DECISION 28 OF 1991: 3 JUNE 1991

ON COMPENSATION FOR NATIONALIZED PROPERTY:

"COMPENSATION CASE IV"

The President of the Republic sought the constitutional review of provisions of the unpromulgated Act on Partial Compensation of Damage unjustly caused to the Property of Hungarian Citizens by the State (the "Compensation Act").

The President petitioned, *inter alia*, whether it was constitutional that (a) the regulatory concept of the Compensation Act, set out in s.1, namely that the State did not satisfy legal claims but awarded goods as a "moral obligation" essentially on the basis of "fairness" as "partial compensation" to the beneficiaries; (b) the Act did not provide for the compensation of those who suffered property-related damage or other material damage not amounting to damage to the title to ownership; (c) s.2(2), (3) and (4) ensured claims to compensation by the heirs and the spouse of the deceased person affected by the nationalization; (d) in the regulation on the extent and the method of compensation under ss. 3, 4 and 13, and Schedule 2 of the Act, there were various distinctions in part between the damaged property objects and in part on the extent of the property: the lump-sum value depended on the type of property - for real estate (including appartments), it was determined per square metres; for companies, according to the number of employees; and for arable land, the registered net income of land valued in gold crowns. According to the general rules, the extent of compensation was 100% up to a limit of HUF200,000 except for arable land where the 100% limit reached 1000 gold crowns, at

HUF1000 to a crown, *i.e.* HUF 1 million; (e) there was no one comprehensive Act which dealt with compensation of damage to property which occurred before 8 June 1949; (f) the regulations which determined the local government's obligation (the so-called "right of pre-emption", in the case of a local government-owned apartment) to accept the compensation voucher, which might not be sold at all or only at a low price under s. 7(2) and s.9 conflicted with the Act on Local Government or with the Constitution Art.44(2) on the protection of local government property; and (g) the co-operatives had a right of pre-emption.

Held, granting the petition in part:

(1) The pre-promulgated Compensation Act was, in general, constitutional as it created a uniform legal basis for claims to compensation for those affected under the Act. The legal claims for compensation arose from a moral obligation on the part of the State. On account of the extraordinary circumstances and considerations in which private property would be restored, it was considered as constitutional the renewal of the obligation and its fulfilment by partial compensation so that the application of the method of "novation" was not in itself unconstitutional. Through the renewal of the obligation, the claims to compensation based on the legal obligation originally ensured by the Act without a former obligation would have a common legal basis. The system of novation excluded references to older legal titles (page 00, lines 00-00; page 00, lines 00-00).

(2) The State had no general legal obligation to provide compensation, in particular a financial remedy to the persons who had suffered any kind of damage or to remedy it merely because of discrimination against those who had suffered damage with financial effects.

Considering the limited resources available for the purposes of compensation and the economic condition of the country, it was not arbitrary that at the present time no general remedy for damage having financial effects existed. Further the selection of the group of owners to whom compensation would be provided under the Act was not in itself arbitrary: indeed it fulfilled the legal obligation of the State since failure to compensate parties suffering damage in the nationalization and land expropriation would violate the protection of property and the principle of the constitutional state. In the renewal or novation of the obligation to remedy damages, it was correct to include in the Act the group of owners whose private property was socialised, becoming the property of agricultural co-operatives through compulsory expropriation. The criteria determining the owners entitled to compensation were that they lost their property as a result of socialisation of property, of certain legal rules or of the unlawful execution of such rules. It mattered little to the former owners what legal means of expropriation were employed and the identity of the new owners. Accordingly the formation of the group of former owners was not arbitrary and the addition of those entitled to compensation on the aforementioned criteria was therefore constitutional (page 00, line 00 - page 00, line 00).

(3) The provisions permitting claims to compensation by the entitled descendants and the spouse of a deceased person were constitutional. Since novation was permissible as regards obligations for compensation affected by the Act, this did not violate the right of inheritance. It was therefore unnecessary to determine who were entitled to compensation based on claims prior to the Compensation Act which, according to the civil law, formed a part of their property and so could be inherited. In fact the relatives entitled to compensation did not inherit the claim but acquired it by virtue of the Act. There was accordingly no relevant connection between the

constitutional right of inheritance under the Constitution, Art. 14 and s.2 of the Act. Further, review of any deviation in the Act from the rules on legal inheritance in the Civil Code was outside the remit of the Court (page 00, line 00 - page 00, line 00).

(4) The difference which, according to s.4(2) and (3) of the Act, existed between claimed land and other assets concerning the 100% value limit of compensation was unconstitutional. Moreover the difference which as a consequence of the different methods of calculation of the compensation might lead to full restitution in kind in the case of land but used compensation vouchers for other assets, through which only a partial compensation might be achieved and which did not even approach the present value of those other assets, was also unconstitutional. If there were no distinction between the arable land and other property assets, about 94.2% of the former landowners would have been in the 100% compensation bracket. The benefits of the digression limit of 1000 gold crowns was enjoyed by merely 1.5% of the land. Only 6% of the land was affected by the determination of a separate digression limit. For at least 94% of the former landowners, the differing digression limit mattered little; therefore, for the majority of landowners the extra burdens mentioned were not counterbalanced by the benefits provided by the differing extent of compensation. With regard to them, those reasons were not valid and because of the absence of any other justification, the difference existing between the 1000 gold-crown and HUF 200,000-value limits was arbitrary and contrary to Art. 70/A (page 00, line 00 - page 00, line 00).

(5) Although it was constitutional that no one comprehensive Act provided for compensation of damage to properties, the starting date for the Act of 8 June 1949 was

unconstitutional. Nationalization and utilization of arable land had already begun in the preceding years. Other "unfair" damages had also occurred before 1949, the remedy for which might be the moral obligation of the present State. It was possible however to transform the said date into a constitutional starting point if the Act were to determine the legal rules the application of which before 8 June 1949 caused the same type of damage as those to be compensated by the present Act and further specified a final deadline within which an Act on compensation related to the previous damages should be drafted (page 00, lines 00-00; page 00, lines 00-00).

(6) Section 7(2) of the Act was unconstitutional in respect of apartments which were the property of local governments but not in respect of those which became their property after the Act entered into force. Article 44/A (1)(c) laid down the right of local governments to own property which could be limited by Art. 44/C through a two-thirds majority vote by MPs. The obligation to accept compensation vouchers as means of payment for property already owned by a local government limited the right of disposal of such property since the burdens of the risk inherent in the use of vouchers was placed upon it. A lack of opportunity for investment resulted in a lower interest rate than money and, where a voucher was used, the risk in the difference between the nominal value and the rate of exchange had to be borne. The property of local governments could be burdened with such a risk only if the Act in question had been passed by a two-thirds majority: as this was not the case, the limitation on the right of disposal was unconstitutional. On the other hand local governments would, after the commencement of the Act, acquire apartments free of charge which had come into the possession of the State through nationalization. The obligation for compensation in respect of such apartments would be satisfied by the State which simultaneously undertook the obligation that in their sale compensation

vouchers could be used. The burden existed before the state-owned apartments became the property of the local government and the latter, in acquiring them without charge, had no right to acquire them free of any burden. Thus, in respect of post-Act acquisitions, s.7(2) remained constitutional (page 00, lines 00-00; page 00, lines 00-00).

(7) The right of pre-emption on the part of the agricultural co-operatives based on the Act was not unconstitutional. The transformation of the property of co-operatives was a constitutional task of the State as was its task of protecting co-operative ownership rights. The double task was part of the unique historical situation in which change in ownership, constitutionally determined as a task, occurred and in which the consequences of a former, opposite change of regime in property relations (now classified as unconstitutional) had to be settled. With the exception of land in the ownership of agricultural co-operatives, state property served as security for the compensation vouchers with regard to all other assets. The State, however, gave a significant part of the arable land to agricultural co-operatives on the basis of once-legal rules. If, in the case of land, compensation might only be accomplished on the basis of encumbering land in state ownership this would mean a disadvantageous discrimination of the former owners contrary to Art. 70/A. Consequently the limitation on the property rights of co-operatives was necessary and proportional to the objective to be achieved. There was nothing therefore unconstitutional about the use of the right to purchase with vouchers certain of the property of agricultural co-operatives in compensation for claims under the Act which encumbered such property (page 00, line 00 - page 00, line 00).

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Constitutional Court, on the basis of the petition submitted by the President of the Republic concerning the preventive norm control of the provisions of the Act of Parliament, passed by Parliament but not yet promulgated, with the separate opinion of Vörös, J., made the following

DECISION.

I

In order to settle ownership rights, the Constitutional Court holds the following in the order of the questions included in the petition concerning certain provisions of the Act of Parliament (hereinafter: the "Act"), passed by Parliament at its sitting on 24 April 1991, on the Partial Compensation of the Damages unjustly caused to the Property of Hungarian Citizens by the State after 8 June 1949:

(a) Section 1 of the Act - except for the provision settling the date as 8 June 1949 - is not unconstitutional.

(b) It is not unconstitutional in and of itself that this Act does not provide for the compensation of those who suffered property-related damages or other material damages not being damage to ownership.

It is not unconstitutional that subsections (2), (3) and (4) of the s. 2 of the Act insures claim to compensation by the heirs and the spouse of the deceased person.

(c) The difference which exists under subsections (2) and (3) of s. 4 of the Act between property consisting of land and other goods with regard to the 100% compensation is unconstitutional. The distinction, which as a result of the different method of compensation can lead to the return of property in kind consisting of land while with the use of the compensation vouchers only a partial compensation which does not even come near to the present value of the lost property can be achieved, is unconstitutional.

(d) It is not unconstitutional that there is no one comprehensive Act which provides for the compensation of damages to the properties.

Section 25 of the Act is unconstitutional because of its uncertain content. As a consequence of this the settling of 8 June 1949 as the date, s. 1 of the Act is also unconstitutional. These provisions may be made constitutional if the Act determines the legal rules in consequence of which damage was caused to the property and Acts of Parliament shall be enacted for the compensation of such damages and shall set a final time limit for the legislature to enact these statutes.

(e) Section 7(2) of the Act is unconstitutional with regard to the apartments which are the property of the local governments; it is not unconstitutional with regard to the apartments which became the property of the local governments after the Act came into force.

(f) The right of pre-emption of the agricultural co-operatives based on the Compensation Act is not unconstitutional in and of itself.

II

The Constitutional Court rejects the petition requesting the review of the whole Act - in addition to the provisions directly specified in the petition - and the investigation of whether certain provisions of the Act are contrary to Act LXV of 1990 on Local Government.

The Constitutional Court will publish this Decision in the *Hungarian Official Gazette*.

REASONING

I

A

Taking into consideration the possible finding that the various nationalization laws are in part or in whole unconstitutional (independently of whether or not this means the annulment with retroactive effect), does the regulatory concept of the Compensation Act that the State does not satisfy legal claims but, according to the content of the general justification of the Act, awards goods as a `moral obligation' - essentially on the basis of `fairness' - as `partial compensation' to the beneficiaries, correspond to the principles of constitutionality. Is the preclusion of the return of the properties (the so-called `reprivatization') by an Act unconstitutional, to which the justification of the Compensation Act refers several times? If the object is the satisfaction by full or partial indemnification or compensation of claims on the basis of legal grounds, the freedom of the legislator is far less from the point of constitutionality than in the case of compensation based on fairness.

1. The Constitutional Court determines the unconstitutionality only of certain provisions of the Act; the question of constitutionality of the regulatory concept or the justification of the

Act may be judged by the Court only to the extent which these arise on the basis of the text of the Act. The Constitutional Court shall render its opinion on the provisions of the Act disquieting only from the view mentioned in the petition. In relation to the quoted question the Constitutional Court has examined s. 1 and Schedule 1 of the Act; the justification of the Act, which does not contain the opinion of Parliament but only that of the government submitting the Act, was taken into consideration only in the course of interpretation.

In accordance with s. 1 of the Act partial compensation is due to those natural persons determined in s. 2 whose property suffered damages in consequence of the legal rules enacted after 8 June 1949 and enumerated in Schedule 1.

The Preamble and the Title of the Act call such damages as "damages caused unjustly." In the damages caused by the "application" of legal rules specified in the Schedule the Act does not differentiate between damages caused because of adherence to the legal rules or because of the unlawful application of legal rules. Furthermore the Act does not differentiate, according to whether some legal rules prescribed an obligation for compensation, while others did not. The Act does not separately specify the legal basis of the compensation.

According to the aforementioned the precondition of the answer to be provided for the question of constitutionality is the re-establishment of certain legal relations. The question whether the basis for the compensation is really "fairness", and whether it is true that the State "satisfies non-legal claims" deserves clarification in particular. Further, the connection between the "remedy of damages caused unjustly" and the other objectives of the Act shall be clarified, since the constitutionality of certain provisions may not be judged by taking them out of this context.

2. The Act has a double purpose according to the Preamble: "the remedy of the damages caused unjustly to the property of the citizens by the previous regime" in a manner that at the same time will also achieve "the settlement of questions of ownership", and thereby the security of transaction and enterprise will be established.

Partial compensation for those, whose property suffered damage by the application of the legal rules enumerated in the Schedule of the Act (para. 1) is the means for this.

The motives of s. 1, which contains the concept of the Act, may essentially be found in the general justification of the Act. According to this "for the sake of establishing stable ownership in accordance with the modern market economy, and the termination of the uncertainty in ownership," the damages caused to private property will not be remedied by reprivatization, but by partial compensation; this solution is justified further by the present financial capacity of the nation, and the fact that in the past non-propertied owners have also suffered damages which had financial effects, and even the partial remedy of these persons is not possible. The general justification emphasizes that "with the change in the regime a strong claim has arisen on the part of the former owners for the remedy of past damages unjustly caused to private property," and that the "moral obligation" of the State is to ensure the financial compensation of those who have suffered damages to their property in the past.

Section 1 of the Act does not in itself exclude either the possibility for the reprivatization or for full compensation. It is only apparent from the Preamble that the party submitting the Act intends partial compensation as the final arrangement of damages in ownership; furthermore, that this will be provided by the State as a moral obligation and not a legal obligation. The petition of the Minister of Justice (at page 4) to the Constitutional Court in *Dec. 16 of 1991 (IV.20) AB* (MK 1991/42) concerning the Compensation Act (hereinafter: "the *Second Compensation Case*") took

it for granted similarly to the present petition (at page 1), that the State has no legal obligation to compensate ownership damages or that anybody has a subjective right to the restoration of his ownership.

2.1. According to the aforementioned, one of the basic ideas of the Act is that damages in ownership "caused unjustly" will be remedied by the State on the basis of fairness. The criterion "injustice" collects together under a uniform judgment several ownership changes which have quite different legal bases. It is apparent from the Schedule 1 of the Act that this relates on the one hand to the nationalizations carried out at the end of the 1940s and at the beginning of the 1950s; and on the other hand to property changes in consequence of the redistribution of land and later to the offering of land for sale to the State, to the organization of the agricultural co-operatives and to the creation of property for the agricultural co-operatives; thirdly this relates to some real estate acquisition by the State, essentially with political motives, as *e.g.* in the case of the property of those who emigrated illegally.

According to the legal rules on nationalization which were among the legal rules specified as the basis for compensation, the nationalization was to be carried out with compensation, and a separate legal rule was to provide for the method and extent of compensation. The legal rules for compensation were not drafted. The Constitutional Court has already referred in its *Dec. 21 of 1990 (X.4) AB* (1990/98) (hereinafter: "the *First Compensation Case*") which forms a preliminary step in the present process that the review of various legal rules concerning nationalization is under way. Neither the Bill nor the legislation paid attention to the fact that the consequences on the basis of the new Constitution of the failure to provide compensation for nationalization and the compensation based upon the "fairness" were to be harmonized. The Constitutional Court at the same time of the passing of the Act declared as unconstitutional the legal rules on

nationalization: *Dec. 27 of 1991 (V.20) AB* (MK 1991/53) (hereinafter: "the *Third Compensation Case*"). The Constitutional Court has suspended the process in the question of the compensation for nationalization but has made clear in the reasoning of its Decision that the obligation for compensation promised in the legal rules concerning nationalization is still considered to exist. The State has an obligation to provide compensation in the field of "injustices" caused by the nationalization.

The view of constitutionality of several legal rules related to the nationalization of the arable land, some of which appear in the Schedule of the Act, and others form the preliminary steps for the Schedule[???], is before the Constitutional Court. These legal rules usually prescribe an obligation for compensation, the fulfilment of which was partly suspended by a legal rule or the other part was invalidated. Depending on the Decision of the Constitutional Court the State may have a legal obligation to provide compensation in connection with some of the legal rules ordering the nationalization of arable lands.

In the *Second Compensation Case* (MK 1991/42) the Constitutional Court pointed out that the legislator - renewing his obligations with the various bases on the model of motivation - maintains his ability under a new title, in a new dimension and with new conditions. The Constitutional Court saw such a new legal ground in the Act.

"Fairness" is the uniform motive for the enactment of the Act. At the same time some other obligation for compensation is behind the uniform legal ground for compensation created by the Act and, in such a case, the issue whether their relation to the compensation is constitutionally settled shall also be investigated.

2.2. The other objective of the Act is "the settlement of issues of ownership."

"The settlement of issues of ownership" is a constitutional task, since the Preamble of the Constitution sets out as a goal the achievement of the social market economy. This settlement of issues of ownership is at the same time a complex process, in which both the "closing of the past," and the transformation of the social property forming the basis of the past regime, and the new acquisition of property shall be constitutional, from the point of view of present and future owners alike. All these aspects may be judged only in their context; on the other hand, the unique historical character of the "settlement of issues of ownership" may be seen in this relationship which is also an essential standpoint in the judgment of the constitutionality of certain solutions.

3. The Compensation Act is only a part of the process. Since the relevant legal aspect, *i.e.* the State's obligation to provide compensation, was not taken into consideration in the course of the drafting of the Act, and because of various petitions in which the Constitutional Court has had to examine the settlement of issues of ownership in this context, the task of evaluating the context of the "settlement of ownership issues of properties" from the constitutional perspective, and of laying down the coherent legal foundation of the change of regime fell on the Constitutional Court. The opportunity arose when the issues of privatisation, reprivatisation and compensation came before the Constitutional Court first on a theoretical level as an abstract constitutional interpretation and then in connection with the Compensation Act, the Constitutional Court had the opportunity to take a further theoretical stance, and the Court in the present case renders a Decision about the constitutionality of some provisions of the Act. At the same time the Constitutional Court reviewed several legal rules in effect between 1948 and 1952 concerning the nationalization from the perspective of constitutionality. Because of these circumstances, the Constitutional Court is compelled to be bound by its own Decisions, and at the same time the Constitutional Court reviewed the settlement of issues of ownership from the perspective of

constitutionality independent of the politics of the day. The constitutional framework of the change of regime in the question of the ownership which was outlined step by step, binds the Constitutional Court as well.

The more important observations of the Constitutional Court so far are as follows:

3.1. The Constitutional Court stated in the *First Compensation Case* (MK 1990/98) that under Art. 70/A(1) of the Constitution, it amounts to discrimination to distinguish between people, *i.e.* it is unconstitutional, when the former property of some people will be reprivatized depending upon the object of the property while the property of others will not be reprivatized. In this Decision the Constitutional Court has not found any constitutional justification for the return of property in kind in the case of the former landowners, whilst other former owners will receive only a partial financial compensation.

In the reasoning of the Decision, the Constitutional Court explained in detail the conditions necessary to permit positive discrimination.

In the same case the Constitutional Court interpreted Art. 13 of the Constitution which states that the Hungarian Republic ensures the right of the agricultural co-operatives to the arable land in their ownership. There is no constitutional possibility for the expropriation of land of the agricultural co-operatives (in the given case to return them to the original owners) without an immediate, full and unconditional compensation on the basis of the provisions of the Act.

3.2. In the *Second Compensation Case* (MK 1991/42) the Constitutional Court has taken a stand on the more essential questions of constitutionality in relation to provisions of the Compensation Bill without rendering any decision on the constitutionality of certain provisions.

The Constitutional Court pointed out that within the concept of rejecting reprivatisation and of providing a partial financial compensation for all former owners, the freedom of the

legislature in making distinctions in the details is very great, first of all because it does not distinguish among parties. In such a case the only requirement within theoretical limits of positive discrimination is that there shall be a reasonable motive in unequal treatment, *i.e.* it shall not be arbitrary.

The Constitutional Court stated that in principle that, in itself, the Act is not unconstitutional if it determines the distribution of the arable land available only to a limited extent and having a particular legal position different to other goods serving as the basis for compensation.

The Constitutional Court stated, in relation to the right of pre-emption to be introduced in the Act *vis-ŕ-vis* the agricultural co-operatives, that this is not an expropriation of property under Art. 13(2) of the Constitution but a limitation on ownership, the unconstitutionality of which shall be judged in accordance with Art. 13(1) and Art. 8(2) of the Constitution. According to the Constitutional Court the constitutionality of the right of pre-emption shall be examined in the context of the breaking up of social property as a constitutional task.

The Constitutional Court with this requirement set upon the development of the principal theses, on how the unique, particular historical requirements of the change of regime may be executed constitutionally, remaining on the basis of legal continuity. The Constitutional Court stated that there is no constitutional obstacle to the Acts transforming the system of property obligations which occur as a consequence of the modification of the Constitution made on 23 October 1989 and the burdens originating from the establishment of the former social property being distributed among those who acquire the social property for free. (The parties acquiring property for free will be, *e.g.*, the local governments, the members of the agricultural co-operatives, among whom the property of the co-operatives will be distributed as private property

by the new Act on Co-operatives. The burden in question is, *e.g.*, the compensation for the nationalization or the consequences of the expropriation of property increasing the size of co-operative property.)

The abovementioned statement of the Constitutional Court referred to the fact that the legislature could renew the obligations of the State on the model of novation, thereby, rendering possible the application of the obligations originating from the past regime within the framework of the existing legal and economic conditions, and, in particular to exclude the reference to old legal titles.

3.3. The *Third Compensation Case* (MK 1991/53) determined that the legal rules in effect between 1948 and 1952 on nationalization were unconstitutional and declared them invalid. The Constitutional Court left open the adjudication of the provisions concerning compensation. The Court stated in the reasoning that on the one hand it considers the obligations to compensation promised in the legal rules of nationalization to be still valid, and on the other hand, it also recognizes the right of the State to renew this obligation, and in connection with this - since the Decision about the indemnification was suspended at the start of the legislative process of the Compensation Act - it did not exclude the recognition of the fulfillment compensations provided by the Compensation Act.

The "renewal" of the obligation of the State is not unconditionally constitutional. In the case of the compensations promised but not provided for nationalization, the application of novation could be allowed, since considering these in their context, it can be seen that these were not the usual nationalizations but aimed at the systematic liquidation of private property. Taking into account that the compensation occurs in the course of the restoration of constitutionality when the distribution of the burdens and advantages originating from the change of regime also

has to be constitutional, it is not unconstitutional in itself that the Act in connection with the compensation ensures the protection of property and the enforcement of the basic constitutional principles instead of the guarantees for the constitutional nationalization in another manner. In the particular case the method of novation is a suitable and permissible means for taking into consideration the former nationalizations and the present extraordinary characteristics and conditions of their review. The renewal in itself may not violate any constitutional rights or principles. Therefore, on the basis of the protection of property and the principle of the constitutional state, the State has the obligation to settle all of its obligations originating from the former nationalization - even through renewal - so that no affected party is put into a disadvantageous position.

4. According to the aforementioned s. 1 and Schedule 1 of the Act - with the exception of the provision setting 8 June 1949, as the date (see Point D) - are not unconstitutional. Naturally, the concept to be found in these is not unconstitutional as well. The Act creates a uniform legal basis for compensation claims for those affected under the Act. Behind the legal claims arising from "moral obligation", a former legal obligation of the State originating from another legal basis may be found in the majority of the cases for the compensation of the parties suffering damages. The existence of such obligations was determined by the Constitutional Court on the basis of the legal rules on nationalization; as a result of the review by the Constitutional Court a similar legal obligation may likely be related to the provisions concerning the expropriation of arable land. Since all the extraordinary circumstances and considerations on account of which the Constitutional Court considered permissible the renewal of the obligation and its fulfilment by partial compensation constitutional, are valid for the other claims and obligations for

compensation and indemnification affected by the Act, the application of the method of novation is not in itself unconstitutional.

Through the renewal of the obligation, the compensation claims, based on the legal obligation originally ensured by the Act without a former obligation, will have a common legal basis.

The system of novation excludes the references to older legal titles. Since the novation is constitutionally permissible, there is no reason to review further, whether there were or could be claims for reprivatization within the scope of the damages to the property in question.

The fact that the Constitutional Court considered the method of novation in the given case as constitutional, does not mean any statement about the question, whether the actual renewal of the obligations for compensation violates the Constitution. This question can be answered only on the basis of the review of certain provisions of the Compensation Act.

B

> Is the determination of the group of people entitled to compensation, in the Act (s. 2) in accordance with the principle of so-called `positive discrimination,' or is it contrary to the fundamental constitutional right, the right of equality included in Art. 70/A of the Constitution? Is the omission to exclude those who suffered other than property damages with financial effects constitutional, and is the deviation from the rules relating to inheritance contained in the Civil Code - from the point of view of entitlement to compensation - contrary to Art. 14 of the Constitution?

1.1. In the case closed by the Decision in the *First Compensation Case* (MK 1990/98), which formed the preliminary steps for the present inquiry, the full compensation and reprivatization concept of the government came before the Constitutional Court. The Constitutional Court took into consideration in this Decision that the basis for the planned

compensation is not only the expropriated property but the damages suffered in general. Meanwhile Parliament gave authorization in its Resolutions 19/1989 (XI.1) and 20/1989 (XI.1) for the compensation of the victims of unlawful convictions or internments or for the remedy of the damages suffered by interned and enacted persons. The government enacted measures for the implementation of these Resolutions. It can be stated that the present Compensation Act serves for the political restitution, and within this it fits into the process of measures providing financial remedy as well. The issue of constitutionality emerged in the context of whether the fact that the Act compensates only those persons who suffered damage in their property, and excludes those who "suffered damages other than property damages with financial effects." The general justification of the Act regards this latter group as the people having no property but who suffered damages, which have affected their present living conditions, and states that the remedy for their damages may not even be partially provided.

The State has no legal obligation for providing any compensation and in particular some financial remedy to the persons who suffered any kind of damage or to remedy that just because of the existence of discrimination against those who suffered damages with financial effects. Taking into account the fact that various measures for compensation are under way, there is in theory a possibility for the prohibited discrimination concerning the group of the beneficiaries and the extent of the allotments. Since these are not originally entitled parties, the arbitrary discrimination among them is unconstitutional. The Constitutional Court has to decide whether there is a reasonable motive in the compensation process to limit the Act to the group of persons who lost their property.

1.2. Neither the group of people, who, according to the petition are in a disadvantageous position by the Compensation Act, nor the nature and extent of their damages may be determined.

In practice it could be applicable to everyone who lived in Hungary in the past regime that although his property was not expropriated but suffered "damages with financial effect." Considering the limited resources which may be used for the purpose of compensation and the economic condition of the country, it is not arbitrary that there will be no general remedy at the present time for damages having financial effects.

The selection of the group, to whom compensation will be provided under the Act is also not arbitrary. The Constitutional Court pointed out above that the compensation of a significant group of the former owners was a legal obligation of the State. The fulfillment of these obligations may not be neglected implicitly, or their eventual suspension and the impracticability of their enforcement may not be ignored on a review concerning their constitutionality. The compensation of the parties suffering damages in the nationalization and land expropriation has to be settled, therefore, the omission of this would violate the protection of property and the principle of the constitutional state. The remedy for damages may be arranged constitutionally with the renewal of the obligations by the legislation. It makes sense to include the group of owners in the compensation scheme based on a new legal entitlement whose land became the property of the agricultural co-operatives through compulsory expropriation. The criterion determining the compensated owners is that they lost their property as a result of the socialization of private property, by force of certain legal rules or by the unlawful execution of these legal rules. From the point of view of the former owner, the legal means of expropriation and the identity of the new owner were indifferent (a part of the land went into the possession of the agricultural co-operative from state ownership). The group of former owners is, therefore, not an arbitrarily-formed group and adding the group of those entitled to compensation on the basis of the abovementioned criteria was sensible.

1.3. The dual purpose of the Act renders reasonable the limitation of the group of those to be compensated to the owners. As the first step of the "settlement of issues of ownership," *i.e.*, before transforming social property into private property, or into the property of the local government, *etc.*, the settlement of the obligations which remain is still not arbitrary. Therefore, distinguishing between the group of owners affected by this directly and those affected indirectly is not unconstitutional.

1.4. The judgment on the constitutionality of the personal of the Act may not be separated from the effect. The Constitutional Court took a stand on this in Point D but also notes here that the rendering of an opinion on the constitutionality of the differences existing among the persons receiving various forms of financial compensation may be made only with the knowledge of the concrete regulation, after the conclusion of the process. In principle it may be unconstitutional, if a part of a rule will introduce a differentiation which may not after be equalized - *e.g.* depriving the fund providing the coverage irreplaceably. The Constitutional Court did not see such a danger in the present Act. The same is valid for those owners who do not fall into the group determined by s. 2(1) of the Act.

1.5. On the basis of the aforementioned it is not unconstitutional that the Act does not provide compensation for those who did not suffer damages in their ownership but some other damage in their property or disadvantages with financial effects.

2. According to the Act if the person entitled to compensation died, his heir or in the absence of such his spouse may make a claim to compensation, on the basis of rules which deviate from the normal ones on legal succession (subsections (2), (3) and (4) of s. 2).

2.1. The Act concerns those claims which are founded by themselves. As the Constitutional Court pointed out previously, the novation excludes references to old legal titles.

Since novation is constitutionally permissible in relation to the obligations for compensation affected by the Act, this does not violate the right of inheritance. Therefore, there is no need to review who in the group of people entitled to compensation or indemnification had claims prior to the Compensation Act which according to the rules of the Civil Code formed a part of their property and which could, therefore, be inherited. The Constitutional Court noted that the obligation for compensation by the State prescribed in the legal rule did not form a subjective right in the majority of cases for the claim for compensation since the regulation of the method and extent of the compensation were omitted.

2.2. According to the Act the relatives entitled to compensation do not inherit the claim for compensation but they acquire it by virtue of the Act. Therefore, there is no relevant connection between the constitutional right of inheritance (Art. 14 of the Constitution) and the s. 2 of the Compensation Act. The Constitutional Court does not examine the deviation from the rules on legal inheritance contained in the Civil Code from the point of view of the content and formality, since the conflict existing among the Acts does not belong to the jurisdiction of the Constitutional Court.

3. Therefore, subsections (2), (3) and (4) of s. 2 of the Act which regulate the compensation claim of the heirs or spouse of the deceased person are not unconstitutional.

C

Whether the regulation on the extent and the method of compensation included in the Act, the various distinctions in the Act in part between the damaged property objects, and in part on the extent of the property (ss. 3, 4, 13 and Schedule 2) conform with the basic principles of constitutionality?

1. The legislature has great freedom in determining the extent of the damages and the extent of the compensation, since it is the legislature which creates the new, uniform legal basis for compensation, taking into account fairness. The method for the calculation of the damages and the compensation - the calculation of the extent of the damages in a lump sum, the digression on the extent of compensation and the determination of the maximum amount of the compensation - is in itself not unconstitutional.

2. Calculating the extent of the damages the Act provides different lump-sum values for real estate (apartments, stores, workshops and empty spaces in the inner-city [???] districts), for companies and for arable lands. The Act states that lump-sum value will be determined in the case of apartments and other real estate per square metres (categorized in accordance with where the real estate is situated), and in companies according to the number of permanent employees, in the case of arable land the measuring unit is the registered net income of the land (the value in gold crowns, the gold crown being the currency of the Austro-Hungarian Monarchy). These rules, included in s. 3, Schedule 2 and s. 13 of the Act contain reasonable distinctions, which take into consideration the simplification of the technical side of the compensation and the different characteristics found in the various property of the assets.

3. The Act differentiates from two perspectives in the calculation of the extent of the compensation depending upon whether the entitled person claims arable land as compensation or requests only the issue of a compensation voucher. One perspective is the degressivity of the extent of the compensation, and the other is the compensation in gold-crown value in the case of land and in forint value in the case of other damages.

3.1. According to the general rules the extent of the compensation is equal to 100% up to damage of HUF 200,000. If, however, the basis for compensation is land and the person entitled

to compensation requires this in the form of arable land, the extent of the compensation equals to 100% up to the value of 1000 gold crowns. (The multiplicator of the damages in the case of arable land is 1000 HUF/ gold crown and according to this is HUF 1 million.)

This distinction, which gives a very significant advantage with regard to the acquisition of arable land, is explained by the justification attached to ss. 3 and 4 of the Act stating that the returns on the arable land are much smaller in comparison with other capital goods; that the person entitled to compensation undertakes important additional costs according to this method of compensation (*e.g.* land surveying); and furthermore, that the arable land lays the foundation for the future enterprise of the person entitled to compensation but this requires significant investment, with a later return, the costs of which do not permit the entitled persons to elect other ways of compensation (*e.g.* acquisition of shares). Essentially similar reasons were expounded by the Minister for Justice in his statement submitted to the Constitutional Court on this case and during this hearing.

This difference between the persons requesting land as compensation, and the parties who suffered damages to the extent of full compensation is striking, and may not be justified constitutionally, even if this is measured by the great degree of freedom provided to the legislature in the case of positive discrimination as explained in the *Third Compensation Case* (MK 1991/53).

The digression starting at 1000 gold crowns was justified in the Bill or by the Minister of Justice with the economic particularities and the special requirements falling on the person making the claim under the Compensation Act. According to the Constitutional Court these burdens do not lay a foundation, however, of the difference between the limit of the 1000 gold crowns and the limit of HUF 200,000 determined for non-arable lands. In accordance with the

Land and Cartographic Office, considering the properties in 1947, 98.5% of the land properties were smaller than 30 hectares. Following on from this, calculating with the average value of 15.25 gold crowns of the 1 hectare arable land, 98.5% of the former landowners could have received full compensation in kind, even if 100% compensation would have been given only up to 457.5 gold crowns. Moreover, if the beginning of the digression were only 183 gold crowns - which if converted according to the Act is smaller than the general HUF 200,000-value limit, *i.e.* if there were no distinction in the extent of the digression between the arable land and other property assets - still about 94.2% would have been in the 100% compensation bracket. The benefits of the digression limit of 1000 gold crowns is enjoyed only by 1.5% of the land. Only 6% of the land is affected by the determination of a separate digression limit. At least for 94% of the land the differing digression limit is immaterial, therefore, for the majority of the landowners the extra burdens mentioned in the reasoning are not counterbalanced by the benefits provided for by the differing extents of compensation. With regard to them those reasons are not valid, and because of the absence of any other justification, the Constitutional Court declares the difference existing between the 1000 gold crown and HUF 200,000-value limit as arbitrary and contrary to Art. 70/A of the Constitution.

3.2. According to the s. 16 of the Act the entitled party who requested arable land, may request land equal to the gold-crown value indicated in the decision of the Damage Compensation Office up to the extent of the value of the compensation vouchers issued because of damage to his land. On the other hand the compensation voucher which was not issued for arable land constitutes the nominal value of the claim against the State, and may be used in its forint-value for the purposes determined in the Act.

The relation between the compensation and the damage is quite different in the case of persons requesting land and those requiring other methods of compensation. Since the damage suffered to the land is determined in the gold-crown value and in the case of making a claim for land equal to the gold-crown value of the lost property may be acquired. This way of calculation - which uses the same method for the calculation of damages and compensation - ensures compensation at the original value. This method of calculation may be used only for the compensation of damage in land. This means that the Act restores in kind the amount of land owned in 1949 to the persons entitled.

The fact that the refunds given for land are to be subtracted from the compensation does not alter the restituitive character of the compensation with land: this is very advantageous for the owners anyway because of the difference between the value of the gold crown then and the forint value established in the Act. The character of full compensation in kind is reinforced by the fact that the difference in the gold-crown value existing between the original land and the new land may be exchanged for land. On the other hand, compensation with regard to all the other people remains only partial. The forint-based claim calculated for the lump-sum value of the damages is independent of the present market value of goods. The lump-sum value established per square metre in Schedule 2 is, *e.g.*, not even a tenth of the present price of an apartment. Compensation for an apartment would be similar to that of the land if the former apartment owner were entitled to the same size apartment in the same district as determined by the Schedule, than the one taken from him. The difference between the two methods of compensation may be eliminated inversely as well: if the entitled party may purchase with the compensation voucher land at its current market price that has the value calculated on the basis of 1000 HUF/gold crown of the expropriated land. In this case both groups of the damaged parties would share the burden of the

past proportionally. (It may be that the entitled agricultural co-operative members who exchange compensation vouchers received other than for land will acquire a property on the basis of calculating 1000 HUF/gold crown, though the Act does not clarify this.)

According to the Act some former landowners may receive a compensation in kind to the extent of their original land, whilst others may obtain only a partial compensation. This differentiation breaks up the concept of the Act, which dismisses the idea of reprivatization and provides a partial compensation. The Constitutional Court stated in the *First Compensation Case* that the restitution of land and the monetary compensation of other owners are in conflict with Art. 70/A of the Constitution, unless the constitutional justification of positive discrimination in accordance with the principles therein. The Constitutional Court did not find such evidence in the reviewed documents in the present case.

The Constitutional Court notes that the consideration of the special character of land and the enforcement of the ecopolitical preferences are not barred by the elimination of the differences existing in the calculation methods. (Approximately a quarter or one third of the land which would be restored on the basis of the gold-crown value, may be acquired for the forint value of the compensation vouchers, and this is still 2.5-3 times more than what the damaged parties could otherwise purchase.

4. On the basis of the aforementioned, the difference, which according to s. 4(2) and (3) of the Act exists between the claimed land and the other assets concerning the 100% value limit of the compensation, is unconstitutional. The difference, which as a consequence of the different calculation methods of the compensation may lead to full restitution in kind in the case of land, whilst using the compensation vouchers only a partial compensation may be achieved, which does not even approximate to the present value of the assets lost, is also unconstitutional.

D

Whether the compensation by separate Acts which are to be drafted at different times in the future instead of a complex, comprehensive Act is in harmony with the constitutional principles of legislation in the case of goods of legal entities (*e.g.* church property) or in other cases of property expropriations (s. 25(2)) which occurred before a certain date (8 June 1949) with special attention to the fact that in this case the review of the principles of compensation and the assessment of the social costs may be provided only to a reduced extent, or that in the case of such legislative method there is a possibility to discriminate among certain groups of citizens on the basis of ethnicity or race concerning the method and the extent of the compensation? The regulatory concept of the Bill related to church properties is completely different, the right of pre-emption of the former owners is differently regulated by the Act LXXIV of 1990).

1. The Compensation Act is a justly separate part of the political restoration process. Since the whole process is politically initiated and at the same time the group of the damages requiring remedy is the satisfaction of the former claims may be closed with a symbolic date. In the case of certain compensations this date may not, however, be arbitrary.

The damages to be compensated by the Compensation Act which are within the ambit of the Act, *i.e.* 8 June 1949 may be well defined with then existing criterion of the change in the ownership: expropriation of private property for the benefit of the State or agricultural co-operatives. From the same perspective the date of 1949 is not relevant since the nationalization and utilization of the arable land had already begun in the previous years. Other "unfair" damages occurred before 1949 as well, the remedy of which may be the "moral obligation" of the present State since the former regime failed to do it.

The Constitutional Court has stated in the *Second Compensation Case* (MK 1991/42) that in the case of an *ex gratia* compensation, no objection may be made if the compensation occurs in

different phases. Dividing the process into phases presupposes, however, that the possibility of the overview of the whole process in its content and in time. Dividing the process into phases is an arrangement for the execution thereof.

The already drafted part of the Compensation Act is homogeneous. The basis for the extraordinary solutions to be found in it is that the changes in ownership, remedied then and now, form a part of the so-called "social ownership." This process may be defined in time, and comprises also the period before 8 June 1949. These expropriations of property which - originally had other purposes - but became part of this process can be also determined. In the case of other property expropriations, the time of which may also be determined, certain international contexts justify the separate regulation by law.

2. Based on the abovementioned considerations it is not unconstitutional that the property damages are not contained in a comprehensive Act. A possibly disadvantageous discrimination among the groups of damaged parties may occur with other legislative methods as well; the danger of this would not make any of the methods unconstitutional even if the application of one of these methods would provide a greater chance for discrimination.

Concerning ownership damages affected by the Compensation Act, the date starting with 8 June 1949 is in itself unconstitutional, and this will not be remedied by the provision of s. 25 of the Act, according to which damages caused before this time by the State in the property of the citizens will be partially compensated on the basis of principles determined in this Act by the provisions of a separate Act of Parliament. The date of 8 June 1949 may be transformed, within the constitutionally permissible division of the compensation, into the constitutional starting point of time of a period. One of the possible ways is that the Compensation Act determines those legal rules, whose application before 8 June 1949 caused the same type of damages as the ones

compensated by the present Act, and indicates the final time limit, within which an Act of Parliament on the compensation related to those shall be drafted.

E

Whether the regulations determining an obligation on the part of the local governments (the burden of the right of pre-emption), in the case of an apartment owned by the local government, the obligation to accept the compensation voucher, which may not be sold at all or only at a low price - s. 7(2) and s. 9 - do not conflict with the Act on Local Government or with Art. 12(2) of the Constitution guaranteeing the property of local governments.

1. The Constitutional Court reviews only the relation of the challenged provisions of the Compensation Act to the Constitution, their conflict with the Act on Local Government does not belong to its jurisdiction. There is no relation between the right of pre-emption of s. 9 of the Compensation Act and the property of the local governments under Art. 44/A(1)(b) of the Constitution; the right of pre-emption affects the relation between the buyers, and the seller has no constitutionally protected right in choosing the buyer.

2. In accordance with s. 7(2) of the Compensation Act the person entitled to compensation may use his compensation voucher in its nominal value during the sale of the apartments in the property of the local governments as means of payment.

2.1. According to Art. 44(1) of the Constitution, the rights determined in Art. 44/A of the Constitution are the fundamental rights of local governments. Article 44/A(1)(b) includes the right of local governments to own property. In accordance with the Art. 44/C the limitation of the fundamental rights of the local governments requires the vote of two-thirds of the parliamentary representatives present. The obligation to accept the compensation vouchers as means of payment

limits the right of disposal as it relates to the property of the local governments, since the burdens of the inherent risk in the use of the compensation vouchers is placed upon it. Since there is a lack of opportunity for investment, the compensation vouchers have a lower interest rate than money; in case of using it, the risk in the difference existing between the nominal value and the rate of exchange has to be borne. The property of the local governments may be burdened with this risk only in case of an Act passed by two thirds. In case of passing such an Act, the constitutionality of the limitation on ownership may be examined.

The limitation on the right of disposal may surface only with regards to apartments, which are in the property of the local governments at the time when the Compensation Act comes into force. In relation those, s. 7(2) of the Compensation Act is unconstitutional.

2.2. Concerning the sale of apartments, the ownership of which will be acquired by the local governments only after the Compensation Act comes into force, the obligation determined in s. 7(2) of the Compensation Act is not unconstitutional.

According to the concept of the Compensation Act a partial monetary compensation will be provided. The State has no obligation to harmonize the offer for privatization and the claims of the persons entitled for compensation, or to include all the properties which were expropriated among the properties which may be purchased. At the same time the State may formulate the establishment of the offer in accordance with its own economic and socio-political objectives, and among others the mass trade may also be taken into account. The privatization of apartments has already begun, it is a socially successful process, which will an important part of the use of the compensation vouchers. The Compensation Act enforces separately the use of the compensation vouchers for the purchase of apartments, *i.e.* the privatization will be burdened by this obligation.

According to the statements contained in the *Second Compensation Case* (MK 1991/42) there is no constitutional objection to the fact that in the course of giving the state properties into the property of the local governments, the laws transforming the system of ownership distribute the burdens and obligations originating from the former establishment of state ownership among the local governments acquiring the property free of charge. On the basis of the Act on Local Government and the laws giving the property assets in the ownership of the State to the local governments, the local governments will acquire apartments free of charge, which had been taken into state ownership in the course of nationalization. The obligation for compensation for those apartments will be satisfied by the State with compensation, and at the same time the State undertakes the obligation that in the case of selling the apartments, the compensation vouchers may be used as a means of payment. This burden existed before the state-owned apartment became the property of the local self- governments, and the local governments acquiring this free of charge have no right to acquire the former state property free of any burden.

F

> Whether the burdens established on the part of the co-operatives (s. 15, ss. 17-19) are in harmony with the provisions of the Constitution guaranteeing co-operative property as unique common (association) private property (Art. 12(1)), as co-operative property by the Constitution, taking into account that according to the Civil Code exercising the right of pre-emption results in the necessary extinction of the existing ownership of a certain property asset, and that the co-operatives acquired land not directly as a result of the nationalization Acts and that there is a way through the courts to reclaim the land acquired by them possibly in a non-legal manner, `legally imperfectly,' according to the general rules of civil law.

1. In accordance with s. 15 of the Act the entitled party who has declared his claim for an arable land has the right to purchase by using the compensation voucher the land owned by the agricultural co-operative or its legal successor, which acquired ownership or the use of the arable land that serves as the basis for compensation in its possession or used in accordance with the legal rules specified in the Schedule of the Act.

According to the original concept of the settlement of issues of ownership, the original ownership would have been restored. With regard to this concept in the case closed with the Decision in the *First Compensation Case* (MK 1990/98), the Prime Minister proposed the interpretation of Art. 13 of the Constitution as it relates to Art. 12 examining whether the expropriation of the property of the agricultural co-operatives may be carried out on the basis of the provisions of the Act, but without an expropriation procedure and compensation. The Constitutional Court stated that the protection ensured in Art. 12(1) of the Constitution relates to co-operatives which exist on the basis of its voluntary association in the circumstances of its foundation. The general meeting of the co-operative is the competent body to decide whether the co-operative functions on the basis of voluntary association.

The current law in force allows for a member to leave or for the dissolution of the co-operative on the basis of the general meeting's resolution but there is no possibility for the distribution of the co-operative's wealth - which would be the guarantee for the voluntary principle. The *First Compensation Case* pointed out that the problem of distributing the wealth of the agricultural co-operatives may be resolved by the modification of the Act.

The Constitutional Court stated that the co-operative property - similar to any other property - is under the protection of the Constitution. Article 13(2) of the Constitution controls expropriation of property not only when that is carried out by an individual authority but when it

happens by a law. Therefore, the Constitutional Court adopted the view according to which the immediate, unconditional expropriation of the property of the co-operatives without full compensation is unconstitutional.

2.1. Since the *First Compensation Case* (MK 1990/98) declared the expropriation of the co-operative ordered by an Act, without any compensation as constitutional, the draft of the Compensation Act included the land in the ownership of the agricultural co-operatives into the compensation so that with regard to these lands a smaller group of damaged parties will be given the right of pre-emption up to the limit of their compensation vouchers. (Independent of this any injured party may use his compensation voucher for the purchase of state-owned land offered for privatization.) On the subject of this solution the reasoning of the proposal stated from a legal point of view only that a significant proportion of the arable land is in the ownership of co-operatives and the right to purchase ensures that they are given to the entitled party.

The Constitutional Court stated in principle in the *Second Compensation Case* (MK 1991/42) that the right to purchase is a limitation on the right to property, the constitutionality of which shall be judged in accordance with the Art. 13(1) and Art. 8(2) of the Constitution. According to the Constitutional Court the right to purchase based on an Act will not be classified as expropriation or as another legal institution which is in the same category if it is unconstitutional - in this case the Act establishing the right to purchase shall be annulled.

2.2. The constitutionality of the "right to purchase" used in the Compensation Act has to be judged in the framework of the settlement of the issues of ownership. This is a constitutional task. A part of this comprehensive process is the transformation of the co-operatives and the co-operatives' property which is at present indivisible. According to the Bill on Co-operatives that has already been submitted to Parliament and to the Bill on Transformation before the

government, this will happen so that the co-operative's property will be given into the private ownership of the members of the co-operatives in the proportions established by the general meeting (and on the decision of the general meeting to the employees and relatives). The new owners will remain, according to their decision, members of the co-operative along with their land or without those. Section 17 of the Compensation Act ordered the establishment of a land, which may not be acquired with the right to purchase in order to ensure the minimal amount of arable land to be transformed according to the Act on Co-operatives. This includes 29.7% of the land owned by the agricultural co-operatives.

The settlement of ownership issues not only means the transformation of the co-operative's property into private property, but also the settlement of the obligations existing on the part of the State on the basis of establishing before the agricultural co-operative's properties. These two tasks have to be resolved with regard to one another. There is no constitutional obstacle to the State putting some of the burdens on the people who will acquire the property of the co-operatives free of charge. This possibility for this encumbrance is valid with regard to the legal successors of the agricultural co-operatives until their land is transformed into private property.

A significant number of transforming co-operatives will be established on lands, which before giving them into private ownership were acquired by the co-operatives on the basis of legal rules, which according to the Compensation Act unfairly damaged the former owners. (On the basis of the data provided by the Land and Cartographic Institute, the Act affects about 3.1 million hectares of land out of the 3.5 million hectares of co-operative property). Within this the State may provide compensation for the lands given to co-operative ownership from state ownership (about 1.8 million hectares) depending on the Decision of the Constitutional Court, the

State may owe compensation to the former owners and that - patterned after the compensation of the nationalization - may be accomplished in principle by compensation established by an Act. For land that became the property of co-operatives on the basis of compulsory redemption, the State undertakes compensation on the basis of the Compensation Act.

The members of the agricultural co-operatives have no constitutional right to make the property of the co-operative divisible, and to receive parts of it as private property free of charge. This depends upon the decision of the legislature, and at the same time if it means the complete extinction of the ownership of the co-operatives existing up to now. While the members of the co-operative do not acquire a certain part of the property of the co-operative on the basis of the Act, there are no constitutional obstacles to the Compensation Act and the law regulating the transformation from taking into consideration the burdens mentioned before during the distribution of the property of the co-operatives free of charge.

The fact that the State is not transforming its own property and that it burdens the party acquiring the property free of charge does not present an obstacle for placing an encumbrance on the future owners - in the given case they have to render an account to the party from whom the co-operative acquired the land, before acquiring the free property acquisition, and therefore a smaller amount of land will be distributed among them. The transformation of the property of the co-operatives is a constitutional task of the State. The State also has the task to ensure the constitutional protection until the co-operatives ownership ceases to exist. This double task is a part of the unique historical situation, in which the change in ownership determined as a task in the Constitution takes place, and in which the consequences of a former change of regime in property ownership having the opposite effect and which is classified today as unconstitutional has to be settled. With the exception of land in the ownership of the agricultural co-operatives,

the State property serves as security for the use of the compensation vouchers with regard to all other assets. The State, however, gave a significant part of the arable land to the ownership of the agricultural co-operatives on the basis of legal rules enumerated in the Schedule 1 of the Act. If, in the case of land, compensation may only be accomplished on the basis of encumbering land in State ownership, this would mean a disadvantageous discrimination of the former owners which may not be harmonized with the contents of Art. 70/A of the Constitution. Taking this into account the Constitutional Court considers it possible within this process that the Act shall ensure the protection of property and of the basic constitutional principles according to the particular situation, as this was done, *e.g.*, in the case of compensation for nationalization.

The Constitutional Court pointed out that in the absence of a different provision in the Act, the agricultural co-operative may take advantage of the opportunity ensured by art. 375(3) of the Civil Code according to which the court may waive its obligation resulting from its right of pre-emption if the owner proves that after the granting of the right to purchase (in the case examined after the Compensation Act came into force) an essential change in its circumstances occurred, and therefore, fulfillment of the obligation may not be expected from him.

Taking all these into consideration the limitation on the ownership reviewed is necessary, and it is proportional to the constitutional objective to be achieved. Therefore, the Constitutional Court does not consider in itself unconstitutional the utilization of the right to purchase in the Act for the compensation of claims provided in the Compensation Act, which encumbers the agricultural co-operatives.

3. The extent of the property which has been acquired on the basis of the right to purchase would be determined by the provisions of the Compensation Act, which were examined in Point C by the Constitutional Court. The Constitutional Court established the unconstitutionality of

these provisions. Until the unconstitutionality of the amount of compensation is eliminated by the legislature, this unconstitutionality will also affect the provisions related to the right to purchase included in the Act.

II

The petitioner asked the Constitutional Court to examine the Compensation Act in its entirety and in its details and to express its opinion on the constitutionality with regard to the promulgation of the Act in addition to the abovementioned issues. Point E of the petition further requested the examination of whether s. 9 and s. 7(2) of the Act conflict with the Act on Local Government.

The Constitutional Court has jurisdiction according to s. 1 of Act XXXII of 1989 and s. 35 of which to perform the preventive norm control of certain provisions of a passed but not yet promulgated Act. Therefore, the examination of the whole Act, or the investigation of conflicts between some provisions of the Act with other Acts is rejected because of the lack of jurisdiction on the part of the Constitutional Court.

VÖRÖS, J., dissenting: [*Omissis.*]