# 2004/05/13 - IV. ÚS 396/03: PRINCIPLES OF JUST PUNISHMENT

**HEADNOTES**

**In judging whether the „substantive“ requirement for especially dangerous recidivism under § 41 para. 1 of the Criminal Code is fulfilled, that is, that the recidivism results in a substantial increase in the level of danger of the criminal offense for society, it is necessary also to take into consideration circumstances other than the length of time which has passed since the last conviction, circumstances, for example, the manner in which the criminal conduct was committed, the harm caused both now and by the earlier criminal conduct, the amount, type and extent of previous punishments, the motives and reasons which led to the recidivism. Weighty considerations include an overall evaluation of the perpetrator's character and personality, his overall personal profile, features of his character and psychological attributes, age, etc. It is also significant to ascertain how many times the perpetrator has been punished in the past for especially serious crimes, for how many criminal offenses he was punished, and for how many criminal offenses he is now being condemned, what is the total amount of time he was incarcerated in the past, what is the time interval between times in prison, etc. In evaluating the substantive condition of especially serious recidivism, the concrete level of danger of the criminal offenses, both the previous and the currently prosecuted one, as well as the consequences of the crimes, must be assessed. One must also take into account the significance and seriousness of all criminal offenses for which the perpetrator has previously been punished, his conduct during incarceration, his manner of life in the periods between criminal offenses and punishments, the length of imprisonment previously imposed as well as the duration of actual incarceration, and the commission of other criminal offenses in the decisive period.**

**There is no doubt that it best corresponds to the principles of just punishment and of the equality of citizens before the law in a law-based state if the regular cases of „standard“ criminality are prosecuted in the framework of the „normal“ criminal sentencing range, as laid down in the special part of the criminal code. The legislature expresses therein the categories of degrees of danger to society of certain types of criminal delicts and provides state bodies participating in the criminal process a settled framework within the confines of which they must mete out a concrete punishment, taking into consideration all circumstances of the case. For the legislature to lay down in this manner the criminal sentencing range best satisfies the principle nullum crimen, nulla poena sine lege, the principle of the equality of citizens before the law, and the principle of the predictability of court decision-making.**

**Deviations from the general criminal sentencing range, either in legislation or in applicational practice, must be founded upon entirely exceptional and duly justified circumstances. The statutory conditions for the application of the institute of especially dangerous recidivism under § 41 of the Criminal Code must be interpreted restrictively.**

**The criminal policy purpose of this legal institute is to prosecute more severely „incorrigible“ delinquents who repeatedly perpetrate especially serious criminal offenses. The exceptional severity of the punishment is justifiable in this case because the perpetrator, although he has already, by being punished in the past, received appropriate warning, obstinately repeats especially dangerous anti-social attacks the blameworthiness of which must be notoriously manifest to him. In such cases, the imposition of an intensified punishment can be warranted by considerations of general and individual prevention.**

**In cases where the repeated comission of criminal acts does not substantially increase the level of danger for society of a criminal offense, a rational reason cannot be found as to why repeatedly criminal conduct should result in the infliction of an especially intensified sentencing range; in such cases, in order to fulfill the aims of the the Criminal Code, it suffices to mete out punishment within the framework of the „normal“ (that is, not increased by one-third) sentencing range.**

**CZECH REPUBLIC**

**CONSTITUTIONAL COURT**

**JUDGMENT**

**IN THE NAME OF THE CZECH REPUBLIC**

On 13 May 2004 the Constitutional Court decided without an oral hearing in a panel composed of its chairperson, JUDr. Jiří Mucha, and Justices JUDr. Pavel Holländer a JUDr. Jan Musil in the matter of the constitutional complaint of Milan Adam, born 14 November 1977, residing at Polní 18/1817, Český Těšín, at the moment serving a sentence of imprisonment at the Valdice Penitentiary, Náměstí Míru 55, 507 11 Valdice, represented by JUDr. Stanislav Blažek, an attorney with his office at Moskevská 24a, 736 01 Havířov6 May 2003 ruling of the Supreme Court of the Czech Republic, file no. 5 Tdo 363/2003, the 25 September 2002 judgment of the Regional Court in Ostrava, file no. 5 To 422/2002, and the 12 August 2002 judgment of the District Court in Karvina , file no. 7 T 39/2002, with the Supreme Court of the Czech Republic, the Regional Court in Ostrava, and the District Court in Karvina as parties to the proceeding and the Supreme State Attorney, the Regional State Attorney in Ostrava, and the District State Attorney in Karvina as secondary parties to the proceeding, decided, as follows:

**The 6 May 2003 ruling of the Supreme Court of the Czech Republic, file no. 5 Tdo 363/2003 is quashed. The 25 September 2002 judgment of the Regional Court in Ostrava, file no. 5 To 422/2002 is quashed in relation to the defendant Milan Adam. That part of the 12 August 2002 judgment of the District Court in Karvina , file no. 7 T 39/2002, which relates to the finding of guilt and imposition of punishment in relation to the defendant Milan Adam is quashed.**

**REASONING**

I.

In his constitutional complaint which, as far as concerns the requirements prescribed by Act No. 182/1993 Coll., on the Constitutional Court, as subsequently amended (hereinafter „Act on the Constitutional Court"), was timely and duly submitted, the complainant (in the criminal matter „the convicted") requests that the 6 May 2003 ruling of the Supreme Court of the Czech Republic, file no. 5 Tdo 363/2003 and the two judgments preceding it, the 25 September 2002 judgment of the Regional Court in Ostrava, file no. 5 To 422/2002 and the 12 August 2002 judgment of the District Court in Karvina , file no. 7 T 39/2002, be quashed.

The complainant believes that the contested ordinary court decisions infringed his constitutionally guaranteed right to judicial protection, specifically those found in Arts. 36 and 39 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter"). In particular, he cannot accept that in the judgment of conviction he was adjudged, pursuant to § 41 para. 1 of the Criminal Code, as an especially dangerous recidivist, since the substantive requirements for especially dangerous recidivism (that is, a substantial increase in the level of danger of the criminal offense for society) were not met in his case. In this regard, the complainant referred to the Constitutional Court's judgment of 11 July 2002, file no. III. ÚS 701/01.

II.

The Constitutional Court ascertained the following from criminal file no. 7 T 39/2002 of the District Court in Karvina:

In its 12 August 2002 judgment, file no. 7 T 39/2002, the District Court in Karvina convicted the complainant, under § 234 para. 1 of the Criminal Code, of the criminal offense of robbery and, as an especially dangerous recidivist, under § 41 para. 1 of the Criminal Code, sentenced him to imprisonment of eight years, and to serve his time, he was assigned to higher security level prison. Stated briefly, the criminal act consisted in the fact that on 15 January 2002 at approximately 1:30 a.m. in Český Těšín the complainant, together with his accomplice, Jiří Jadamus, attacked the injured party, Ivan Gazdík and stole from his wallet with the sum of 1650 Kč and identity cards. The act occurred as follows – the complainant hit the complaining witness in the face with his fist,

upon which the complaining witness fell to the ground, at which point the accomplice Jadamus leaned over the complaining witness, began searching through his clothing, and pulled his wallet from the pocket of his jacket; when, during the search, the complaining witness began to resist him, the complainant kicked him in the ribs with his shoe (instep), after which both accomplices left the scene of the crime. The complainant committed this criminal act despite the fact that, by the 2 July 1998 judgment of the District Court in Karvina, file no. 7 T 156/97, he had already been convicted of another criminal act of robbery under § 234 para. 1 of the Criminal Code and sentenced to imprisonment of two years, which had been suspended for a trial period of three years, afterwards, however, on 30 May 2000, he was ordered to serve the sentence, from which he had obtained conditional release on 30 October 2000.

By its 25 September 2002 judgment, file no. 5 To 422/2002, Regional Court in Ostrava rejected on the merits the complainant's appeal against the first instance court's judgment of conviction. By its 6 May 2003 ruling, file no. 5 Tdo 363/2003, the Supreme Court rejected as manifestly unfounded, pursuant to §265i para. 1 lit. e) of the Criminal Procedure Code, the complainant's extraordinary appeal against the appellate court's judgment.

III.

The Constitutional Court requested a statement of views from the Supreme Court, the Regional Court in Ostrava, the District Court in Karvina, the Supreme State Attorney, the Regional State Attorney for Ostrava, and the District State Attorney for Karvina.

In its 21 October 2003 statement of view, file no., 5 Tdo 363/2003, the Supreme Court stated that in adjudging the extraordinary appeal it did not find that the contested decision suffered from any defects. It declared that the complainant has a marked inclination towards the commission of criminal acts, that he committed the incriminating acts during the trial period after his suspended sentence, and that he committed a further criminal act during his parole period following his conditional release. The appellate court is of the view that the classification of the complainant, under § 41 para. 1 of the Criminal Act, as an especially dangerous recidivist was correct, in view as well of the character of the complainant's conduct in the previous case and in the case under consideration.

In its 30 April 2004 statement of views, the Regional Court in Ostrava asserted that, in his constitutional complaint, the complainant has merely repeated the arguments to which the ordinary courts have satisfactorily responded in their decisions. It considers that the material elements of especially dangerous recidivism were fulfilled by the repeated committing of especially serious criminal offenses within a brief period following the previous conditional release from serving his sentence of imprisonment, as well as by the intensity of the criminal conduct. On these grounds the regional court proposes the constitutional complaint be rejected on the merits as unfounded.

The District Court in Karvina did not avail itself of its right, as a secondary party, to give its views on the constitutional complaint.

Both the Supreme State Attorney, in its 4 September 2003 statement of views, file no. 1 NZo 28/2003, and the Regional State Attorney for Ostrava in its 27 April 2004 statement of views, file no. 2 KZt 1853/2002-25, waived their status as secondary parties to the proceeding on the constitutional complaint. In its 26 April 2004 statement of views, file no. 1 Zt 91/2002, the District State Attorney for Karvina expressed the opinion that the brief period of time which has passed since the complainant's previous conviction considerably increases the level of danger for society of the criminal act; therefore, the ordinary court decisions must be deemed to be lawful.

The complainant and all other parties and secondary parties consented to the Constitutional Court deciding without holding a hearing. In view of what has been stated and, further, in light of the fact that the Constitutional Court is of the view that further clarification of the matter cannot be expected from a hearing, an oral hearing was dispensed with in this case (§ 44 para. 2 of the Act on the Constitutional Court).

IV.

The conditions for the imposition of a sentence of imprisonment upon an expecially dangerous recidivist are laid down in § 41 of the Criminal Code as follows:

„(1) A perpetrator who has already been convicted of an especially serious intentional crime and once again commits that same or some other especially serious intentional crime, shall be considered as an especially dangerous recidivist, if that circumstance, due to its gravity - particular in view of the length of time which has elapsed since his most recent conviction, substantially increases the level of danger of this crime to society.

(2) Especially serious crimes are those criminal offenses listed in § 62, as well as all intentional crimes for which this Act prescribes a punishment of imprisonment with a maximum sentencing range of at least eight years."

A basic issue in the present case is whether the repeated commission of the criminal offense of robbery in the year 2002 (that is, after he was already convicted and sentenced for the same criminal offense, committed in 1997), should be adjudged a circumstance which, due to its gravity – in particular in view of the length of time which has elapsed his most recent conviction, substantially increases the level of danger to society of this crime; in other words, whether the substantive conditions for especially serious recidivism were met.

V.

In making an overall assessment in this case of the substantive conditions for especially dangerous recidivism, the Constitutional Court ascertained the following facts from the criminal file:

A) It was necessary, first and foremost, to adjudge the nature of the criminal offenses of theft, previously or presently committed, in relation to which recidivism was considered: aa) From the 2 July 1998 judgment of the District Court in Karvina, file no. 7 T 156/97, the Constitutional Court ascertained that in the past the complainant had committed the ongoing criminal offense of robbery in the form of two attacks:

1. On 22 May 1997, following an argument and while intoxicated, he forced his mother, Marie Adamová, to give him 500,- Kč by threatening that if she did not give him the money he would throw her from her seventh apartment window and further that he shoved her and held her by her clothes.

2. On 31 May 1997, following an argument and while intoxicated, he forced his mother, Marie Adamová, to give him first 200,- Kč, and then 250,- Kč, by waving his arms in front of her face and, with a kitchen knife in his hands, threatening to kill her.

For these acts the complainant was, in the above-mentioned judgment, found guilty, under § 234 para. 1 of the Criminal Code, of the criminal offense of robbery and sentenced to imprisonment for two years, which sentence was suspended for a trial period of three years; in addition thereto, he was ordered to receive outpatient treatment for alcohol dependancy.

Even though it is self-evident that these acts he committed are very blameworthy and testify to the complainant's bad human and social characteristics, it must be taken into account that, in character, they differ from the usual criminalogical profile of a typical robbery. The complainant's antisocial conduct in these cases was heavily influenced by his dismal personal situation – unemployment and material want, dependence on alcohol, as well as the ill effects from quarrels and from familial disagreements with his mother. The overall constellation of these acts is reminiscent rather of the model of deeply disturbed and conflictual family relations and of family violence. The complaining witness' actual conduct following the act, as well as in the course of the criminal proceeding, attest to the interpersonal conflicts underlying these events. In the complainant's pre-trial hearing, his mother, Mária Adamová, testified as a witness. At the trial, however, she refused to testify and stated that she would like to withdraw the criminal complaint against her son and and that her purpose in making the complaint was merely so that someone would have a talk with her son and that he would be frightened. In its judgment of conviction, the court also took into account the complaining witness' conciliatory attitude, as shown in the reasons it gave for imposing upon the complainant, to teach him a lesson, a mere sentence of imprisonment at the very lower end of the range of possible punishments and conditionally suspended the sentence.

The act of robbery, described above, committed in two ongoing attacks, can be characterized by the relatively minor degree of physical violence: they resulted in no bodily harm and in essence were predominantly threats to use violence. The value of the items stolen was small (950,- Kč).

ab) As was ascertained from the file of the District Court in Karvina, file no. 7 T 39/2002, in the newly case, committed on 15 January 2002 in Český Těšíň, the factual basis of the

criminal offense of robbery consisted in the fact that the complainant hit the complaining witness in the face with his fist, upon which the complaining witness fell to the ground, at which point the accomplice Jiří Jadamus leaned over the complaining witness, began searching through his clothing, and pulled from the pocket of his jacket his wallet with the amount of 1.650,- Kč and his identity documents; when, during the search, the injured party began to resist, the complainant kicked him in the ribs with his shoe (instep), after which both accomplices left the scene of the crime.

Even though the degree of bodily force was greater on this occasion than on the previous occasion, it was in no sense particularly high. The complaining party, Ivan Gazdík, did not suffer any bodily injury; in his testimony in the main trial on 3 May 2002 he described the physical attack as consisting in a blow by the fist to the lower jaw and a kick with his shoe (instep) into the ribs; „it was not, however, in any way a powerful blow“ (No. 1. 98 of the criminal file). That the complaining party himself did not personally assess the act as terribly serious, is attested to by the fact that he reported the act, which occurred at 1:30 a.m, only at 1:40 p.m.. Moreover, as the witness, Rudolf Trombík, stated, the complaining witness confided in him that he reported the offense primarily due to the fact that all of his identity documents were stolen.

The amount of money stolen in the course of this act (1.650,- Kč) was not high.

B) In was in this case also appropriate to take into account the number, type, and level of prior convictions and sentences imposed, the overall amount of time served pursuant to those sentence, and the length of the intervals between them. As was ascertained from a copy of the complainant’s criminal record, prior to his most recent conviction, when he was classified as an especially dangerous recidivist, he has been convicted a total of three times:

1. in the 18 April 1997 judgment of the District Court in Karvina, file no. 7 T 54/97, he was convicted of criminal offences relating to property (§ 247 para. 1 and § 257 para. 1 of the Criminal Act) and given a suspended sentence of 4 months imprisonment with a fifteen-month trial period. On 3 February 1998, this punishement became subject of an amnesty;

2. in the 2 July 1998 judgment of the District Court in Karvina, file no. 7 T 156/97, he was convicted, pursuant to § 234 para. 1 of the Criminal Code, of the criminal offense of robbery and was given a suspended sentence of two years imprisonment, with a three-year trial period. Afterward, he committed a further criminal offense (stated in the following point three), and on 30 May 2000 a decision was made ordering that he serve his sentence, from which on 30 October 2000 he was released on parole lasting four years. This conviction and sentence in particular were taken into account when making the classification of especially dangerous recidivism in the decisions contested in the constitutional complaint;

3. in the 5 April 2000 judgment of the District Court in Karvina, file no. 7 T 33/2000, he was convicted, under several provisions of the Criminal Act, under § 202 para. 1, of the criminal offense of hooliganism, under § 257 para. 1 of damage to another’s property, under § 221 para. 1, of causing harm to a person’s health, under § 197a, of violence

against a group of inhabitants and against an individual, and under § 171 para. 1 lit. d), of thwarting the enforcement of an official decision, and was sentence to an unconditional 14-month term of imprisonment; on 30 October 2000 he was released on parole lasting four years.

Several facts that are relevant for the assessment of the material elements of especially dangerous recidivism become evident from a recapulation of the prior convictions and sentences served in relation to the adjudicated criminal offense of robbery:
- only in a single previous case was the complainant convicted and sentenced for a criminal act which can be classified, pursuant to § 41 para. 1 of the Criminal Act, as an especially serious intentional criminal offense; the case currently being adjudicated is thus his second conviction for an especially serious criminal offense;

- more than four and one-half years passed between the commission of these two criminal offenses;

- the total period of time which the complainant spent serving sentences of imprisonment was approximately five months; before serving out his sentence, he was released on parole;

- The prior criminal offenses for which the complainant was convicted were of a divergent nature, in two cases he was convicted of violent crimes; as can be concluded from the types and length of sentences imposed, these criminal offenses were not adjudged in specific cases as being especially dangerous, and he was even given merely a suspended sentence of imprisonment for the first criminal offense of robbery he committed.

C) The personality of the convicted person, his overall personal profile, his character and psychological attributes, age, etc. are crucial considerations which should have been taken into account in evaluating the substantive conditions of especially dangerous recidivism.

As the fact-finding first instance court declares in its judgment, the convicted person was not well known in his place of residence, and has once, in 1999, been the subject of a misdemeanor proceeding. At the time the most recent criminal offence was committed, he was unemployed and lived on social support payments. He has been sentenced three times by a court, two of those were suspended sentences of imprisonment.

At the time the incriminating criminal offense of robbery was committed, he was 24 years old.

The ordinary courts did not ascertain any further personal characteristics, from which the especial dangerousness of a perpetrator can be determined.

VI.

As the Constitutional Court has already many times pointed out, in principle it is not empowered to intervene into the decision-making of ordinary courts, as it is not the apex

of their court system (compare Art. 81, Art. 90 of the Constitution). As long as courts proceed in accordance with the Part Five of the Charter, the Constitutional Court may not arrogate to itself the right of supervisory review of their decisions (Art. 83 of the Constitution). On the other hand, it is empowered, and even obliged, to adjudge whether a proceeding was on the whole just and whether a complainant's constitutionally guaranteed fundamental rights or basic freedoms have not been infringed in it.

According to Art. 36 para. 1 of the Charter everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body. According to Art. 39 of the Charter only a law may designate the conduct which shall constitute a crime and the penalties or other detriments to rights or property which may be imposed for committing them.

The Constitutional Court considered all parts of the judgment and the reasoning of the contested decisions in the light of the just delineated constitutional framework and determined that the constitutional complaint is well-founded.

The Constitutional Court determined that the ordinary court decisions categorizing the complainant, under § 41 para. 1 of the Criminal Code, as an especially dangerous recidivist resulted in the infringement of the complainant's constitutional rights, as the conclusion that in his case the substantive requirement for especially dangerous recidivism was fulfilled, that is, that there has been a substantial increase in the level of danger of the criminal offense for society, is in extreme incongruity with the established factual circumstances.

In highly regarded criminal law literature, it is emphasized that, when judging this condition, it is necessary also to take into consideration circumstances other than the length of time which has passed since the last conviction, circumstances determinative of the level of danger of recidivism for society, for example, the manner in which the criminal conduct was committed, the harm caused both now and by the earlier criminal conduct, the amount, type and extent of previous punishments, the motives and reasons which led to the recidivism. Weighty considerations include an overall evaluation of the perpetrator's character and personality, his overall personal profile, features of his character and psychological attributes, age, etc. (compare Novotný, O., et. al., Substantive Criminal Law I – The General Part, 4th ed., Prague, ASPI 2003, p. 360). It is also significant to ascertain how many times the perpetrator has been punished in the past for especially serious crimes, for how many criminal offenses he was punished, and for how many criminal offenses he is now being condemned, what is the total amount of time he was incarcerated in the past, what is the time interval between times in prison, etc. It is also important to evaluate the consequences of the crimes. In evaluating the substantive condition of especially serious recidivism, the concrete level of danger of the criminal offenses, both the previous and the currently prosecuted one, must be assessed. One must also take into account the significance and seriousness of all criminal offenses for which the perpetrator has previously been punished, his conduct during incarceration, his manner of life in the periods between criminal offenses and punishments, the length of imprisonment previously imposed as well as the duration of actual incarceration, and the commission of other criminal offenses in the decisive period (compare Šámal, Púry, and Rizman: The Criminal Code – Commentary, 5th ed., Prague, C.H. Beck, 2003, p. 347).

Analogical conclusions on the problem of judging the substantive condition for especially dangerous recidivism have also been adopted in the constant jurisprudence (compare, for example, the case decision no. 32/2001 Coll., criminal decisions).

The Constitutional Court entirely concurs with these views expressed in scholarly literature and in the decisional law and observes that in the instant case certain relevant criteria, determinative for the substantive condition of especially dangerous recidivism, were not taken into account. The Constitutional Court also considers it necessary to advert to numerous contexts, of a criminal policy and historical nature, of the institute of especially dangerous recidivism.

There is no doubt that it best corresponds to the principles of just punishment and of the equality of citizens before the law in a law-based state if the regular cases of „standard" criminality are prosecuted in the framework of the „normal" criminal sentencing range, as laid down in the special part of the criminal code. The legislature expresses therein the categories of degrees of danger to society of certain types of criminal delicts and provides state bodies participating in the criminal process a settled framework within the confines of which they must mete out a concrete punishment, taking into consideration all circumstances of the case. For the legislature to lay down in this manner the criminal sentencing range best satisfies the principle nullum crimen, nulla poena sine lege, the principle of the equality of citizens before the law, and the principle of the predictability of court decision-making.

Deviations from the general criminal sentencing range, either in legislation or in applicational practice, must be founded upon entirely exceptional and duly justified circumstances. The institute of especially dangerous recidivism under § 41 and following of the Criminal Code is just such an extraordinary institute and for that reason alone it is necessary when applying it to proceed very carefully, and the conditions therefor must be interpreted restrictively.

The criminal policy purpose of this legal institute is to prosecute more severely „incorrigible" delinquents who repeatedly perpetrate especially serious criminal offenses. The exceptional severity of the punishment, which pursues preventive and repressive aims, is justifiable in this case because the perpetrator, although he has already, by being punished in the past, received appropriate warning, obstinately repeats especially dangerous anti-social attacks the blameworthiness of which must be notoriously manifest to him. In such cases, the imposition of an intensified punishment can be warranted by considerations of general and individual prevention.

In cases where the repeated commission of criminal acts does not substantially increase the level of danger for society of a criminal offense, a sufficiently rational reason cannot be found as to why repeatedly criminal conduct should result in the infliction of an especially intensified sentencing range; in such cases, in order to fulfill the aims of the the Criminal Code, it suffices to mete out punishment within the framework of the „normal" (that is, not increased by one-third) sentencing range. The Constitutional Court recalls that the sentencing range laid down for the criminal offense of theft in § 234 para. 1 of the Criminal Code prescribes imprisonment for from two to tens years. In the vast majority of cases, this wide range and high maximum permissible sentence enables courts to make a sufficiently sensitive differentiation in the imposition of specific sentences and suitably to

perceive the level of danger to society of the act. The Constitutional Court is of the view that, in the case before it, that basic sentencing range allows for the imposition of a proportionate and just punishment without it being necessary to resort to an extraordinary increase of the maximum permissible term of imprisonment and impose a punishment in the upper half of the increased criminal sentencing range pursuant to § 42 of the Criminal Code.

Just in passing it is fitting to call attention to the historical circumstances of the Czech legal rules concerning especially serious recidivism, which went through an instructive historical development. This institute was introduced into Czech criminal legislation in 1961 by the Criminal Code, No. 140/1961 Coll., in a more extensive form then exists today. Apart from the prosecution of recidivism of especially serious criminal offenses, the then valid wording of § 41 para. 1, lit. b) of the Criminal Code allowed in addition for the prosecution of the „continual perpetration of intentional crimes of the same nature“, hence even of criminal social seriousness, which did actually sometimes occurred in the criminal justice practice of that time. In the new social and political conditions that prevailed after 1989, this situation was criticized as exaggerated criminal repression, so that an amendment to the Criminal Code, effected by Act No. 175/1990 Coll., reformulated § 41 para. 1 of the Criminal Code such that it restricted the impact of the institute of especial dangerous recidivism on especially serious intentional criminal offenses.

It should be remembered that the institute of especially dangerous recidivism was characteristic of criminal legislation in former East-Bloc countries, and, after the political changes, in the majority of those countries it was eliminated during the course of the last decade of last century. In Western European countries having a continental legal system, this institute traditionally has not been and currently is not found. Naturally it is true that recidivist criminal conduct continues to be considered all over the world a very serious and dangerous phenomena which justifies the resort to a special legislative solution making stricter the criminal prosecution of recidivists, for example by qualifying recidivism as an aggravating circumstance, a condition for making more severe the regime of imprisonment and for making more difficult the conditions for release, etc.; in general, however, it is considered sufficient to mete out punishment within the framework of the „normal“ sentencing range.

VII.

The Constitutional Court observes that it has already in its previous case-law concerned itself with the criteria for assessing the subtantive conditions for especially dangerous recidivism. In particular in its 11 July 2002 judgment, file no. III. ÚS 701/01, it expressed the view that an ordinary court conclusion that a perpetrator committed a criminal offense as an especially dangerous recidivist must be persuasively proven and substantiated, also because such a finding has considerable influence on the qualification of criminal conduct with an acute impact on the type and extent of the punishment imposed. Within the framework of the substantive conditions for especially dangerous recidivism, it is necessary

to evaluate in a responsible manner the concrete level of danger, both of a previous criminal offense, as found by a court in the past, and the one currently being prosecuted, according to the standards laid down in § 3 para. 4 of the Criminal Code.

In its constant decisional practice the Constitutional Court defined the conditions in which the incorrect application of ordinary law norms by ordinary courts would result in the infringement of constitutionally-guaranteed rights or freedoms (on this point, compare, for example, the judgment of the Constitutional Court in the matters file no. III. ÚS 173/02 and file no. I. ÚS 733/2001). One of them is the case of the arbitrary application of an ordinary law norm on the part of an ordinary court in the situation that the ordinary court's legal conclusion is „in extreme incongruity with the factual and legal determinations that were made" (for example, III. ÚS 84/94, III. ÚS 166/95, I. ÚS 401/98, II. ÚS 252/99, I. ÚS 129/2000, I. ÚS 549/2000, III. ÚS 694/02). It is the Constitutional Court's conviction that the substantive requirements for an especially dangerous recidivist were not fulfilled in this case, and consequently such extreme incongruity was found in this case as well.

Therefore, the Constitutional Court had no alternative but, pursuant to § 82 para. 2 and 3 lit. a) of the Act on the Constitutional Court, to quash the decisions contested in the constitutional complaint for violating Art. 36 and Art. 39 of the Charter.

In further proceedings following the Constitutional Court's quashing of the decisions, the ordinary courts will be bound, in the sense of § 314h of the Criminal Code, by the legal proposition that the complainant's criminal offense may not be qualified, under § 41 para. 1 of the Criminal Code, as a criminal offense committed by an especially dangerous recidivist.

**Notice: A Constitutional Court decision can not be appealed.**

Brno, 13 May 2004