

[HUN-1994-3-019](#)¹

a) Hungary / b) [Constitutional Court](#) / c) / d) 22-12-1994 / e) 60/1994 / f) / g) *Magyar Közlöny* (Official Gazette), 124/1994 / h) *East European Case Reporter of Constitutional Law*, 1995, vol. 2, n° 2, 159.

Keywords of the Systematic Thesaurus:

3.9 General Principles - **Rule of law.**

4.6.9.2.1 Institutions - Executive bodies - The civil service - Reasons for exclusion - **Lustration.**

5.3.24 Fundamental Rights - Civil and political rights - **Right to information.**

5.3.25 Fundamental Rights - Civil and political rights - **Right to administrative transparency.**

5.3.25.1 Fundamental Rights - Civil and political rights - Right to administrative transparency - **Right of access to administrative documents.**

Keywords of the alphabetical index:

Secret agent / [Political crime.](#)

Headnotes:

Data and records on individuals in positions of public authority and on those who partake in political life which reveal that they at one time carried out activities contrary to the principles of a constitutional State, or belonged to State organs that pursued activities contrary to same, count as information of public interest. But even the secrecy of the records established by political police in a system that did not adhere to the principles of a constitutional State may limit the right to information of affected persons.

Summary:

On 8 March 1994, Parliament passed a law on mandating background checks on individuals holding certain key offices. The Constitutional Court subsequently received a number of petitions contending that particular provisions of the Act were unconstitutional.

The law requires screening of certain public officials and others occupying key positions in public life. The screening aims to determine whether these individuals carried out activities on behalf of State security organs, or obtained data from State security agencies to assist them in making decisions, or whether they were members of the Nazi Arrow Cross Party. If, in the course of the screening, an individual is found to fall under one of these categories, the results are to be published unless the given individual first resigns from his post. The screening is carried out by a special committee whose members are judges. The individual under scrutiny may file a claim

¹ Source: [http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-1994-3-019?fn=document-frameset.htm&f=templates\\$3.0](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-1994-3-019?fn=document-frameset.htm&f=templates$3.0)

with the Municipal Court. The court reviews the committee decision. Both proceedings are conducted behind closed doors.

The Hungarian Act is different from earlier «lustration» laws. It does not declare incompatibility between personnel in past and present offices, nor does it propose to unveil the whole of the previous system of political informing. The Court therefore examined the case in view of the fact that in a constitutional State, the fundamental right to freedom of information presumes that the functioning of the State is «transparent» to its citizens.

The Court found that the petitions are in part justified, and declared unconstitutional several provisions of the law. The justification for the annulment was that the violations of the right to information require clarification of who may gain access to secret service files which concern themselves, so that they may understand the true extent to which the past regime influenced their personal fate. This can be resolved only if the secrecy of one-time secret service records is not further maintained. The unconditional secrecy of the data in the records listed in the law was declared unconstitutional.

The other reason for the unconstitutionality was the range of information and of the persons affected by the law. The Act in this respect went beyond the legislature's jurisdiction, and failed even within those limits to apply consistently the same criterion for distinguishing between information of private and public interest.

One judge wrote a concurring opinion.

Supplementary information:

Settled case-law on the right to information.

[Languages:](#)

Hungarian.

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