54 para. (1) of the Constitution. According to the practice of the Constitutional Court, when the statute challenged in the petition or part of it is deemed to violate a provision in the Constitution, then the Constitutional Court does not examine the violation of any further constitutional provisions regarding the statutory provision already declared unconstitutional. [Decision 44/1995 (VI. 30.) AB, ABH 1995, 203, 205; Decision 4/1996 (II. 23.) AB, ABH 1996, 37, 44; Decision 61/1997 (XI. 19.) AB, ABH 1997, 361, 364; Decision 15/2000 (V. 24.) AB, ABH 2000, 420, 423; Decision 16/2000 (V. 24.) AB, ABH 2000, 425, 429; Decision 29/2000 (X. 11.) AB, ABH 2000, 193, 200]. Accordingly, the Constitutional Court has not examined the

constitutionality of Section 7 of the Act – declared unconstitutional above – on the basis of the violation of the right to self-determination resulting from Article 54 para. (1) of the Constitution.

5. The petitioners request the retroactive annulment of the text “designating a thirty-day period of resignation” in Section 7 of the Act. Pursuant to Section 40 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), if the Constitutional Court establishes the unconstitutionality of a statute, it annuls that statute. According to Section 42 of the ACC, the annulment shall take effect – as a general rule – on the day of publication of the Decision of the Constitutional Court. Section 43 para. (4) of the ACC allows deviation from the general rule of *ex nunc* annulment if it is justified by the interest of legal certainty or a particularly important interest of the petitioner. In the present case, the Constitutional Court has established that neither of the causes of retroactive annulment specified in Section 43 para. (4) of the ACC exists. According to Section 43 para. (2) of the ACC, the annulment of a statute – with a few exceptions – does not affect the legal relations that were created prior to the publication of the Decision or the rights and obligations deriving from such relations. In view of the above, the Constitutional Court has annulled the unconstitutional provision in Section 7 of the Act with effect as of the date of publication of its Decision.

The publication of this Decision in the Official Gazette is based on Section 41 of the ACC.

Budapest, 13 December 2004

Dr. András Holló
President of the Constitutional Court
Judge of the Constitutional Court, Rapporteur

Dr. István Bagi
Judge of the Constitutional Court

Dr. Mihály Bihari
Judge of the Constitutional Court

Dr. Árpád Erdei
Judge of the Constitutional Court

Dr. Attila Harmathy
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