Decision 66/2006 (XI. 29.)

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of a petition seeking posterior constitutional examination of a statute, the Constitutional Court has adopted the following

decision:

1. The Constitutional Court rejects the petition aimed at establishing the unconstitutionality of, and at annulling, Section 4, Section 7 items 8 and 9, and Section 8 paras (1) and (2) of Act LIX of 2006 on Supertax and Contribution for the Improvement of the Balance of Public Finances.

2. The Constitutional Court rejects the petition seeking establishment of the unconstitutionality and annulment of Section 223 paras (1) and (2) as well as para. (16) items b), c), and d) of Act LXI of 2006 on the Amendment of Certain Acts on Financial Subjects.

3. The Constitutional Court rejects the petition aimed at examining whether Section 4 of Act LIX of 2006 on Supertax and Contribution for the Improvement of the Balance of Public Finances is in violation of Council Directive 77/388/EEC "on the harmonisation of the laws of the Member States relating to turnover taxes" and the Code of Conduct for Business Taxation.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

Three petitioners have filed a joint petition for establishing the unconstitutionality of Section 4 and, in relation to that, of Section 7 items 7 and 8 as well as of Section 8 of Act LIX of 2006 on Supertax and Contribution for the Improvement of the Balance of Public Finances (hereinafter: the AIBP), furthermore, of Section 211 para. (15) of Act LXI of 2006 on the

Amendment of Certain Acts on Financial Subjects (hereinafter: the AAFS). The Constitutional Court has judged upon the contents of the petition examining from constitutional aspects Section 4 and, in relation to that, Section 7 items 8 and 9 as well as Section 8 paras. (1) and (2) of the AIBP, furthermore, Section 223 paras (1) and (2) as well as para. (16) items b), c), and d) of the AAFS.

Section 4 of the AIBP has introduced a new tax type for the taxation of credit institutions, by virtue of which the credit institutions shall pay a contribution of 5% upon the amounts collected under the title of interests receivable and similar income based on the credit amounts affected directly or indirectly by interest-rate subsidy or interest-rate equalisation by the State. Although, according to the petition, the petitioners basically support the efforts for financial stabilisation, and therefore they do not raise objections to introducing the taxation of interests and exchange profits, they would only accept measures applying a sector-neutral approach. The petitioners' objections are not merely targeted at the additional burdens necessary for financial stabilisation, i.e. the additional tax burdens, but they challenge the alleged discriminative way of imposing this tax, violating the prohibition of discrimination and the principle of proportionate sharing of public burdens.

The petitioners hold Section 4 of the AIBP to be unconstitutional by violating the principles of the rule of law and legal certainty, the prohibition of discrimination, and the principle of proportionate sharing of public burdens, furthermore, by impairing the regulations of the European Union.

The petitioners' arguments are summarised in the following points 1 to 5:

1. a) The contribution intervenes into a live system of contracts elaborated for the long run on the basis of a subsidy system determined by the law and familiarised by the contracting parties who are the State, the credit institutions participating in the forwarding of subsidies, and the hundreds of thousands of clients who have taken out loans; this intervention is practically of retroactive effect, seriously violating the requirement for the predictability of business, i.e. legal certainty. The credit institutions forwarding the interest subsidies granted by the State have elaborated their business plans and concluded the loan contracts with their clients in light of the statutory regulations pertaining to the subsidies.

When the legislation changes the taxation position of the credit institutions also regarding the bulk of contracts already concluded and to be in force for decades, it aggravates the position of the credit institutions and lessens the absolute quantity of compensation received in exchange for their services. By amending the underlying legal relations, the legislation violates the essential lawful interests of the credit institutions, which is only acceptable in exceptional cases under the principle of legal certainty.

The introduction of the contribution aims to decrease the subsidy amount formerly laid down in a statutory form for a determined period of time. As there are no circumstances justifying on a constitutional ground the withdrawal of the State's promise made in a statutory form, the Government attempts to decrease the level of subsidies by using taxation as a tool of relatively wide scale of application. In our opinion, this procedure may raise a constitutional concern about abusing the right of legislation.

(b) The unclear definition of the scope of effect of the contribution payment obligation specified in Section 4 of the AIPB is also considered to impair the principle of legal certainty. Under Section 4 para. (1), "The credit institution shall establish and pay a contribution (...) on the basis of the credit amount affected directly or indirectly by interest-rate subsidy or interest-rate equalisation by the State in the year of taxation, according to a specific statutory provision."

It is not clear from the above wording whether there shall be a specific implementing decree to determine the loan constructions subject to the payment of the contribution, or whether it refers to the statutes that contain provisions on certain subsidised loan constructions. Both interpretations raise constitutional concerns, as according to Section 10 of the Act on Public Finances (hereinafter: the APF), payment obligations, the scope of those obliged to pay, the extent of payment obligations, furthermore, the scope and the extent of discounts and exemptions shall only be provided in Acts of Parliament or in local government decrees issued upon authorisation by an Act of Parliament.

Until now, the ministry in charge has not made any announcement specifying the loan constructions falling under the obligation to pay the contribution. Accordingly, the scope of the Act of Parliament concerned is undefined in respect of the loan constructions covered.

This fact alone results in legal uncertainty of a scale violating Article 2 para. (1) of the Constitution.

The principle of legal certainty is violated by maintaining the obligation to pay supertax in respect of a specific group of institutions – although with a different basis of projection – despite the provisions stipulated in Act CII of 2004 on the Supertax of Credit Institutions and Financial Enterprises.

2. The Constitutional Court has pronounced with regard to the requirement of equality that "equals must be treated as equals and unequals as unequals under the law. Equality must be secured within the same regulatory concept with regard to the essential elements of the facts of the case – and this is how the formula of the "homogeneous group" has evolved."

According to the category of the uniform homogeneous group, there are two types of principles to define the scope of persons obliged to pay taxes in excess to the general contribution to public burdens. It would be possible to tax in a uniform and sector-neutral way the profitable enterprises over a certain level of profitability, in which case the most profitable companies in all sectors would become subjects of a certain progressive taxation of income. Another way that may be followed by the legislation is to build upon the extra demand and the improved profitability generated by the State subsidies, but even in that case, all companies enjoying the benefits of State subsidies should become subjects of the supertax.
The introduction of the contribution is discriminative since it only burdens the credit institutions although the benefits of the interest subsidies are enjoyed on the financing side of real estate purchases not only by the credit institutions but also by the whole construction sector, thus increasing the capacity of that sector to contribute to public burdens.

This is considered to violate Article 70/A of the Constitution, prohibiting discrimination.

The levying of a contribution payment obligation exclusively upon the credit institutions results in excessive differences regarding the tax level burdening the economic actors, thus impairing the freedom of economic competition. This is how Section 4 of the AIPB impairs Article 9 para. (2) of the Constitution guaranteeing that the Republic of Hungary recognises and supports the right to enterprise and the freedom of competition in the economy.

3. Having regard to the contribution to public burdens as enshrined in Article 70/I of the Constitution, there is only one requirement for the legislation, namely that the given payment obligation should be in line with – i.e. proportionate to – the subjects' conditions of income and wealth. It is worth examining the potential collision between a tax payment obligation and the principle of equal contribution to public burdens when the obligation would result in a disproportionately high level of taxation regarding the person obliged to pay.

Consequently, if – due to the planned contribution – the State took away a considerable part of the income, i.e. the profits of the affected credit institutions (to be assessed by the Constitutional Court in light of concrete figures), the challenged rule could be considered to violate the principle of equal sharing of public burdens.

The AIPB is aimed at punishing, without a due cause and ground, the credit institutions based on their indicators of profitability. The various types of credit institutions are affected differently by Section 4 of the AIPB. Cooperative banks are more sensitive to the changes as they operate with a higher level of risk due to their smaller size and lower profitability.

The petitioners also object to the fact that – under Section 3 of the AIPB – the supertax on credit institutions and the tax on companies (solidarity tax) are to be collected in a parallel way in the last four months of the year 2006, imposing a multiple tax burden upon the credit institutions. Another factor increasing the unequal taxation of the sector of credit institutions is the Act on the supertax on banks remaining in force even after the introduction of the solidarity tax as from 1 September 2006. The taxation of the interest subsidies originating from budgetary sources, together with the introduction as from 1 September and the parallel application of the solidarity tax payable by credit institutions and financial enterprises is considered to violate the principle of equal contribution to public burdens.

4. According to the petitioners, it is only Belgium where a similar extra-tax is applied to financial institutions in the form of a special local tax to be paid by banks and companies operating ATMs.

The Code of Conduct for Business Taxation was adopted in the year 1997. According to this document, it is prohibited to apply any positive or negative discrimination between domestic or foreign persons, in particular through the application of regulations pertaining to low tax

level, various tax reliefs, and special tax bases. Making the company tax more stringent in a uniform manner – without discrimination – instead of introducing the contribution to be paid by the banks would not impair the provisions of the Code of Conduct.

Under Article 33 of the Sixth Directive of the European Union on turnover taxes (Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes), it is not allowed to introduce new turnover-type taxes. As the obligation to pay the contribution is related to the interests earned rather than to the income realised by the credit institution, without allowing a deduction of the related costs from the tax base, this contribution qualifies as a turnover-type tax, and as such, it is not compatible with the provisions of the Sixth Directive of 1997.

5. Section 211 of Act LXI of 2006 on the Amendment of Certain Acts on Financial Subjects – laying down the provisions of the Act on Personal Income Tax in respect of the tax on interests and exchange profits – provides for a date of taking effect on 1 September 2006 earlier than the originally promulgated date of 1 January 2007.

There are serious problems related to putting into force the tax on interests and exchange profits on 1 September. It is impossible for the banks to technically handle the task of applying an earlier date than the date of introduction of 1 January 2007 determined in Section 179 of Act CXIX of 2005 on the Amendment of Acts on Taxes, Contributions and Other Budgetary Revenues, as harmonised with the banks in advance.

As the 45 days after the promulgation of the Act of Parliament is not enough for final technical implementation, only provisional solutions could be put into operation for the development and testing of the IT systems. However, provisional solutions imply the possibilities of more errors and lawsuits later on, not to mention the additional administrative burdens and costs resulting from the transitional situation. Bearing in mind the planned level of revenues and the above professional arguments, an unjustified bringing forward of the statutorily promulgated date of 1 January would violate the principle of legal certainty.

II

1. According to the relevant provisions of the Constitution:

"Article 2 (1) The Republic of Hungary is an independent democratic state under the rule of law. (...)
Article 70/A (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. (...)
Article 70/I. All natural persons, legal persons and unincorporated organisations have the obligation to contribute to public revenues on the basis of their income and wealth."

2. The challenged provisions of the AIPB are as follows:

"Section 4 para. (1) The credit institution shall establish and pay a contribution of 5% upon the amounts collected under the title of interests receivable and similar income on the basis of the credit amount affected directly or indirectly by interest-rate subsidy or interest-rate equalisation by the State in the year of taxation, according to a specific statutory provision.
(2) The credit institution shall keep a separate registry for the purpose of establishing the obligation under paragraph (1).
(3) The credit institution shall pay quarterly an advance to the contribution, not later than on the 12th day of the month following the respective quarter, and the last quarter's advance shall be payable on the 20th day of the tax year's last month, to be paid upon the amounts collected in the relevant quarter under the title of interests receivable and similar income. (...)
Section 7 For the purposes of this Act (…)
7. controlled foreign company: as defined in Section 4 item 11 of the Act on Company Tax and Tax on Dividends;
8. directly affected credit amount: the totality of the loan transactions in respect of which the credit institution enforces to the benefit of the debtor of the loan transaction a preferential transactional interest or fee level, as specified in a separate statute, and the credit institution sets off directly with the State of Hungary the interest-subsidy granted by the State in respect of these transactions – according to the prevailing statutory regulations;
9. indirectly affected credit amount: the totality of the loan transactions in respect of which the credit institution secures the financing source from a mortgage credit institution by way of the sale and the concurrent re-purchase of an independent mortgage, and with account to the

foregoing the credit institution enforces to the benefit of the debtor of the loan transaction a preferential transactional interest or fee level, as specified in a separate statute. (...)

Section 8 (1) This Act shall enter into force – with due account to paragraphs (2) to (8) – on 1 September 2006.

(2) Section 2 para. (1), para. (2) item a) and para. (5), Section 4, Section 7 items 1, 2, 4, 7 and 8 as well as the provisions in Section 5 paras (2) and (3) and Section 6 paras (3) and (4) as related to the contribution under Section 4 shall enter into force on 1 January 2007."

The relevant provisions of the AAFS are as follows:

"Section 223 (1) The provisions of this Act amending the Act on Personal Income Tax shall – with the exceptions mentioned in paragraphs (6) to (9) and (11) – enter into force on 1 September 2006, and these provisions shall be applicable – with account to the provisions under paragraphs (2) to (5) and (12) to (16) – to the incomes obtained and the tax payment obligations generated from 1 September 2006 on. (...)

(2) Section 12 of the Act on Personal Income Tax and the title preceding the Section, the text "or the separate declaration made in the framework of the declaration by the tax authority for the purpose of establishing the tax on the basis of data supplied" and the text "also in the case of several retirement savings accounts" in Section 44/B para. (1), the second sentence of Section 44/B para. (3), Section 67 para. (1) item b), and Section 80 item g) shall be repealed as from 1 September 2006.

(16) As from 1 September 2006, in Act CXIX of 2005 on the Amendment of the Acts on Taxes, Contributions and Other Budgetary Revenues:

b) in the introductory text of Section 179 para. (4), the text "as from 1 January 2007" shall be replaced with the text "as from 1 September 2006",

c) in Section 179 para. (9), the text "December" shall be replaced with the text "August",

(c) in Section 179 para. (10), the text "2007" shall be replaced with the text "2006"."

III

The petitions are unfounded.

1. a) According to an early decision by the Constitutional Court (Decision 32/1991 (VI. 6.) AB) referred to by the petitioners, both individual legal relations – i.e. the contents of

specific contracts – and legal relations on the level of the society – i.e. statutes – may only be implemented in a constitutional framework. The constitutional guarantee for such changes is judicial control in the case of individual legal relations and control by the Constitutional Court when legal relations on the level of the society are amended. [ABH 1991, 146, 154]

However, the AIPB does not amend any contract or statute on the subsidies. The contribution is related to amounts collected under the title of interests receivable and similar income based on a certain credit amount, and it does not amend the contents of any contract.

Although the legislation does, in fact, change the taxation position of the credit institutions with regard to revenues collected under a specific title, based on the stock of contracts already concluded, there is no prohibition following from Article 2 para. (1) of the Constitution to exclude this. Introducing a new tax law or making an existing tax law more onerous does, in general, necessarily amend the taxation position of the subjects of taxation, sometimes affecting their tax burden as well. A general prohibition on increasing the tax burden would be incompatible with the fundamental obligation laid down in Article 70/I of the Constitution.

From a different point of view, however, the practice of the Constitutional Court does, in an exceptional case, provide protection against making the taxation position of the subjects of taxation more onerous. According to the practice of the Constitutional Court, decreasing or withdrawing, before the expiry of a fixed term, the tax reliefs already obtained for a definite term is generally unconstitutional – due to the lawful expectations about the promises made by the legislation, and the reasonable element of trust thus included in the relations under tax law for the long run – on the basis of the rule of law granted in Article 2 para. (1) of the Constitutional Court and the principle of legal certainty resulting therefrom; tax reliefs granted for fixed periods and already obtained are, in general, not withdrawable. [Decision 16/1996 (V. 3.) AB, ABH 1996, 61, 69-70] This practice only applies to a narrow scope of tax reliefs, i.e. to those reliefs which are determined by the State – clearly defined in the statute granting the relief – explicitly for the purpose of providing long-term guarantees for the actors of the economy for a predefined period of time (summarised in Decision 28/B/2001 AB, ABH 2002, 1209). In the present case, the Constitutional Court has not identified any promise made by the legislation or any lawful expectation of the affected actors which are deemed to be amended by the State with the adoption of the AIPB.

Article 70/I of the Constitution does not prohibit the taxation of revenues (in contrast to the taxation of income), which is the aim of the AIPB. The Constitutional Court examined in Decision 963/B/1993 AB (ABH 1996, 437, 440.) certain constitutional questions related to the taxation of revenues, based on Section 39 para. (1) of Act C of 1990 on Local Taxes (hereinafter: the ALT), which determined the entrepreneur's net sales as the tax base in the case of business activities pursued on a continuous basis. According to the provision in force at the time of judging upon the case, the basis of the tax was the net turnover of the products sold or the services performed, less the procurement value of the products sold and the value of performance by subcontractors. The term of net turnover was determined in Section 52 of the ALT. At the same time, the ALT did not contain any other factor to correct the tax base. According to the petition reviewed, the provisions in force at that time allowed only a part of the entrepreneurs to decrease the tax base, depending on the nature of the business activity; others who could not demonstrate the two above named cost-types were not able to cut the tax base. In the relevant decision, the Constitutional Court established that the unconstitutionality of the challenged provision could not be verified on the basis of Article 70/I of the Constitution.

According to one of the Constitutional Court decisions, the changing of the legal regulations – in the given case, the differentiation of the interest incomes and the applicable tax burdens of the subjects of taxation contrary to the former practice – is, in itself, not a constitutional question, as the Constitution does not grant the unchangeability of legal regulations. [Decision 59/1995 (X. 6.) AB, ABH 1995, 295, 298]
At the same time, applying different regulations – without a constitutional cause – to a specific group within the same regulatory concept would lead to unconstitutionality. [Decision 21/1990 (X. 4.) AB, ABH 1990, 73, 78]

However, a new tax law or the amendment of an existing tax law may be onerous for the subjects of taxation, but this shall be restricted constitutionally – under Article 2 para. (1) of the Constitution – by the prohibition of retroactive force and the protection of tax reliefs obtained for a fixed period.

The Constitutional Court has, in several decisions, dealt with legal certainty and, in that context, with the prohibition of introducing legal regulations of retroactive force. Under Section 12 para. (2) of Act XI of 1987 on Legislation, no statute may provide for an

obligation or declare the unlawfulness of any conduct for any period preceding the promulgation of the statute. According to the consistent practice of the Constitutional Court, the retroactive effect of a statute shall be established not only in the case of putting into force by the legislation with a retroactive effect, but also if the statute has not been put into force retroactively, but its provisions are – according to an explicit provision therein – also applicable to the legal relations established before its entry into force. [Decision 57/1994 (XI. 17.) AB, ABH 1994, 316, 324] According to Section 8 para. (1), the AIPB entered into force – subject to Section 8 paras (2) to (8) – on 1 September 2006. Under paragraph (2), Section 4, Section 7 items 1, 2, 4, 7 and 8 as well as the provisions in Section 5 paras (2) and (3) and Section 6 paras (3) and (4) as related to the contribution under Section 4 shall enter into force on 1 January 2007.

As the challenged rules of the AIPB do not provide for any obligation or declare the unlawfulness of any conduct for any period preceding the promulgation of the Act, they are not against the principle of prohibiting retroactive force.

b) The petitioners also challenge the clarity of the norm on the newly introduced payment obligation.

As pointed out by the Constitutional Court in Decision 9/1992 (I. 30.) AB, legal certainty is an indispensable component of the rule of law. Legal certainty compels the State – and primarily the legislature – to ensure that the law in its entirety, including its individual parts and specific legal rules, be clear and unambiguous and that its operation is ascertainable and predictable for the addressees of the norm. (ABH 1992, 59, 65)
As pointed out by the Constitutional Court in principle in Decision 26/1992 (IV. 30.) AB, it is a constitutional requirement that normative texts must have a clear, comprehensible and lucid normative content. The principle of legal certainty – which is an important element of the rule of law declared in Article 2 para. (1) of the Constitution – demands that the text of a statute should bear a reasonable and clear normative content distinguishable in the application of the law. (ABH 1992, 135, 142)
In Decision 1160/B/1992 AB, the Constitutional Court further refined the constitutional requirements on the contents of norms as follows: “Statutes are presented in a fixed language form. The concepts and the terms of the language are always general ones. Therefore, it is questionable in each case whether the concrete facts of the case fall into the scope determined

in the legal norm. (...) When the description of the facts in a norm is too detailed, too narrow, or too casual, it ties the judiciary and prevents or makes it more difficult for the statute to fulfil its role in the regulation of the situations of life. When the statutory definition in a statute is too abstract or too general, then the provision of the statute may be extended or limited in the discretion of the authority applying the law. Such rules allow subjective decisions in the application of the law, the formation of different practices at different authorities applying the law, and the lack of unity in the law. This diminishes legal certainty." (ABH 1993, 607, 608)

According to the consistent practice of the Constitutional Court, only a rule causing legal uncertainty by way of its uninterpretability may be declared unconstitutional as its effects cannot be foreseen and predicted by its addressees. Legal certainty is only violated by statutes that are inherently uninterpretable by those who apply the law. [c.p. Decision 36/1997 (VI. 11.) AB, ABH 1997, 222, 232; Decision 42/1997 (VII. 1.) AB, ABH 1997, 299, 301]

The mere fact that a statute needs to be interpreted during its application and in some cases such interpretation might take the form of problem-solving in a creative manner does not, in itself, violate the requirement of legal certainty. The changing of the socio-economic situation may make it necessary to adopt new statutes, and in the case of a new statute, the process of interpretation can rely only to a limited extent on earlier interpretations of statutes – it takes some time to develop routine interpretations. [Decision 31/2003 (VI. 4.) AB, ABH 2003, 352, 365]

To establish what qualifies for the purpose of the AIPB "amounts collected under the title of interests receivable and similar income on the basis of the credit amount affected directly or indirectly by interest-rate subsidy or interest-rate equalisation by the State in the year of taxation, according to a specific statutory provision" is a question of applying the law, related to the AIPB and the specific statutes. The relevant passage in Section 4 of the AIPB is not inherently uninterpretable. The determination of the force of the obligation specified in Section 4 of the AIPB is supported by items 8 and 9 in Section 7 of the Act, providing for the definitions of "directly affected credit amount" and "indirectly affected credit amount". The above interpreting provisions help determine whether a specific implementing decree is to determine the loan constructions subject to the obligation of contribution payment, or whether the Act refers to the statutes that contain provisions on certain subsidised loan constructions.

2. Imposing a contribution payment obligation exclusively upon credit institutions does not violate Article 70/A para. (1) of the Constitution nor does it impair Article 9 para. (2) of the Constitution.

The Constitutional Court has dealt with the constitutional questions of discrimination under Article 70/A para. (1) of the Constitution in several of its earlier decisions. As pointed out in Decision 9/1990 (IV. 25.) AB, "the prohibition of discrimination does not mean that any discrimination, including even discrimination intended to achieve greater social equality, is forbidden. The prohibition of discrimination means that all people must be treated as equal (as persons with equal dignity) by law, i.e. the fundamental right to human dignity may not be impaired, and the criteria for the distribution of the entitlements and benefits shall be determined with the same respect and prudence and with the same degree of consideration of individual interests." (ABH 1990, 46, 48)

As underlined by the Constitutional Court in several decisions, “in the examination of discrimination, it is of central importance to define who belong to a single group. (...) The constitutional prohibition of discrimination only applies to the persons who belong to the same group in terms of the regulation. Accordingly, only differentiation between the members of the same group is the subject of examining discrimination.” (Decision 1009/B/1991 AB, ABH 1992, 479, 479-480) Therefore, when examining discrimination, it is a central element to determine who belong to the same group with regard to the regulatory concept. [Decision 49/1991 (IX. 27.) AB, ABH 1991, 246, 249]

According to the established practice of the Constitutional Court, providing for different regulations by the legislation with regard to different scopes of subjects is not considered to be a prohibited discrimination, as it takes comparable beneficiaries and obliged persons to establish an unconstitutional discrimination. [Decision 21/1990 (X. 4.) AB, ABH 1990, 73, 79; Decision 881/B/1991 AB, ABH 1992, 474, 477; Decision 4/1993 (II. 12.) AB, ABH 1993, 48, 65]

Section 4 of the AIPB pertains to credit institutions, and in particular to certain amounts collected by the credit institutions under the title of interests receivable and similar income.

For the purpose of the AIPB, according to Section 7 item 4, “credit institution” shall mean a credit institution falling under the scope of the Act on Credit Institutions and Financial Enterprises.

According to Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter: the ACI), credit and money on loan can be provided – as a financial service – in the course of a gainful activity by financial institutions, credit institutions and financial enterprises, unless otherwise provided by the Act.

As held by the petitioners, the contribution payment obligation is based on the presumption that the interest-rate subsidies granted by the State improve the profitability of the banks fundamentally and to a major extent.
In the scope under examination, the credit institutions are to be compared to other organisations engaged in the businesslike provision of credits and money loans with regard to Article 70/A para. (1) of the Constitution, rather than to other enterprises that obtain certain benefits due to some State subsidies or procurements financed from the central budget, such as the companies operating – as referred to in the petition – in the field of housing (designers, contractors and investors), or the companies purchasing agricultural machinery by the aid of agricultural subsidies.

Under the regulatory concept of the AIPB, the credit institutions and the financial enterprises shall be considered to belong to the same group; it is not applicable, however, to other enterprises referred to in the petition that may also benefit from the positive economic effect of the interest subsidies on the financing side of real estate purchases. The regulations pertaining to credit institutions and financial enterprises are different in many respects as to their establishment and operation (see in particular: Sections 5, 6, and 9 of the ACF).

Although the scope of the AIPB does not cover the financial enterprises, this fact may, in itself, not be considered discriminative, and it has not been alleged even by the petitioners.

Under Section 24 para. (1) of Government Decree 12/2001 (I. 31.) Korm. issued on the basis of the authorisation laid down in Section 91 para. (1) item e) of Act CXXV of 1999 on the Budget of the Republic of Hungary for the Year 2000 and in Section 109 para. (1) item j) of Act CXXXIII of 2000 on the Budget of the Republic of Hungary for the Years 2001 and

2002, the credit institutions shall be in charge of providing and transferring the loans as well as of establishing the instalments and the subsidies, together with setting off the foregoing with the central budget – without regard to the builder (the investor) or the seller.

As provided in Government Decree 30/2000 (III. 10.) Korm. on Development Credit Constructions for Agricultural Producers and the Credit Programme for Farmers, the credit institutions shall be in charge of financing the credit constructions regulated in the Decree.

According to the above regulations, the financial enterprises may not act as credit institutions on the financing side of real estate purchases as mentioned in the petition, and they are not allowed to perform the tasks of credit institutions in respect of such subsidies and credits related to the purchase of agricultural machinery.

Consequently, the violation by the provisions under review of Article 70/A para. (1) of the Constitution cannot be established.

3. As established in the practice of the Constitutional Court, Article 70/I of the Constitution does not prohibit the State from imposing, in addition to income taxes, other types of payment obligations as well (such as turnover or property taxes, duties, customs, contributions, fines, fees etc.). The way and the level of contributing to public burdens are determined in the Acts of Parliament on taxes, duties, customs etc. [Decision 61/1992 (XI. 20.) AB, ABH 1992, 280, 281]
It does not follow from Article 70/I of the Constitution that no (tax) payment obligation may be imposed even upon an enterprise considered to make loss in terms of income taxes. (Decision 122/B/1996 AB, ABH 2002, 737, 746)
The State enjoys a wide range of discretion in choosing the economic source on which tax payment is based, thus determining the object of the tax. (620/B/1992 ABH 1994, 539, 541)

It was established in Constitutional Court Decision 54/1993 (X. 13.) AB that the legislation shall enjoy great freedom also in forming the tax system: within the limits of the Constitution, this falls into the discretion of the legislation and the Government's economic policy. (ABH 1993, 340, 342) When establishing a tax payment obligation, introducing a new tax type or changing the level of taxation, it is generally not possible to refer to the rights obtained – due to the function of taxes as the tools of economic policy. [Decision 16/1996 (V. 3.) AB, ABH

1996, 61, 67] The Constitutional Court does not examine the issues of the appropriateness or the effectiveness of the statutes. (Decision 772/B/1990/5 AB, ABH 1991, 519, 522)

As explained by the Constitutional Court in point III 1 (a) of the present Decision with reference to the Constitutional Court's practice, the taxation of revenue is, in itself, not prohibited under Article 70/I of the Constitution.

Having regard to the petitioners' allegation concerning the violation of the principle of equal sharing of public burdens resulting from the disproportionately high level of taxation caused by the obligation for the subject of taxation, and the State collecting a significant part of the income and profits of the credit institutions affected, the Constitutional Court holds the following.

According to its established practice, the Constitutional Court does not examine the level and the extent of taxes or duties, and a constitutional concern is only deemed to exist – as pointed out in Decision 1531/B/1991 AB (ABH 1993, 707, 711) – when the payment obligation is of an excessive nature (having a confiscating character) not serving the original purpose, and putting the subject of taxation into an impossible situation. In the case judged upon in Decision 1531/B/1991 AB, the petitioner alleged the unconstitutionality of a local government decree determining a local tax, referring to the violation of the proportionality rule under Article 70/I, as a single amount annual tax had been levied on his real estate, but the amount of the tax had been excessive as compared to the value of the real estate forming the basis of the tax.

As stated in Decision 1558/B/1991 AB, the level of the tax may be considered unconstitutional if it is either defined in a discriminative manner or it reaches a level which is obviously excessive and becomes a quality category, which is out of proportion and unjustified. (ABH 1992, 506, 507)

The Constitutional Court holds that in the present case, the 5 % level of the tax does not result in a disproportionately excessive taxation of the subjects of taxation violating Article 70/I of the Constitution, and therefore the unconstitutionality of the challenged provision may not be established under Article 70/I of the Constitution even in respect of the tax rate.

4. The Constitutional Court's scope of competence is laid down in Article 32/A paras (1) and (2) of the Constitution as well as in Section 1 items a) to h) of the ACC. The Constitutional Court does not examine whether or not the AIPB impairs the rules of the "Code of Conduct for Business Taxation" or Directive 77/388/EEC as referred to in the petition.

5. The fact that the challenged provisions of the AAFS bring forward the effective date of amendment of the Act on income tax, originally planned at a later date, does not in itself violate the principle of legal certainty.

With regard to putting into force on 1 September the tax on interests and exchange profits, the Constitutional Court may only examine whether or not the actors required to apply the law are able to implement the provisions taking effect.

As explained by the Constitutional Court in Decision 7/1992 (I. 30.) AB, providing and securing "adequate time" to prepare for the application of the statute depends on the legislation's responsible consideration and decision-making. Unconstitutionality may only be established in the lack of a period needed to prepare for the application of the statute when it seriously injures legal certainty or poses a serious threat thereon. (ABH 1992, 45, 47)

In the prevailing practice of the Constitutional Court, the unconstitutionality of a statute has only been established due to the lack of adequate time for preparation when it restricted a right obtained, provided for rules less advantageous than before, or put more risk on the addressee, and the lack of a possibility to get familiarised with, and prepared for, the provision resulted in injuring the affected persons, or in preventing the judiciary from applying the statute. [Decision 7/1992 (I. 30.) AB, ABH 1992, 45, 47; Decision 25/1992 (IV. 30.) AB, ABH 1992, 131, 132; Decision 43/1995 (VI. 30.) AB, ABH 1995, 188, 196; Decision 44/1995 (VI. 30.) AB, ABH 1995, 203, 207]

The AIPB contains a payment obligation according to Section 10 of Act XXXVIII of 1992 on Public Finances (hereinafter: the APF). Under Section 10 para. (4) of the APF, in the case of statutes related to payment obligations, to the scope of those obliged to pay, or to the extent of payment obligations, at least 45 days shall lapse between the promulgation and the entry into force of the relevant statute, save when the statute concerned decreases the payment

obligation without extending the scope of payment obligations or that of the persons obliged to pay.

The AIPB was promulgated in Vol. 86 of the Official Gazette on 17 July 2006. According to Section 222 of the AAFS, this Act shall enter into force – subject to the provisions in Sections 223 to 257 – on 1 January 2007. As laid down in Section 223 para. (1), the provisions of this Act amending the Act on Personal Income Tax shall – with the exceptions mentioned in paragraphs (6) to (9) and (11) – enter into force on 1 September 2006, and these provisions shall be applicable – subject to the provisions under paragraphs (2) to (5) and (12) to (16) – to the incomes obtained and the tax payment obligations generated as from 1 September 2006. There has been adequate time lapsed – as statutorily required – between the promulgation and the entry into force of the AAFS as the Act on the level of the payment obligation.

In the present case, as explained above, the execution of the statutes challenged in the petition is not considered to be impracticable, and the period provided for preparations in the concrete case is not considered to hinder the application of the law. For this reason, the Constitutional Court has also rejected the petition challenging certain provisions of the AAFS on entry into force.

The Constitutional Court has ordered the publication of this Decision in the Official Gazette in view of the public interest therein.

Budapest, 28 November 2006

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President of the Constitutional Court

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Judge of the Constitutional Court

Dr. András Bragyova
Judge of the Constitutional Court

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