

2004/05/12 - I. ÚS 167/04: AUTONOMY OF THE WILL

HEADNOTES

The autonomy of the will and individual liberty of action guaranteed on the constitutional level by Art. 2 para. 3 of the Charter of Fundamental Rights and Basic Freedoms. Art. 2 para. 3 of the Charter must be understood in a double sense. In its first dimension it represents a structural principle, according to which state authority may be asserted in relation to the individual and her autonomous sphere (including autonomous manifestations of the will) solely in cases where an individual's conduct violates an explicitly formulated prohibition laid down in law. However, such prohibition must, in addition, reflect solely the requirements consisting in preventing the individual in encroaching upon the rights of others and in the attainment of the public good, provided that such restriction upon the individual liberty of action is legitimate and proportional. Such principle must, then, be conceived of as an essential attribute of every democratic law-based state (Art. 1 para. 1 of the Constitution of the Czech Republic). Art. 2 para. 4 of the Constitution of the Czech Republic has a like content.

In its second dimension, Art. 2 para. 3 of the Charter operates as an individual right to the respect by state authorities of the autonomous manifestation of one's personhood (including manifestations of the will), which are reflected in a person's specific conduct, to the extent that such conduct is not expressly prohibited by law.

In its second dimension, in which it operates as an individual fundamental right, Art. 2 para. 3 must be applied immediately and directly. In this dimension it does not merely radiate through ordinary law, rather it is an individual right which operates directly in relation to state authority. Thus, when state bodies apply ordinary law, they are also obliged to interpret the norms of that law, in which Art. 2 para. 3 of the Charter and Art. 2 para. 4 of the Constitution of the Czech Republic are reflected as objective constitutional principles, in such a manner that they do not encroach upon the right of the individual to the autonomy of his will, which is guaranteed by the second dimension of Art. 2 para. 3.

Such a conception of Art. 2 para. 3 of the Charter merely expresses the fact that, in the substantive law-based state, the individual and his liberty of action always take priority before state power realized in statutes. Should the individual not have the opportunity directly to call upon this priority, such priority would be a mere formal declaration. Such a proclamation of objective principle is then easily erodible by the legislative activity of the legislative body.

The free sphere of the individual and its direct constitutional guarantee in the form of an enforceable individual right are conditions sine qua non of the material law-based state, which is erected upon respect for the fundamental rights of the individual. The individual's right to the respect for his or her autonomous and free sphere actually operates as a constant placed before the bracket in which are found particular specified fundamental rights put into positive law form in reaction to the massive infringement of them by authoritarian or totalitarian regimes. The need to formulate particular fundamental rights has, as a historical matter, always been conditioned as a

reaction to the massive infringement in a certain field of individual freedom, from which specific fundamental right emerged (see Hayek, F. A., Law, Legislation and Freedom, Part 3, Academia, Prague 1991, p. 96). This fact is apparent from the evolution of catalogues of fundamental rights; otherwise, the taxonomy of the Charter of Fundamental Rights and Basic Freedoms is constructed upon the same logic as well.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 12 May 2004 the Constitutional Court decided in a panel composed of its Chairman, JUDr. František Duchoň, and Justices, JUDr. Eliška Wagnerová and JUDr. Vojen Güttler, in the matter of the constitutional complaint of the commercial company, Home Credit Finance a. s., with its headquarters at Kounicova 284, 602 00 Brno, represented by JUDr. Vladimír Muzikář, an attorney with his office in Brno, Havlíčkova 13, joined for joint hearing and resolution by the 23 March 2004 ruling of the Plenum of the Constitutional Court, against the rulings of the Regional Court in Brno listed below:

1. resolution of 7. 11. 2003, file no. 28 Co 416/2003,
2. resolution of 7. 11. 2003, file no. 28 Co 388/2003,
3. resolution of 7. 11. 2003, file no. 28 Co 371/2003,
4. resolution of 7. 11. 2003, file no. 28 Co 417/2003,
5. resolution of 6. 11. 2003, file no. 28 Co 168/2003,
6. resolution of 6. 11. 2003, file no. 28 Co 339/2003,
7. resolution of 6. 11. 2003, file no. 28 Co 421/2003,
8. resolution of 6. 11. 2003, file no. 28 Co 215/2003,
9. resolution of 7. 11. 2003, file no. 28 Co 409/2003,
10. resolution of 6. 11. 2003, file no. 28 Co 306/2003,
11. resolution of 7. 11. 2003, file no. 28 Co 381/2003, as follows:

I. The resolutions of the Regional Court in Brno of 7. 11. 2003, file no. 28 Co 416/2003, of 7. 11. 2003, file no. 28 Co 388/2003, of 7. 11. 2003, file no. 28 Co 371/2003, of 7. 11. 2003, file no. 28 Co 417/2003, of 6. 11. 2003, file no. 28 Co 168/2003, of 6. 11. 2003, file no. 28 Co 339/2003, of 6. 11. 2003, file no. 28 Co 421/2003, of 6. 11. 2003, file no. 28 Co 215/2003, of 7. 11. 2003, file no. 28 Co 409/2003, of 6. 11. 2003, file no. 28 Co 306/2003, of 7. 11. 2003, file no. 28 Co 381/2003, constituted an intrusion into the fundamental rights of the complainant under Art. 2 para. 3 and Art. 38 para. 1 of the Charter of Fundamental Rights and Basic

Freedoms, and at the same time Art. 1 para. 1 and Art. 2 para. 4 of the Constitution of the Czech republic were infringed.

II. The resolutions of the Regional Court in Brno listed in point I of the statement of judgment (dispositif) are quashed.

REASONING

By her timely and, as far as other requirements are concerned, duly submitted constitutional complaints, the complainant contested the ordinary court decisions listed in the heading. The contested rulings of the Regional Court in Brno upheld the rulings of the Municipal Court in Brno, by which the first instance court declared that it was not the proper venue in the case and transferred the matter to the court which, according to § 84 of the Civil Procedure Code, was the proper venue (the ordinary court of the defendant).

In view of the fact that the constitutional complaints have identical content and that the parties to the proceeding are identical, the Constitutional Court Plenum decided in its 23 March 2004 ruling to joint all constitutional complaints for joint hearing under file no. I. ÚS 167/04.

The complainant is of the view that the contested rulings of the Regional Court in Brno violated her constitutionally guaranteed fundamental rights, in particular the right to act in accordance with the principle of contractual liberty in the sense of Art. 2 para. 4 of the Constitution of the Czech Republic and Art. 2 para. 3 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“), as well as the right to equal status in judicial proceedings under Art. 37 para. 3 of the Charter.

According to the complainant, the Municipal Court declared in its rulings (about which the Regional Court in Brno decided in the appellate proceeding) the invalidity of the parties' prorogation agreement, which stipulated the court in Brno as the proper venue to hear their mutual disputes. According to the Municipal Court, it is not clear from the agreement which of the two courts located in Brno should be the proper venue in the matter (whether the Municipal Court in Brno or the District Court Brno - Province). For this reason the court considered the agreement to be indefinite and, thus, invalid under § 37 para. 1 of the Civil Code. In its rulings, contested in this case, the Regional Court in Brno subsequently affirmed this conclusion.

The Regional Court put forward as the cardinal argument in the reasoning of its decisions that it found there to be a difference between the formulation „the court that is the proper venue in Brno“, which in its view designates the court's seat, and the formulation „the court that is the proper venue for Brno“, which in the court's view designates the courts' jurisdiction regardless of its seat.

The complainant considers that, in this matter, all statutory conditions for the entry into a „prorogation agreement“ were met. The parties to the proceeding stipulated as the

proper venue the court in Brno that has subject-matter jurisdiction to hear matters relating to that agreement. In the complainant's view, at the present no court other than the Municipal Court in Brno qualifies as such a court, nor even at the time when individual actions were filed (§ 11 para. 1 of the Civil Procedure Code).

In her constitutional complaints, the complainant further argues that the title, district, and seat of each court are laid down by law. It is also stated directly in the law that, in the judicial district of the City of Brno, the Municipal Court in Brno exercises the jurisdiction of a district court (§ 9 para. 2 of the Act on Courts and Judges), and that the seat of the Municipal Court in Brno is the City of Brno (§ 12 of the Act on Courts and Judges).

The municipalities that fall within the judicial district of the District Court Brno-Province are exhaustively enumerated in the appendix to the Act on Courts and Judges (in the complainant's view, it must be emphasized that this list contains neither the municipality nor the City of Brno); it further provides that the seat of the District Court Brno-Province is the City of Brno.

In the complainant's view, it follows from what has been stated that the Municipal Court in Brno is the sole court which is related to Brno by title, judicial district, and seat - that is, which is, in the wording of the prorogation agreement „in Brno“. It also follows from the above that the District Court in Brno-Province is not directly related to the City of Brno; the sole fact that the seat of this court is in Brno is not capable of establishing any such qualified relation.

In light of the above-stated arguments, it is the complainant's view that the opinion of the Regional Court in Brno, according to which the formulation, „the court that is the proper venue in Brno“, designates the court's seat and the formulation, „the court that is the proper venue for Brno“, designates the courts' jurisdiction, does not hold muster.

In a situation where the contracting parties wished to establish, as the proper venue, the court which hears and decides matters within the territory of the judicial district of the City of Brno, the complainant considers the term which was designated in the prorogation agreement for the venue of the court as the appropriate choice; at the same time, the parties wished to formulate this agreement in such a way as to cover, as well, any possible changes that might occur in the future.

The complainant considers that one can give consideration even to other terms which might have been used in the text of the prorogation agreement. For example, one such formulation could be the term, „the court for Brno which has subject-matter jurisdiction over the matter“. The complainant considers this formulation to be similar in meaning to that used in the prorogation agreement. The complainant thus considers that the term, „court in Brno“ and „court for Brno“ mean practically the same thing, so that the correct interpretation of them should lead to the same conclusion as to whether they are definite.

For these reasons, the complainant considers the conclusions reached by the ordinary courts as legal formalism and believes that, as a matter of fundamental constitutional principles, excessive demands concerning the formulation of a prorogation agreement are

unacceptable, as they demonstrably encroach upon the contractual liberty resulting from the principle of the priority of the citizen before the State, as laid down in Art. 1 of the Constitution of the Czech Republic (more precisely, Art. 1 para. 1 of the Constitution of the Czech Republic) and from the principle of contractual freedom, in the sense of Art. 2 para. 4 of the Constitution of the Czech Republic and of the corresponding provisions of Art. 2 para. 3 of the Charter of Fundamental Rights and Basic Freedoms (in this connection, the complainant refers to the Constitutional Court's judgment in the matter no. I. ÚS 331/98).

The complainant further believes that, in addition, her constitutionally guaranteed right to her lawful judge, under Art. 38 para. 1 of the Charter, was infringed by the contested decisions, precisely due to the declaration that the prorogation agreement was invalid. To the extent that, in a specific case, a court fails to respect a validly concluded prorogation agreement and decides concerning the proper venue in disregard thereof, in the complainant's view it has infringed the right of the parties to a proceeding to have their case heard by the court which is the proper venue, and thus also the constitutionally guaranteed right to one's lawful judge under Art. 38 para. 1 of the Charter.

The complainant also considers that, by its contested decisions, the Regional Court in Brno encroached upon her right, under Art. 37 para. 3 of the Charter, to the equality of parties to a proceeding. A component of this right is the parties' right to give their views on all facts which are important for the adjudication of the matter. This right then corresponds to the duty of courts to respond, in a relevant procedural matter, to all views expressed by the parties. Should the court fail to respond to their views, procedural error can reach such an intensity as to result in the infringement of the constitutionally guaranteed right to the equal status of parties to a proceeding. In the complainant's view, such is the case, in particular, when the court entirely disregards the views expressed by the parties, and the same outcome may result where the relevant part of the judicial decision is unreviewable due to a failure to give reasons.

For all of the above-stated reasons, the complainant proposes that the Constitutional Court quash the contested rulings.

At the Constitutional Court's request, the opposing party to the constitutional complaint, the Regional Court in Brno, represented by the Chairman of Panel 28 Co, responded to the submission of the complaint. In the statement of views, he declared that without a doubt the complainant has the right, when entering into a credit contract in conformity with the object of her entrepreneurial activities, to make use of the possibility afforded, under § 89a of the Civil Procedure Code, to parties to a civil court proceeding in commercial law matters. It does not follow from the contested rulings, however, that the Regional Court in Brno denied or called into doubt the complainant's right under Art. 2 para. 3 of the Charter (everyone may do that which is not prohibited by law; and nobody may be compelled to do that which is not imposed upon him by law). In his view, it was up to the parties, and above all to the complainant, as contracting subjects to realize the above-stated right in an appropriate manner into the text of the agreement making another court the proper venue, and to stipulate in that agreement, in a quite unequivocal and indisputable manner, which specific court the parties have chosen to decide on their disputes.

Even though it might be conceded, as a general matter, that such other court need not be designated in the agreement by the title given it in Act No. 6/2002 Sb., on Courts and Judges, without a doubt the parties' agreement on the selection of such court must designate it in such an unequivocal manner so as not to give rise to doubts as to which specific court the parties agreed was to be the proper venue. If the parties expressly agreed that such court would be „the venue in Brno which has subject-matter jurisdiction over the matter“, in the Regional Court's view, it can be adjudged that courts „in Brno“ refers to, on the one hand, the Municipal Court in Brno, but also that the District Court Brno-Province, with its seat in Brno, could be meant, as both courts have subject-matter jurisdiction in first instance to hear and decide in the given matter.

To the objection that the right to one's lawful judge had been infringed, the Chairman of Panel 28 Co stated that it is precisely the indefiniteness of the prorogation agreement that has logical impact even in the sphere of the lawful judge, and it is precisely for this reason that prorogation agreements require an entirely unambiguous expression of intent to select another concrete court as the proper venue. It is precisely the indefiniteness of the given agreement which gives grounds for concluded that Art. 38 para. 1 of the Charter has been affected, and in no sense on the part of the court, rather by the complainant herself.

As far as concerns the arguments relating to the violation of the equality of parties to a proceeding, the Regional Court in Brno stated that, in its view, there were sufficient and detailed reasons supporting the conclusion that the prorogation agreement is indefinite (and, in consequence thereof, invalid). The Regional Court in Brno did not, as the appellate court in the matter, receive from the complainant any expression of views or of opinion to which the Court would have had to react (or take a position upon) in the reasoning of its contested decisions.

With reference to all these grounds, the Regional Court in Brno proposes that the constitutional complaints not be granted.

In his 9 April 2004 declaration, one of the secondary parties to the proceeding on the constitutional complaints, Maxmilián Šimonič, waived this status pursuant to § 28 para. 2 of the Act on the Constitutional Court, and the other secondary parties did not give their views on the constitutional complaints in a qualified manner within the period prescribed by the Constitutional Court.

After receiving the agreement of the parties to dispense with an oral hearing pursuant to § 44 para. 2 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, the Constitutional Court came to the conclusion in the proceeding that the constitutional complaints are well-founded.

The Constitutional Court has repeatedly, in its judgments nos. I. ÚS 546/03 and I. ÚS 43/04, dealt with the decision-making of the Regional Court in Brno in the complainant's matters, in which the complainant, pursuant to § 89a of the Civil Procedure Code, designated in credit contracts the proper venue for disputes under those contracts. In consideration of the fact that the constitutional complaints presently being heard concern an analogous legal issue, the first panel of the Constitutional Court continues to adhere to its original opinions, expressed in the cited judgments.

The Constitutional Court constitutes the judicial body responsible for the protection of constitutionalism (Art. 83 of the Constitution of the Czech Republic). Accordingly, it does not constitute a part of the ordinary courts, neither is it, in relation to them, a superior instance. The Constitutional Court's task is to review the ordinary courts' decisional activity, however, only in the circumstance where, by their decisions, they have encroached upon constitutionally protected fundamental rights and basic freedoms of the individual. That means that the Constitutional Court is not entitled to intervene into the ordinary courts' decisional activity in each case in which there has been a violation of ordinary legality or of some other incorrect decision which, in its essence, resides on the plane of ordinary law.

It follows from the Constitutional Court's constant jurisprudence, the circumstances under which it can be considered that the incorrect application of ordinary law by ordinary courts results in the violation of fundamental rights and basic freedoms (compare judgment in the matter . III. ÚS 224/98 in The Constitutional Court of the Czech Republic, Collection of Judgments and Rulings, Vol. 15, p. 98). The fundamental rights and basic freedoms operate in the field of ordinary law as regulative ideas, on account of which the complex of norms of ordinary law are, by content, intimately bound up therewith. The violation of certain of these norms, in consequence in particular of arbitrariness (for example, the failure to respect mandatory norms) or as the result of an interpretation which is in extreme conflict with the principles of justice (for example, excessive formalism), then also gives rise to a grievance respecting fundamental rights and basic freedoms. In other words, apart from the flagrant disrespect of mandatory norms, excessive formalism in the interpretation of the norms of ordinary law is also one of the conditions for the Constitutional Court to intervene into the decision-making of ordinary courts and the application of ordinary law.

The Constitutional Court has deduced from the content of certain of these constitutional complaints that the given case is just such a case; therefore, it addressed the issue whether the Regional Court in Brno, by its interpretation and application of ordinary law, encroached upon the complainant's constitutionally guaranteed fundamental rights.

A basic attribute of a law-based state (Art. 1 para. 1 of the Constitution of the Czech Republic) is the protection of individual fundamental rights, upon which state authorities are entitled to encroach only in exceptional cases, especially where the individual has intruded upon the rights of others (including by manifestations of the will which are reflected in concrete conduct) or to the extent that such intrusion is justified by a certain public interest, which nonetheless must result, in specific cases, in a proportionate limitation upon the fundamental right in question. In other words, a condition of the proper operation of a law-based State is the State's respect for the autonomous sphere of the individual, who enjoys protection on the part of the State such that, on the one hand, the State ensures such protection against intervention by third parties and, on the other hand, the State itself engages in only such actions as would not encroach upon this sphere, or would do so only in cases where such is warranted by a certain public interest and where such encroachment is proportionate in respect of the aim which is meant to be attained.

The individual right to the autonomy of the will, that is in consequence of the liberty of the individual, is one of the expressions of, and institution guarantees of, these principles. To the extent it aspires to be an authority with the attributes of a law-based State, it is incumbent upon state authority to recognize the autonomous manifestations of individual will, as well as the conduct corresponding thereto, if such conduct fulfills the above-described conditions (above all, the nonintrusion upon the rights of third persons). In such cases, state authority must respect or approve such manifestations of the individual only to the extent that such conduct might possibly call into being further legal consequences.

The autonomy of the will and individual liberty of action guaranteed on the constitutional level by Art. 2 para. 3 of the Charter of Fundamental Rights and Basic Freedoms. Art. 2 para. 3 of the Charter must be understood in a double sense. In its first dimension it represents a structural principle, according to which state authority may be asserted in relation to the individual and her autonomous sphere (including autonomous manifestations of the will) solely in cases where an individual's conduct violates an explicitly formulated prohibition laid down in law. However, such prohibition must, in addition, reflect solely the requirements consisting in preventing the individual in encroaching upon the rights of others and in the attainment of the public good, provided that such restriction upon the individual liberty of action is legitimate and proportional. Such principle must, then, be conceived of as an essential attribute of every democratic law-based state (Art. 1 para. 1 of the Constitution of the Czech Republic). Art. 2 para. 4 of the Constitution of the Czech Republic has a like content.

In its second dimension, Art. 2 para. 3 of the Charter operates as an individual right to the respect by state authorities of the autonomous manifestation of one's personhood (including manifestations of the will), which are reflected in a person's specific conduct, to the extent that such conduct is not expressly prohibited by law.

Such a conception of Art. 2 para. 3 of the Charter merely expresses the fact that, in the substantive law-based state, the individual and his liberty of action always take priority over state power realized in statutes. Should the individual not have the opportunity directly to invoke this priority, such priority would be a mere formal declaration. Such a proclamation of objective principle is, after all, easily erodible by the legislative activity of the legislative body, which is otherwise substantiated, for example, by the French Declaration of the Rights of Man and Citizens, which on the European continent was the ideological model for the enactment of human rights into positive law, V. Klokočka („The entire profundity of the Declaration, contained in the introductory text, which gives a vivid picture of ‚natural, inalienable, and sacred human rights‘, was eclipsed by the competence of parliament“, compare Klokočka, V., *Constitutional Systems of European States*, Linde Publishers, Prague 1996, p. 273).

The free sphere of the individual and its direct constitutional guarantee in the form of an enforceable individual right are conditions sine qua non of the material law-based state, which is erected upon respect for the fundamental rights of the individual. The individual's right to the respect for his or her autonomous and free sphere actually operates as a constant placed before the bracket in which are found particular specified fundamental rights put into positive law form in reaction to the massive infringement of them by authoritarian or totalitarian regimes. The need to formulate particular

fundamental rights has, as a historical matter, always been conditioned as a reaction to the massive infringement in a certain field of individual freedom, from which specific fundamental right emerged (see Hayek, F. A., *Law, Legislation and Freedom*, Part 3, Academia, Prague 1991, p. 96). This fact is apparent from the evolution of catalogues of fundamental rights; otherwise, the taxonomy of the Charter of Fundamental Rights and Basic Freedoms is constructed upon the same logic as well.

State authorities thus also commit an infringement of this right to the extent that, by a formalistic interpretation of the the norms of ordinary law, they deny the autonomous manifestation of intent of parties to a contract the consequences which, by that manifestation, the contractual parties intended to bring about in their legal spheres.

After assessing all circumstances of the case, the Constitutional Court came to the conclusion that the given case concerns such a legal situation where the ordinary court interpreted in an excessively formalistic manner the provisions of the Civil Code concerning the rules for interpreting legal transactions and also engaged in formalism in interpreting the relevant provisions of the Civil Procedure Code, which gave rise to further legal consequences for the status of the complainant and the secondary party as regards access to the courts.

Under § 35 para. 2 of the Civil Code, legal transactions expressed in words shall be interpreted not only in accordance with their verbal formulation, but also particularly with regard to the intention of the person who performed the legal transaction, provided that such intention is not inconsistent with the expressed wording. Under § 37 para. 2 a contrario a legal transaction is invalid if it is not made definitely and comprehensibly. Then § 89a of the Civil Procedure Code enables the parties to legal relations to agree, by the expression of their intent, that the proper venue to hear their disputes will be an ordinary court other than the court designated by the fixed rules of the Civil Procedure Code for those parties.

It is evident that the above-stated principle of the autonomy of the will, in accordance with which individuals must be granted space in which they alone designate the extent of their rights and duties, radiate into all of the cited provisions; further, their expression of intent must be given priority over the mandatory wording of statutes.

In its second dimension, in which it operates as an individual fundamental right, Art. 2 para. 3 must be applied immediately and directly. In this dimension it does not merely radiate through ordinary law, rather it is an individual right which operates directly in relation to state authority. Thus, when state bodies apply ordinary law, they are also obliged to interpret the norms of that law, in which Art. 2 para. 3 of the Charter and Art. 2 para. 4 of the Constitution of the Czech Republic are reflected as objective constitutional principles, in such a manner that they do not encroach upon the right of the individual to the autonomy of his will, which is guaranteed by the second dimension of Art. 2 para. 3. In other words, in interpreting the above-cited provisions of ordinary law, the ordinary court must do so in such a manner that they do not, by means of a formalistic interpretation of legal norms, encroach upon the right of the individual to do anything which he is not by law expressly prohibited from doing and to not be compelled to do that which is not expressly imposed upon him by law. This applies as well for norms governing the interpretation of the manifestation of individual will, where formalism in the

interpretation of the legal norm itself can be deduced from formalism consisting in the mere interpretation of the contractual text without regard to the aim of the transaction consisting in the intent of the parties to the contractual relation, which the court puts into effect when interpreting an individual's legal transaction.

In the instant case, the Regional Court in Brno interpreted the expressed intent of both the complainant and the secondary party such that, without even affording the parties the opportunity to give their views on the matter, it designated their intent as indefinite. It found the cause of the indefiniteness in the fact that there are two courts in Brno having subject-matter jurisdiction in the case (the Municipal Court in Brno and the District Court, Brno-Province). In the ordinary court's view, an intent expressed in such an indefinite manner gives rise to the invalidity of the prorogation clause, in consequence of which it declined to recognize the outcome which, by their expressed intent, the parties wished to bring about.

As the Constitutional Court has ascertained from a copy of the credit contracts entered into by the complainant and the secondary parties, the parties to the contracts agreed that in the resolution of any disputes arising between them in connection with the credit contracts, including disputes which would emerge in consequence of claims arising on the basis of the termination of a credit contract, „the proper venue“ shall be „the court in Brno which has subject-matter jurisdiction over the matter“. In the Constitutional Court's view, it is evident therefrom that the contracting parties intended to derogate from the relevant provisions of the Civil Procedure Code on ordinary court venue and designate a different court as the proper venue, such that the court with venue would be the court situated in Brno. This means that the parties were aware of the fact that any disputes between them would be heard by the court in Brno having subject-matter jurisdiction. In other words, the parties agreed upon designating the court in Brno as the proper venue. Such manifestation of intent can also be interpreted in such a way that both parties to the contractual relations were aware of the fact that they had designated the proper venue for the hearing of disputes between them in such a manner that it would always be the complainant's ordinary court, regardless of whether, in any particular dispute, she would be the plaintiff or defendant.

As the Constitutional Court has already held in its judgments I. ÚS 546/03 a I. ÚS 43/04, it does not agree with the formalistic approach of the Regional Court in X, the main aim of which is evidently to eliminate for the future the situation where it would be the proper venue and proper instance to hear all disputes arising from the complainant's loan agreement, or for any appeal in such matters. The Constitutional Court does not regard it as essential to distinguish between the formulations “the court having venue in Brno” and “the court having venue for Brno”. In the Constitutional Court's view the decisive factor is, above all, the fact that, with this formulation, the parties to the contract referred to the venue, which is always determined by the appropriate judicial district, and not by the place in which a court is located. Further, as indicated above, the parties expressed their intent to construe the term, proper venue, such that it would always be the complainant's ordinary court. However, the Constitutional Court sees no point in repeating the approach used by the ordinary court, when interpreting the expressed intent of the parties to the credit contract, with the aim of refuting the interpretation supported thereby, for that is not the Constitutional Court's task.

By means of the interpretation which the ordinary court espouses and which is strictly a grammatical interpretation, the ordinary court incorrectly applied the provisions of ordinary law (§ 35 para. 2 of the Civil Code and § 89a of the Civil Procedure Code), which implement and institutionalize the operation of the autonomy of the individual will, in consequence of which it encroached upon the complainant's rights guaranteed by Art. 2 para. 3 of the Charter. The Regional Court in Brno committed such an infringement due to the fact that it did not sufficiently take into consideration the jointly-expressed intent of the subjects of a legal relation, which it interpreted merely formally from a grammatical interpretation of the text of the contractual arrangement (§ 35 para. 2 of the Civil Code), and also by an interpretation of § 89a of the Civil Procedure Code which restricted the impact of the autonomy of the will in determining the ordinary court that will be the proper venue in a civil proceeding.

As a subsidiary argument, the Constitutional Court cites the facts which emerge from statistical data which it had already requested from the Chairwoman of the Municipal Court in Brno when hearing constitutional complaint no. I. ÚS 546/03. It emerged therefrom that on 17 December 2003 that court issued in the complainant's matter 8001 payment orders (Register Ro), 4478 of which have become final. In the context of hearing the actions (Register C), the court, as the proper venue pursuant to § 89a of the Civil Procedure Code, decided on 99 actions (40 of them finally) and on 190 further actions by declaring it was not the proper venue.

As the Constitutional Court has already stated, in no sense does it call into doubt the principle of the independence of courts and judges; nonetheless, it is of the view that it is in accord with the principle of legal certainty for the same court to proceed in the same manner even in different matters having, however, an identical legal basis (prorogation clause pursuant to § 89a of the Civil Procedure Code). In the Constitutional Court's view, any possible threatened increase in the number of matters coming into being in the case of a particular party, who entered into, with a large number of subjects, contractual relations in which the proper venue for the matter was agreed upon identically in a manner departing from the fixed rules laid down in the Civil Procedure Code, cannot be resolved at the price of intruding upon an individual's fundamental rights as a party to a judicial proceeding.

By its infringement of the fundamental right under Art. 2 para. 3 of the Charter, the ordinary court gave rise, in addition, to an encroachment upon the right to one's statutory judge, under Art. 38 para. 1 of the Charter. In consequence of the fact that the court withheld its approval of the autonomous manifestation of the will agreeing upon court venue pursuant to § 89a of the Civil Procedure Code, it also intruded upon the right to one's statutory judge.

For the above-stated reasons, the Constitutional Court, due to the infringement of Arts. 2 para. 3, 38 para. 1 of the Charter, and Arts. 1 para. 1 and 2 para. 4 of the Constitution of the Czech Republic, has granted the constitutional complaints pursuant to § 82 para. 2 lit. a) of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, and, pursuant to § 82 odst. 3 písm. a) of the cited Act, quashed the contested decisions of the Regional Court in Brno.

Notice: A Constitutional Court decision may not be appealed.

Brno, 12 May 2004