

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the matter of a petition seeking posterior review of the unconstitutionality of a statute, the Constitutional Court has – with dissenting opinions by *dr. András Bragyova*, *dr. András Holló* and *dr. Péter Paczolay*, Judges of the Constitutional Court – adopted the following

decision:

The Constitutional Court establishes the unconstitutionality of Section 5 para. (5) of Act CXLI of 1997 on Real Estate Registration, and therefore annuls it as of 30 June 2007.

The Constitutional Court publishes this Decision in the Official Gazette.

Reasoning

I

The petitioner has requested establishment of the unconstitutionality and annulment of Section 5 para. (5) of Act CXLI of 1997 on Real Estate Registration (hereinafter: the ARER). The petitioner holds that the term of three years provided for the deletion of rights registered and facts recorded on the basis of an invalid document in the real estate register on behalf of a bona fide third party is unreasonably short, thus violating Article 8 paras (1) and (2), Article 9 para. (1), Article 57 paras (1) and (2) and Article 70/A para. (3) of the Constitution.

As held by the petitioner, the arguments supporting the unconstitutionality of the challenged provision are laid down in Constitutional Court Decision 53/1992 (X. 29.) AB on the annulment of Section 349 para. (2) of Act IV of 1959 on the Civil Code (hereinafter: the CC) providing for special statutes of limitation for the enforcement of damages caused in public administration competence, furthermore, in the reasoning of Decision 61/1993 (XI. 29.) AB on the annulment of Section 232 para. (1) (second part of the second sentence) of the CC. The petitioner has referred to the CC rule on the time of easement by prescription, and

the five years of statutes of limitation specified in Section 324 para. (1) of the CC, in connection with which the petitioner has argued that the legal certainty related to the real property, the right to use the judicial way, and equality before the court require the application of a longer term of enforcing the right even in the case of deletion.

II

The Constitutional Court has judged upon the petitions on the basis of the following statutes:

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

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

“Article 8 (1) The Republic of Hungary recognizes 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 9 (1) The economy of Hungary is a market economy, in which public and private property shall receive equal consideration and protection under the law.”

“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. A law 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.”

“Article 70/A (3) The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.”

2. The challenged provision of the ARER is as follows:

„Section 5 (5) Rights registered and facts recorded on the basis of an invalid document in the real estate register on behalf of a bona fide third party may not be deleted from the real estate register after three years from the date pertaining to its rank.”

III

The petition is well-founded.

The challenged provision of the ARER – subject to Section 5 para. (3) of the ARER as well – provides for a three years’ forfeit deadline to be calculated from the date applicable to the rank, after which rights registered and facts recorded on behalf of a bona fide third party on the basis of an invalid document may not be deleted. This offers protection for the acquisition of ownership, registered on the basis of an invalid document, by a bona fide third party if the party did not know, and was not expected to know, about the factual legal situation being different than shown by the data in the real estate registration, provided that the party acquired the property against a consideration.

First, the Constitutional Court has assessed the constitutionality of the challenged norm in the context of Article 57 paras (1) and (5) of the Constitution, alleged by the petitioner to be impaired by the shortness of the deadline open for the deletion of the rights registered and facts recorded, restricting the enforceability of the claim by judicial way.

The reasoning provided by the petitioner refers to the increased legal certainty that could result from the extension of the challenged deadline. As held by Constitutional Court, the petitioner has also requested establishment of unconstitutionality on the basis of Article 2 para. (1) of the Constitution – not by specifying the Article but by making reference to the text of the relevant constitutional provision. The Constitutional Court has examined whether, by providing for the forfeit deadline, the legislation offered adequate guarantee for the

originally entitled party to enforce his claim, in accordance with the principle of legal certainty rooted in the rule of law granted under Article 2 para. (1) of the Constitution.

1.1. First the Constitutional Court has reviewed when the documents supporting the registration are to be considered “valid”.

Under Section 8 of the ARER, rights and facts of legal importance may be registered and data may be amended in real estate registers – unless otherwise provided by an Act of Parliament – solely on the basis of documents specified in this Act or resolutions of authorities and court rulings of final force. As laid down in the reasoning to the Act, in the interest of legal certainty, data may only be recorded, and rights or facts may only be registered on the basis of a valid document (resolutions of authorities).

This provision follows from the principle of the public authenticity of the Real Estate Register, as laid down in Section 116 para. (2) of the CC and Section 5 para. (1) of the ARER.

The types of the documents to be used as the basis of registration are defined in Section 29 and Section 30 para. (1) of the ARER as follows: public documents, private documents of full probative force, or copies of such witnessed by a notary public, court verdict or official resolution, i.e. one-sided and two-sided legal representations or official resolutions, which substantiate the creation, modification or termination of rights.

1.2. Sections 32 to 36 of the ARER pertain to the substantial and formal requirements of such documents.

Section 32 provides for the minimum substantial requirements for all documents, while Section 33 contains further formal and substantive stipulations, requiring stricter formal conditions in the case of documents serving as the basis for the registration of certain rights. Section 34 para. (3) of the ARER refers to Section 195 of Act III of 1952 on Civil Procedure (hereinafter: the ACP) in respect of the formal requirements of a public document.

The following documents comply with the above formal and substantial conditions:

a) Under Section 196 of the ACP, a private document of full probative force – the document type, which is the basis of the registration of the most significant rights in the real estate registration procedure – shall verify upon the fulfilment of the conditions in the ACP

that the issuer of the document has made or accepted the representation contained therein or accepted the binding force thereof. With regard to the provisions under Section 197 of the ACP, private documents do not imply the presumption of authenticity, only the presumption of not being forged, i.e. – if the authenticity of the signature is beyond doubt – the document shall be considered not forged – until proving the contrary – and to be made by the person(s) who signed it.

b) Under Section 195 of the ACP, a public document is a document issued by the court, the notary public and by other authorities in the prescribed form, possessing a full probative force, i.e. it fully proves the measure or the resolution contained therein, as well as the authenticity of the data and the facts verified by the document, the making of the representation contained therein as well as the time and the manner of making the representation.

The public document bears the disprovable presumption of genuineness. Proving to the contrary – aimed at verifying that the document is not issued by the issuer, i.e. it is forged – may only be implemented if not excluded or not restricted by the Act of Parliament.

A “valid” document is first of all one with formal and substantive conditions bearing the presumption of not being forged or being genuine. This also includes the documents having formal or substantive deficiencies that can be remedied (Section 39 of the ARER) and that can be the basis of registration after being completed.

c) In another respect, a valid document is a contract or a representation based on a valid title if it fulfils the other statutory requirements.

2.1. Accordingly, an “invalid” document is any of the following:

a) A forged private document – signed by the issuer, but the text above the signature has been changed without the signor knowing and approving to it, and a false private document is one not originating from the issuer (in the latter case, the contract is deemed not to exist).

b) False or forged public document.

c) Documents in which the declaration made or the contract concluded is invalid (challengeable or void).

2.2. In the case of “invalid” documents, invalidity may not be remedied in a public administration procedure (by the land registry office); it may only be remedied by a civil court procedure.

In the case of both private and public documents, forgery or falseness may be proved in a civil procedure, but the completion with final force of the relevant criminal procedure may be the precondition of judging upon a lawsuit on the deletion.

Invalid contracts may be challenged in a civil procedure – within the deadline specified in the CC – and the voidness of the contract may be referred to at any time, and as a result, the court may order the restoration of the original state and the deletion of the invalid record made on the basis of the invalid contract.

3. In the case of a mala fide person acquiring the property, or if the acquisition is without a consideration, there is no limitation in time concerning the deletion of the rights registered and facts recorded.

The Constitutional Court has therefore examined when a record based on an invalid document may be deleted – in the case of establishing the invalidity of a document – against the person acquiring bona fide the property against due consideration.

The record may be deleted in three years upon the commencing of the deadline – the day of registering the application submitted for registration or record subject to Section 7 para. (1) of the ARER – pertaining to the deletion of the record based on the invalid document.

In several cases, this deadline may form an obstacle for enforcing the claim by the originally entitled person, as there might not be enough time to start the procedure after acquiring knowledge about the registration, or the deadline has already lapsed, or the related procedure might not be ended.

If the resolution on the registration based on the invalid document has not been served to the originally entitled person, and he has no knowledge of the supporting document as the invalidity of the document supporting the registration is related to a criminal act (e.g. “flat mafia” activity), it is uncertain when that person becomes able to start the procedure within

the three years' deadline for the establishment of the invalidity of the document (to report the crime).

Despite the fact that the originally entitled person may – without a limitation in time – refer to the voidness of the contract upon which the registration is based, the challenged provision prevents the court – after the expiry of the three years' deadline – to order the restitution of the original state of the real estate registry and to delete the record even if it establishes the invalidity of the document – contract – upon which the registration was based.

4. 1. Article 57 para. (1) of the Constitution establishes the fundamental right to turn to court, the content of which has been interpreted by the Constitutional Court in several decisions. The Constitutional Court has established that everyone enjoys a subjective right to have his rights enforced at an independent and impartial court of justice and to be a party in the court proceedings. Based on the fundamental right, the State is obliged to offer a judicial way for the settlement of rights and obligations (legal debates), including but not limited to the settlement of rights and obligations under civil law (legal debates under civil law). [Decision 9/1992 (I. 30.) AB, ABH 1992, 59, 67; Decision 59/1993 (XI. 29.) AB, ABH 1993, 353, 355; Decision 1/1994 (I. 7.) AB, ABH 1994, 29, 35; Decision 930/B/1994 AB, ABH 1996, 502, 505] As pointed out in Decision 3/2006 (II. 8.) AB, “One of the elements of the right to the judicial way is the right to turn to court in the sense that the affected person should be able to have his case judged upon by the court without being prevented by legal, practical or abusive obstacles.” (ABK February 2006, 51, 64)

Following from the forfeit nature of the challenged provision, if the originally entitled person fails – due to a cause attributable to him – to start the civil or criminal procedure related to the invalidity of the document, or if the procedure is under way but the court fails to pass a judgement with final force within three years, the rights registered and facts recorded may not be deleted. As interpreted in the judicial practice, this norm allows the deletion of the rights registered and facts recorded even after the expiry of three years if the lawsuit on the deletion has been started in due time. [The opinion of the Supreme Court's Public Administration Board on actual judicial questions (BH 8/2000) and the opinion of the Supreme Court's Civil Board on the relation between the lawsuits aimed at the establishment of the invalidity of real estate transfer contracts and lawsuits related to the real estate registration (BH 9/2005) However, the challenged deadline does restrict the right granted in

Article 57 para. (1) of the Constitution, as it raises obstacles or prevents the originally entitled person to make the record based on the invalid document deleted in a lawsuit started after the expiry of the short deadline.

According to the consistent practice of the Constitutional Court regarding the restriction of a fundamental right, the legislation may only use this option if the protection or the enforcement of another fundamental right or the protection of other constitutional objectives may not be achieved any other way, and the restriction shall only reach the extent absolutely necessary for the desired aim. [Decision 7/1991 (II. 28.) AB, ABH 1991, 22, 25) As pointed out by the Constitutional Court in Decision 20/1990 (X. 4.) AB about the requirements of proportionality for norms restricting fundamental rights, “[...] the importance of the desired objective must be proportionate to the restriction of the fundamental right concerned. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose. If the limitation adopted is unsuitable to achieve the purpose, the violation of a fundamental right may be established.” (ABH 1990, 69, 71) Under Article 8 para. (2) of the Constitution, the rules pertaining to fundamental rights shall be determined in Acts of Parliament which, however, may not restrict the essential contents of fundamental rights. Consequently, the Constitution does not exclude the statutory provisions restricting the right to start a court procedure, but the constitutionality of such regulations requires the restriction to be absolutely necessary and proportionate to the desired objective. (Decision 2218/B/1991 AB, ABH 1993, 580, 582) With regard to the fundamental right to turn to court, Decision 930/B/1994 AB provides that – subject to Article 8 para. (2) of the Constitution – this does not imply an unrestrictable subjective right to start a lawsuit. “However, an Act of Parliament may not impose any limitations on the essential contents of fundamental rights, and the restriction must be necessary and proportionate to the desired objective.” (ABH 1996, 502, 505)

Therefore, the Constitutional Court has examined what made the restriction of the fundamental right granted in Article 57 para. (1) of the Constitution necessary, and whether the level of the restriction was proportionate to the constitutional objective.

4.2. Under Section 5 paras (1) to (3) of the ARER, the implication of public authenticity – which means an authentic demonstration of the existence of the registered rights and the recorded facts – regarding the present matter is that in the case of deleting the rights and facts, there is a presumption about no other rights existing with regard to the real estate than the

ones recorded in the registry. The legislation safeguards the acquisition of property by anyone who concludes a contract or makes a representation bona fide, trusting the real estate registration.

Nevertheless, the mere public interest in the real estate registration is not considered to be an objective justifying the restriction of the enforcement of the rights of the originally entitled person against the acquisition of rights – potentially related to a criminal act – by a bona fide third person, as the third person may not acquire ownership by trusting a wrongful record based on an invalid document, i.e. there is no constitutional right to be protected that would require the restriction of the constitutional right of the original owner.

In the opinion of the Constitutional Court, the only constitutionally acceptable reason of restricting the right to turn to court – in respect of the public authenticity of the real estate registration – is legal certainty resulting from the rule of law.

At the same time, the Constitutional Court holds the level of the restriction to be disproportionate to the desired objective. The respective regulation focuses on the interests detailed above, by laying great emphasis on protecting the interests of the person entitled by the recorded right, without regard to the originally entitled person whose ownership right or other registered right has been deleted on the basis of the invalid document. This way, the requirement of proportionality has not been fulfilled: the means chosen to reach the desired objective – allowing the deletion within a forfeit deadline of a short time – restrict the right to enforce by the originally entitled person the rights granted in Article 57 para. (1) of the Constitution. Thus, the right to property granted in Article 13 para. (1) of the Constitution is indirectly impaired when the original owner's claim to his property vanishes, in the event of registering a right on the basis of an invalid document. Similarly, the right to property is restricted when a recorded burden may not be deleted due to the lapse of time.

Consequently, the provision restricts the originally entitled person to an extent more than necessary in exercising his constitutional fundamental right by way of applying the deletion deadline as a general rule, allowing no exception; in other words, the aim, i.e. legal certainty related to the real estate registration is not in proportion with the violation of the right sustained by the originally entitled person when he cannot enforce the right to start a lawsuit for no fault of his own.

Accordingly, as held by the Constitutional Court, there is no fundamental right or a constitutional value the protection of which would justify such an extent of restricting the

enforcement of rights – in particular in respect of registrations based on forged or false documents – thus preventing the possibility of settling the legal debate after the expiry of three years.

Therefore, the challenged provision constitutes a violation of Article 57 para. (1) of the Constitution and it results in legal uncertainty thus impairing the requirement of the rule of law enshrined in Article 2 para. (1) of the Constitution.

As laid down in Constitutional Court Decision 44/1997 (IX. 19.) AB with regard to Article 2 para. (1) of the Constitution, “According to Article 2 para. (1) of the Constitution, the Republic of Hungary is an independent democratic state under the rule of law. [...] In the Constitutional Court's interpretation, legal certainty is closely interconnected with the constitutional law doctrine of the rule of law, as an essential element of it. Legal certainty requires of the State and the legislature that the law as a whole as well as its specific parts and provisions be clear, unambiguous, interpretable and their consequences foreseeable by those to whom the laws are addressed. The grave violation of the above respect of legal certainty is at the same time deemed to be an impairment of the rule of law guaranteed in Article 2 para. (1) of the Constitution. At the same time, the principle of the rule of law is not a mere auxiliary rule, nor a mere declaration, but an independent constitutional norm, the violation of which is itself a ground for declaring the unconstitutionality of a statute [Decision 11/1992 (III. 5.) AB, ABH 1992, 77; Decision 21/1993 (IV. 2.) AB, ABH 1993, 172].” (ABH 1997, 304, 308)

In view of the above, the Constitutional Court has – in accordance with Section 43 para. (4) of Act XXXII of 1989 on the Constitutional Court (hereinafter: the ACC), in the interest of legal certainty – annulled Section 5 para. (5) of the ARER as of 30 June 2007. Annulment with *pro futuro* effect serves the purpose of enforcing legal certainty, i.e. providing enough time for the legislation to elaborate the preconditions for constitutional regulations.

According to the established practice of the Constitutional Court, when the statute challenged in the petition or a part of it is deemed to violate a provision in the Constitution and, therefore, it is annulled, the Constitutional Court does not examine the violation of any further constitutional provisions regarding the statutory provision already annulled. [Decision 44/1995 (VI. 30.) AB, ABH 1995, 203, 205; Decision 4/1996 (II. 23.) AB, ABH 1996, 37, 44; Decision 61/1997 (XI. 19.) AB, ABH 1997, 361, 364; Decision 15/2000 (V. 24.) AB, ABH

2000, 420, 423; Decision 16/2000 (V. 24.) AB, ABH 2000, 425, 429; Decision 29/2000 (X. 11.) AB, ABH 2000, 193, 200]

Having annulled the challenged provision with regard to Article 2 para. (1) and Article 57 para. (1) of the Constitution, the Constitutional Court has refrained from review on the merits in respect of Article 8 paras (1) and (2), Article 9 para. (1), Article 57 para. (5) and Article 70/A para. (1) of the Constitution.

The publication of this Decision in the Official Gazette (*Magyar Közlöny*) is based on Section 41 of the ACC.

Budapest, 19 December 2006

Dr. Mihály Bihari
President of the Constitutional Court

Dr. Elemér Balogh
Judge of the Constitutional Court, Rapporteur

Dr. András Bragyova
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Judge of the Constitutional Court

Dr. István Kukorelli
Judge of the Constitutional Court

Dr. Péter Paczolay
Judge of the Constitutional Court

In witness thereof:

Dissenting opinion by Dr. Péter Paczolay, Judge of the Constitutional Court

I do not agree with establishing the unconstitutionality of Section 5 para. (5) of the ARER. I hold the regulation protecting the interests of the bona fide party acquiring the ownership of a real estate not to violate the fundamental right to property or the right to the judicial way.

1. According to Constitutional Court Decision 64/1993 (XII. 22.), the contents of property protected as a fundamental right must always be understood within the framework of the prevailing public and (constitutional) private law restrictions. (ABH 1993, 373, 379)

As pointed out in another Decision by the Constitutional Court, Article 13 of the Constitution grants the right to property against the State and protects it – with the requirement of value guarantee and the criterion of the proportionality of restriction in “public interest” [Decision 64/1993 (XII. 22.) AB, ABH 1993, 380-382] – as a fundamental right against the State. (Decision 800/B/1993. AB, ABH 1996, 422)]

As follows from the above, the protection of property under Article 13 of the Constitution may not be enforced in respect of the regulations protecting the owners against each other. In such cases, one should examine whether the relevant regulation is able to create a balance between the positions of the subjects of the legal relation concerned whose interests may in some cases be differing. [Decision 3/2006 (II. 8.) AB, ABK February 2006, 51, 59]

The rule laid down in Section 5 para. (5) of the ARER has been in existence since the year 1855, when land registry was introduced, and the same provision can be found in the proposed normative text of the new Civil Code under elaboration. (Fourth Book, Right *in rem*, Section 173)

Section 5 para. (5) of the ARER is contained in the principles of real estate registration under the rules pertaining to public authenticity. An interesting question related to the public authenticity of real estate registration is the solution chosen by the legislation for the settlement of any conflict between the interests of a bona fide person trusting the real estate registration and the interests of the original owner.

An absolute and unconditional protection of the bona fide person acquiring ownership would be a statutory protection right from the registration against anyone, including the original owner. However, such an enforcement of the requirement of the right to legal certainty would be one-sided. As the real estate registration has only limited possibilities to examine the validity of the relevant record – and of the supporting document – upon which the trusting bona fide third person may request the registration of his ownership, the instant application of the effect of protection is not justified by the interest of protecting the rights of the original owner.

The unconditional enforcement of the fundamental right to property of the original owner would require that on the basis of a record founded upon a document being defective for any reason, the person registered as owner in the real estate registration should only acquire property according to the general rules of easement by prescription – i.e. after fifteen years of uninterrupted possession. This solution would be unfair for the bona fide party acquiring ownership under the real estate registration upon trusting the real estate registration, and it would neglect the requirements of legal certainty and the certainty of the trade of real estates; in fact this is the situation resulting from the annulment of Section 5 para. (5) of the ARER.

The solution chosen in the Act of Parliament is to postpone the application of the protective effect for a definite period of time after the registration. The regulation is designed to secure the equalization of the interests of the bona fide person acquiring ownership (security of trade) and the interests of the original owner. The Act of Parliament provides for a subjective deadline of sixty days from the service and an objective deadline of three years from the date of submitting the document the registration was based upon. In the present case, the latter deadline is under examination.

When the Constitutional Court examines whether Section 5 para. (5) of the ARER violates Article 13 of the Constitution, it may only form an opinion on the appropriateness of the equalization of interests by the ARER, i.e. whether the regulation is suitable for the creation of a balance between the different positions – determined by their differing interests – of the original owner and the bona fide person trusting the registration.

In my opinion, the inappropriateness of the rule under Section 5 para. (5) of the ARER to reach this may not be established in the present case – either on the basis of the term of three

years or on the basis of its forfeit character or due to any other specific condition found in the challenged regulation. Therefore, Section 5 para. (5) of the ARER is not in violation of Article 13 of the Constitution.

2. Neither does the challenged provision on easement by prescription under the real estate registration restrict unconstitutionally the right to the judicial way, as it merely provides for limitations upon the potential judgement on the merits by the court – under certain circumstances – by regulating the cases when a registered right may not be deleted after the expiry of three years.

In addition to procedural guarantees, Article 57 para. (1) of the Constitution contains the right to turn to court. As interpreted by the Constitutional Court, based on this fundamental right, “the State is obliged to offer a judicial way for – including but not limited to – the settlement of rights and obligations under civil law (legal debates under civil law).” [Decision 59/1993 (XI. 29.) AB, ABH 1993, 353, 355]

In the scope examined, the right to turn to court in lawsuits for deletion is restricted not by Section 5 para. (5) of the ARER but by Section 62 para. (2) of the ARER among the rules pertaining to legal remedies, and the rules on lawsuits for deletion and for correction. Against a bona fide person acquiring a right by way of further registration, trusting the validity of the former registration, the lawsuit for deletion may be filed in sixty days upon service if the resolution on the originally invalid registration has been served to the injured party. In the case of no service, the lawsuit for deletion may be started in three years’ time upon registration.

The constitutionally acceptable restriction of the right to turn to court requires a constitutional objective, and the level of the restriction must be reasonably proportionate to this objective. In the present case, the aspects of legal certainty linked to the rule of law justify the restriction of the right to file a claim.

As established by the Constitutional Court in Decision 935/B/1997 AB (ABH 1998, 765) – in a case which was not identical but similar in constitutional aspects – when reviewing the unconstitutionality of the provisions under Section 45 para. (1) of Act VI of 1988 on Companies, the provision in the relevant Act whereby the deadline of 30 days for seeking

judicial remedy against resolutions by the company was to be calculated from the “adoption of the resolution” was not in violation of Article 13 para. (1) and Article 57 para. (1) of the Constitution. According to the decision, the Constitutional Court formed this opinion “when limited to the aspects of economic law, based on the requirements of the security of trade and the protection of the creditors, and – in constitutional aspects – the primacy of legal certainty as the constitutional manifestation of the latter two criteria.”

According to another decision, the mere fact of having a sixty days’ deadline for filing a claim is not to be held unreasonable based on its content, and it does not violate Article 57 para. (1) of the Constitution. [Decision 3/2006 (II. 8.) AB, ABK February 2006, 51, 65]

The Constitutional Court has rejected establishment of the unconstitutionality of Section 43 paras (5) and (6) of Act IV of 1952 on Marriage, Family and Guardianship (hereinafter: the AMFG) based on a petition alleging the unconstitutionality of the one-year deadline for challenging the presumption of fatherhood and the calculation method thereof. According to the decision, the deadline specified in the challenged provisions of the AMFG and the forfeit nature thereof do, indeed, implement the objective under Article 67 of the Constitution by providing for a limitation in time for the questionability of the existing family status in order to secure undisturbed existing family circumstances. (Decision 982/B/1998 AB, ABK July-August 2006, 576, 578)

The Constitutional Court has also rejected the petition seeking review of the unconstitutionality of the six months’ forfeit deadline specified in Section 583 para. (1) of Act XIX of 1998 on Criminal Procedure (hereinafter: the ACP) for filing a claim for damages on the basis of Section 580 para. (1) and Section 581 para. (1) of the ACP. The reasoning of the decision refers to Decision 1167/B/1997 ABH (ABH 2004, 1179), Decision 53/1992 (X. 29.) AB (ABH 1992, 261, 264) and Decision 921/B/1992 AB (ABH 1994, 554, 555-556), by establishing the following: although the constitutional right to use the court must be enforced the same way in the legal relations under civil law in the case of legal relations of the same content and subject, the determination of the statutes of limitations is not directly related to any of the rules of the Constitution. The statutes of limitations is determined by the legislation on the basis of the individual features of the specific legal relations, and it may only raise constitutional concerns in exceptional extreme cases. (Decision 3/D/2005 AB, ABK September 2006, 711, 713)

In the present case, in the review of the challenged provisions of the ARER, the judicial practice to be followed is to be taken into account as well. Accordingly, if the lawsuit for deletion takes place within three years from registration, the rights registered and the facts recorded may be deleted even after the expiry of three years from the date pertaining to its rank, i.e. the deadline specified in Section 5 para. (5) of the ARER does not bind the court in a lawsuit for deletion (see the opinion of the Supreme Court's Public Administration Board on actual judicial questions, Court Reports 8/2000).

In line with the judicial practice, the term “trusting the real estate registration” as found in the statute under review includes the subjective element of good faith according to which the party is not aware of the real legal situation being different from the one recorded in the real estate registration and he is not even expected to know it. However, an acquiring person hoping that the real estate registration shall overpower the situation he knows of shall not be considered to act bona fide. In respect of due circumspection, for acquiring knowledge about the contents of the real estate registration, it is absolutely necessary to observe the titles pages, the real estate registry map, the archive of documents when necessary (especially when having a marginal note on the titles pages), and – when some of the notes raises concerns – the list of deleted records (see the opinion of the Supreme Court's Civil Board on the relation between the lawsuits aimed at the establishment of the invalidity of real estate transfer contracts and lawsuits related to the real estate registration (Court Reports 9/2005).

All the arguments that might be raised in the context of Section 5 para. (5) of the ARER about the conflict between legal certainty and the fundamental right to property shall apply to the restriction of the right to the judicial way. In the present case, the weight of restricting the right to the judicial way – as compared to the desired objective and the limited enforcement of legal certainty – is not disproportionate, and the level of the restriction is reasonably proportionate to the desired objective. Accordingly, Section 5 para. (5) of the ARER is not in violation of Article 57 para. (1) of the Constitution, and therefore the Constitutional Court should have rejected the petition.

Budapest, 19 December 2006

Dr. Péter Paczolay
Judge of the Constitutional Court

I second the above dissenting opinion.

Dr. András Bragyova
Judge of the Constitutional Court

Dr. András Holló
Judge of the Constitutional Court

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