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East Europe Recent Legislation

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15 August 1992

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Fuel, Energy Consumption Reduction Efforts
*92CH0721C Prague HOSPODARSKE NOVINY
in Czech 2 Jun 92 p 8*

[Item by the Czech Republic Ministry of Economic Policy and Development and the Ministry of Finance: "The Principles of State Participation in Reducing the Consumption of Fuels and Energy in Apartment Houses and Apartments in the Czech Republic for 1992"]

[Text] The CR [Czech Republic] Ministry of Economic Policy and Development and the CR Ministry of Finance have established the following principles (hereinafter called "principles") for using CR state budget resources to finance:

- a) Technical measures in apartment houses and in apartments aimed to reduce the use of fuels and energy;
- b) The activities of coordination, information, and consulting services in the area of saving fuel and energy in apartment houses and apartments (EKIS A-type [expansion not given] centers);
- c) Model projects to verify technically progressive solutions to ensure saving in fuel and energy in apartment houses, apartments, and public facilities;
- d) the use of renewable and nontraditional sources of energy.

I. Joint Provisions

1. State support may be granted to the owners of buildings, EKIS A-type centers, and business entities producing energy through the use of renewable and nontraditional sources (hereinafter called "organizations"), which have their headquarters in the territory of the Czech Republic.
2. State support is designated for the introduction of advanced and economically effective measuring and control technologies in the sphere of heat and hot-water consumption, increased use of nontraditional and renewable sources of energy, and improvement of heat insulation features in buildings.
3. State support in accordance with these principles will not be granted if the process mentioned below is not observed or if contractual obligations toward the state, which were accepted in this connection, are not met. Organizations will be obligated to return state support granted within the framework of the selection process if they interrupt this activity for more than three months during the period the support is being provided or during the period during which they assumed the liability to execute the activity, or if serious shortcomings are discovered in their activities on the basis of justified complaints by customers or a statement submitted by coordination, information, or education centers.
4. The validity of these principles is limited to the year 1992, which does not affect contractual obligations of

the state toward organizations that have arisen due to these principles. More precise details about conditions for 1993 will be executed no later than 31 December 1992.

II. Support Provided to Owners of Apartment Houses

1. State support may be granted to owners of apartment houses when they are purchasing and installing control and measuring technologies, or improving the heat insulation qualities through partial modification of the buildings (additional insulation in the walls, roof, window openings, etc.), under the following conditions:

1.1. State support will amount to 75 percent of the interest payment on a loan (credit), granted to the owner of the building by a financial institution for the above-mentioned activities.

1.2.a. The amount of such a subsidized loan (credit) may not exceed 10,000 Czech korunas (Kcs) per apartment unit.

1.2.b. The period during which the loan (credit) may be used is a maximum of 12 months from signing the contract on the provision of nonreturnable financial aid to pay interest on the loan (credit).

1.3. In granting the state support, priority will be given to multi-story apartment buildings constructed using the panel technology and included in revision CSN 73 05 04, which are supplied from central heat sources.

1.4. Materials and products used for additional heating, or for the measurement or control of heat and TUV must be certified by the state testing office as suitable in accordance with Law No. 50/1976 Sb. [Collection of Czechoslovak Law] (Construction Law), or as meeting measuring prerequisites in accordance with Law No. 505/90 Sb.

1.5. The supply company must guarantee a high quality and long durability of the technologies used and, in the case of technologies under license, certification from the foreign supplier must be provided about the training of the workers in this technology.

1.6. State support does not apply to buildings for which financial resources were already provided from the state budget in 1991 to execute the above-mentioned activities. II.2. Owners of apartment houses may be granted state support when they are installing complex additional heating (the whole building) under the following conditions:

2.1. State support will amount to 75 percent of the interest payment on a loan (credit) granted to the owner of the building by a financial institution for the above-mentioned activity.

2.2.a. The amount of the loan may not exceed Kcs40,000 per apartment unit.

2.2.b. The time the loan (credit) may be used is a maximum of 24 months from signing the contract on the provision of nonreturnable financial aid to pay interest on the loan (credit).

2.3. The apartment building had been built before 1970 (e.g., system types T1-T22, G40-G59, T01B-T08B, HK 60, HK 65, PS 61, etc.).

2.4. Materials and products used for additional heating must be certified by the state testing office as suitable in accordance with Law No. 50/1976 Sb. [Collection of Czechoslovak Law] (Construction Law).

2.5. The supply company must guarantee a high quality and long durability of the technologies used and, in the case of technologies under license, certification from the foreign supplier must be provided about the training of the workers in this technology.

2.6. The owner of the building must ensure the static determination of the tolerance of the building shell (including the roof, balconies, arcades) in respect to the possible increased weight of the additional heat insulation.

Applications for state support for the loans (credit) processed according to the above-mentioned formula may be sent to the following address: CR Ministry for Economic Policy and Development, Department of Fuel and Energy Policy, Vrsovicke trida 65, 101 60 Praha 10.

More details will be provided by the employees of the MHPR CR, Prague (tel. 712 2468, 712 2774).

Selection Process

III.1. Public Selection Process for Model Projects

The Czech Republic Ministry for Economic Policy and Development stipulates:

Introductory Provisions:

1. The public selection process implements CR Government Resolution No. 365/92, dated 20 May 1992 on the principles of state participation in reducing fuel and energy consumption in apartment buildings, apartments, and public facilities.

2. Participants in the Public Selection Process: Only owners of buildings, and/or organizations authorized by them, who have their domicile in the territory of the Czech Republic may take part in the selection process and apply for state support.

The Objective of the Public Selection Process:

3. The objectives of the public selection process are model projects for multistory apartment buildings, for public facilities (health service, education, welfare, etc.), including facilities that supply them with heat. Facilities are to be understood up to the level of the transfer station or the housing or district furnace room. Model projects must aim to verify measures to reduce the consumption

of fuel and energy, which have been mastered technically and technologically and which will not cause insoluble technical problems during implementation and operation. The basic aim is not only a successful demonstration but, primarily, support for and distribution of a successfully demonstrated technology throughout the Czech Republic.

The following measures are expected within the framework of model projects:

- The introduction of controls, adjustments, and improvement of heat insulation of the pipes and tanks in the furnace rooms and transfer stations

- Measurement of the supplied heat for heating and for the production of hot utility water at the heat source or in the transfer station and in the building

- Introduction of controls in the building (zone, individual)

- Control of the heating system (heating and hydraulic stability)

- Additional insulation of walls, roofs, and facade casing

- Reduction of infiltration through filling in openings

- Improvement of the technological heat qualities of the filling in openings

- Improvement of the energy efficiency of appliances

- Energy-conscious running and maintenance of buildings

- Other measures (e.g., utilization of nontraditional energy sources, etc.).

Conditions for Accepting a Proposal:

4.1. A condition for including the proposal in the selection process is the assumption that the implementation will be started in 1992 and finished by 30 September 1993.

4.2. The proposal must include:

- The name of the model project

- The owner of the item

- The location

- A brief summary of the present state of construction of the item and its technological equipment

- A proposal for the measure or group of measures to reduce the consumption of fuel and energy. Technical description, investment costs, technical and economic evaluation including expected savings in fuels and energy and time of return of the investment

- A brief evaluation of the heat source (transfer station) primarily from the aspect of control and measuring

equipment and an evaluation of the losses of secondary heat through the heating networks (if there are any)

- Guarantees for the project and implementation of the measures (including a static determination of the tolerance of the building shell, the roof, balconies, arcades if there is additional heating). The signature of the consumers protection group if it goes into effect
- Working schedule for the model project
- The method of evaluating the model project (description of the reference item, time of measurement, ensurance of measurement, and its evaluation)
- Method of utilizing conclusions obtained in repeated implementations and to support the development of the enterprise market (owners of buildings)
- Proposal for financing the model project with proof that financial resources have been secured over and above the framework demanded by state aid.

Types of State Participation:

5. Selected model projects will be granted state support:
- a) through a direct grant for a part of the project
 - b) through a repayable financial loan with the interest paid
 - c) through a direct grant for part of the project and a repayable financial loan with the interest paid.

Organizational Guarantees:

6.1. Deadlines:

- Submission of proposal—by 3 June 1992;
- Execution of selection and announcement of the results of the competition—within 30 days of the termination of the selection process.

6.2. Persons submitting a proposal for a model project must send it in triplicate to the address of the CR Ministry of Economic Policy and Development.

6.3. Information and consultation during the formulation of the proposal for the offer will be provided by the employees of the MHPR CR.

6.4. A commission appointed by the CR minister of economic policy and development will make the decisions on the acceptance of submitted proposals.

6.5. Persons who submit a proposal for a model project that is accepted, will be notified of the type and amount of the state participation, detailed conditions for granting it, and instructions for further procedures.

6.6. All proposals for model projects will be considered to be trade secrets.

III.2 Support Provided for the Use of Renewable Resources and Nontraditional Sources of Energy

1. Applicants who guarantee the acquisition of primarily electric power through the use of renewable and nontraditional sources of energy may be granted a state contribution in the form of a repayable, no-interest loan with due date up to three years from the start of production of the equipment. The contribution will be provided in the form of a grant to the account of the applicant. The amount of and conditions for the contribution provided will be set on the basis of an expert evaluation of the project, whereby consent for the construction of the facilities will be demanded in the form of a construction or reconstruction permit.

2. The application form, which is printed as a supplement to the Principles, may be submitted no later than 3 July this year in triplicate to the CR Ministry of Economic Policy and Development, Department of Fuel and Energy Policy, Vrsovicke trida 65, 101 60 Praha 10.

3. More detailed information and consultation on formulating the proposal will be provided by the employees of the MHPR CR department of fuel and energy policy, tel. 712 2953.

4. A commission appointed by the CR minister of economic policy and development will decide on the acceptance of the submitted proposals.

5. Applicants, who will be selected to obtain a state contribution will be notified of the type and amount of state participation, detailed conditions for granting it, and instructions for further procedures.

6. For the purposes of these principles, primarily water, wind, sun, and geothermal energy are considered to be renewable and nontraditional energy sources.

Decision on Customs Duties, Adequacy of Notice
92P20301A

[Editorial Report] Budapest *MAGYAR KOZLONY* in Hungarian No. 44 on 30 May on pages 1,606-1,609 presents the full text of a Constitutional Court decision involving an effort by customs authorities in the first and second instances to collect customs duties pursuant to a decree promulgated jointly by two ministries that took force on the same day the customs duty was to be collected. The court struck down as unconstitutional the decree because it took effect on the day of its publication, thus failing to provide adequate public notice to affected parties. In its arguments the court said that interested parties must be provided "adequate" time to familiarize themselves with legal provisions that have an effect on their conduct, that enforcement authorities must be given time to prepare themselves for the enforcement of new legal provisions, and that affected persons must be given an opportunity to decide how they should comply with new legal requirements. The court went on to condemn the practice followed in the previous system in which legislative and governmental pronouncements disregarded elementary rights specified by the constitution and in laws. At the same time, the court pointed out that it was impossible to define the exact period of time that should constitute "adequate" notice, because of the great variety of potential cases.

Budapest *HETI VILAGGAZDASAG* in Hungarian on 30 June 1992 on page 18 reports that the Constitutional Court manifested similar sensitivity toward basic tenets of administrative law when it struck down a provision of the local government law that "in justifiable cases" permits local legislative bodies to exclude the public from their sessions. The court said that until a new and constitutionally sound provision replaces the unconstitutional provision, all local legislative sessions, as well as the minutes of such sessions, must be open to the public.

Decision on President's Appointing Power

92CH0824B Budapest MAGYAR KOZLONY
in Hungarian No 59, 10 Jun 92 pp 2,025-2,034

[Constitutional Court Decision No. 36 of 10 June 1992]

[Excerpt] For the Hungarian Republic!

In response to the prime minister's proposal to interpret the Constitution, the Constitutional Court has reached the following decision, with separate opinions filed by Constitutional Court Justices Dr. Geza Kilenyi and Dr. Imre Voros.

Based on the interpretation of Paragraph 30/A Section (1) Subsections (h), (i), and (m), and Paragraph 30/A Section (2) of the Constitution concerning the appointment power of the president of the Republic relative to certain problems of constitutional law revealed by the questions to which answers were sought by the prime

minister and which could be answered by an abstract interpretation of the Constitution, the Constitutional Court finds as follows:

1. Provided that legal requirements for appointment, as established by law, exist, the president of the Republic may refuse to make an appointment if he has substantial reason to believe that the proposed appointment would gravely disturb the democratic functioning of the state organization. From the latter standpoint, the president of the Republic may examine solely the personal aspects of the proposal. The conditions for the constitutionally sound exercise of the appointing power must not be interpreted broadly.

In exercising his appointment power, the president of the Republic may determine that a given appointment would gravely disturb the democratic functioning of the state organization if he has substantial reason to believe that the organ to which the person is proposed to be appointed would become incapable of performing its basic functions, including the institutional protection of fundamental rights related to the functioning of the organ, as a result of appointing the person recommended.

The president of the Republic may refuse to make an appointment if one could expect that the appointment would constitute an immediate and direct threat to the state organ; one that could not be prevented otherwise. An appointment must not be refused for the elimination of some abstract dangers, which are also independent from the person proposed to be appointed, which present themselves as a result of omissions in legal provisions relative to the democratic functioning of the state organization, or because of a lack of legal guarantees. The Constitution provides other means to the president of the Republic to remedy such problems.

2. The president of the Republic must not establish conditions in addition to those provided by law relative to appointments and dismissals.

3. The president of the Republic is obligated to refuse an appointment if the preconditions established by law have not been complied with. By logic, conditions for refusing an appointment on substantive grounds may be applied to dismissals if, without an intervening appointment, the authority and function of the dismissed person would be exercised by a person, in regard to whom the conditions for refusing the appointment prevail.

4. The decision to refuse a proposed appointment must indicate the legal condition not met for which the president of the Republic rejected the appointment, and it must indicate the facts which provided substantial grounds for the president of the Republic to believe that making the proposed appointment would gravely disturb the democratic functioning of the state organization.

The Constitutional Court rejects the third subquestion of the first question in full, and the first and second subquestions of the first question to the extent that those

subquestions cannot be responded to in the form of an abstract interpretation of the Constitution.

The Constitutional Court publicizes this decision in *MAGYAR KOZLONY*. [passage omitted]

Decision on Trade Union Property

92P20291A Budapest *MAGYAR KOZLONY*
in Hungarian No 44, 30 Apr 92 pp 1,597-1,604

[Summary] The National Federation of Hungarian Trade Unions [MSZOSZ]—established by changing the name of the communist system's National Council of Trade Unions [SZOT]—and other, unnamed organizations petitioned the Constitutional Court to declare unconstitutional and to retroactively annul Law No. 28 of 1991 concerning the protection of trade union property, and regarding equal opportunity for organizing and for the organizational functioning of employee organizations. The court upheld the law as a whole and, with the exception of two provisions, each individual provision of the law. See IV below for the voided provisions, and for the effect of voiding these provisions.

I.

The law applies to all trade unions. It requires trade unions to account for their property; defines the scope of property to be accounted for; prohibits the sale or encumbrance of certain types of property; declares that all property subject to reporting must be regarded as property to be distributed among all trade unions; establishes the Organization for the Temporary Management of Property [VIKSZ] and vests VIKSZ with use and dispositional rights concerning the property until final distribution of property among trade unions is accomplished; defines the organizational structure and authority of the VIKSZ Board of Directors; and provides for the temporary distribution of property until the National Assembly creates a separate law providing for the permanent distribution of trade union property.

II.

Petitioners asserted that:

—The law conflicts with the International Agreement on Civil and Political Rights and with the International Agreement on Economic, Social, and Cultural Rights adopted by Hungary in 1976, and further, with International Labor Affairs Agreement No. 87 concerning the right to associate and to organize, and with International Labor Affairs Agreement No. 98 concerning the right to organize and the application of collective bargaining principles, and that in this respect the law also conflicts with Paragraph 7 Section (1) of the Constitution ["The legal system of the Hungarian Republic shall accept the generally recognized rules of international law, and shall ensure harmony between legal obligations agreed to under international law, and domestic law"], which states that the legal system

of the Hungarian Republic adopts the generally recognized rules of international law and guarantees harmony between international legal obligations and domestic law;

—Provisions that regard former SZOT and subordinate trade union property as divisible, grant temporary use rights to VIKSZ, prohibit the sale or encumbrance of property, and hold out the prospect of a final settlement of property distribution, conflict with Paragraph 13 of the Constitution ["(1) The Hungarian Republic shall ensure the right to own property. (2) Property may be expropriated only exceptionally and only in the public interest, in cases and in a manner defined by law, along with full, unconditional, and immediate indemnification"] concerning the right to own, and the protection of property;

—By settling a dispute over property by legislative means—a matter to be resolved within the judicial domain—the law violates the constitutional principle of separation of powers and denies to trade unions the right to legal recourse guaranteed in Paragraph 57 Section (5) of the Constitution ["All persons in the Hungarian Republic shall be entitled to legal recourse pursuant to law, against decisions rendered by courts, state administrative organs, or other authorities which violate a person's rights or just interest"];

—The law constitutes an unconstitutional expansion of the constitutional authority of the State Accounting Office [ASZ] and disregards the two-thirds majority vote requirement related to legislation affecting the ASZ;

—The law violates provisions of the Civil Code of Laws concerning foundations, and provisions of the corporate law of 1988 when it establishes accountability requirements for trade union property contributed by trade unions to foundations and businesses;

—The law makes an unwarranted distinction between various trade union federations in violation of Paragraph 70/A of the Constitution ["(1) The Hungarian Republic shall observe the human and citizen rights of all persons staying within its territory, without any discrimination, notably, without distinguishing on the basis of race, color, gender, language, religion, political or other view, national or social origin, property, birth, or other condition"], and violates Paragraph 4 of the Constitution ["Trade unions and other interest groups shall protect and represent the interests of employees, cooperative members and entrepreneurs"] when it prescribes rules for participation by trade unions in VIKSZ;

—The law establishes vague requirements concerning choices to be made between trade unions by members, and that these provisions violate citizens' rights to organize, as guaranteed in Paragraphs 7 and 63 of the Constitution ["Paragraph 63. (1) Based on the right to assemble, all persons in the Hungarian Republic shall

have a right to establish or join organizations established for purposes not prohibited by law"] and in international agreements; and

—The legislative process leading to the enactment of the law violated the legislative law of 1987.

III.

The court refused to consider arguments based on international agreements for lack of jurisdiction.

The court rejected all arguments challenging the constitutionality of the law as a whole and held that

—The purpose of the law is constitutional because it intends to clarify the unsettled legal situation of trade union property ownership that threatens the functioning of trade unions and prevents the constitutional right to freely organize;

—The intent to redistribute former trade union property of uncertain origin is constitutional because it is meant to protect such property and to thereby enable the enforcement of the general right to organize, and the specific right of interest groups to organize, as guaranteed in Paragraph 63 Section (1) and Paragraph 70/C Section (1) of the Constitution ["All persons shall have the right to establish organizations with others, or to join organizations for the protection of their economic and social interests"]. In this regard the court also made reference to its previous decision in which it held that it was appropriate for the legislature to consider the historical situation in which the system change occurred;

—Petitioners' arguments asserting that the law constituted an unwarranted interference with the autonomy of trade unions and a grave violation of trade union rights to own property and other rights related to property were inappropriate, because

—Of SZOT's origins and monopolistic position in the past system, its close linkage to the state and performance of state functions, the forced membership in SZOT and the lack of an alternative to SZOT in the past, and the sources and purposes of SZOT property creating a constraint to join the organization in exchange for certain benefits (e.g. recreation);

—Of the disintegration of SZOT following the system change due to a mass exodus of members and the evolution trade union pluralism, causing uncertainty in property relations and a need to protect the property;

—Petitioners' assertions to the effect that legal continuity exists between SZOT and MSZOSZ, and that MSZOSZ is the legal successor to SZOT lack factual and legal foundations due to various procedural flaws in the course of transition at SZOT, MSZOSZ and in court proceedings;

and held that its present ruling justifying after-the-fact legislative interference with property rights was singular

and applicable only to the present case, prompted only by the historical background, the numerous uncertainties and the importance of permitting the evolution of a viable trade union movement.

IV.

The court rejected separate challenges pertaining to individual provisions of the law, except for the following two provisions, which it struck down as unconstitutional:

(1) Paragraph 7 Section (2) of the law grants dispositional rights to VIKSZ regarding all property enumerated in the law, if a trade union obligated to account for its property fails to do so. The property enumerated in the law includes property that has been transferred by SZOT or MSZOSZ to foundations. The court held that the granting of authority to VIKSZ over property belonging to separate legal entities—such as foundations—is arbitrary and capricious, and therefore unconstitutional.

(2) The law vests the VIKSZ Board of Directors with temporary authority to exercise ownership rights, including dispositional right, over former SZOT property. Paragraph 9 Section (1) of the law defines the composition of the board, apparently excluding MSZOSZ from holding membership on the board. The court held that by failing to include all prospective beneficiaries of trade union property in the VIKSZ Board, alternatively, by failing to assign the VIKSZ functions to the state, the Paragraph 9 Section (1) provision violates the equal protection provision contained in Paragraph 70/A Section (1) of the Constitution.

Thus the Constitutional Court implicitly recognized as valid what many regard as the salvaging of former trade union property and granted participatory rights to MSZOSZ in deciding the use and disposition of former SZOT property.

Decision on Voluntary Union Dues Payment

92P20291B Budapest MAGYAR KOZLONY
in Hungarian No 44, 30 Apr 92 pp 1,604-1,606

[Summary] Unnamed petitioners asserted that Law No. 29 of 1991 as a whole concerning the voluntary character of trade union dues payments was in conflict with generally recognized rules of international law and thus with Paragraph 7 Section 1 of the Constitution ["The legal system of the Hungarian Republic shall accept the generally recognized rules of international law, and shall ensure harmony between legal obligations agreed to under international law, and domestic law"], with the equal rights provisions of Paragraph 70/A Section (1) of the Constitution ["The Hungarian Republic shall observe the human and citizen rights of all persons staying within its territory, without any discrimination, notably, without distinguishing on the basis of race, color, gender, language, religion, political or other view,

national or social origin, property, birth, or other condition"), that the law interfered with the freedom of contracts insofar as trade unions were concerned, and other matters.

The court refused to consider arguments based on international agreements for lack of jurisdiction.

In rejecting petitioners' arguments the court discussed the various provisions of the law and found in regard to each challenge asserted by petitioners that the law was constitutionally sound. Specifically, the obligations established by the law pertain to employers and provide for equal treatment of all unions and all employees by the employer. The law cancels previously existing trade union agreements with employers regarding the mandatory collection of union dues; the court found this measure to be constitutional on grounds of the historical circumstances of the system change and the legitimate need to protect trade union property. The court also rejected a claim according to which the law was inconsistent with other provisions of law, because petitioners' claim did not relate to a substantive right spelled out by the Constitution. Finally, the court rejected petitioner's assertion according to which there was insufficient time to prepare for the change, by stating that the lapse of 30 days between the enactment and the effective date of the law provided sufficient time to prepare.

Decree on Interior Ministry Health Service
92CH0788A Budapest MAGYAR KOZLONY
in Hungarian No 58, 5 Jun 92 pp 1,981-1,982

[Interior Ministry Decree No. 9 of 5 June 1992 concerning the use of the Interior Ministry Health Service]

[Text]

**Decree No. 9/1992 of 5 June 1992
of the Interior Ministry [BM]
of the Minister of the Interior
on Access to the Interior Ministry Health Service**

On the basis of the authorization contained in Article No. 38.1 of Cabinet Order No. 16/1972 (29 April) regulating the implementation of Law No. II of 1972, and in view of the modification of the above as contained in Article 3 of Executive Order No. 55/1992 (21 March), I decree the following in agreement with the minister of justice, the minister of welfare, and the minister without portfolio in charge of the national civil security service:

Article 1.1. The Interior Ministry, units supporting the official activities of the Interior Ministry, independent units under the direction of the minister of the interior (in the following: organs of the Interior Ministry), and the national civil security service, employs physicians (in the following: Interior Ministry health service) to provide basic health care for the following persons, irrespective of their choice of family doctor:

a. Employees of the organs of the Interior Ministry and enlisted members of the border guards;

b. Employees of the professional fire departments of the state and local governments;

c. Employees of the Information Bureau and the National Security Bureau, as well as employees of the secretariat of the minister overseeing these organizations;

d. Employees of the law enforcement branch of the Interior Ministry;

(in the following, all of the above: employees), retired employees of these organs, as well as the family members of employees and retired employees.

Article 1.2. A person defined in Article 1.1 availing himself of the Interior Ministry health service for basic health care does not need a health insurance identification card.

Article 2. The health insurance identification card of an employee and his dependent family members will be validated by an employee of the unit in charge of personnel matters.

Article 3. Availing oneself of the Interior Ministry health service does not affect an employee's right to choose a family doctor as regulated in Executive Order No. 55/1992 (21 March).

Article 4. If an employee does not choose a family doctor, he must retain his health insurance identification card together with the "doctor coupon" and the "counterfoil."

Article 5.1 The Interior Ministry health service is entitled to determine if an employee, as defined in Article 1.1, is fit for work, to put him on sick leave, or to declare him fit for work.

Article 5.2. If a professional and appointed civilian employee, as defined in Article 1.1, does not avail himself of the Interior Ministry health service, he must present documents concerning his fitness for work, or his sick leave, to the commander or manager in charge.

Article 5.3. If an appointed civilian employee neglects his duty defined in Article 5.2, he cannot claim the income supplement that he would otherwise be entitled to receive.

Article 6.1. For the purposes of this decree, a family member is a close relative, as determined in Paragraph 685.b of the Code of Civil Law, who lives in the same household with an employee or retired employee.

Article 6.2. This decree will take effect on 10 June.

(signed) Dr. Peter Boross, Minister of the Interior

Interim Rules Adopted by Parliament for Trade Unions*92CH0824A Budapest HETI VILAGGAZDASAG
in Hungarian 1 Jul 92 p 2,374*

[Law No. 47 of 1992 amending law No. 28 of 1991 Concerning the Protection of Trade Union Property and To Provide Equal Opportunity for Trade Unions To Organize and To Operate, adopted by the National Assembly at its 16 June 1992 session]

[Text]

Law No. 47 of 1992**Amending Law No. 28 of 1991
Concerning the Protection of Trade Union Property
and To Provide Equal Opportunity for Trade Unions
To Organize and To Operate****Paragraph 1**

Paragraph 5 of the law concerning the protection of trade union property and to provide equal opportunity for trade unions to organize and to operate (hereinafter: Law) shall be amended by adding the following Section (4):

(4) "Trade union federations shall provide full information to the State Accounting Office by 31 July 1992 concerning trade unions and independent organizational units operating as legal entities which are related to those federations and which are obligated to account for their property."

Paragraph 2

Paragraph 7 Section (2) Subsection (b) of the law shall be amended to change its wording as follows:

(2) VIKSZ [Organization to Temporarily Manage the Property of Trade Unions] shall exercise the authority specified in Paragraph 8 regarding the kinds of assets enumerated below until such time that final distribution of such assets among the various trade unions is made:

(b) "all assets enumerated under Paragraph 2 Section (2) Subsections (a) through (f) in regard to which the organization subject to accounting had failed to fulfill its obligation to report."

Paragraph 3

(1) The following provisions shall be inserted in lieu of the present Section (1) of Paragraph 9 of the Law and simultaneously, Section (2) shall be renumbered as Section (3):

Paragraph 9

(1) "The Board of Directors shall direct the activities of VIKSZ. Until such time that the results of trade union elections are proclaimed, the membership of the VIKSZ Board of Directors shall consist of one representative of each organization comprising the employee side of the

Interest Mediation Council, and one common representative of trade unions not belonging to that federation (hereinafter: trade unions outside the federation).

(2) "Trade unions outside the federation which intend to be represented in the VIKSZ Board of Directors shall, within 30 days from the effective date of this law:

(a) "elect from among themselves their common representative at a general meeting convened by the VIKSZ Board of Directors, or

(b) "authorize in writing one of the federations taking part in the [VIKSZ] Board of Directors pursuant to Section (1) to represent their interests.

(2) "The following provision shall be inserted in lieu of the wording of Paragraph 9 Section (3) of the Law, and simultaneously, Sections (4)-(5) shall be renumbered as Sections (5)-(6):

(4) "The Board of Directors as enlarged pursuant to Sections (1)-(2) shall review its rules and regulations within 30 days from date of its establishment."

Paragraph 4

The following provisions shall be inserted in lieu of Paragraph 10 Sections (1)-(2) of the Law:

Paragraph 10

(1) "The temporary distribution of assets to be divided among trade unions for their use shall be made according to the constituent support of each trade union, as shown by the results of the trade union elections.

(2) "A law shall provide for the temporary distribution of assets to be divided among trade unions for their use within six months after the elections mentioned in Section (1)."

Paragraph 5

(1) The following provision shall be inserted in lieu of Paragraph 211 Section (1) of Law No. 22 of 1992, the Code of Labor Laws (hereinafter: Labor Law):

Paragraph 211

(1) The first plant council elections shall be held simultaneously with the elections required by Law No. 28 of 1991, but in no event later than 10 December 1992;

(2) "Paragraph 211 of the Labor Law shall be amended by adding a new Section (2) as follows, and by renumbering the present Section (2) to Section (3):

(2) "In a manner different from the provisions of Section (1), plant council elections shall be held between 1 July 1992 and 31 December 1992 at employers where no trade union is represented."

(3) Paragraph 211 of the Labor Law shall be amended by adding the following Sections (4)-(5):

(4) "At employers where plant councils or plant representatives must be elected.

(a) "Collective agreements may be reached jointly by all trade unions represented at the employer in a manner different from the provisions of Paragraph 33 Sections (2)-(6), until the election results are determined, but in no event after 31 December 1992;

(b) "Trade unions represented at an employer shall jointly exercise their rights as employees until the election of a plant council, but in no event after 31 December 1992.

(5) "Deviating from the provisions of Paragraph 29, the officer of the trade union is entitled to the protection provided by Paragraph 28, until the results of the first plant council elections are determined, but in no event after 31 December 1992, irrespective of the representative character of the trade union."

Paragraph 6

(1) The following provision shall be inserted in lieu of Paragraph 89 Section (3) of Law No. 33 of 1992 concerning the legal status of public employees (hereinafter: Public Employee Law):

(2) "The first public employee council election shall be held simultaneously with the elections designated in Law No. 28 of 1991, but in no event later than 10 December 1992. The representative character defined in Paragraph 5 Section (2) shall be determined by 15 February 1993."

(3) The Public Employee Law shall be amended by adding the following Paragraph 91:

"Trade unions represented at an employer shall jointly exercise the participatory rights of public employees until the election of public employee councils, but in no event after 31 December 1992."

Paragraph 7

This law shall take effect on 1 July 1992.

[Signed] Arpad Goncz, President of the Republic

[Signed] Gyorgy Szabad, President of the National Assembly

Law on Civil Service

92P20341A Budapest MAGYAR KOZLONY
in Hungarian No 56, 2 Jun 92 pp 1,953-1,964

[Summary of Law No. 33 of 1992 concerning the legal status of public employees, adopted by the National Assembly at its 5 May 1992 session]

[Summary] The law applies to state and local government employees; it recognizes public employee interest groups, including trade unions, as well as collective bargaining agreements, and provides for mediation at various levels; grants authority to ministers to determine

and change the legal relationship between the employer and the employees and to establish basic work assignments and to set time limits for probationary employment; and authorizes the government to establish work assignments for higher level employees.

The law provides in detail for the termination of the employment of public employees, for the obligations of the employer to provide for training and continuous education, and for disciplinary proceedings against public employees. Further, it specifies leave and rest periods due to public employees, and the promotional and compensation system applicable to public employees. Finally, the law establishes limits of public employee and employer liability for damages.

Law on Code of Labor

92P20291C Budapest MAGYAR KOZLONY
in Hungarian No 45, 4 May 92 pp 1,613-1,642

[Summary] Law No. 22 of 1992 concerning the Code of Labor was adopted by the National Assembly at its 30 March 1992 session. The cardinal features of the law are as follows:

- Employment relationships are viewed as contractual relationships and all employment is based on mandatory, written, individual contracts between employers and employees, with specified minimum content requirements;
- The employer must prove nondiscrimination in disputes arising from alleged discriminatory employment practices;
- The employer must prove the validity of reasons provided for terminating employment; and
- The right to collective bargaining is recognized.

The law applies "to all employment relationships in which work is performed within the territory of the Hungarian Republic and in which an employee performs his work abroad on behalf of his Hungarian employer." The law also applies to employees working on Hungarian air or water transportation vehicles or foreign vehicles, as long as the employer is personally subject to Hungarian laws. Foreign employees of foreign employers performing work in Hungary, and Hungarian civil servants are exempt from the law.

Additional provisions specify privacy and posttermination loyalty requirements, nondiscrimination provisions, requirements for mandatory written declarations concerning employment and other general rules.

The institutional structure relating to employment is defined in Part 2. The National Interest Mediation Council represents the government in labor relations and governmental action regarding large-scale unemployment; determination of minimum wage and maximum length of the workday is subject to concurrence by the council. The law establishes trade union and employer

rights and duties, including the right to collective bargaining. Employee participation in management decisions is accomplished through elected plant councils, the establishment and size of which is based on the number of employees in a given plant.

Part 3 establishes general age criteria for eligibility for employment; specifies the minimum content of employment contracts (basic wage, work function, place of work); permits employers to terminate employment, provided that the employer clearly specifies the reason for termination and that the reason relates to the employee's abilities or work conduct, or to the employer's operating difficulties. The employer must provide an opportunity to the employee to defend himself.

Employees are entitled to a healthy and safe work environment; they must be enabled to perform their work and must receive information, direction and training for the performance of work.

In general, a workday consists of eight hours. The law provides for rest periods and overtime work and specifies regular annual leave as the sole mandatory fringe benefit. The minimum length of the annual leave is established as 20 workdays, with additional days added on the basis of the employee's age, up to 30 workdays beginning in the year when the employee reaches the age of 45. Employees are entitled to 10 days of sick leave per calendar year.

The law provides rules for the payment of wages and salaries but does not mandate any other form of compensation "to satisfy the cultural, welfare or health care needs, or improvements in the standard of living of employees." The extent to which such support is to be provided is the subject of collective bargaining.

Part 4 of the law deals with labor disputes and establishes mediation as the appropriate initial means of resolving such disputes. The law authorizes the hiring of independent mediators, and establishes rules for mediation, binding arbitration and judicial proceedings.

Law on Compensation of 1939-49 Losses

*92CH0594A Budapest MAGYAR KOZLONY
in Hungarian 8 May 92 pp 1,670-1,672*

[Text of law granting compensation for property confiscated by state between 1 May 1939 and 8 June 1949]

[Text]

Act XXIV of 1992, to regulate property ownership, on the partial compensation for the state's confiscation of citizens' property pursuant to the enforcement of laws passed between 1 May 1939 and 8 June 1949¹

In order to establish a guarantee for the ownership of property, being guided by the principles of a constitutional state, taking into consideration both society's conception of justice and its ability to sustain burdens,

and in accordance with Article 1.3 of Act XXV of 1991, in order to remedy the unjust confiscation of citizens' property by the state pursuant to the enforcement of laws passed between 1 May 1939 and 8 June 1949, parliament legislates the following:

Article 1.1. On the basis of the present law, partial compensation (hereafter: compensation) is due to those natural persons who suffered the loss of private property pursuant to the enforcement of laws passed by the state between 1 May 1939 and 8 June 1949.

1.2. To compensate for the confiscation defined in Article 1.1, the regulations of Act XXV of 1991 (hereafter: Comp. [Compensation]) must be enforced in conjunction with the modifications and additions of the present law.

Article 2.1. The force of the law extends to the confiscation of property within the borders of Hungary as defined by the Paris Peace Treaty.

2.2. If a person has been sentenced for war crimes or crimes against humanity and the sentence is legally binding, and if the confiscation of his property was suffered in conjunction with the sentence, he is not entitled to compensation.

2.3. Persons whose confiscation of property has already been remedied by the enforcement of supplement No. 1 to the present law, or through other means, are not entitled to compensation.

Article 3. The extent of the loss pursuant to the enforcement of regulations prescribing the obligatory custody or sequestration of individual articles of property—as stated in Supplement 1.6 of Comp. and in Supplements 2.2, 2.4, and 2.6 of the present law—must be determined by the contents of Supplement No. 3.

Article 4. If a person is entitled to compensation both according to Comp. and according to the present law, the amount of compensation must be determined in such a way as if all his claims to compensation were to be enforced according to one and the same law.

Article 5. The interest accrued on the compensation voucher issued on the basis of the present law must be calculated—independent of the date of issue—from the day Comp. became effective.

Article 6. A claim for compensation can be submitted to the county (capital) loss adjustment offices within 120 days after the day on which the present law becomes effective.

Article 7.1. This law becomes effective on the 30th day after its announcement.

7.2. Supplements 1 and 2 of Comp. are supplemented as described in Supplement 2. of the present law. The

submission of claims for compensation for the confiscation of property pursuant to the enforcement of laws listed in this supplement is regulated by Article 6.

7.3. The last line of Supplement 3.b. of Comp. is to be modified as follows:

Number of Employees	Value Serving as Basis for Compensation
100-200 persons	5,000 forints

after every further unit of 100 persons, or commencement of the same, another 1,000 forints."

7.4. The government is authorized to determine the rules of procedure.

(signed) Arpad Goncz, President of the Republic

(signed) Gyorgy Szabad, Speaker of Parliament

Supplement No. 1 to Act XXIV of 1992

1. Order 7,590/1945 of the Prime Minister concerning the restoration of business premises, their furnishings (equipment), as well as inventories of merchandise and materials lost as a consequence of regulations involving discrimination against Jews or as a consequence of left-wing activities.

2. Order 3,630/1945 of the Prime Minister, in connection with the restoration of licenses to sell alcoholic beverages, which had been revoked on the basis of anti-Jewish laws, the appropriation of furnishings (equipment) in places of business, and payment for the value of investments (repairs).

3. Order 10,480/1945 of the Prime Minister, concerning the settlement of individual pharmaceutical licenses which had been revoked as a consequence of laws involving discrimination against Jews.

4. Order 300/1946 of the Prime Minister, concerning the settlement of movable property which had been lost as a consequence of laws involving discrimination against Jews.

5. Order 12,530/1946 of the Prime Minister, concerning the cancellation of the ownership of certain items of real estate which had been registered as belonging to the treasury.

6. Order 6,400/1947 of the Prime Minister, concerning farm equipment which had been lost as a consequence of laws involving discrimination against Jews.

7. Order 5,280/1947 of the Prime Minister, concerning the restrictions on returning cold-storage depots and poultry processing plants that were lost as a consequence of laws involving discrimination against Jews or of left-wing activities.

8. Executive Decree No. 13,160/1947, concerning the administration of goods left behind by Jews (Article 4.2).

Supplement No. 2 to Act XXIV of 1992

1. Order 5,410/1945 of the Prime Minister, modified and supplemented by Cabinet Decree No. 147/1950 (24 May), concerning the authorization of the minister for industrial affairs to requisition factory equipment and inventories of materials.

2. Order 8,400/1946 of the Prime Minister, concerning the circulation of foreign currency, foreign credit balances, foreign securities, and gold, as well as more recent regulations on exporting currency.

3. Act XXVIII of 1948 concerning the issue of abandoned property.

4. Order No. 326,400/1949 (30 December) of the Finance Minister concerning the custody of gold and platinum reserves within the scope of industrial and commercial activities.

5. Order 4,247/1949 (22 September) of the Prime Minister, supplemented and modified by Order No. 113/1950 (18 April) of the Prime Minister, concerning the regulations on the liquidation of certain companies.

6. Decree with legal force No. 13 of 1954 on the supplementation and modification of the decree with legal force No. 13 of 1949 (Article 9.1) concerning museums and historic monuments.

7. Article 674.2 of Act IV of 1959 on the Code of Civil Law, according to which the state succeeded to an individual who refused the acceptance of an inheritance.

8. Articles 8.1 and 8.2 of Act No. VII of 1961 on forests and game reserves.

9. Decree with legal force No. 35 of 1976 on the modification of Decree with legal force No. 31 of 1972 (Article 13) concerning the registration of real estate.

Supplement No. 3 to Act XXIV of 1992

I.

Average values to be used to determine the extent of the loss caused by obligatory deposits:

a. The value of gold articles depending on purity:

Carats	Forints/Grams
14	90
16	100
18	110
20	120
22	130
24	140

b. The value of platinum articles is 300 forints per gram.

c. If the purity of the gold article put into custody cannot be determined, the value of 16 carats is to be taken as the basis for valuation.

d. If the weight of the gold (or platinum) article cannot be determined, the following average weights are to be taken as the basis for valuation.

	Grams/Piece
Gold articles for men:	
wedding band	3
ring, with stone	4
signet ring	8
tie clip	3
cuff-links	6
watch chain	12
watch	30
chain	14
cigarette case	150
Gold articles for women:	
ring	3
ring, with stone	4
broach	4
earrings	2.5
chain	3
charm	2
gold watch	10
bracelet	22
Gold articles for children:	
chain	3
ring	2
earrings	1
Other gold articles:	2

e. The value of brilliants (cut diamonds) is, according to weight: one carat = 80,000 forints/stone.

f. If the weight of the brilliants (cut diamonds) put into custody cannot be determined, a value of 0.25 carats is to be taken as the basis for valuation.

II.

On the basis of Article 9.1 of the decree with legal force No. 13 of 1954, in the case of articles of property that became the property of the state, six times the 1954 market value must be regarded as the extent of the loss.

Footnote

1. The law was passed by parliament at its 7 April 1992 session.

Law on Incitement, Debasement, Free Speech 92CH0652A Budapest MAGYAR KOZLONY in Hungarian No 53, 26 May 92 pp 1,908-1,915

[Constitutional Court Decision No. 30 of 26 May 1992]
[Text]

FOR THE HUNGARIAN REPUBLIC

In response to proposals to review the constitutionality of certain legal provisions in force, the Constitutional Court has handed down the following decision:

The Constitutional Court rejects petitions to declare unconstitutional and to annul Paragraph 269 Section (1) of Law No. 4 of 1978 concerning the Criminal Code of Laws [CCL].

The Constitutional Court finds that Paragraph 269 Section (2) of the CCL is unconstitutional and therefore declares the same null and void effective on the day when this decision is proclaimed.

The Constitutional Court orders the review of all completed criminal proceedings based on CCL Paragraph 269 Section (2), and closed on the basis of an affirmed judgment of a court, unless the convict involved in the case has already been relieved of the adverse consequences of being convicted.

The Constitutional Court proclaims its decision by publishing it in MAGYAR KOZLONY.

ARGUMENTS

I.

(1) Proponents petitioned the court to declare unconstitutional Paragraph 269 of Law No. 4 of 1978 concerning the CCL and to void the definition of the crime governed by that paragraph. In the proponents' view, CCL Paragraph 269 is unconstitutional because it orders the punishment of certain conduct involving the freedom of expression and the freedom of the press protected by Paragraph 61 of the Constitution, and further, according to one proponent, by Paragraph 60 of the Constitution regarding the freedom of thought, and by Paragraph 65 of the Constitution regarding the right to asylum.

(2) The Pest Central District Court has issued Order No. 6.B.X.20.192/1991/28 suspending ongoing proceedings before that court. The Order was based on Paragraph 38 Section (1) of Law No. 32 of 1989 concerning the Constitutional Court. The Order states that the CCL "appears to be in conflict" with Paragraph 61 Sections (1) and (2) of the Constitution, in light of Paragraph 8 Sections (1), (2) and (4) of the Constitution.

(3) The chairman of the Supreme Court and the Supreme Prosecutor have addressed the Constitutional Court. In their view, CCL Paragraph 269 is not unconstitutional.

II.

(1) The elements of the crime of inciting against the community, as defined in the present CCL Paragraph 269, became part of the CCL as amendments to the CCL contained in Paragraph 15 of Law No. 25 of 1989 as follows:

“(1) Any person inciting hatred before the greater public

“(a) against the Hungarian nation or some nationality, or

“(b) against some people, denomination, race, or certain groups of the populace shall be deemed to have committed a crime and shall be punishable by a prison term not exceeding three years.

“(2) Any person offending or debasing the Hungarian nation, some nationality, people, denomination, or race before the greater public, or committing some other similar act before the greater public, shall have committed a misdemeanor and shall be punishable by a prison term or correctional-educational labor not exceeding one year, or shall be fined.”

(2) Historically, both the scope of the legally protected subjects and the conduct involved in committing these acts have changed in the course of applying these criminal provisions. Only the purpose of declaring these acts as punishable has remained unchanged: to establish a legal standard to indicate where the freedom of expression, and within that, the freedom of speech ends, and where conduct prohibited by criminal law begins.

Regarding the elements of the crime examined by the Constitutional Court, the relevant provisions of Act No. 5 of 1878—the CCL of Hungary—(*Csemegi Kodex*) state that a person who incites hatred by one class of people, nationality or religious denomination of another at a gathering, in public, by either verbal advocacy, or the distribution or public exhibition of printed material, a document, or an illustration, shall be punishable (Paragraph 172 Section (2)).

Act No. 3 of 1921 to more effectively protect the state's order and the social order, states that anyone who uses expressions that debase the Hungarian state or the Hungarian nation, or who commits such acts shall be punishable for having committed a misdemeanor. (Paragraph 8.)

Act No. 7 of 1946 to protect the democratic order of the state and the republic under criminal law, replaced the provisions of the *Csemegi Kodex* by defining the elements of the crime as instigating and inciting against the democratic order of the state and the democratic republic, the citizens' freedom, and the citizens' equality before the law. Act No. 46 of 1948 to discontinue certain shortcomings in, and to supplement criminal laws, included protective criminal law provisions against slandering national, nationality and religious denominational sentiments, in addition to the slandering of the democratic order of the state and of the democratic republic.

The “Official Compilation of Substantive Criminal Law in Force” (BHO) of 1952 contained the elements of the crime regarding the internal security of the state in an essentially unchanged form, as compared to the elements contained in Act No. 7 of 1946 and Act No. 48 of 1948.

Law No. 5 of 1961 concerning the CCL changed the scope of incitement among crimes against the state in several respects. Among crimes against public security and public order, “offending the community” became a new crime. This provision held out the prospect of milder sanctions for conduct that completed the elements of incitement if mitigating circumstances could be found, particularly from the standpoint of the offender's motive, manner of commission, and personal circumstance.

Decisions to distinguish between “incitement” and “offending the community” were left to those who applied the law. Considering the fact that the distinction was important not only from the standpoint of the severity of punishment, but also from the standpoint of discerning between conduct aimed against the state and an ordinary crime, the framers of the new CCL have tried to develop a more distinct criterion for distinguishing between the two.

The result of this effort was that henceforth, intent had to be shown regarding “incitement” dealt with in the original CCL Paragraph 148 of Law No. 4 of 1978; i.e., that it no longer sufficed to show that the offender was aware that his act had been well suited to provoke the hatred of legally protected subjects included in the elements of the crime, but instead, the offender's guilt had to be proven by showing that it was his intent and desire to provoke such hatred and that he acted in order to provoke such hatred.

If an intent to incite hatred could not be found in a given case, the same conduct was punished for offending the community (the original Paragraph 269 Section (1))—one of the crimes against the public peace. And further, a person was deemed to have completed the elements of the crime of “offending the community” if he used offensive or debasing terms in the presence of others in regard to the Hungarian nation, or groups of persons or individuals based on their nationality, religious affiliation, race, or socialist convictions, or who committed other such acts (the original Paragraph 269 Section (2)).

In order to establish guarantees to be provided by the constitutional state, criminal acts of a political character were designated as subjects of urgent changes in 1989. Law No. 25 of 1989 dealt especially with the issue of incitement and defined new elements for completing the crime of “inciting against the community” among criminal acts against the public peace, while substantially reducing criminal liability. The reduction in criminal liability materialized in the narrowing of the scope of subjects to be protected and in rendering the term “before the greater public” as a basic element of the crime.

(3) "Racial" incitement is prohibited in the criminal laws of every democratic European country having a continental legal system, as well as in England and Wales, Canada, and New Zealand. Nevertheless, the issue of where to draw the appropriate line between incitement—the provocation of hatred—and the freedom of expressing one's opinion is the subject of significant debate even on an international scale.

III.

The proposals are unfounded insofar as the elements of the crime defined in CCL Paragraph 269 Section (1) are concerned. On the other hand, CCL Paragraph 269 Section (2) unnecessarily and disproportionately restricts the freedom of expression and the freedom of the press guaranteed in Paragraph 61. Sections (1) and (2) of the Constitution, and in due regard to the provisions of Paragraph 8 Sections (1) and (2) of the Constitution, and is therefore unconstitutional.

(1) In comparing CCL Paragraph 269 with Paragraph 60 Section (1) of the Constitution it becomes evident that the concept of freedom of thought and incitement against the community have no common denominator whatsoever. Since the criminal provision in question applies to the expression of views, it does not restrict or violate this fundamental right to free thought. The disputed elements of the crime prescribe the punishment of a given conduct. It is one of the axioms of criminal law that mere thought cannot serve as a basis for holding a person criminally liable.

Similarly, no substantive correlation can be established between CCL Paragraph 269 and that provision of Paragraph 65 of the Constitution which proclaims that under legally established conditions the Hungarian Republic provides asylum to foreign citizens subjected to racial, religious, national, language-based or political persecution in their homelands, or at the place of abode of homeless people. In the Constitutional Court's view the condition for acquiring the right to asylum is based on a person's well-founded fear of being persecuted for his racial background, religious or national belonging, or for his belonging to a given social group, or as a result of such person's political views. This right is not based on inciting hatred against, or using offensive or debasing expressions regarding the people of the country such persons left. There is no relevant relationship between the right to asylum as a basic constitutional right, and CCL Paragraph 269, thus no conflict between the two can be found either.

(2.1.) Paragraph 269 of the CCL constitutes an actual limitation of the freedom of expression and of the freedom of the press guaranteed in Paragraph 61 Sections (1) and (2), respectively, of the Constitution, and uses criminal sanctions—the harshest means available to the judicial system—to designate the limits of the freedom of expression and of the press.

Whether basic constitutional rights can be limited or restricted at all, and if so, under what conditions, and if

such rights conflict with one another, which right should have priority over the other in the course of imposing limitations or restrictions, are important issues that apply to all basic constitutional rights. This issue gains special significance in the context of freely expressing views, and of the freedom of the press which is part of the right to free expression, because these liberties are among the fundamental values of a pluralistic, democratic society.

For this reason in particular, freedom of expression occupies an eminent place among basic constitutional rights, it actually constitutes the "source right" of several kinds of liberties designated as the fundamental "rights to communicate." Separately designated rights, such as the right to free speech and the freedom of the press—the latter includes the freedom of all media, the right to be informed, the right to freely obtain information—flow from this right. In a broader sense, the freedom of artistic and literary creation, and the freedom to propagate creations of art, the freedom of scientific creation, and the freedom to teach scientific knowledge are also part of the freedom of expression. Paragraph 70/G of the Constitution makes separate provisions for respecting and protecting the latter liberties. Freedom of conscience and religious freedom (Paragraph 60) are also part of the freedom of expression, and so is the right to assemble (Paragraph 62).

This group of rights enables an individual's substantive involvement in social and political processes. History teaches us the lesson that social justice and human creativity suffer whenever the right to express one's opinion is restricted, and whenever the opportunity to develop human capacities is diminished. The harmful consequences of such actions could be seen not only in terms of individual lives, but also in the life of society; they led to the dead-end street of human development and were accompanied by much suffering. The free expression of ideals and views, freely stated concepts—however unpopular or peculiar those may be—are the basic conditions for the existence of a society that is truly alive and is capable of developing.

(2.2.) Paragraph 8 of the Constitution states that the Hungarian Republic recognizes the inviolable and inalienable basic rights of people, and that it is the state's first class duty to respect and to protect those. Rules concerning fundamental rights and duties are established by law, but such laws must not limit the substantive content of such rights.

The state may restrict a fundamental right only if the protection or enforcement of another fundamental right or liberty, or the protection of some other constitutional value cannot be achieved otherwise. In other words, a restriction of a fundamental right is not constitutional solely because it is meant to protect another fundamental right or to achieve some other constitutional goal; constitutionality also requires that the impact of the infringement upon a fundamental right be proportionate to the importance of the intended goal. When restricting

a fundamental right, the legislature must use the least intrusive means to achieve its goal. Limiting the substance of a right is unconstitutional if the restriction is made arbitrarily, in the absence of a compelling force, or if the impact of the restriction is disproportionate to the goal to be achieved.

In addressing constitutional issues related to abortion the Constitutional Court held that the state's duty relative to basic individual rights—the duty to “respect and protect” fundamental rights—is not discharged merely by abstaining from violating such rights: this duty also involves the state's active efforts to ensure that conditions required for the enforcement of such rights exist. People exercise their fundamental rights as each individual views these rights from the standpoint of his own individual freedom and personal needs. On the other hand, in order to discharge its duties, the state, as the guarantor, must not only protect the individual rights of certain persons, but also the very values and life situations related to such rights; i.e., the state must defend individual rights not only in regard to the needs of individuals, but must also treat such rights in the context of the rest of the fundamental rights. From the state's standpoint the protection of fundamental rights is only a part of the maintenance and operation of the entire constitutional order (Decision No. 64 of 17 December 1991).

Accordingly, aside from the subjective right of the individual to freely express his views, Paragraph 61 of the Constitution also mandates a duty for the state to establish and maintain conditions for the evolution of a democratic public opinion [as published]. The right to free expression is an objective right, its institutional aspects apply not only to the freedom of the press, the freedom to teach, etc., but also also to that aspect of the institutional system that places freedom of expression in general among the rest of the protected values. For this reason, limits to the freedom of expression must be defined not only as an individual right of the person exercising that right, but also in due regard to the free evolution, and free molding of public opinion—processes that are indispensable from the standpoint of democracy.

Considering the fact that the subject of this examination pertains to criminal law limitations of the right of free expression, judgments as to the constitutionality of such limitations must also be based on constitutional requirements applicable to the criminal law system as a whole. The source of these is the concept of a constitutionally sound criminal law system, the system of consequences that flows from constitutional statehood as a fundamental value, and devolve to the state's exercise of its penal authority, and, within that, substantive restrictions and formal requirements in the course of framing criminal law.

Consistent with the above considerations, in judging the constitutionality of CCL Paragraph 269, the Constitutional Court raised the following questions:

—Is it unavoidable and necessary to restrict free expression in the context of conduct that completes the elements of the crime in question, and

—Is the restriction proportionate, i.e., as compared to the established purpose of the restriction, are the means of criminal law in general, and within that the given elements of the crime subject to punishment necessary and appropriate?

Based on the definition of the crime, two types of conduct are subject to criminal sanctions: provoking hatred (inciting hatred) and the expression of contempt (the use of offensive or debasing expressions, or the commission of such acts). The two types of crimes defined in CCL Paragraph 269 Sections (1) and (2) respectively, are substantially different from the standpoint of both the conduct involved in the commission of these crimes, and the danger they present. Thus the Constitutional Court examined the constitutionality of the two types of conduct involved in the commission of these crimes separately.

IV.

With respect to conduct punishable under CCL Paragraph 269 Section (1) the Constitutional Court has determined the following:

(1) Human history provides abundant examples for the potentially harmful character of provoking hatred, of manifestations which express contempt or humiliate certain groups of people.

The minister's arguments contained in the Csemegei Kodex of 1878 have already focused attention on the power of words: “The free communication of ideals to which humanity may attribute its most beautiful achievements, could become just as harmful; it is like fire that provides light and heat, while it also causes frequent, great calamities, much misery, and devastation if left uncontrolled and permitted to run wild.”

Grave historical examples in this century prove that the propagation of views which proclaim ideals concerning inferiority or superiority based on racial, ethnic, nationality or religious backgrounds, or advocate hatred and contempt, endanger the values of human civilization.

The fact that any manifestation expressing an intent to provoke hatred against a specific group of people is well suited to increase social tensions, to disturb harmony and peace in society, and, at worst, to evoke violent clashes between certain groups of society, has been proven in history and by current events.

In addition to historical and current experiences attesting to the most extreme, actually accomplished damaging effects of provoking hatred, one must also consider threats that appear every day, which accompany the unbridled expression of views and ideals suitable to provoke hatred. These manifestations hinder the ability of certain human communities to live in harmony with other groups. By increasing a given emotional or

social tension within a community—irrespective of whether such tension is small or large, this impediment tears society apart, and reinforces extreme views, prejudice and intolerance. All this reduces the pluralist system of values, the chances for a kind of social evolution in which the right to be different is recognized, one that is based on tolerance, multiple cultures and on the recognition of equal human dignity, and which refuses to recognize discrimination as a value.

(2) To constitutionally protect the provocation of hatred of specific groups of people, to view such conduct as the exercise of the right of free expression or as the freedom of the press, would constitute an unresolvable conflict with the political setting and value system described in the Constitution, with the concept of democratic, constitutional statehood, with the ideal of human equality and equal dignity, as well as with constitutional prohibitions regarding discrimination, guarantees regarding the freedom of conscience and religious freedom, and the protection and recognition of national and ethnic minorities.

Paragraph 2 Section (1) of the Constitution states that the Hungarian Republic is a democratic constitutional state. The concept of democracy is extremely complex. Nevertheless, from the standpoint of the question examined it is essential to determine whether the substantive concept of democracy also includes the surrender of the right to be different, the requirement to protect minorities, and the right to be violent or to be threatened with violence, as methods of conflict resolution.

Provocation of hatred is a negation of the above substantive characteristics and amounts to an emotional preparation for violence. Intolerant descriptions of certain groups of people or a collective abuse the right of free expression, and these are abuses characteristic of dictatorships, not democracies. Tolerating forms of expression or manifestations of journalistic freedom prohibited by CCL Paragraph 269 Section (1) would conflict with requirements stemming from the concept of democratic constitutional statehood.

Paragraph 54 Section (1) of the Constitution states that every person has an inherent right to human dignity. Thus, human dignity may serve as a barrier with respect to the free expression of views.

(3) The necessity to restrict the freedom of expression and the freedom of the press also flows from international obligations subscribed to by the Hungarian state. Paragraph 7 Section (1) of the Constitution states that the legal system of the Hungarian Republic adopts the recognized rules of international law, and that it harmonizes domestic law with obligations agreed to under international law. The following international obligations exist from the standpoint of the issues examined:

(3.1.) The Agreement on Civil and Political Rights adopted by the 21st General Assembly of the United Nations on 16 December 1966, proclaimed in Hungary by virtue of Decree with the Force of Law No. 8 of 1976,

provides for the freedom of thought (Article 18) and the right to free expression (Article 19).

According to the latter provision:

"1. No person shall be harassed for his views.

"2. All persons shall have a right to freely express their views; this right shall include the freedom to seek, learn and propagate all kinds of data and ideas verbally, in writing, in print, in an artistic form or in any manner according to one's liking irrespective of national boundaries.

"3. The exercise of rights specified in Section 2 of this Article is accompanied by special obligations and responsibilities. Due to these obligations and responsibilities, these rights may be restricted, but such restrictions must be expressly established by law, and must

"a) pertain to respect for the rights or good reputation of others, or

"b) be necessary from the standpoint of state security or the public order, public health or public morals."

The framers of Article 20 Section 2 took a more firm position: "Any proclamation of hatred based on national, racial or religious grounds must be prohibited by law—proclamations, which incite discrimination, hostilities or violence."

(3.2.) The international agreement concerning the elimination of all forms of racial discrimination proclaimed under Decree with the Force of Law No. 1 of 1969 also establishes legal obligations for the Hungarian state.

Article 4. of the Agreement requires the participating states to

"a) declare as criminal acts punishable by law the propagation of ideals based on racial superiority or hatred, incitement advocating racial discrimination, any act of violence or incitement to commit acts of violence against any race, or against groups of persons of a different color or ethnic background, and any type of support, including funding, provided to activities promoting racial hatred;

"b) declare as illegal and ban every organization, as well as organized and all other propaganda activities which encourage or incite racial discrimination, and to declare as criminal acts punishable by law participation in any such organization or activity; and

"c) not to permit national or local authorities, or public institutions to encourage or incite racial discrimination."

(3.3.) The European Agreement concerning the protection of human rights and fundamental liberties does not directly obligate the states to declare incitement a criminal act, instead it provides guidance primarily in regard to the methods in which the right to free expression can be restricted.

According to Article 10 of the agreement:

"1. Every person has a right to freely express his views. This right includes the freedom to formulate one's opinion, as well as the freedom to learn and to convey information and ideals irrespective of national borders and without authorities having a right to interfere. This article shall not prevent states from conditioning the operations of radio, motion picture, and television enterprises by requirements to obtain permits.

"2. The exercise of liberties accompanying these obligations and responsibilities may be subjected to requirements as to format, conditions, restrictions or sanctions specified by law, to the extent that these are necessary in a democratic state from the standpoint of national security, territorial integrity, public security, the prevention of disturbances or the prevention of crime, the protection of public health or morality, the protection of the good reputation or the rights of others, the prevention of the conveyance of confidential information, and the maintenance of the authority and impartiality of courts of law."

Several resolutions brought by the European Committee on Human Rights took a position according to which the Article 10 Section 2 prohibition on communications conveying racial hatred may be regarded as valid restrictions on the free expression of views.

To summarize the position of the Constitutional Court: The court regards the limitation of the right express one's opinion and the freedom of the press as both necessary and justified from the standpoints of the historically proven damaging effects of provoking the hatred of specific groups of people, the protection of fundamental constitutional values, and the performance of international obligations subscribed to by the Hungarian Republic.

(4) Criminal law provides the ultimate rationale in the framework of the system of legal responsibility. Its function is to provide sanctions and to thus complete the entire legal system. It is the role and function of criminal sanctions and of punishment to maintain legal and moral standards intact when sanctions provided in other fields of law fail.

The substantive requirement that flows from constitutionally sound criminal law is that the legislature must not act arbitrarily in defining the scope of conduct subject to criminal sanctions. The necessity to render a given conduct punishable must be viewed on the basis of a strict criteria: Criminal sanctions, which necessarily limit human rights and liberties in order to protect various conditions of life as well as moral and legal standards, must be used only if absolutely necessary and only proportionately, and only if the preservation of constitutional goals, or of state, social and economic goals whose origins can be traced to the Constitutions cannot be achieved otherwise.

The Constitutional Court holds that the previously analyzed effects and consequences of the conduct prohibited under CCL Paragraph 269 Section (1) on individuals and on society are sufficiently grave to render insufficient other forms of accountability, such as rules violation or civil law sanctions against persons who manifest such conduct. The forceful disapproval and condemnation of such conduct reinforces democratic ideals and values attacked by those who commit these acts, and the restoration of the violated legal and moral order demands the application of criminal sanctions.

(5) Finally, the issue of whether CCL 269 Section (1) constitutes a reasonable and appropriate response to the phenomenon regarded as dangerous and undesirable must also be examined, i.e., whether the scope of this provisions represents the minimum required to accomplish its purpose, consistent with standard guidelines applicable to the restriction of fundamental constitutional rights. Constitutionally sound criminal law requires that the description of the prospectively sanctioned conduct be specific, circumscribed and clearly defined. A clear expression of the legislative intent pertaining to the legitimate object to be protected and to the conduct involved in committing the act is a criterion of constitutionality. At what point an individual violates a law providing criminal sanctions must be conveyed clearly. At the same time, the language of criminal provisions must also limit the possibility of arbitrary interpretation by enforcement authorities. Accordingly, the court has examined whether the provisions of CCL Paragraph 269 Section (1) defined the scope of conduct subject to sanctioning too broadly, and whether the provisions of this Section were sufficiently specific.

CCL Paragraph 269 Section (1) satisfies the requirements imposed with respect to restriction. As the historical review presented in Part II Section (2) of this decision indicates, the 1989 amendments essentially narrowed criminal liability in several respects:

—The legitimate objects to be protected no longer include the international relationship between constitutional order on the one hand, and the state's endeavors to foster alliances, friendship and cooperation. As a result of omitting these requirements, the incitement of hatred of these institutions no longer amounts to punishable conduct. Criminal sanctions come into play only if a person manifests conduct which qualifies as an effort to change the constitutional order by force (Paragraph 139), as an organizing effort against the constitutional order (Paragraph 139/A), as insurrection (Paragraph 140), as treason (Paragraph 141), etc., all of which require substantially greater activities than provoking hatred.

—The more gravely viewed version of the earlier elements of incitement—incitement before the greater public—has become the basic element of the crime of inciting against the community. This concept is defined in Paragraph 137 Section (10) of the law itself. According to this provisions "the term 'before the

greater public' shall mean the commission of the crime of incitement through the press, other mass media, or through duplication." In addition, the meaning of this concept has already been defined for a long time in the course of applying criminal law.

On the other hand, by adding the term "incitement against the community," the 1989 amendment undoubtedly broadened criminal liability as compared to the original definition of incitement, because intentionality is no longer an element of the crime, i.e., an expressed, direct intent to provoke hatred is no longer needed to prove guilt, instead, the offender's awareness that his conduct is well suited to provoke hatred suffices.

The elements of the crime include the term "certain groups of the populace," and this term needs to be interpreted. The intent supportive of this term is the protection of persons categorized on the basis of having a different outlook (political party members, association members, participants in movements, etc.) or actually by any other criterion.

Further, the term "incitement of hatred," as that relates to the conduct manifested in the commission of this act, needs to be interpreted. These words themselves have a generally known meaning. Hatred is one of the most extreme forms of a negative attitude, and is defined by the Hungarian Interpretative Dictionary (Volume 2 page 1132) as a "high degree of hostile emotion." A person engaged in incitement encourages, excites and instigates rebellion (Interpretative Dictionary Volume 7 page 59). Considering the fact that conduct that incites hatred completes the elements of the crime even according to the Csemegi Kodex, those who apply this law may rely on more than 100 years of practical interpretation in any specific case. The Curia [highest court in Hungary prior to 1945] has defined in highly explicit detail the concept of incitement in several cases that arose at the turn of the century: The term "incite," as contained in the law, should not be interpreted to mean the expression of an unfavorable or an offensive view by a person, but instead certain rebellious outbursts which are well suited to culminate passions in large masses of people to a degree that once such passions turn into hatred, such hatred could lead to a disturbance of the social order and peace (Compilation of Leading Criminal Cases Volume 7 page 272). Accordingly, criticism, disapproval, objections, and even offensive statements do not complete the elements of incitement; one can speak of incitement only when expressions, remarks, etc. no longer address the mind, but instead, intend to exert an impact upon the world of emotions and are well suited to provoke hostile emotions. Insofar as the concept of incitement is concerned, it is entirely indifferent whether the stated facts are true or false; the essential criterion is that the grouping of data—however true or untrue—is well suited to provoke hatred. (Compilation of Leading Criminal Cases Volume 1 page 124.)

Accordingly, the aggravated form of incitement against the community, the elements of instigation of hatred are

proportionate: They extend only to the most dangerous conduct and the elements of the crime can be clearly interpreted in the course of applying the law. The fact that the original elements of the crime, as contained in the CCL, have in and of themselves provided an opportunity to restrict the freedom of expression even in the recent past—restrictions which are unacceptable in the framework of the democratic value system—is not a valid argument to prove the unconstitutionality of the elements of the crime. These arguments go to prove only that accurate descriptions of the elements of crimes provide limited remedy to curb the abuse of criminal law. Real protection is being provided by the functioning of the institutions of the democratic constitutional state, the independence of courts, and the establishment of a social environment committed to uphold democratic values.

V.

(1) According to the above, the right to free expression is not merely an individual right, but also a recognition of the objective, institutional aspect of that right; it guarantees the free expression of views as a fundamental, political institution. Although the eminent role played by the right to free expression does not lead to a conclusion that unlike the right to life and the right to human dignity, this right cannot be restricted, nevertheless, the right to free expression must yield only in favor of a very few other rights, i.e., legal interpretations restricting free expression must be strictly constructed. Other restrictive laws to be balanced against the freedom of expression will weigh more heavily if their purpose is to directly protect and enforce other individual rights, less heavily if a law protects such rights only indirectly through some "institution," and least heavily if the subject of the law is some abstract value in itself (e.g. public peace).

(2) The conduct criterion for committing the crime of incitement is "inciting hatred," according to CCL Paragraph 269 Section (1). The Curia's definition with respect to "incitement" in those days makes it clear that the types of conduct to be regarded as incitement are those "well suited to culminate passions in large masses of people to a degree that once such passions turn into hatred, such hatred could lead to a disturbance of the social order and peace." Behind such disturbance of the social order and peace—public peace, to use the terminology that appears in the CCL—we also find the threat of violating a large number of individual rights: Stirred emotions against a group threaten the honor and dignity (and the lives, in extreme cases) of those belonging to the group, and as a result of intimidation restrict others in the exercise of their rights (including free expression). The conduct sanctioned in Section (1) also endangers individual rights, this then accords such weight to the immediate subject of public peace that the restriction on free expression appears as necessary and proportionate, as explained in Part IV. Although the result produced by this balancing exercise is similar to the one produced by the other, this line of thought involves not only the intensity by which public peace is disturbed, and which,

above a certain limit ("clear and present danger" [as published]) justifies the restriction of free expression. In this regard the endangered subject constitutes the decisive issue: Incitement threatens some individual rights which rank rather highly in the framework of the constitutional value system.

In contrast, with respect to "debasement," the suitability of the use of offensive expressions—or actions to the same effect—to disturb the public peace is not an element of the crime. In contrast to "inciting hatred" itself, the suitability of debasement to incite hatred cannot be deduced from the manner of conduct involved in debasement. The CCL uses as its starting point the fact that the use of offensive expressions regarding national or religious communities is contrary to the peace that is desired by society. Accordingly, this immaterial element of the crime protects public order, public peace, and social peace in and of themselves, and does so in an abstract manner. Based on the present provisions of CCL Paragraph 269 Section (2), the crime materializes even if as a result of circumstances the offensive expression does not threaten to violate individual rights. Such abstract endangerment of the public peace does not provide sufficient ground for a constitutionally sound restriction of free expression.

(3) The right to free expression means the protection of the expression of views irrespective of their value or truth content. Only this approach satisfies the criteria of ideological neutrality expressed in the constitutional amendment based on Law No. 40 of 1990, when it repealed a provision of Paragraph 2 of the Constitution which, in October 1989, was included as an example of pluralism and enumerated leading ideological trends. Freedom of expression has only exterior barriers; as long as expression does not clash with such constitutionally sound barriers, the opportunity for, and the fact of expressing an opinion is protected, irrespective of its content. In other words, constitutional protection is being extended to the individual expression of opinion, to public opinion that evolves according to its own laws, and to the formulation of individual opinion based on the broadest possible opportunity to be informed—the latter having a mutual relationship with the two former protected purposes. The Constitution guarantees free communications—both in terms of individual conduct and as a social process—and the basic right of free expression does not pertain to the contents of such communications. This process accommodates all views irrespective of whether they are beneficial or harmful, pleasant or offensive, especially because opinions qualifying the character of communications are themselves products of the same process.

Views deemed to be appropriate by everyone may be supported by everyone—including the state, and everyone may stand up against views deemed to be inappropriate as long as in doing so no other rights are violated to an extent that the right to free expression must retreat. Paragraph 269 Section (2) of the CCL, however, does not erect external barriers, but instead

qualifies views based on their value content; the idea of violating the public peace relates to this only on the basis of presumption and statistical probability.

The comparative base upon which a given expression can be regarded as offensive or debasing is not the Constitution, but criminal law. But the stylistic value of certain words is tied so closely to given situations and cultural levels (and is changing), that without hypothetical (e.g., "well suited") or actual examples (e.g., "he has indeed disturbed the public peace") describing the elements of the crime, a violation of the public peace materializing as a result of abuse amounts to a mere supposition, one that does not sufficiently warrant the restriction of free expression. Namely, in this instance, the existence of the outside barrier itself, i.e., the violation of other rights, is uncertain. Due to this uncertainty, it would be premature to examine the inevitability and the proportionate quality of the legal restriction.

On top of this, "public peace" itself cannot be viewed independently from the situation in which free expression takes place. Public opinion becomes tolerant where people are able to see a multitude of views, while in closed societies even an unusual expression may stir up public peace. On the other hand, the unnecessary and disproportionately strict restriction of expression counteracts openness in society.

The Constitutional Court has considered the historical circumstances in which the individual cases have evolved. Any system change is inevitably accompanied by social tensions. Undoubtedly, these tensions can be increased if certain persons remain unpunished for expressing before the greater public their hatred of, contempt or adverse feelings for certain groups.

But the peculiar historical circumstances have also exerted a different effect, and precisely for this reason it is necessary to distinguish between "inciting hatred" on the one hand, and the use of offensive or debasing expressions, on the other. Aside from rallies, from a practical standpoint the term "greater public" means the openness of the press. Considering the freedom of the press that has already evolved, no one can claim that there exists of external constraint; the one who enters the public arena represents himself with every word he puts on paper, alternatively, he risks his entire moral trust. A political culture and a public opinion that reacts in a healthy manner can evolve only as a result of a self-purging process. Accordingly, the one who perpetrates abuse marks himself, and becomes an "abusive person" in the eyes of the public. Abuse must be countered with critique. This process also includes the fact that an abusive person must count on paying high damages. In contrast, sanctions provided under criminal law were not meant to mold either public opinion or political style—doing so would amount to paternalism. Instead, the function of criminal sanctions is to protect other rights when inevitable and necessary.

(4) Based on the above, Paragraph 269 Section (2) of the CCL is unconstitutional, and the Constitutional Court hereby declares its provisions null and void. The maintenance of public peace does not inevitably demand that laws threaten with criminal sanctions expressions (and acts of equal value) in and of themselves, uttered before the greater public, which offend or debase the Hungarian nation, some nationality, people, denomination or race. The present definition of the crime unnecessarily, and, compared to its intended purpose, disproportionately restricts the right to free expression. The abstract, potential threat presented to public peace does not provide sufficient ground to restrict the basic right to free expression, as that is accomplished by CCL Paragraph 269 Section (2), a right that is indispensable from the standpoint of the functioning of a democratic constitutional state.

According to this decision of the Constitutional Court, the dignity of communities may serve as the constitutionally sound limit to free expression. Accordingly, this decision does not rule out possible legislative action in this regard, even if such action broadens criminal law protection beyond the elements of inciting hatred. On the other hand, the dignity of communities can be effectively protected by means other than those provided by criminal law; expanding the opportunities for applying non-monetary compensation of damages is one suitable means.

(5) The order to review affirmed judgments resulting from criminal proceedings conducted on the basis of Paragraph 269 Section (2) of the CCL is based on Paragraph 43 Section (3) of the law governing the Constitutional Court.

—Dr. Laszlo Solyom, chairman of the Constitutional Court, the Constitutional Court justice delivering the opinion; Constitutional Court Justices Dr. Antal Adam, Dr. Geza Kilenyi, Dr. Peter Schmidt, Dr. Odon Tersztyanszky, Dr. Geza Herczegh, Dr. Tamas Labady, Dr. Andras Szabo, Dr. Imre Voros, Dr. Janos Zlinszky.

Constitutional Court Case No. 1358/B/1991/10.

Law on 'State Household'

92P20341B Budapest *MAGYAR KOZLONY*
in Hungarian No 63, 18 Jun 92 pp 2,101-2,113

[Summary] Budapest *MAGYAR KOZLONY* No. 63, 18 June 1992 pp 2,101-2,113 carries the full text of Law No. 38 of 1992 concerning the state household adopted by the National Assembly at its 19 May 1992 session.

Chapter 1 of the law defines the term "state household" as the management and financing system for the state functions of (a) the central government, (b) the segregated state funds, (c) local governmental bodies, and of (d) the social security, and defines each of these components separately. It establishes a requirement for an

annual budget, indicates that the state fiscal year coincides with the calendar year, and establishes an obligation for individuals and entities earning an income, collecting revenues, or owning property in Hungary to contribute to the state household. This chapter also details basic public management principles regarding e.g. the treatment of revenues and expenditures, limitations on the authority to open bank accounts, the level of detail required, the treatment of borrowed funds, and a requirement that the central and local budgets become public information after submitting the same to the respective legislative bodies having jurisdiction.

Chapter 2 of the law provides for the structure of the central budget, defines revenues and expenditures, and establishes limitations on both general and special reserve levels. Prescriptions as to structure are limited to a chapter-by-chapter breakdown, the order of which is to be established in the framework of each year's budget law.

Chapter 3 details the functions of the National Assembly, the government, the finance minister, and other ministers, as those relate to the budget. In essence, the National Assembly creates a budget law, debates both the proposed budget and the year-end reconciliation of the budget in due regard to the views expressed, and reports filed by the State Accounting Office; in case a budget law is not passed by the first day of the new fiscal year, the National Assembly may provide for the temporary funding of the state on the basis of a continuing resolution. This chapter also establishes limitations on the use of reserve funds, authorizes the government to reallocate funds within individual chapters of the budget unless such authority is reserved by the National Assembly (reallocation of funds between chapters is reserved for the National Assembly), and mandates the government to submit a supplemental budget to the National Assembly if the originally budgeted resources prove to be insufficient.

Under the subheading "Procedural Rules," this chapter also establishes a budgeting schedule with deadlines starting on 30 May and ending on 1 January. From the standpoint of public information, 30 September, the date by which the government must submit the budget to the National Assembly, and 30 November, the date by which a budget law authorizing revenue and expenditure levels must be passed, stand out.

As part of these procedural rules, the provisions of Paragraph 52 Section (4) are not clear: "Within 20 days after proclaiming the budget law, ministers prepare budgets within the budget chapters for which they are responsible for organs funded by the budget, and central budget revenue and expenditure projections whose determination is not under the jurisdiction of the National Assembly and the government." [Contrast this provision to the Paragraph 12 Section (1) provision according to which "All revenues and expenditures of the state household subsystems are part of their respective budgets."]

Chapters 4, 5, and 6 provide parameters and procedures for segregated state funds and local government and social security budgeting, respectively.

Chapter 7 provides a generic definition for organs subject to state funding, controls over creating and abolishing such organs, and the way such organs must be managed.

Chapter 8 describes the system of funding; Chapter 9 establishes requirements regarding the management of

treasury assets; Chapter 10 provides recording and reporting requirements for the state's indebtedness; and Chapter 11 treats the state's financial reporting system, and specifically the contents of the various financial statement the government is obligated to submit to the National Assembly. Chapter 12 briefly states the purpose of financial accounting and that accounting reports must be presented in the Hungarian language and that amounts must be expressed in forints. Chapter 13 provides for audit and control functions.

Decision on National Quality Certification System
92BA0905A Bucharest *MONITORUL OFICIAL*
in Romanian 21 Apr 92 pp 7-8

[Romanian Government decision on the establishment and operation of the national system of quality certification]

[Text] The Romanian Government decrees:

Article 1. A National System of Quality Certification [SNCC] is established; the system will incorporate all the bodies in charge of certifying products and services, the bodies of certification of quality systems, bodies of personnel certification, bodies in charge of accreditation of test laboratories, and all the accredited test laboratories.

Article 2. The SNCC will be coordinated by the Romanian Institute of Standards [IRS].

The IRS is entitled to accredit and to notify the certification bodies and the bodies in charge of the accreditation of test laboratories.

For the purpose of exercising this authority, a Board of Accreditation will be attached to the IRS Managing Board, which will be made up of 18 representatives of ministries and other relevant bodies of the public administration, accredited bodies of certification, accredited laboratories, consumer organizations, trade unions, and qualified persons.

The composition, duties, and operation of the Board of Accreditation will be established by the IRS Managing Board.

The IRS will sign mutual recognition agreements with boards of accreditation in other countries and will facilitate the signing of agreements between certification bodies and test labs.

The certification bodies and accredited test labs will sign agreements with foreign bodies and labs for the mutual recognition of their accreditation, certification marks, and the results of tests and verifications.

Article 3. The certification bodies, bodies of accreditation of test labs, and test labs may be accredited only if they meet the conditions of the Romanian standards concerning those bodies and in accordance with international standards.

Article 4. The regulations, methodologies, and procedures of certification will be established by the IRS in conjunction with the bodies of certification and in accordance with the Romanian standards regarding the certification of products, services, and quality systems and with the operation and evaluation of test labs.

Article 5. The certification of quality systems, products, and services and the granting of certification marks will be carried out by the accredited bodies of certification upon the request of interested economic factors.

Products may be tested for certification only by accredited labs.

Article 6. Products and services regulated under the Romanian obligatory standards regarding the protection of life and health, labor safety, and environmental protection must be certified, or they are not allowed on the market.

Article 7. The competence of personnel is certified only by specially accredited bodies of certification.

Professional auditors working for bodies belonging to the NSCC must be authorized under a competence certificate issued by the IRS or the bodies empowered by it.

Article 8. Accreditation certificates, conforming marks and certificates, and personnel competence certificates may be suspended or withdrawn by the issuing body if violations of the conditions in which they were granted are revealed.

Article 9. The IRS will carry the following information in its official publications:

- The list of accredited bodies of certification and of those whose accreditation was withdrawn;
- The list of products and services that obtained certification or whose certification of conformity was suspended or withdrawn, i.e., the right to bear the certification mark;
- The list of economic factors who obtained quality system certificates and the list of economic factors whose system certification were suspended;
- The list of obligatory Romanian standards, new or amended, referring to the protection of life and health, labor safety, and environmental protection;
- The list of accredited labs and of labs whose accreditation was suspended or withdrawn;
- The list of authorized auditors, on the basis of competence certificates.

Article 10. Violation of the provisions of the present decision will incur material, civil, disciplinary, contraventional, or penal punishment of those responsible, according to case.

Article 11. Failure to observe the provisions of Article 6 constitutes a contravention of the provisions of the present decision, unless it was committed in conditions that, according to the penal law, makes it a felony and is punished by a fine of 5,000-10,000 lei.

Article 12. The contravention will be ascertained and the sanctions will be applied by the special public administration bodies in charge of supervising the marketing of products and services.

The contravention envisaged in the preceding paragraph will be subjected to the provisions of Law No. 32/1968 regarding the establishment and punishment of contraventions.

Article 13. The economic factors are obligated to obtain conformity certificates for all the products they have in current fabrication and for the services regulated by obligatory standards, within at most 24 months of the date of publication of the present decision, in accordance with the provisions of Article 6 of the present decision.

Article 14. Any provisions to the contrary will be abrogated on the date of enactment of the present decision.

[signed] Prime Minister Theodor Stolojan
[countersigned] Mihai Ciocodeica, Chairman of the National Commission for Standards, Metrics, and Quality

Bucharest
6 April 1992
No. 167

Regulation on Agricultural Register

92BA0905B Bucharest MONITORUL OFICIAL
in Romanian 7 Apr 92 pp 6-8

[Romanian Government regulation regarding the agricultural register]

[Text] On the basis of Article 107 par. 1 and 3 of the Constitution and of Article 1 of Law No. 68/1991 on the agricultural register,

The Romanian Government issues the present regulation.

Chapter I: General Provisions

Article 1. For the purpose of ensuring a uniform system of recording the land situation according to categories of utilization, the development of farming agriculture, and a sound utilization of local resources, the local communal, town, municipal, and Bucharest district councils will organize the establishment and maintenance of an agricultural register in keeping with the provisions of the present regulation.

Article 2. The agricultural register will be the official document of uniform primary recording of data regarding individual households, to wit:

- a) The head of the household and its members;
- b) The plots of land they hold, in whatever form, according to category of utilization, the areas cultivated to major crops, and the number of fruit trees by species;
- c) Number of livestock by species and categories existing at the beginning of the year; annual developments in the number of cattle, pigs, sheep, and goats;
- d) Housing units and other household buildings;

e) Animal-drawn and mechanical means of transportation;

f) Tractors and agricultural machinery.

The form to be filled out for the agricultural register is envisaged in the annex, which constitutes an integral part of the present regulation.

Article 3. On the basis of the data shown in the agricultural register regarding individual households, centralized records will be kept by commune, town, municipality, and Bucharest districts regarding:

- a) The number of individual households, housing units and household buildings, mechanical or animal-drawn means of transportation, tractors and agricultural machinery;
- b) The utilization of the plots of lands and the area cultivated to major crops; number of fruit trees by species;
- c) Number of livestock by breed and categories at the beginning of the year and annual developments in the number of cattle, pigs, sheep, and goats.

Article 4. For the purpose of the present regulation, a household consists of all the family members, relatives, or other persons who live and work together, have a common budget, farm the land or raise livestock together, and jointly consume and utilize the products obtained, as the case may be.

The agricultural register will show the individual households with all the land, buildings, and livestock they hold in a given locality, regardless of the owner's place of residence.

In communes, the agricultural register will feature all the individual households, even if they do not hold agricultural or forestry land, livestock, or utilitarian buildings. They will also feature all the individual households in localities that administratively belong to towns, municipalities, or Bucharest districts, established by law.

In towns, municipalities, and Bucharest districts the agricultural register will feature only the households that have agricultural and forestry plots of land, and those who have livestock of the cattle, pigs, sheep, goats, and horse species and families of bees.

The persons who do not reside in the locality but have in it land, livestock, or buildings will be entered in the agricultural register after the households of the persons that do reside in the locality and after empty pages have been left for the households planned to be formed after the date of establishment of the register.

Chapter II: Organization, Entries, Monitoring, and Centralization of the Agricultural Register Data

Article 5. The local communal, town, municipal, and Bucharest district councils will take measures to establish and keep up the agricultural register in accordance

with the provisions of the present regulation, to ensure it against deterioration, destruction, or theft, and to provide register data in accordance with the legal provisions.

The agricultural register, an official document that constitutes an important source of information, will be numbered, stamped, sealed, and entered in the incoming-outgoing ledger of the respective local council.

Article 6. The prefects will ensure that the legal provisions regarding the establishment and maintenance of the agricultural register are observed and that the data entered in it are correct.

The Ministry of Agriculture and Food Industry, the Ministry of the Environment, the National Commission for Statistics, and the Ministry of Economy and Finance will take joint actions to ensure guidance and supervision of the work involved in the establishment and updating of the agricultural register, and the correctness of the data entered in it by households and of the centralized and reported data.

The bodies listed under the preceding paragraph will work out technical norms for making entries in the agricultural register.

Article 7. Data will be entered into the agricultural register on the basis of a declaration made and signed by the head of the household or, in his absence, by another adult member of the household, by calling at households, or at the offices of the local communal, town, municipal, or Bucharest district councils in whose jurisdiction the head of the household has his residence.

Persons who do not reside in the locality will mail the declaration envisaged in par. 1, the receipt to be confirmed at their cost, or may make the declaration through power of attorney.

In cases of joint ownership, any of the members of the joint ownership may make the declaration in the conditions of par. 1 or par. 2, according to case.

Article 8. Data will be entered in the agricultural register in communes, towns, municipalities, and Bucharest districts by the agricultural agent, statistician, or clerk who was assigned by the respective local council to fill out, update, and centralize the agricultural register data.

The secretary of the local council will coordinate, check, and answer for the entries into and updating of the agricultural register.

Any modification of the data entered in the agricultural register may be done only by the secretary of the respective local council.

Article 9. A livestock-veterinary expert employed by the sanitary-veterinary district of communal agricultural centers will participate in entering data regarding livestock into the agricultural register.

In the presence of the persons making the declaration regarding their agricultural property, the expert envisaged in the preceding paragraph will verify the correctness of the data entered in the agricultural register by comparing them with the technical-operational evidence at his disposal, and together with the secretary of the respective local council and the clerk in charge of entries into the agricultural register he will be responsible for the correctness of the data recorded.

The recording and centralization of the data regarding the utilization of the land will also be attended by a cadaster technician designated by the county Office for the Cadaster and Regional Organization.

Article 10. The schedules on which the citizens are expected to declare the data to be entered in the agricultural register are the following:

a) 5-20 January, for annual data regarding household members, housing, household buildings, and mechanical and animal-drawn means of transportation, agricultural machinery, number of livestock existing in the household at the beginning of the year, and any changes recorded in the course of the preceding year in the number of cattle, pigs, sheep, and goats as a result of sale or purchase, birthing, dead or slaughtered animals, and other incoming and outgoing;

b) 1-15 May for data regarding the utilization of the land, the areas cultivated, and the number of fruit trees.

Article 11. The data by commune, town, municipality, and Bucharest districts will be centralized according to the following schedule:

a) By 30 January for data regarding developments in the numbers of cattle, pigs, sheep, and goats during the entire previous year;

b) By 15 February for data regarding new construction (housing and household buildings), means of transportation, and agricultural machinery;

c) Between 1-15 June for data regarding the utilization of the land, areas cultivated, and number of fruit trees.

Article 12. When the data is entered in the agricultural register, the households will also be polled on their vegetable and animal production.

The methodology of the poll will be regulated by the technical norms that will be worked out as per Article 6 par. 3.

On the basis of that information and of additional data furnished by technical agricultural bodies, the animal and vegetable output of individual farms will be established by commune, town, municipality, and Bucharest districts.

Article 13. The citizens are obligated to declare, according to the schedules envisaged in Article 10, precise data for entry in the agricultural register.

Article 14. The local councils are in charge of informing the citizens regarding their obligations concerning the agricultural register.

Chapter III: Reporting Data From the Agricultural Register

Article 15. The data centralized by communes, towns, municipalities, and Bucharest districts will be communicated by the local councils of the county statistical directorates and of Bucharest municipality on the schedules envisaged in the technical norms for entries in the agricultural register.

The communication featuring the centralized data will be signed by the mayor and the secretary of the local council and will be made on forms designed by the National Commission for Statistics.

Article 16. The county directorates for statistics and of Bucharest Municipality will centralize the data received by counties and for the Bucharest Municipality and will convey them to the National Commission for Statistics and to the prefects on the schedules established by the statistical information system.

Chapter IV: Final Provisions

Article 17. The agricultural register will be kept for five years, whereby the data will be entered annually according to the form featured in the annex to the present regulation.

Article 18. Violation of the provisions featured in the present regulation will incur disciplinary, contraven-tional, material, civil, or penal punishment, according to case.

Article 19. Declaring false data, refusal to make a declaration, and failure to declare data on the schedules established for the agricultural register, and failure by the personnel of local councils to fulfill their obligations stemming from the present regulation will be viewed as violations and fined 5,000-10,000 lei, unless they are committed in conditions that make them into felonies according to the penal law.

The violations envisaged in the preceding paragraph will be ascertained and the fines will be given:

- a) to natural persons obligated to declare data, by the mayor and the secretary of the local council;
- b) to the personnel of local councils, by functionaries especially empowered by the bodies envisaged in Article 6 par. 2.

A complaint may be lodged, within 15 days of the date of communication, against the report filed on violations.

Article 20. The provisions of Law No. 32/1968 on establishing and punishing violations will be applicable to the violations featured in Article 19.

Article 21. The expenditures involved in printing and distributing agricultural registers will be borne from the budgets of the local communal, town, municipal, and Bucharest district councils.

Article 22. The Ministry of Industry will provide the volume of paper required to print the agricultural registers and centralized records.

[signed] Prime Minister Theodor Stolojan
[countersigned] Petru Marculescu, Minister of Agriculture and Food Industry

Doru Viorel Ursu and Teodor Mircea Vaida, secretaries of state at the Department for Local Public Administration
Bucharest
13 March 1992
No. 1

Regulation on Modifying Situation of Banking Associations

*92BA0906A Bucharest MONITORUL OFICIAL
in Romanian 7 Apr 92 p 11*

[Regulation No. 2/1992 of the Romanian National Bank on Modifications in the Situation of Banking Associations]

[Text] On the basis of the provisions of Article No. 26 of Law No. 34/1991 concerning the Statute of the Romanian National Bank [BNR], and Article No. 15 of the Law No. 33/1991 on banking activities,

The BNR issues the following regulation:

Chapter I: Amendments in the Legal Situation of Banking Associations

1. Prior BNR authorization is required in order to make amendments in the situation of banking associations regarding the following:

- a) Legal form;
- b) Social title;
- c) Object of activity;
- d) Identity of the associates in an association of persons;
- e) Amount of nominal capital;
- f) Headquarters;
- g) Persons designated to effectively manage the activities of the banking association, implement Art. 3 point c) par. 1 and 3 of Norms No. 59/1991 (published in MONITORUL OFICIAL No. 217 of 29 October 1991) of the BNR regarding the authorization of banking associations.

2. Modifications in the composition of the management board will be reported to the BNR within 10 days of the date on which the decision was taken.

3. Branches of banking associations established abroad will report to the BNR, within one month, modifications regarding:

- The name of foreign banking associations;
- The address of the foreign banking association and of the branch.

Chapter II: Modifying the Distribution of Nominal Capital

4. A person or group of persons acting together who wish to hold at least 5 percent of the capital of a banking association or to increase their participation must secure prior approval from the BNR.

5. The banking associations will notify the BNR of any changes affecting the distribution of the voting stock held by the associates or their stockholders subject to the provisions of point 4 above, within one month of their occurrence.

6. Included in the voting stock held by a person subject to the obligations envisaged under point 4 are:

- a) Voting stock held by other persons for that person;
- b) Voting stock held by societies under the effective control of that person;
- c) Voting stock held by a third party together with whom the person is acting;
- d) Voting stock that the person or one of the persons envisaged under letters a), b), and c) is entitled to obtain upon request on the basis of an agreement.

7. For the purpose of the present norms, persons acting together are persons who signed an agreement with a view to securing voting stock or exercising such rights for the purpose of conducting a joint policy in relation to the banking association.

The existence of such an agreement is presumed:

- Between an association, the chairman of the management board, and its administrators;
- Between an association and the companies of which it has direct or indirect control;
- Between companies controlled by the same person or persons.

8. For the purpose of the present norms, having control of a company means that a physical or legal person:

- a) Holds the majority of the voting stock;
- b) Is entitled to appoint or replace the majority of the members of the management board;
- c) Is a stockholder or partner and has control of the majority of the voting stock in accordance with an agreement signed with other stockholders or partners in the company.

9. Banking associations will send annual financial reports to the BNR regarding each person holding at least 5 percent of their capital. This obligation does not apply to associations or stockholders that are themselves banking associations.

Chapter III: Territorial Organization of Banking Associations

10. Banking association may open branches, agencies, representations or similar offices in the country or abroad only with the prior approval of the BNR.

11. Failure to establish the entities listed under point 10 within one year of the issue of an approval will terminate its validity.

12. Banking associations will report to the BNR the date on which the entities listed under point 10 begin operations and their exact address.

Chapter IV: Final Provisions

13. The BNR will pass a decision on applications for prior authorizations within the framework of these norms, within at most three months of receiving them.

The prior authorization will be communicated to the applicants immediately by registered letter.

14. The present norms will come into effect on the date of their publications in *MONITORUL OFICIAL*.

[signed] Mugur Isarescu, President of the Management Board of the BNR

Regulation on Opening Foreign Banking Offices

92BA0906B Bucharest *MONITORUL OFICIAL*
in Romanian 7 Apr 92 p 12

[Regulation No. 3/1992 on Notification of Opening Representations in Romania by Foreign-Based Banking Associations]

[Text] On the basis of Article 3 par. 1 of Law No. 34/1991 on the Statute of the Romanian National Bank [BNR], the BNR issues the following regulations:

1. Foreign-based banking associations are obligated to notify the BNR about opening representations in Romania within 15 days of the actual date of opening of such offices.

2. The official letter of notification, bearing the heading of the foreign banking association and the signature of one of its managers, must explicitly specify that the representation will limit its activities to providing information, contacts, or representation and that it will not conduct any operations which are subject to the provisions of Law No. 33/1991 on banking activities.

3. The foreign banking association must supply the BNR with the following information:

- a) Official name and legal form;
- b) Head office address;
- c) A notarized certificate issued by the banking supervision authority of the country of origin attesting the legal existence, nominal capital, and the fact that the association in question is authorized as a banking association and is subject to supervision by the respective authority;
- d) A description of the principal activities, accompanied by the latest annual report;
- e) Data on the representation whose opening is the object of the notification:
 - Name;
 - Object of activity;
 - Address and telephone number;
 - Date of opening;
 - Duration of operation;
 - Notarized power of attorney for the representatives designated to do business in the name of the foreign banking association.

4. The file with the documentation envisaged under points 2 and 3 must be remitted to the BNR Directorate for Banking Regulations and Supervision.

5. In order to allow the BNR to keep up-to-date records on the representations of foreign banking associations, the latter are obligated to communicate to the Directorate for Banking Regulations and Supervision any change in their main data or those of the association they represent and, where applicable, their closing, within 15 days.

6. The present norms will come into effect on the date of their publication in Romania's MONITORUL OFICIAL.

[signed] Mugur Isaescu, chairman of the BNR Managing Board

Regulation on Registering Banking Associations
92BA0906C Bucharest MONITORUL OFICIAL
in Romanian 7 Apr 92 p 12

[Regulation No. 4/1992 on the Registration of Banking Associations]

[Text] On the basis of the provisions of Article 7 par. 2 of Law No. 33/1991 on banking activities, the National Bank of Romania [BNR] issues the following regulations:

1. The banking associations, Romanian legal bodies, and branches of foreign banking associations authorized to operate on Romanian territory will be entered in a register kept by the BNR.

2. The entry will be made in the register within 15 days of the final act of authorization for establishment and operation or, in the case of already existing authorizations, within 15 days of the publication of the present norms in Romania's MONITORUL OFICIAL.

3. An entry will be made regarding banking associations in liquidation. After the liquidation has been completed the entry will be deleted.

4. The register of banking associations will feature the following columns:

- Item number;
- Name of the banking association;
- Head office;
- Legal form or the mention: branch office;
- Nominal capital;
- Number and date of registration in the commerce register;
- Date of authorization;
- Date of deletion of the registration;
- Notes.

5. One copy of the register of banking associations will be kept permanently at the disposal of the public at the BNR head office and its branches.

6. The present norms will come into effect within 30 days of their publication in Romania's MONITORUL OFICIAL.

[signed] Mugur Isaescu, BNR Managing Board Chairman

NTIS
ATTN PROCESS 103
5285 PORT ROYAL RD
SPRINGFIELD VA

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