Decision 70/2006 (XII. 13.) AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of petitions seeking posterior examination of the unconstitutionality of a statute and a law uniformity resolution, and by virtue of constitutional complaints and a petition aimed at establishing an unconstitutional omission of legislative duty, the Constitutional Court – with dissenting opinions by Constitutional Judges *Dr. Mihály Bihari, Dr. Attila Harmathy, Dr. László Kiss, and Dr. Péter Kovács* – has adopted the following

decision:

1. The Constitutional Court rejects the petitions and the constitutional complaints seeking establishment of the unconstitutionality and annulment of Resolution 4/2003 PJE on default in submitting a statement of claims or a request starting court proceedings.

2. The Constitutional Court rejects the petition aimed at establishing an unconstitutional omission of legislative duty on the ground of the Parliament's failure to regulate the procedure to be followed in the case of a collision between a law uniformity resolution and an Act of Parliament.

3. The Constitutional Court rejects the constitutional complaints seeking establishment of the unconstitutionality and annulment of Section 103 para. (5), Section 105 para. (4), Section 130 para. (1) item h), Section 157 item a), and Section 330 paras (1) and (4), formerly in force, of Act III of 1952 on Civil Procedure, of Section 72 para. (1) of Act IV of 1957 on the Public Administration Procedure, already repealed, as well as of Section 39 para. (2) of Act CXXXIX of 1997 on Asylum.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

The Constitutional Court has received several petitions for reviewing the unconstitutionality of Civil Law Uniformity Resolution 4/2003 on default in submitting a statement of claims or a request starting court proceedings (hereinafter: Resolution 4/2003 PJE), according to the following:

1. One of the petitioners has asked for reviewing Resolution 4/2003 PJE within the framework of posterior abstract examination, alleging the contents of the resolution to violate the right to legal remedy. Under the law uniformity resolution concerned, unless otherwise provided by law, the deadline for the submission of a statement of claims is to be calculated in accordance with the rules of substantive law, i.e. among other factors, the time to be taken into account is that of delivery to the court rather than the time of mailing. As held in the law uniformity resolution, Section 105 para. (4) of Act III of 1952 on Civil Procedure (hereinafter: the ACP) is not applicable to calculating the deadline open for the submission of a statement of claim, according to which "The consequences of the default in keeping the deadline shall not be applicable when the document to be submitted to the court has been mailed as a registered mail at the latest on the last day of the deadline."

As explained by the petitioner, although the right to legal remedy may only be restricted in an Act of Parliament and not in a law uniformity resolution, Civil Law Uniformity Resolution 4/2003 on the calculation of the statutory deadline for the submission of a statement of claims – with particular regard to lawsuits under public administration law – does provide for rules different from the statutory regulations, thus shortening the period of time available for seeking legal remedy. According to the petitioner, Act LXVI of 1997 on the Organisation and the Administration of Courts (hereinafter: the AAC) does not provide, either, an authorisation for the Supreme Court to restrict in a law uniformity resolution the right to file a claim. The petitioner asks for a retroactive annulment of Resolution 4/2003 PJE.

2. Another petitioner has, in the framework of a constitutional complaint, requested reviewing Resolution 4/2003 PJE. In the petitioner's opinion, the provisions determined by the Supreme Court in respect of calculating the deadline open for the submission of a statement of claims violate Article 2 para. (1), Article 8, Article 47 para. (2), Article 50 para. (3), and Article 57 paras (1) and (5) of the Constitution. As complained by the petitioner, in the case forming the basis of his complaint, the court rejected the statement of claims as delayed, without the issue

of summons, with reference to the law uniformity resolution under review. According to Civil Law Uniformity Resolution 4/2003, it is of no interest when the statement of claims was mailed by the party as a registered mail. Therefore, in the petitioner's opinion, the law uniformity resolution restricts the enforcement of rights. The petitioner refers to Rulings No 2.K.20.136/2005/2 by the Court of Zala County and No 4.Kf.28.168/2005/2 by the Metropolitan Court of Appeal as the grounds of his constitutional complaint.

The other request by the petitioner is aimed at examining an unconstitutional omission of legislative duty, as according to the petitioner, "the Parliament has failed to regulate how to resolve a potential collision between a law uniformity resolution and the statutory provisions which form the basis of the foregoing."

3. The constitutional complaints – referring to the violation of the right to legal remedy – filed against Section 105 para. (4), Section 130 para. (1) item h), Section 157 item a), and Section 330 paras (1) and (4) of the ACP, against Section 72 para. (1) of Act IV of 1957 on the Public Administration Procedure, as well as against Section 39 para. (2) of Act CXXXIX of 1997 on Asylum are essentially targeted at Resolution 4/2003 PJE, seeking the annulment thereof. As explained by the petitioner in respect of the specific case, his client had asked for the judicial review of an asylum request rejected by the authority, but in Ruling No 6.K.32430/2004/2, bearing reference to Resolution 4/2003 PJE, the Metropolitan Court terminated the lawsuit as the statement of claims had not been delivered to the public administration organ of first instance until the end of the working hours on the last day of the deadline for filing a claim. In Ruling No 4.Kf.28.072/2005/2, the Metropolitan Court of Appeal upheld the ruling on terminating the case. According to the petitioner, Resolution 4/2003 PJE is not applicable to the procedures under public administration law as in the opinion of the petitioner, the deadline open for judicial review is of procedural law nature rather than of substantive law nature in the present case. The right to legal remedy granted in Article 57 para. (5) of the Constitution is impaired and emptied in public administration cases related to asylum, as here most of the affected persons do not speak the Hungarian language, and their personal freedom is restrained. Therefore, the petitioner holds that in the scope of these persons, the deadline should be considered kept at the time of handing over the document to the staff member of the detention facility

4. In his constitutional complaint, another petitioner has asked for a constitutional review of Resolution 4/2003 PJE and a retroactive annulment thereof. As complained by the petitioner, in the cases forming the basis of the complaint, i.e. Case No 5.K.21.427/2004 at the Court of Veszprém County, and Cases No 4.Kf.28.227/2005/2 and No 4.Kpkf.54.143/2005/2 at the Metropolitan Court, the courts applied Resolution 4/2003 PJE to calculate the deadlines for filing the claims. That was the cause of terminating the lawsuit in the petitioner's case. According to the petitioner, the constitutional right to seek legal remedy is violated by the fact that in the cases under public administration law, the statutorily defined deadline for filing a claim is shortened due to the law uniformity resolution under review. Not even the AAC allows the passing of a law uniformity resolution with such contents. Therefore, the petitioner asks for a retroactive annulment of Resolution 4/2003 PJE and for prohibiting its application in the cases concerned.

5. Another petitioner has filed a constitutional complaint related to Rulings No 2.K.26.879/2004/5 by the Court of Pest County and No 4.Kf.28.131/2005/4 by the Metropolitan Court of Appeal. In the petitioner's opinion, Section 103 para. (5) and Section 105 para. (4) of the ACP, as well as the interpretation of these statutory provisions in Resolution 4/2003 PJE are against the rule of law guaranteed in Article 2 para. (1) and the right to seek legal remedy granted in Article 57 para. (5) of the Constitution. As complained by the petitioner, he mailed his statement of claims for the judicial review of a decision under public administration law on the 28th day upon the delivery of the decision, but the claim was not received by the court within 30 days. He failed to file an application for relief, as he considered the statement of claims to have been filed within the deadline, but the court rejected the statement of claims without the issue of summons. In view of the above, in the constitutional complaint, the petitioner has asked for the annulment of Section 103 para. (5) and Section 105 para. (4) of the ACP as well as for the annulment of Resolution 4/2003 PJE.
[In addition, the petitioner has filed a request for the constitutional review of the whole of the law uniformity procedure as regulated in Chapter III of the AAC, and that element of the petition has been separately handled by the Constitutional Court.]

6. A further petitioner has filed a constitutional complaint "for the annulment of Law Uniformity Resolution 4/2003 PJE of the Supreme Court, the rejecting Ruling No 15.K.31497/04/3 by the Metropolitan Court, and the rejecting Ruling No 2.Kf.28.903/2004/2 by the Metropolitan Court of Appeal". As claimed by the petitioner, he had requested in due

time from the Metropolitan Court the judicial review of a decision under public administration law, but the court rejected his statement of claims without the issue of summons, with reference to Resolution 4/2003 PJE, and the Metropolitan Court of Appeal approved to the above ruling. The petitioner holds the law uniformity resolution applied to contradict the relevant provisions of the ACP (thus violating the principle of the hierarchy of laws as well), the constitutional requirement of legal certainty, the right to seek legal remedy, and the principle of equality before the court.

7. Another petitioner has filed a petition in the scope of posterior abstract examination laid down in Section 1 item b) of Act XXXII of 1989 on the Constitutional Court. The petitioner claims that Resolution 4/2003 PJE violates the ACP and Article 57 para. (1) of the Constitution. According to the petitioner, the provisions [and in particular Section 103 and Section 105 para. 84)] of the ACP clearly stipulate that the deadline for starting a lawsuit is of procedural nature, while the challenged law uniformity resolution defines it as a deadline under substantive law (thus transposing any default by the Hungarian Post to the party). The petitioner holds the law uniformity resolution to be a "source of law of a lower hierarchical level" than an Act of Parliament, and therefore considers it to be in violation of Act XI of 1987 on Legislation. The petitioner has asked for establishing the unconstitutionality of Resolution 4/2003 PJE.

8. Another petitioner requests the annulment of Resolution 4/2003 PJE also in the framework of posterior examination. According to the petitioner, Resolution 4/2003 PJE is unconstitutional by violating legal certainty as granted in Article 2 para. (1), the right to seek legal remedy as granted in Article 57 para. (5), furthermore, the rule pertaining to law uniformity resolutions under Article 47 para. (2) of the Constitution. The petitioner holds that Resolution 4/2003 PJE "has drastically changed the practice of submitting claims against resolutions under public administration law", by practically introducing a new rule as compared to the provisions of the ACP and of the Act on the General Rules of Public Administration Procedure (hereinafter: the APAP). According to the petitioner, as defining the deadline for filing a claim and the manner of submitting it fall into the competence of the legislation (and the legislation did indeed provide for such rules), no law uniformity resolution may contain any provision in this regard. Under the law in force – in contrast with the law uniformity resolution challenged – a document mailed on the last day of the relevant deadline is deemed to be have been submitted in due time. Since the promulgation of

Resolution 4/2003 PJE, statements of claim should be mailed at least a week earlier, which rule violates legal certainty and shortens the period of time open for seeking legal remedy as a fundamental right. Finally, as alleged by the petitioner, Resolution 4/2003 PJE provides for rules pertaining directly to the parties and not to the courts – as required in the Constitution – which makes it unconstitutional for this reason as well [by violating Article 47 para. (2) of the Constitution]. The petitioner asks for a retroactive annulment of the challenged law uniformity resolution.

9. Finally, another petitioner – filing a constitutional complaint as interpreted according to the contents of the petition – has requested the constitutional review of Resolution 4/2003 PJE, alleging it to be in violation of the provisions under Section 330 of the ACP (the deadline of thirty days determined for the submission of a statement of claim), thus impairing Article 57 para. (1) of the Constitution. According to the petitioner, an Act of Parliament may only be amended by another Act and not by a law uniformity resolution, and he holds the law uniformity resolution under review to amend the ACP. The petitioner also holds Resolution 4/2003 PJE to restrict the essential contents of a fundamental right at the same time. The constitutional complaint challenges Ruling No 11.K.32.134/2005/5 by the Metropolitan Court as well as Rulings No 2. Kpkf. 54.257/2005/2 and No 2. Kpkf. 54.257/2005/3 by the Metropolitan Court of Appeal.

10. The Constitutional Court has consolidated the petitions and judged them in a single procedure. The Constitutional Court has thus examined in the present procedure three requests for posterior abstract examination and six constitutional complaints. All constitutional complaints are in compliance with the conditions under Section 48 of the Act XXXII of 1989 on the Constitutional Court, i.e. the petitioners challenge the unconstitutionality of a norm applied in their specific cases [Section 48 para. (1)] and their requests containing the constitutional complaint were filed within sixty days upon the delivery of the resolution of final force [Section 48 para. (2)].

During its procedure, the Constitutional Court called upon the president of the Supreme Court to make his comments on the matter.

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 8 (1) The Republic of Hungary recognises inviolable and inalienable fundamental human rights. The respect and protection of these rights is a primary obligation of the State.
(2) In the Republic of Hungary regulations pertaining to fundamental rights and duties are determined by Acts of Parliament; such an Act, however, may not restrict the essential contents of fundamental rights.”

“Article 32/A (1) The Constitutional Court shall review the constitutionality of laws and attend to the duties assigned to its jurisdiction by Act of Parliament.
(2) The Constitutional Court shall annul any Act of Parliament and other statutes that it finds to be unconstitutional.
(3) Everyone has the right to initiate proceedings of the Constitutional Court in the cases specified in the Act of Parliament.

“Article 47 (1) The Supreme Court is the supreme judicial authority of the Republic of Hungary.
(2) The Supreme Court shall assure the uniformity of the administration of justice by the courts and its resolutions concerning uniformity shall be binding for all courts.
(3) Judges are independent and answer only to the law. Judges may not be members of political parties and may not engage in political activities.”

“Article 57 (1) In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just public trial by an independent and impartial court established by Act of Parliament.
(…)
(5) In the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions which infringe on his rights or justified interests. An Act of Parliament passed by a majority of two thirds of the votes of the Members of Parliament present may impose restrictions on the right to seek legal

remedy in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time."

2. According to the holdings of Resolution 4/2003 PJE:

"With regard to calculating the deadline for submitting a statement of claims, in the absence of a statutory provision to the contrary, the provisions under Section 105 para. (4) of Act III of 1952 on the Act of Civil Procedure (hereinafter: the ACP) shall not be applicable.
In the case of filing a statement of claims in default, if the deadline for submitting the statement of claims is a forfeit one due to an explicit provision of a statute, or the party fails to apply for relief with respect to the default (Sections 107 to 110 of the ACP), or when such application is unfounded, the statement of claims shall be rejected *ex officio* without the issue of summons (Section 130 para. (1) item h) of the ACP), and in the absence of that, the lawsuit is to be terminated (Section 157 item a) of the ACP).
When filing the statement of claims in default does not lead to forfeiture, and there is no statutory provision on the application for relief to remedy the default, the decision on the legal consequences of the default – passed by virtue of the objection on the statutes of limitation made by the adverse party – shall be included in the judgement on the merits of the case.
The above shall also be applicable to requests for starting non-litigious proceedings by the court.
Point III of the Supreme Court's Civil Board Resolution No 13 PK shall not be applicable as from the date of promulgation of the present law uniformity resolution."

3. According to the provisions of the ACP as in force:

"Section 103 (5) The deadline shall lapse at the end of the last day, however, a deadline specified in respect of filing a document or performing an act at the court shall lapse at the end of the working hours."

"Section 105 (4) The consequences of the default of keeping the deadline shall not be applicable if the document addressed to the court has been mailed as a registered mail at the latest on the last day of the deadline."

“Section 130 (1) The court shall reject the statement of claims without the issue of summons [Section 125 para. (1)] if the following is established:

h) a separate statute provides for a deadline in respect of filing a claim, and the plaintiff fails to keep the deadline and no application for relief is filed by the plaintiff or it is rejected by the court;”

“Section 157 The court shall terminate the lawsuit:

a) if the statement of claims should have been rejected without the issue of summons under Section 130 para. (1) items a) to h);”

“Lawsuits under public administration law

Filing a claim

Section 330 (1) The statement of claims shall contain, in addition to what has been required in Section 121 – not including the provisions under Section 121 para. (1) item f) – the following:

a) the number of the public administration decision to be reviewed,

b) the manner and the date of obtaining information on the decision, and

c) a reference to a power of attorney for the legal representative as attached in the public administration procedure when it covers the representation at the court as well.

(…)

(4) If according to the APAPS – due to a breach of contract by the client – the contract with the authority is to be considered a resolution by the authority, the deadline open for filing the statement of claims shall be calculated from the receipt of the ruling on ordering the execution of this resolution.”

4. As laid down in the provisions of the ACP on the lawsuits under public administration law in force at the time of adopting Resolution 4/2003 PJE:

“Lawsuits under public administration law

Filing a claim

Section 330 (1) The statement of claims shall be filed at the organ adopting the public administration resolution of first instance or at the court with jurisdiction within thirty days from the communication of the resolution to be reviewed. The public administration organ of first instance shall forward the statement of claims – together with the documents of the case – to the court within eight days.
(…)
(4) If the party fails to file the statement of claims in time, he may apply for relief (Sections 106 to 110). The public administration organ shall not reject any statement of claims filed there in default, but it shall forward such statement of claims to the court even if no application for relief has been filed by the party."

5. As laid down in the provisions of the APAP – out of force now – in force at the time of adopting Resolution 4/2003 PJE:

"Section 72 (1) The client, or the party whose lawful interests have been injured, with reference to the violation of a statute – save if otherwise provided in an Act of Parliament – may request the judicial review of the resolution passed on the merits of the public administration case by filing a claim within thirty days from the communication of the resolution."

6. According to Act CXXXIX of 1997 on Asylum:

"Section 39 (1) The resolution may not be appealed against by way of public administration.
(2) The claim for the judicial review of the resolution shall be filed at the asylum authority within 15 days from the communication of the resolution. The authority shall forward the statement of claims together with the documents of the case and its counter-claim to the court without delay.
(…)"

III

It has been concluded by the Constitutional Court from Article 32/A para. (1) of the Constitution that a law uniformity resolution by the Supreme Court may become the subject of posterior constitutional examination. As declared in a decision by the Constitutional Court,

"It follows from (...) the Constitutional Court's practice – stemming from its constitutional status – of including in the scope of posterior constitutional examination the constitutional examination of all norms that the review of a law uniformity resolution is within the Constitutional Court's competence and that the Constitutional Court may establish the unconstitutionality of such a resolution when it is deemed to violate the Constitution as a result of interpreting the law differently than acceptable." [Decision 42/2005 (XI. 14.) AB, ABH 2005, 504, 514; (hereinafter: the CCDec)] In the above decision, the Constitutional Court established the unconstitutionality of Resolution 3/2004 BJE and annulled it as from the date of promulgating the decision.

In the present case, the constitutional examination of Resolution 4/2003 PJE has been requested in the frameworks of both posterior abstract examination and constitutional complaint. First, the Constitutional Court has had to decide whether or not the constitutionality of a law uniformity resolution can be examined on the basis of a constitutional complaint.

Section 1 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC) provides a detailed list of the Constitutional Court's competences. In the above framework, Section 1 item d) of the ACC regulates the examination of constitutional complaints filed due to the violation of constitutional rights. As pointed out by the Constitutional Court in several decisions – such as the CCDec – its competences are to be interpreted in line with its constitutional status. (ABH 2005, 504, 511) With regard to law uniformity resolutions, this interpretation was performed in the CCDec within the competence laid down in Section 1 item b) of the ACC (ABH 2005, 504), but the other competences of the Constitutional Court concerning the constitutionality examination of law uniformity resolutions were not addressed there. The posterior constitutional examination regulated under Section 1 item b) of the ACC is detailed in Sections 37 to 43 of the ACC. In the above framework, not only abstract examination, but also the concrete examination of a norm – on a judicial initiative – is mentioned in the CCDec. Under Section 38 para. (1) of the ACC, upon noting the unconstitutionality of a rule of law or other legal means of state administration applicable in the judgement of a case, the judge hearing that case shall suspend the judicial proceedings and file a petition initiating proceedings by the Constitutional Court. In addition to the judicial initiative, the constitutional complaint – regulated under Section 1 item d) and Section 48 of the ACC – is another form of the concrete examination of norms.

Based on Article 32/A para. (1) of the Constitution, providing for competences in respect of both abstract and concrete constitutional examination, the rules of the ACC as referred to above, and the principle applied in the practice of the Constitutional Court (namely that the Constitutional Court's competences are to be interpreted in line with its constitutional status), the Constitutional Court may perform the constitutional examination of a law uniformity resolution in the cases of the reviews regulated under Section 1 item b) and d) (posterior abstract examination and both forms of the concrete review of the norms, i.e. judicial initiative and constitutional complaint). Accordingly, in the present case, the Constitutional Court has also judged upon the merits of the petitions seeking examination of Resolution 4/2003 PJE on the basis of constitutional complaints.

IV

The petitions are unfounded.

The petitions – including the constitutional complaints – primarily request establishment of the unconstitutionality and annulment of Resolution 4/2003 PJE. The requests aimed at the constitutional examination of certain statutory provisions are also related to the above law uniformity resolution.

1. Resolution 4/2003 PJE has decided the question whether the statutory deadlines for filing a statement of claims are of substantive law or of procedural law nature. This is the basis of all further statements related to the calculation of the deadline open for filing a claim. As declared by the Supreme Court in the law uniformity resolution, "The statutorily determined deadline for filing a claim is not part of the court proceedings; it is, as the time factor of the demand reaching the phase of enforceability, connected to the subjective (substantive) right, and as such, it is necessarily of substantive law nature. This character of the deadline does not depend on the type of the statute (substantive or procedural one) providing for it, nor is it related to what the legal consequence of the default is. The legal nature of the deadlines for filing a claim, as ones of substantive law, is the same as in the case of other types of deadlines of substantive law (e.g. performance etc.). This is also reflected in the similarity of the method of their calculation.
Filing a statement of claims at the court is not an act in the lawsuit."

However, in addition to the above, Resolution 4/2003 PJE has also established the following: "The serious consequence of forfeiture may only result from the explicit provision of the statute. It has been pointed out in several resolutions by the Supreme Court (e.g. Pfv.I.22.629/1993/4); nevertheless, there is another judicial interpretation according to which the default of a deadline of substantive law – in the absence of a provision to the contrary – implies forfeiture. The law uniformity council does not agree with the latter interpretation."

1.1. Resolution 4/2003 PJE enumerates the statutes, in force at the time of adopting the resolution, pertaining to the calculation method of the deadlines for filing a claim. The Supreme Court has established on the basis of the (differing) practices developed according to these statutory regulations that the issue is to be addressed in a law uniformity resolution.
First of all, the Constitutional Court establishes that it is out of its scope of competence to decide whether the Supreme Court considered correctly the various interpretations of the law when adopting the law uniformity resolution. With regard to the present case, it means that the Constitutional Court is not in charge of deciding with final force whether, in the course of applying the ACP, the deadline established in various statutes regarding the filing of the statement of claims is a deadline of substantive law or of procedural law nature, nor is it the task of the Constitutional Court to form an opinion on whether or not the deadline for filing a claim is part of the court proceedings. It is the duty of the Supreme Court, based on Article 47 para. (2) of the Constitution, to unify the differing interpretations of the law and to determine the contents of the interpretation to be followed by the courts. The review by the Constitutional Court may only be based on whether or not the law uniformity resolution violates any constitutional provision. Therefore, the Constitutional Court shall examine in each case whether the unconstitutionality is caused by the legal norm or by the law uniformity resolution interpreting the norm and it shall establish the legal consequences based on the result of the above examination. As pointed out by the Constitutional Court in the CCDec, it is to be decided case by case whether the unconstitutionality is the result of the legal regulation under examination (and the law uniformity resolution merely "interprets" accordingly) or the unconstitutionality originates basically from the contents of the law uniformity resolution rather than from the statute. (ABH 2005, 504, 514) As in the present case, the petitions primarily allege the unconstitutionality of the interpretation of the statutes given in the law uniformity resolution, the Constitutional Court has first judged upon the petitioners' constitutional concerns related to the law uniformity resolution – as a request within its scope of competence.

According to the holdings of Resolution 4/2003 PJE reviewed in the present case, “With regard to calculating the deadline for submitting a statement of claims, in the absence of a statutory provision to the contrary, the provisions under Section 105 para. (4) of Act III of 1952 on the Act of Civil Procedure (hereinafter: the ACP) shall not be applicable.” Thus, the deadline calculation established in Resolution 4/2003 PJE has a character of secondary nature as indicated in the holdings of the law uniformity resolution applying the formula “in the absence of a statutory provision to the contrary”. Consequently, the law uniformity resolution acknowledges the primacy of those statutory provisions containing deadline calculations (covering the filing of claims as well) different from the one found in the resolution. Accordingly, the petitioners’ arguments are unfounded when alleging that the law uniformity resolution violates Article 47 para. (2) of the Constitution due to the Supreme Court’s exceeding its scope of competence related to securing the uniformity of the law, by providing for regulations contrary to an Act of Parliament. Indeed, in the case of a contrary statutory regulation, the provisions of the law uniformity resolution shall not be applicable. Thus, the resolution does not pre-empt the legislature’s ability to freely determine the nature of the various deadlines open for filing claims. Consequently, Resolution 4/2003 PJE does not result in legal uncertainty violating Article 2 para. (1) of the Constitution by making the calculation of the deadline unforeseeable (contrary to the statute).

The petitioners have also raised concerns about the violation of fundamental rights, requesting the examination of Resolution 4/2003 PJE in respect of the right to seek legal remedy and the right to court proceedings. According to the Constitutional Court’s practice, the right to file a claim is a fundamental right related to the right to turn to court. As established in Decision 2218/B/1991 AB, “the right to file a claim is the right of the person to turn to court in order to have his violated subjective right remedied”. (ABH 1993, 580, 583) According to Decision 467/B/1997 AB, “in line with the practice of the Constitutional Court, the right to turn to court declared in Article 57 para. (1) of the Constitution is a fundamental right, which – like other fundamental rights – may be the subject of a necessary and proportionate restriction”. (ABH 2001, 907, 908) In line with the standard applicable to the restriction of fundamental rights, the Constitutional Court has examined the constitutionality of the deadlines for filing a claim on several occasions. As far as the deadline under review in the present case is concerned, the Constitutional Court – bearing in mind Article 50 para. (2) of the Constitution – has already pointed out the following: “There must be a deadline in respect of filing a claim

for the judicial review of a decision under public administration law, for the purpose of enforcing legal certainty as a part of the rule of law [Article 2 para. (1) of the Constitution]. This is not considered to violate or lessen the essential content of the right to file a claim. A claim may be filed during the term of thirty days (in the case of default, with an application for relief, for six months [Sections 105 to 110 of the ACP]; and the temporal restriction is proportionate to the objective to be achieved." [Decision 2218/B/1991 AB, ABH 1993, 580, 585] The above statement by the Constitutional Court has not been affected by Resolution 4/2003 PJE under review in the present case (as referred to above, the law uniformity council disagreed with the opinion on having forfeiture as a result of default). However, the Constitutional Court does not see it justified to depart from its holding based on Article 50 para. (2) of the Constitution in respect of the right to turn to court as granted in Article 57 para. (1) of the Constitution. This follows from the practice of the Constitutional Court detailed below:

- Decision 935/B/1997 AB "reached the conclusion with regard to the right to turn to court as well that there was a counterweight interest justifying the temporal restriction of the right to file a claim, and therefore the latter was not in violation of Article 57 para. (1) and Article 8 para. (2) of the Constitution" (ABH 1998, 765, 773)
- according to Decision 1018/B/1998 AB, "As a well-known and frequently applied solution within the legal system, when an Act of Parliament (of substantive law) provides for a deadline for the enforcement of a right and the filing of a claim, the default of keeping the deadline bears the consequence that the act in default cannot be substituted for later on, and it is not possible to file an application for relief..." (ABH 2002, 887, 892)
- under Decision 3/2006 (II. 8.) AB, "In general, the right to turn to court is not considered to be violated by restricting the right to turn to court with a forfeit deadline. As a well-known and frequently applied solution within the legal system, when an Act of Parliament (of substantive law) provides for a deadline for the enforcement of a right and the filing of a claim, the default of keeping the deadline bears the consequence that the act in default cannot be substituted for later on." (ABK February 2006, 51, 65)

In the opinion of the Constitutional Court, Resolution 4/2003 PJE does not impair the essential content of the right to file a claim. As referred to in the above decisions, providing for a deadline with regard to the right to file a claim is a necessary restriction of the right to turn to court (also required by legal certainty rooted in the rule of law), while the criterion of proportionality is to be determined in line with the length of the deadline: as declared above by the Constitutional Court, "the temporal restriction is proportionate to the objective to be

achieved". In the opinion of the Constitutional Court, the constitutional assessment of the criterion of proportionality is not changed by Resolution 4/2003 PJE merely by establishing that the statutorily defined deadline for filing a claim is of substantive law nature. Therefore, the Constitutional Court holds that Resolution 4/2003 PJE does not affect the essential content of the fundamental right, i.e. the right to turn to court, and therefore no restriction violating Article 8 para. (2) of the Constitution may be established.

1.2. One of the petitioners alleges the violation of Article 47 para. (2) of the Constitution by the Supreme Court adopting a law uniformity resolution binding not only the courts but the parties as well. In that respect, the opinion of the Constitutional Court is the following:

The Constitutional Court examined in Decision 12/2001 (V. 14.) AB the question of law uniformity resolutions being "binding upon the courts" according to the Constitution, but (in practice) law uniformity resolutions do necessarily affect the citizens as well. As established in the above decision "According to Article 47 para. (2) of the Constitution, law uniformity resolutions by the Supreme Court are generally binding upon the courts. Based on the above provision of the Constitution, the force of the law uniformity resolution does necessarily affect the parties through the judicial application of the law – via the judgement based on the obligatory interpretation of the law. The general effect of law uniformity resolutions under Article 47 para. (2) of the Constitution – binding the courts – may be enforced after their adoption. There are different cases under the procedural Acts of Parliament where the law uniformity resolution affects (may affect) directly the underlying case (cases) as well." (ABH 2001, 163, 171) Based on the above decision, the effects of law uniformity resolutions upon the parties were also examined in Decision 42/2004 (XI. 9.) AB in connection with Section 270 para. (2) item a) of the ACP. As held in the decision, "On the basis of Section 270 para. (2) item a) of the ACP, the law uniformity resolution's effect upon the parties is obvious (and according to the above decision of the Constitutional Court, this effect is not unconstitutional in itself). (ABH 2004, 551, 576)" As pointed out in this decision, a constitutional concern might be raised with regard to the influence upon the parties when the law uniformity resolution would itself decide the underlying individual cases. (ABH 2004, 551, 575-576)
Resolution 4/2003 PJE reviewed in the present procedure has not decided an individual case, and not even the petitioners allege that this has happened; what the petitioners challenge is the fact that the holdings of the resolution – upon promulgation – affect the parties as well. However, as follows from the above decisions, the Constitutional Court does not establish a

violation of the Constitution on the mere basis of the law uniformity resolution binding not only the courts but the procedural acts of the parties as well. Therefore, the Constitutional Court has rejected the petition alleging a violation of Article 47 para. (2) of the Constitution by Resolution 4/2003 PJE affecting the parties as well.

1.3. One of the constitutional complaints has initiated the constitutional review of Resolution 4/2003 PJE by claiming the resolution to violate Article 50 para. (3) of the Constitution.
Article 50 para. (3) of the Constitution provides for the principle and the guarantees of the independence of judges (answering only to the law and prohibited to engage in political activities). In the opinion of the Constitutional Court, there is no constitutionally interpretable connection between the law uniformity resolution on default in submitting a statement of claims or a request starting court proceedings and the constitutional provision regulating the independence of judges, and therefore the Constitutional Court has rejected this petition as well.

1.4. In the above, the Constitutional Court has judged upon the constitutional complaints seeking examination of Resolution 4/2003 PJE. By virtue of the constitutional complaints challenging it, Resolution 4/2003 PJE is to be applied according to the statutes in force at the time of passing the decision with final force serving as the basis thereof. At the same time, in the present procedure, the Constitutional Court also performs an examination with regard to petitions for posterior abstract examination. Unlike in the case of constitutional complaints, these petitions are to be examined by taking into account the statutes actually in force. With regard to that, the Constitutional Court notes the following: some of the petitioners have initiated the constitutional review of Resolution 4/2003 PJE as contrary to the provisions of the APAP and the ACP (regarding lawsuits under public administration law), it is alleged to cover the lawsuits under public administration law as well. After the adoption of the law uniformity resolution, Act CXL of 2004 on the General Rules of Public Administration Procedure and Services (hereinafter: the APAPS) was put into force, repealing the APAP, and – in connection with the APAPS – Act XVII of 2005 on the amendment of the ACP (hereinafter: the ACPAm) was also put into force. The ACPAm has changed the former rules of filing a claim in the lawsuits under public administration law. Under Section 330 para. (2) of the ACP in force, “The statement of claims shall be filed at the organ adopting the public administration resolution of first instance or mailed as a registered mail within thirty days from the communication of the resolution to be reviewed...” As regulated in Section 331 of

the ACP, “If the party – contrary to the statutory provision – has filed the statement of claims at the court, the court shall forward it without delay and without examination (Section 124) to the public administration organ of first instance. Section 330 para. (2) shall be applicable in this case, too, as appropriate, and the statement of claims shall be deemed to be filed in time if it has been mailed as a registered mail or submitted to the court within thirty days from the communication of the resolution to be reviewed.”

As seen in the amended rules of the ACP – compared to Resolution 4/2003 PJE – the last day of the deadline for filing the statement of claims is marked as the day of mailing, thus fulfilling the following condition in the law uniformity resolution: “…in the absence of a statutory provision to the contrary…”. Therefore, by way of the APAPS and the ACPAm, the legislation has withdrawn the lawsuits under public administration law from the scope of interpretation under Resolution 4/2003 PJE. In view of the above, the opinion by the Supreme Court’s Public Administration Board published in Vol. 9/2005 BH provides for the following: “By the entry into force of these statutory amendments, the condition contained in the first sentence of Law Uniformity Resolution 4/2003 PJE is fulfilled, i.e. with regard to filing a statement of claims or a request to start the judicial review of public administration decisions, the provisions under Section 105 para. (4) of the ACP shall be applicable in the cases started after 1 November 2005 (the day of entry into force of the ACPAm) – due to the above statutory rules providing for the contrary”. With regard to the above statutory amendment, Resolution 4/2003 PJE is not applicable any more in lawsuits under public administration law.

Based on the reasons detailed under points 1.1 to 1.4, the Constitutional Court has rejected both the petitions and the constitutional complaints seeking establishment of the unconstitutionality and annulment of Resolution 4/2003 PJE.

2. The petitioners claim the unconstitutionality of Resolution 4/2003 PJE (a “source of law of a lower hierarchical level” as termed by one of the petitioners) due to its collision with an Act of Parliament (the ACP), while another petitioner has grabbed the same problem from the aspect of examining an unconstitutional omission of legislative duty, requesting the Constitutional Court to establish that “the Parliament has failed to regulate how to resolve a potential collision between a law uniformity resolution and the statutory provisions which form the basis of the foregoing.”

As explained by the Constitutional Court in the CCDec, it can be decided even without classifying the law uniformity resolution within the hierarchy of statutes whether or not the Constitutional Court is competent in the question concerned (ABH 2005, 504, 514.); the constitutional status of the Constitutional Court creates a possibility for including all norms in the scope of constitutional review. (ABH 2005, 504, 511) Therefore, the petitioner's allegation about the existence of a hierarchical relation between law uniformity resolutions and Acts of Parliament has no constitutional relevance in the present case either. Under the Constitution, the sources of law are statutes issued by the State organs having legislative competence under the Constitution. Consequently, law uniformity resolutions do not fall into the system of positive sources of law. Article 47 para. (2) of the Constitution is deemed to be violated if a law uniformity resolution changes or amends a statute (typically an Act of Parliament) instead of interpreting it.

As the Constitutional Court's competence was established in the CCDec (and has been completed in the present Decision) regarding the examination – solely from constitutionality aspects – of law uniformity resolutions as special legal norms, the Constitutional Court has rejected the petition seeking establishment of an unconstitutional omission of legislative duty and challenging the lack of proper regulations on the rules of procedure to be followed in the case of a collision between a law uniformity resolution and an Act of Parliament.

3. The petitioners have filed constitutional complaints for the examination of the unconstitutionality of several statutory provisions as well. They request the Constitutional Court to examine Section 103 para. (5), Section 105 para. (4), Section 130 para. (1) item h), and Section 157 item a) of the ACP, furthermore, based on the constitutional complaint, Section 330 paras (1) and (4) of the ACP, formerly in force, pertaining to the lawsuits under public administration law, as well as Section 72 para. (1) of the APAP. One of the petitioners has also specified Section 39 para. (2) of Act CXXXIX/1997 on Asylum (hereinafter: the AA) as the statute applied and now to be reviewed as the basis of his constitutional complaint. The common feature of these statutory provisions is their presence in Resolution 4/2003 PJE (as the statutes forming the ground of unifying the judicial practice in the law uniformity procedure).

3.1. Regarding the petitions aimed at the constitutional review of the ACP and APAP provisions no longer in force, it is to be first noted that according to its established practice,

“the constitutionality of a repealed statute may only be examined by the Constitutional Court when the applicability of the statute is also a question to be judged upon. (Decision 335/B/1990 AB, ABH 1990, 261, 262) Repealed statutes may only be subjected to specific constitutional examination in two cases, i.e. on a judicial initiative under Section 38 para. (1) of the ACC and by virtue of a constitutional complaint under Section 48 of the ACC. [Decision 29/2005 (VII. 14.) AB, ABH 2005, 316, 323] As in the present case, the constitutional complaints do also affect the ACP and APAP provisions no longer in force, the Constitutional Court has performed an examination on the merits in respect of these complaints as well.

3.2. With regard to the above statutory provisions, the petitioners basically refer to the violation of the right to seek legal remedy. The Constitutional Court has been engaged in interpreting from several aspects Article 57 para. (5) of the Constitution in several of its decisions. According to the practice of the Constitutional Court, the option to turn to another organ or a higher forum in respect of decisions on the merits [the ones judging upon the case, significantly influencing the position and the rights (of the convicted person)] is the immanent content of the right to seek legal remedy. [Decision 5/1992 (I. 30.) AB, ABH 1992, 27, 31] As pointed out in other decisions, the fundamental right to seek legal remedy is deemed to be secured if in the procedure the law guarantees for the affected person to have his case reviewed by an organ other than the one which acted in the basic case. (Decision 513/B/1994 AB, ABH 1994, 734) The possibility of “remedying” is an essential element of all legal remedies, i.e. the concept and the substance of a legal remedy contains the possibility to remedy the rights injured. [Decision 23/1998 (VI. 9.) AB, ABH 1998, 182, 186] The Constitution leaves it to the statutory regulations pertaining to the various procedures to determine the applicable forms of legal remedies, to specify the forums in charge of reviewing the legal remedies, and to fix the number of the levels of the system of legal remedies. (Decision 1437/B/1990 AB, ABH 1992, 453, 454)

According to the principle developed on the basis of interpreting Article 57 para. (5) of the Constitution, as mentioned by the Constitutional Court in Decision 696/D/2000 AB, the granting of legal remedy serves the purpose of realising the aims and the duties related to the rule of law. (ABH 2003, 1244, 1246) That is why the State has to adopt legislation granting a possibility to enforce subjective rights by providing for procedural guarantees. [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 65]

In the opinion of the Constitutional Court, the statutory provisions under review do not restrict the subjective right to seek legal remedy, and they comply with the requirements developed by the Constitutional Court and demonstrated above. Section 103 para. (5) of the ACP provides for a statutory regulation to make it clear for everybody which day is to be considered the last one of the deadline for the purpose of the ACP. Section 105 para. (4) of the ACP is connected to this by providing for an exception from the consequences of a default in keeping the deadline (the consequences of a default in keeping the deadline shall not be applicable if the document addressed to the court has been mailed as a registered mail at the latest on the last day of the deadline). This provision – having an effect even on the enforcement of the right to seek legal remedy – is particularly favourable for the party. Under Section 130 para. (1) item h) of the ACP, if a statute provides for a deadline for filing a claim, and the plaintiff fails to keep the deadline (in the absence of an application for relief), the court is to reject the statement of claims without the issue of summons. Section 157/A item a) of the ACP deals with the termination of the lawsuit in connection with the above. Under Section 72 para. (1) of the APAP regarding the judicial review of public administration resolutions, there is a deadline of thirty days from the communication of the resolution for requesting it, and the related Section 330 paras (1) and (4) of the ACP – formerly in force – contained the place and the time of filing the statement of claims as well as the related other deadlines and the order of filing an application for relief. Finally, the AA lays down the rules of procedure for the judicial review of resolutions in asylum cases – providing for deadlines shorter than the ones set in Section 72 para. (1) of the APAP.

As held by the Constitutional Court, the above rules of the ACP, the APAP and the AA are the essential conditions for exercising the subjective right to seek legal remedy: they define the order of filing a statement of claims as well as the relevant legal consequences. Practically, these regulations provide for the conditions of turning to the court in accordance with Article 57 para. (1) of the Constitution and, as such, they are related to the right to seek legal remedy by supporting the enforcement thereof (regulating how to exercise that right). As pointed out by the Constitutional Court earlier, “When regulating various legal relations, including the relations under civil law, the legislation enjoys a wide range of discretion among others in respect of determining the timeframe for the enforcement of subjective rights at the court, with account to the internal characteristics of the specific legal relations. If the regulation does not violate Article 57 para. (1) of the Constitution – i.e. it guarantees the enforcement of the rights at the court – then the legislation is relatively free to act in respect of determining the relevant timeframe...” [Decision 54/1992 (X.29.) AB, ABH 1992, 266,

267] Another decision stressed the importance for legal certainty of accurately determining the deadline for initiating judicial review, establishing that no constitutional concern may result from the mere fact of this deadline being objective and a forfeit one. (Decision 935/B/1997 AB, ABH 1998, 765, 771) In view of all the above, the Constitutional Court underlines in the present case that the statutory regulation of the legal consequences of a default in procedural acts is just as important for constitutional reasons – to enforce the requirement of calculability originated in Article 2 para. (1) of the Constitution – as the provision describing the procedural act itself (in the provisions under review: regulating the methods of calculation as one of the conditions of the legal remedy). Therefore, the petitioner's claims are unfounded in respect of these statutory regulations violating the requirement of legal certainty based on Article 2 para. (1), the right to turn to court as granted in Article 57 para. (1), as well as the right to seek legal remedy enshrined in Article 57 para. (5) of the Constitution.

Consequently, the Constitutional Court has rejected the petitions and the constitutional complaints aimed at establishing the unconstitutionality of, and at annulling, Section 103 para. (5), Section 105 para. (4), Section 130 para. (1) item h), and Section 157 item a) of the ACP, furthermore – on the basis of the constitutional complaint – Section 330 paras (1) and (4) of the ACP, formerly in force, pertaining to the lawsuits under public administration law, Section 72 para. (1) of the APAP, and finally Section 39 para. (2) of the AA.

3.3. One of the constitutional complaints mentions in connection with the AA the necessity to develop a new order of calculating the deadlines in the public administration cases related to asylum, in order to make it more favourable for the asylum seekers than it is now. In the point of view of the Constitutional Court, the option of considering the deadline being met, as requested by the petitioner, by handing over the document to the staff member of the accommodation centre is – with respect to the special position of the persons affected in asylum-related cases – not a constitutional question but a practical one. The legislation rather than the Constitutional Court is in charge of passing a decision on this. As explained in several decisions by the Constitutional Court, "the lack of practicality in the regulations, and having bad or unjust legal regulations are not issues of constitutionality, and thus the Constitutional Court has no competence to examine the merits of such questions. [Decision 26/1993 (IV. 29) AB, ABH 1993, 203] The mere problems of practicality or justice are in the scope of the legislation's political responsibility." [Decision 37/1997 (VI. 11.) AB, ABH 234,

246] Based on the above, the Constitutional Court has not established the unconstitutionality of Section 39 para. (2) of the AA in that respect either.

Having regard to the importance of the matter, the Constitutional Court has ordered the publication of this Decision in the Hungarian Official Gazette.

Budapest, 11 December 2006

Dr. Mihály Bihari
President of the Constitutional Court

Dr. Elemér Balogh
Judge of the Constitutional Court

Dr. András Bragyova
Judge of the Constitutional Court

Dr. Árpád Erdei
Judge of the Constitutional Court

Dr. Attila Harmathy
Judge of the Constitutional Court

Dr. András Holló
Judge of the Constitutional Court, Rapporteur

Dr. László Kiss
Judge of the Constitutional Court

Dr. Péter Kovács
Judge of the Constitutional Court

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. Péter Paczolay
Judge of the Constitutional Court

Dissenting opinion by Dr. Mihály Bihari, Judge of the Constitutional Court

I.

1. I do not agree with point 1 of the holdings in the Decision and with the rejection of the relevant elements of the petitions based on reviewing their contents.

I hold that pursuant to Section 29 item b) of amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's Provisional Rules of Procedure and on the Publication Thereof (hereinafter: the Rules of Procedure), the Constitutional Court should have refused without substantial examination the petitions aimed at the constitutional review of Resolution 4/2003 PJE by the Supreme Court.

Moreover, I do not agree with the statements in Parts III and IV of the reasoning in the Decision about the Constitutional Court's scope of competence regarding the constitutionality review of the law uniformity resolutions regulated in Article 47 para. (2) of the Constitution and in Chapter III of Act LXVI of 1997 on the Structure and Supervision of Courts and on the Legal Status and Remuneration of Judges (hereinafter: the ACJ). [The relevant parts of the reasoning concerning the general review of law uniformity resolutions by the Constitutional Court – thus related to expanding the Constitutional Court's scope of competence as laid down in Section of 1 of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC) – can be found in particular in the first paragraph of Part III of the reasoning and in the second and third paragraphs of point 2 Part IV of the reasoning.]

I hold that the relevant parts of the reasoning present an approach expanding far beyond – and thus being contrary to – the Constitutional Court's position about the question of competence under review as taken in Decision 42/2005 (XI. 14.) AB (ABH 2005, 504; hereinafter: the CCDec) referred to in the reasoning as well. I did and still do agree with the decision contained in the reasoning of the CCDec – i.e. with the annulment of Resolution 3/2004 BJE – as it had a normative content and contained an unconstitutional regulation.

In my opinion, the above two conjunctive conditions (i.e. the normative content of the law uniformity resolution and the unconstitutionality of the normative content) are not fulfilled in the present case, and therefore the Constitutional Court has no competence to perform a constitutional review on the merits of Supreme Court Resolution 4/2003 PJE containing only an interpretation of the law. Therefore, the petitions should have been rejected by the Constitutional Court.

II

1. Under Section 47 para. (2) of the Constitution, the Supreme Court's law uniformity procedure, including the law uniformity resolutions adopted therein, is a constitutional procedure: an institution serving the purpose of assuring the uniformity of the administration of justice by the courts. The Supreme Court's law uniformity procedure and the law

uniformity resolution adopted therein are separated from the Supreme Court's judging activity and the individual judgements passed therein. The law uniformity resolutions adopted in compliance with the formal rules of procedure laid down in Chapter III of the ACJ – as well as in the ACP and the Act on Criminal Procedure – serve the purpose of securing the uniformity of the judicial activity of the courts (uniform judicial practice), which is of primary importance for the enforcement of legal certainty as an element of the rule of law granted in Article 2 para. (1) of the Constitution.

The law uniformity resolutions of the Supreme Court are connected to a concrete statute, and they contain the interpretation of the statute and the exploration of its normative contents, taking a position in the question of interpreting the law by the courts when the judgements and the judicial practices of the courts show differences. Differing judgements by the courts with regard to debated legal questions where the facts of the case are similar may result in the violation of legal certainty as part of the rule of law enshrined in Article 2 para. (1) of the Constitution.

The characteristics of the law uniformity resolutions passed by the Supreme Court are as follows:

- they are binding upon the courts;
- they are regularly/recurrently applied by the courts;
- they affect the litigating parties through the courts' decisions on the merits;
- they are enforceable by way reviewing the ordinary and the extraordinary legal remedies applicable against the decisions on the merits (neglecting them may imply sanctions);
- their publication in the Official Gazette guarantees wide publicity.

In my opinion, a constitutional concern may be raised when the Supreme Court extends beyond its scope of competence under Article 47 para. (2) of the Constitution regarding the adoption of a law uniformity resolution – which is the interpretation of the law, binding upon the courts, for the purpose of serving the uniformity of the judicial practice – i.e. when the law uniformity resolution contains a new normative element and performs a regulatory function instead of interpreting the law.

In the above case, the law uniformity resolution introduces – in a specific subject and in a specific way – one or several new elements into the existing objective elements of the interpreted norm (legal regulation), and therefore the law uniformity resolution obtains a normative content and becomes a regulatory tool, leaving behind the realm of interpreting the law.

2. According to Article 32/A of the Constitution, the Constitutional Court enjoys the competence related to the constitutional examination of statutes as detailed in the provisions under Chapter I of the ACC. In exceptional cases, the practice of the Constitutional Court allows – on the basis of the "living law" deductible from the constitutionality protection function of the Constitutional Court – the constitutional review of *quasi statutes* fulfilling a normative function.

As established in Decision 60/1992 (XI. 17.) AB, the issuing of ordinances, circulars, guides, directives, and resolutions containing legal guidance as well as other informal interpretations of the law by ministries and other central State organs without adhering to the guarantee rules laid down in Act XI of 1987 on Legislation (hereinafter: the AL) and the practice of direction through such documents are unconstitutional and have no legal consequence or legal binding force whatsoever. (ABH 1992, 275)

As a common feature, the above mentioned *quasi statutes* bear normative elements, they have a binding force upon the addressees due to the hierarchical relation between the issuer and the addressee, and they contain *contra legem* or *praeter legem* regulations.

If the Supreme Court's law uniformity resolution bears no normative content (lacking a new element introduced into the objective elements of the interpreted norm, and having no regulatory function), then – in my view – neither Article 32/A of the Constitution nor the CCDec may form a ground for establishing the Constitutional Court's competence regarding examination on the merits. It is out of the Constitutional Court's scope of competence to perform the constitutional review of a law uniformity resolution bearing no new element, remaining within the limits of the interpretation of the law (*intra legem*), and neither formally nor substantially considered to be a statute. In the lack of competence, the Constitutional Court may not give an interpretation of the law concurring with an interpretation of the law within the limits of Article 47 para. (2) of the Constitution, contained in a law uniformity resolution. There may be no debate developed between the Constitutional Court and the Supreme Court in respect of the interpretation of normative contents.

3. The examination on the merits of the contents of law uniformity resolutions falls into the Constitutional Court's competence if the law uniformity resolution – which is formally not a source of law – becomes one in respect of its content (fulfils a regulatory function with normative content).

4. Agreeing with the reasons given in the CCDec, I hold that the Constitutional Court's competence for substantial examination concerning the law uniformity resolutions complying with the above conjunctive conditions may be established – case by case – under Article 32/A of the Constitution even in the absence of an explicit constitutional rule or the ACC's regulation on the competence of the Constitutional Court.

5. In my opinion, the constitutional and statutory regulations on the Constitutional Court's competence for (the possibility of) reviewing law uniformity resolutions is not satisfactory at present. As the legislation should regulate the Constitutional Court's scope of competence for the constitutionality review of the Supreme Court's law uniformity resolutions, I would not consider sufficient to regulate it on a statutory level, i.e. in the ACC. In the course of amending the Constitution, the following are to be taken into account:

- Based on the present regulations (under Article 32/A of the Constitution), if the Supreme Court's law uniformity resolution fulfils a role of normative regulation through *contra legem* or *praeter legem* interpretation of the law, then the contents of such a law uniformity resolution may become the subject of examination by the Constitutional Court.

- The contents of a *contra legem* or *praeter legem* interpretation may be either *contra constitutionem* (unconstitutional) or constitutional. Therefore, the future legislation must take a stand in the question of whether a law uniformity resolution with normative contents – extending beyond the interpretation of the law under Article 47 para. (2) of the Constitution – may only be annulled by the Constitutional Court when its contents are at the same time unconstitutional, or may normativity itself be the cause of annulment.

- According to a potential future regulation, if a law uniformity resolution with normative contents – i.e. containing *contra legem* or *praeter legem* interpretation of the law – are not unconstitutional, then the Constitutional Court must examine its contents and reject the petition, while, if the contents of the normative law uniformity resolution are unconstitutional, then the Constitutional Court must annul it – as a general rule – on the basis substantial examination.

- As another potential alternative of the regulation, the normativity of a law uniformity resolution would, itself, create a ground for establishing unconstitutionality. Unconstitutionality could be established due – among others – to the violation of the rule of law granted in Article 2 para. (1) of the Constitution by the legislative act performed by the Supreme Court when it adopts a *quasi norm*, extending beyond its constitutional scope of activity as an organ of authority. Acting in the scope of activity of another branch of power

throws out of balance the delicate system of the branches of powers as one of the most important components of a democratic State under the rule of law.

- If the law uniformity resolution has no normative content, i.e. it contains an *intra legem* interpretation of the law, then it is out of the Constitutional Court's scope of competence to perform a constitutionality review of the law uniformity resolution containing the interpretation of the law, and the petition is to be rejected according to Section 29 item b) of the CCRP.

- However, the future legislation should also take into account the possibility of a case when the law uniformity resolution contains an *intra legem* interpretation of the law, but the interpretation itself is *contra constitutionem* (unconstitutional) (e.g. violating Article 70/A of the Constitution). In my opinion, the Constitutional Court's general function of protecting the Constitution may justify a way of regulation where the Constitutional Court is allowed to review the constitutionality of a law uniformity resolution having no normative content (i.e. not exceeding the limits of the authorisation given in the Constitution), but containing an unconstitutional interpretation of the law. This could be justified by the Constitutional Court's general function of protecting the Constitution. However, this is a question of competence to be regulated by the legislation on a constitutional level.

III

1. Although judge-made law is not considered to be a source of law – either substantially or formally – in the system of the sources of law in the Republic of Hungary, the "judicial development of the law" undoubtedly has a role in forming and developing the law.

Under Section 47 para. (2) of the Constitution, the Supreme Court's law uniformity resolutions are binding upon the courts, consequently they influence the judicial practice of the courts and the litigating parties too, through the judgements passed in the concrete lawsuits. [The Constitutional Court has already examined in Decisions 12/2001 (V. 14.) AB (ABH 2001, 163) and 42/2004 (XI. 19.) AB (ABH 2004, 551) the effects exerted by law uniformity resolutions on the litigating parties.] Nevertheless, it is important to note that this effect is not identical with the generally binding (normative) influence exercised by the statutes – as legal norms – upon their addressees.

The Supreme Court's constitutional competence of adopting law uniformity resolutions – as laid down in Article 47 para. (2) of the Constitution – is not a legislative power; this is not a competence empowering the Supreme Court to adopt legislation.

Law uniformity resolutions support the courts' declarative activity of applying the law – by setting a uniform way of direction. The judgements passed by the courts should apply the abstract statutory definitions embodied in the legal norm to the concrete facts of the case as explored in the particular lawsuit. The individual judgements imply the possibility of having multiple interpretations of the law under the same or similar facts of the case (resulting in differing judicial practice). This may lead to differing – or in many cases even conflicting – judgements by the courts, posing a risk concerning the unity of the judicial practice and, by that, legal certainty.

2. A constitutional concern arises when, in the law uniformity resolution, the Supreme Court extends beyond the limits of interpreting the law, and the law uniformity resolution is enforced with a normative content (the need of normative regulation). In this case, if the law uniformity resolution with a normative content is unconstitutional, the Constitutional Court – as the general rule – shall annul it under Article 32/A of the Constitution. In my opinion, according to the Constitution in force, the Constitutional Court may only establish the unconstitutionality of, and annul a concrete law uniformity resolution subject to the joint existence of two conjunctive conditions, i.e. when it has a normative content and violates any of the provisions in the Constitution.

In the case reviewed in the CCDec referred to in the reasoning of the majority Decision, by adopting Resolution 3/2004 BJE the Supreme Court exceeded its constitutional competence – granted in Article 47 para. (2) of the Constitution – of interpreting the law in order to secure the unity of the judicial practice and, at the same time, it created an unconstitutional "norm". This was the reason for the annulment – with my support – of the unconstitutional law uniformity resolution based on the competence under Article 32/A of the Constitution.

3. It is necessary to clarify when the Constitutional Court may establish that a law uniformity resolution adopted by the Supreme Court exceeds its constitutional competence of interpreting the law.

In my opinion, this shall be established by the Constitutional Court if the law uniformity resolution:

- extends the scope of subjects falling under the statute concerned;
- extends or limits the rights and obligations of the subjects of law;
- changes the legal relations of the subjects of law (including their rights and obligations), i.e. the contents of the legal relations;

- changes the statutory liability relations of the subjects of law;
- changes the personal, territorial, objective or temporal etc. force of the statute;
- contains a *contra legem* or *praeter legem* interpretation of the law;
- contains a new element as compared with the interpreted norm;

If a law uniformity resolution by the Supreme Court contains even a single element of any of the above-mentioned cases, then the normative content of (a part of) the law uniformity resolution is to be established, i.e. the Supreme Court is considered to have extended beyond the function of interpreting the law by exercising the function of legislation.

4. The CCDec – annulling the unconstitutional Resolution 3/2004 BJE passed by the Supreme Court – was adopted in a case where the law uniformity resolution under constitutional review had a normative regulatory content contrary to the Constitution. It provided for a *praeter legem* interpretation of the law by extending the scope of persons entitled to act in the constitutionally regulated prosecuting function – through neglecting the guarantee regulations in the Act on Criminal Procedure. Thus, it created an unconstitutional regulation (*quasi norm*).

5. Examining the law uniformity resolutions of the Supreme Court according to the theory of the sources of law, it is to be established that they are not part of the system of the sources of law in the Republic of Hungary.

Under Article 7 para. (2) of the Constitution, the order of legislation shall be regulated by an Act of Parliament to be adopted with a majority of two-thirds of the votes of the Members of Parliament present. At present, such an Act of Parliament passed with a two-third majority as required in the Constitution is the AL, which determines – on the basis of the Constitution – the legislative organs (material sources of law) empowered to issue the sources of law, and the legal norms they may issue (formal sources of law). Thus, in the present legislative system of the Republic of Hungary, both the material and the formal sources of law – i.e. the legislative organs and the legal norms issued by them – are to be regulated in an Act of Parliament; at present, the statutory regulations (requiring a two-third majority) in the AL define the organs having legislative competence as well as the contents, the names and the levels of the legal norms (statutes or other legal tools of State administration) they may issue.

The detailed regulations pertaining to the law uniformity resolutions passed by the Supreme Court are laid down in the Constitution, the ACJ, the ACP as well as in the Act on Criminal Procedure, and having regard to these regulations I hold that the Supreme Court is clearly not a legislative organ, and the law uniformity resolutions issued by the Supreme Court are not

sources of law (in either a material or a formal sense) although they fulfil a role of forming and developing the legal system.

As far as their legal nature is concerned, the law uniformity resolutions passed by the Supreme Court significantly differ from the characteristics of legal norms, and the main differences are the following:

- law uniformity resolutions are binding for the *courts* and not in general, like statutes bind their addressees;

- the provisions of law uniformity resolutions affect the litigating parties through the judicial activity of the courts, and they only have an indirect effect on the wider scope of the subjects of law through the uniform judicial practice to be followed;

- the law uniformity councils of the Supreme Court adopt the law uniformity resolutions in special court proceedings, i.e. "law uniformity judiciary" is a special judicial activity fundamentally different from the adoption of norms;

- as the constitutional function of law uniformity resolutions is to secure the uniformity of the judicial activity and, by that, of the application of the law, the law uniformity resolutions show a particular periodicity: the courts adopting the judgements apply the contents of the law uniformity resolutions repeatedly – from time to time, under the same facts of the cases – which is an important guarantee for creating a uniform judicial practice.

In my opinion, the above features support my view that law uniformity resolutions may not be regarded as sources of law in terms of either their contents or their form.

Contrary to the reasoning of the majority Decision, I hold that no general constitutional principle can be established concerning all law uniformity resolutions being norms, but it can be concluded that a uniformity resolution might turn to be a norm, it might sometimes have a normative content, or it might require to be regarded as a normative regulation (with a general binding force).

Therefore, in my view, law uniformity resolutions are not sources of law, they are not statutes, but they are not individual decisions either; they enjoy more limited publicity than the statutes. Law uniformity resolutions do not determine a new rule of conduct: they are a tool for the Supreme Court to secure – through the uniformisation of the judicial practice – the enforcement of a consistent judicial practice in order to support the foreseeability of the legal institutions' operation and legal certainty as part of the rule of law laid down in Article 2 para. (1) of the Constitution.

6. According to the aforesaid, the Constitutional Court may only review the constitutionality of the contents of a law uniformity resolution if it fulfils a normative function. In such case, the Constitutional Court shall answer the constitutional question whether the Supreme Court exceeded in the concrete case beyond the limits of interpreting the law by stepping into the legislative realm of creating norms. Thus, in the case of a law uniformity resolution under substantial review, the applicability of annulment by the Constitutional Court – as a constitutional legal consequence – requires, on the one hand, normativity and, on the other hand, collision with the Constitution.

7. The Supreme Court's law uniformity resolutions – based on the relevant contents of the legal norm serving as the basis of the resolution – set a direction for the uniform judicial activity of the courts adopting judgements, thus targeting the unity of the law.

Examining the relationship between the law uniformity resolution and the interpreted norm, there are several possible cases:

- the statute itself may be unconstitutional while the law uniformity resolution – remaining within the limits of interpreting the norm – may be constitutional;
- sometimes, however, the statute is not unconstitutional but the law uniformity resolution enforcing a normative content is unconstitutional;
- and finally, it may also happen that both the statute and the law uniformity resolution are unconstitutional.

In the first case, when the statute itself is unconstitutional and the law uniformity resolution does not exceed the limits of interpreting the unconstitutional norm, the annulment of the unconstitutional statute naturally implies the annulment of the law uniformity resolution interpreting it.

8. With regard to the above, I do not agree with the reasoning related to the general review of the contents of law uniformity resolutions by the Constitutional Court, as contained in parts III and IV of the reasoning in the majority Decision. In my opinion, this part of the reasoning – with regard to the competence question under examination – extends far beyond the Constitutional Court's earlier position detailed in the reasoning of the CCDec, thus it is in violation of the CCDec. The latter is based on the principle that the Constitutional Court does not have a general competence to review all law uniformity resolutions; it is only empowered to examine, case-by-case, the law uniformity resolutions that have normative contents, exceeding the limits of interpreting the law.

From the reasoning of the CCDec, I hold it important to underline the following:

"The Constitutional Court examines case-by-case whether the provision requested to be examined is of a normative content and whether the Constitutional Court is therefore competent to examine it. (...) In consideration of the above, the problem of the constitutionality review of a law uniformity resolution is connected to the Constitutional Court's competence and its general task of safeguarding the Constitution: the possibility of constitutional control shall be ensured in respect of all statutes and norms of the legal system. This is a requirement based on Article 32/A of the Constitution and on the above decisions of the Constitutional Court interpreting this constitutional provision. (...) This is so because the examination of a statute may only be performed through the analysis of its contents. In the course of such an examination, the Constitutional Court must decide case by case whether the unconstitutionality is the result of the legal regulation under examination (and the law uniformity resolution merely »interprets« accordingly) or the unconstitutionality originates basically from the contents of the law uniformity resolution rather than from the statute.

The Constitutional Court shall establish unconstitutionality accordingly. It follows from the theory of »living law« applied in the practice of the Constitutional Court and from the Constitutional Court's practice – stemming from its constitutional status – of including in the scope of posterior constitutional examination the constitutional examination of all norms that the review of a law uniformity resolution is within the Constitutional Court's competence and that the Constitutional Court may establish the unconstitutionality of such a resolution when it is deemed to violate the Constitution as a result of interpreting the law differently than acceptable. (…)

Therefore, it can be decided – without classifying the law uniformity resolution within the hierarchy of statutes – as a result of case-by-case constitutional examination whether the law uniformity resolution has an independent statutory content separating it from the statute interpreted.

The law uniformity resolution becomes the subject of constitutional examination on the basis of Article 32/A para. (1) of the Constitution. Consequently, the Constitutional Court reviews the constitutionality of the law uniformity resolution within its competence of posterior constitutional examination defined in the ACC as well.

The Constitutional Court notes that it exercises its competence related to the posterior constitutional examination of the law uniformity resolution without prejudice to the independence of the judicial branch of power. (…)" (ABH 2005, 504, 511, 513-514)

In the course of adopting the vast majority of the law uniformity resolutions – as in the case of Resolution 4/2003 PJE reviewed now – the Supreme Court remains within the limits of interpreting the law and adopts a law uniformity resolution, binding the courts, for the purpose of securing the uniformity of the judicial practice.

Undoubtedly, law uniformity resolutions have a binding force – just like legal norms do – but – in contrast with such norms – this binding force is not a general one; it only binds the courts. Similarly to legal norms, law uniformity resolutions are not applied in a single case only: the courts are bound to apply them recurrently, on a continuous basis, but they do not set new rules of conduct as they serve the purpose of securing the unity of the courts' declarative activity of applying the law (adopting judgements) – this is how they fulfil the role of forming (developing) the law.

Law uniformity resolutions have a role of forming the law in the sense of the sociology of law, and at the same time they have a marking role for the legislation, shedding light to the deficiencies of the legislation – represented in contradicting court judgements.

Law uniformity resolutions may only fulfil their constitutional function if they remain in the realm of interpreting the norms, with the role of extracting, correcting, fine-tuning and interpreting the contents of the interpreted norm.

Consequently, I do not agree with point 1 of the holdings in the majority Decision and the parts of its reasoning referred to before, i.e. with the (general) expansion of the Constitutional Court's scope of competence related to the constitutional review of law uniformity resolutions.

Budapest, 11 December 2006

Dr. Mihály Bihari

Judge of the Constitutional Court

I second the above dissenting opinion.

Dr. Péter Kovács

Judge of the Constitutional Court

Dissenting opinion by *Dr. Attila Harmathy*, Judge of the Constitutional Court

I do not agree with point 1 of the Decision and the reasoning thereof. In my opinion, the petition should have been refused. My arguments therefore are as follows:

1. The petitioners have asked the Constitutional Court to establish the unconstitutionality of, and annul Civil Law Uniformity Resolution 4/2003 (hereinafter: the CLUR) on the basis of Section 1 item *b)* in Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC).

The fundamental task of the Constitutional Court is defined in Article 32/A para. (1) of the Constitution, declaring that the "Constitutional Court is to review the constitutionality of statutes, and attend to the duties referred into its jurisdiction by Acts of Parliament." This is the basis of the ACC specifying what belongs into the Constitutional Court's scope of competence.

After the adoption of Article 32/A of the Constitution and of the ACC in 1989, the Constitution was amended in 1997, changing certain rules of Chapter X on the judicial structure and providing for the new text of Article 47 para. (2). According to this new provision, the Supreme Court's duty is to secure the uniformity of the judicial practice, and for this purpose it shall adopt law uniformity resolutions binding the courts.

The 1997 amendment of the Constitution affecting the chapter on the judicial structure has not provided for the Supreme Court a right to adopt a statute. No such right was vested on the Supreme Court prior to 1997 either, when the Constitution provided for a wider scope of competence for the Supreme Court, granting – in Article 47 – the Supreme Court the right to exercise directing in principle "over the judicial operation and the judicial practice of all courts". The tools of this directing in principle were the directives and the resolutions in principle that bound the courts. Although this provision has been included in the Constitution even prior to the transformation of the political regime, the amendment of the Constitution in 1989 determined the Constitutional Court's competence only in respect of statutes and did not extend it to the directives and the resolutions in principle.

As a consequence of the above, the Constitution does not support the view of extending the Constitutional Court's competence to the constitutional review of law uniformity resolutions that serve the purpose of securing the uniformity of law; not even Section 1 item *b)* of the ACC justifies the establishment of such competence. Therefore, I uphold my opinion included in my dissenting opinion attached to Decision 42/2005 (XI. 14.) AB. (ABH 2005, 504, 527-530)

2. According to the practice of the Constitutional Court followed since Decision 57/1991 (XI. 8.) AB, the Constitutional Court has no competence to review the

constitutionality of the judicial practice. (ABH 1991, 272, 277) The same practice was followed by the Constitutional Court in the reasoning of Decision 42/2005 (XI. 14.) AB, according to which it is to be decided in the concrete case under examination whether the unconstitutionality pertains to the statute or the law uniformity resolution interpreting it. Therefore, it may only be decided on case-by-case examination whether "the law uniformity resolution has an independent statutory content separating it from the statute interpreted". (ABH 2005, 504, 512, 514)

3. According to Article 47 para. (2) of the Constitution, the Supreme Court shall only assure the uniformity of the administration of justice by the courts and it may not adopt a statute.

In line with the Constitutional Court's practice developed in Decision 60/1992 (XI. 17.) AB, in the cases when an organ not empowered to adopt legislation issues a directive to be regarded as a statute on the basis of its contents the Constitutional Court shall establish the unconstitutionality of issuing it. (ABH 1992, 275, 278-279)

Therefore, in my opinion, when the contents of a law uniformity resolution are considered to represent a new statute, the Constitutional Court shall establish the unconstitutionality of issuing the relevant law uniformity resolution.

4. In the present case, as detailed in the reasoning of the Constitutional Court's majority Decision on examining the constitutionality of the CLUR, the CLUR is not deemed to extend beyond the limits of interpreting the law. I agree with the above statement. In view of the above, the petitions seeking annulment of the CLUR should have been refused – for lack of competence – under Section 28 item *b)* of amended and consolidated Decision 3/2001 (XII. 3.) Tü. by the Full Session on the Constitutional Court's Provisional Rules of Procedure and on the Publication Thereof.

Budapest, 11 December 2006

Dr. Attila Harmathy
Judge of the Constitutional Court

Dissenting opinion by Dr. László Kiss, Judge of the Constitutional Court

1. I agree with the arguments presented in points 2 and 3 of the holdings in the Decision and with the related part of the reasoning.

2. However, I do not agree with the statement made in point 1 of the holdings in the Decision rejecting the petitions and the constitutional complaints seeking establishment of the unconstitutionality and annulment of Resolution 4/2003 PJE on default in submitting a statement of claims or a request starting court proceedings.

3. According to the holdings of the majority Decision, the following text and the contents of Resolution 4/2003 PJE are not unconstitutional: "With regard to calculating the deadline for submitting a statement of claims, in the absence of a statutory provision to the contrary, the provisions under Section 105 para. (4) of Act III of 1952 on the Act of Civil Procedure (hereinafter: the ACP) shall not be applicable."
In my opinion, the Constitutional Court should have established the unconstitutionality of the quoted "interpreting" rule, and should have annulled it accordingly.
To support my arguments, let me quote the following provisions of the Constitution and of the ACP:
The relevant provision of the Constitution is the following:
"Article 47 (1) The Supreme Court is the supreme judicial authority of the Republic of Hungary.
(2) The Supreme Court shall assure the uniformity of the administration of justice by the courts and its resolutions concerning uniformity shall be binding for all courts".
The relevant provisions of the ACP are as follows:
"Section 103 (5) The deadline shall lapse at the end of the last day, however, a deadline specified in respect of filing a document or performing an act at the court shall lapse at the end of the working hours."
"Section 105 (4) The consequences of the default of keeping the deadline shall not be applicable if the document addressed to the court has been mailed as a registered mail at the latest on the last day of the deadline."

According to the majority Decision, the reasoning of the petitioners is unfounded as the law uniformity resolution acknowledges the primacy of the statutory provisions containing deadline calculations (covering the filing of claims as well) different from the one in the resolution. The main argument in the majority Decision is that in the case of a differing

statutory regulation, the provisions of the law uniformity resolution shall not be applicable. According to the Decision, "Thus, the resolution does not pre-empt the legislature's ability to freely determine the nature of the various deadlines open for filing claims. Consequently, Resolution 4/2003 PJE does not result in legal uncertainty violating Article 2 para. (1) of the Constitution by making the calculation of the deadline unforeseeable (contrary to the statute)."

I do not hold this argumentation to be convincing as "in the absence of a statutory provision to the contrary", the provisions of Resolution 4/2003 PJE shall be applicable in all cases although their contents are contrary to the rule under Section 105 para. (4) of the ACP. (According to the ACP, the basis day of calculating the deadline is the day of mailing, while according to Resolution 4/2003 PJE, it is the day of the document's receipt by the court.) In fact, Resolution 4/2003 PJE forces the future legislature to consider at all times whether it intends to adopt a regulation different from the provisions under Resolution 4/2003 PJE. When the legislation does not adopt a rule regulating otherwise, the provisions under Resolution 4/2003 PJE shall be applicable although their contents are in violation of Section 105 para. (4) of the ACP as quoted above. Practically, this law uniformity resolution forces the legislature to adopt a specific provision in order to make the relevant provisions of the ACP enforced. In my opinion, this way, Resolution 4/2003 PJE exceeds its competence granted under Article 47 para. (2) of the Constitution as provides for a rule with a normative content – contrary to the contents of an Act of Parliament in force – rather than for an interpreting rule. At the same time, this provision transforms a procedural deadline into one under substantive law, with a forfeit effect. Moreover, this "forfeiture" concerns the fundamental right to seek legal remedy as granted in Article 57 para. (5) of the Constitution, which is under direct constitutional protection: "An Act of Parliament passed by a majority of two-thirds of the votes of the Members of Parliament present may impose restrictions on the right to legal remedy in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time."

According to Resolution 4/2003 PJE, "Filing a statement of claims at the court is not an act in the lawsuit". I argue with the correctness of the above statement as the procedure starts with the submission of the statement of claims and as such it cannot be excluded from the scope of acts in the lawsuit.

With regard to legal certainty under Article 2 para. (1) of the Constitution, I have concerns about applying the formula "in the absence of a statutory provision to the contrary". Here the term "statutory provision" may only refer to a provision in an Act of Parliament as the ACP is

an Act of Parliament that may only be derogated from in another Act. In this respect, Resolution 4/2003 PJE does (or may) practically operate as an empowering provision, in particular, one that allows not only an Act of Parliament but also a "statute" in general to differ from the deadline calculation rules specified in the ACP.

In view of all the above, I do not agree with the provision reflecting the majority opinion in point 1 of the Decision.

Budapest, 11 December 2006

Dr. László Kiss
Judge of the Constitutional Court

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