

# 2004/03/10 . PL. ÚS 12/03: MINIMUM PENALTY AMOUNT

## HEADNOTE

Under certain circumstances a fine can amount to interference in a fundamental right under Art. 11 par. 1 of the Charter of Fundamental Rights and Freedoms, that is, if it interferes with an individual's property relationships with considerable intensity. Incorporating a minimal penalty amount into the statute basically pursues a legitimate aim, because this permits distinguishing the gravity or danger of various types of unlawful conduct. It can be a certain means of protection from possible discrimination; only the other hand, however, it leads to limiting the ability of the administrative body to take into account the specific circumstances of the case, the person of the offender and his economic level. Setting and increasing the lower limit for penalties does not always permit proportional intervention, and in relation to the persons who are penalized by a fine, it can sometimes be of a liquidatory nature.

## CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT

### IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of JUDr. Pavel Rychetský, JUDr. František Duchoň, JUDr. Vojen Güttler, JUDr. Pavel Holländer, JUDr. Dagmar Lastovecká, JUDr. Jiří Malenovský, JUDr. Jiří Mucha, JUDr. Jiří Nykodým, JUDr. Pavel Varvařovský, and JUDr. Miloslav Výborný, ruled on a petition from the Regional Court in Ústí nad Labem, Liberec branch, seeking the annulment of part of § 106 par. 2 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by Act no. 83/1998 Coll., as follows:

The words "from CZK 200,000" in § 106 par. 2 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by Act no. 83/1998 Coll., are annulled as of the day this judgment is promulgated in the Collection of Laws.

## REASONING

On 27 May 2003 the Constitutional Court received from the Regional Court in Ústí nad Labem, Liberec branch, a petition under Art. 95 par. 2 of the Constitution of the Czech Republic (the “Constitution”) to annul part of § 106 par. 2 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by of Act no. 83/1998 Coll., (the “Building Act”), beginning with the words “from CZK 200,000,” due to inconsistency with Art. 1 of the Constitution, Art. 1 and 11 par. 1 of the Charter of Fundamental Rights and Freedoms (the “Charter”) and Art. 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Additional Protocol”).

In the petition the Regional Court recapitulates the proceedings which preceded its petition. During building proceedings, the Fund for Children and Youth “in liquidation” was given a fine of CZK 200,000 for not completing urgent safety works, consisting of enclosure fencing and partial stabilization of a roof truss and “bracing it against wind,” as well as other safety works labeled as a violation of the obligation imposed by § 106 par. 2 let. g) of the Building Act. In administration proceedings and in a complaint against an administrative decision imposing a fine, the Fund for Children and Youth objected that it performed the works to the extent it was able, and that the collapse of part of the roof was caused by exceptionally adverse weather. It pointed out that, as a state organization in liquidation, it did not have money for new investments. The Regional Court believes that the lower limit of a fine, CZK 200,000 does not permit taking the cited situation into account, and in particular the fact that, under Art. 1 point 4 of Act no. 364/2000 Coll., on Dissolution of the Fund for Children and Youth and Amending Certain Acts, the liquidator acting in the name of the fund can assume new obligations only if they are directly connected to “termination of uncompleted obligations.” The Regional Court believes that the words “from CZK 200,000” in § 106 par. 2 of the Building Act, setting the lowest fine for defined infractions in the building field are incompatible with the cited articles of the Constitution, the Charter and the Additional Protocol. It finds its arguments in the conclusions in the Constitutional Court judgment of 13 August 2002 promulgated under no. 405/2002 Coll. The courts points to the imbalance between the wordings of par. 2 and 3 of § 106 of the Building Act. In appendices the court submits the complaint and the decisions by the building administration bodies which it contests.

On 4 June 2003 the Constitutional Court called on the Chamber of Deputies and the Senate of the Parliament of the Czech Republic for position statements and asked the regional court to lend it its file.

In its position statement, the Chamber of Deputies recapitulates the court’s petition, including a reference to the existing case law of the Constitutional Court and the course of the legislative process. The present wording of § 106 par. 2 of the Building Act was amended by Act no. 83/1998 Coll.; the draft was proposed by the government of the CR. According to the background report, the amendment of §§ 105 and 106 resulted from the need to fundamentally change the level of fines for building infractions found in the comment proceedings and to set a range of fines for offences and administrative infractions . Setting stricter penalties was supported by certain towns, which have the most experience with failure to observe building regulations. The draft act was approved

by the prescribed majority of deputies on 13 February 1998, the Senate approved it on 18 March 1998, the president signed it on 6 April 1998, and the Act was duly promulgated. The legislative assembly acted in the belief that the passed Act was consistent with the Constitution, the constitutional order, and international treaties. It is up to the Constitutional Court to evaluate the constitutionality of the contested provision.

In its position statement on the petition, the Senate also states that due to the extensive amendment of the Building Act, effective as of 1 July 1998, there was an effort to set stricter penalties for violation of obligations imposed by the Act for purposes of tightening observance of regulations in the construction and use of buildings. In the interests of achieving this aim, the passage of the Act considerably narrowed the scope of the relevant administrative body's discretion, but did not remove it entirely. The administrative body is to continue to weight the circumstances of a case and take them into account when setting a fine. The Senate points out that it accepted this intention of the petitioner, and on 18 March 1998 approved the draft act in the form passed by the Chamber of Deputies. In discussion the draft, it did not find, as it already stated in its position statement to the petition under file no. Pl. ÚS 3/02, constitutional grounds to withhold consent. It is up to the Constitutional Court to evaluate the contested provision, taking into account the judgment published under no. 405/2002 Coll., which concerned the lower limit for fines under § 106 par. 3 of the Building Act. In an appendix the Senate sent part of the transcript of the discussion of this amendment.

The way in which Act no. 83/1998 Coll., which newly set fines for infractions in the field of construction administration, was passed has already been subject to review by the Constitutional Court when it dealt with the matter under file no. Pl. ÚS 3/02. The results authorize review of the petition on the merits, as the Constitutional Court stated that the Act was passed and promulgated in the constitutionally prescribed manner, within the bounds of constitutionally prescribed jurisdiction, and the quorums specified in Art. 39 par. 1 and 2 of the Constitution existed.

The starting point for the Constitutional Court's judgment, if it is not to deviate fundamentally from its previous case law, is the conclusions expressed in the cited judgment of 13 August 2002 in the matter under file no. Pl. ÚS 3/02 (no. 405/2002 Coll.) on a petition from the Regional Court in Hradec Králové to annul the words "from CZK 500,000" in § 106 par. 3 of the Building Act.

In that judgment, the Constitutional Court stated that incorporating a minimal penalty amount into the statute basically pursues a legitimate aim, because this permits distinguishing the gravity or danger of various types of unlawful conduct far more clearly than was possible by setting only an upper limit. A subsidiary consequence of this step is that this limits the room for administrative discretion by the relevant state bodies, which has positive consequences in, for example, the fact that it unifies to a certain extent the level of punishments imposed or limits the room for arbitrary or corrupt conduct by administrative bodies. Thus, it can be a certain means of protection from possible discrimination; only the other hand, however, it equalizes the gravity of various unlawful conduct, to a greater or lesser degree, which leads to limiting the ability of the administrative body to take into account the specific circumstances of the case, the person of the offender and his economic level.

The Constitutional Court concluded that under certain circumstances a fine can amount to interference in a fundamental right under Art. 11 par. 1 of the Charter. A fine can be considered interference with a constitutional law dimension if it interferes with an individual's property relationships with considerable intensity. Therefore, the Constitutional Court evaluated the aim of interference in relation to the means used, and the measure for this evaluation was the principle of proportionality. Setting progressive levels of penalization through increasing the maximum amount of fines can achieve the intended aim, and in view of adequate room to take into account the circumstances of a particular case, it also permits meeting the condition of proportionality of interference. Naturally, setting and increasing the lower limit for penalties, minimizing this room for discretion, does not always permit proportional intervention, because, in relation to the persons who are penalized by a fine, it can sometimes be of a liquidatory nature. For the abovementioned reasons, the Constitutional Court annulled part of § 106 par. 3 of the Building Act by its judgment in the matter under file no. Pl. ÚS 3/02.

In the cited judgment, the Constitutional Court observed the rule of being limited by the proposed judgment in the petition, and thus could not annul the now contested part of § 106 par 2. However, it pointed out that the overall system could be violated and inequality introduced by § 106 par. 2 of the Building Act, in which the lower limit of fines remained. It also indirectly expressed the expectation that the legislature would also review its constitutionality.

Thus, review of the petition filed by the Regional Court in Ústí na Labem, Liberec branch, can not be substantially different. The lowest statutorily set fines for legislatively-defined "medium" serious violations of buildings regulations under § 106 par. 2 of the Building Act, for violations of buildings regulations legislatively defined as being of "medium" gravity, can, in the cases that a regional court handles, amount to the same unconstitutional interference which the Constitutional Court already found to exist. The difference between the lowest fine level of CZK 500,000 in the case already adjudicated and CZK 200,000 in the case now under review is not substantial. A minimum fine of CZK 200,000 for infractions defined in § 106 par. 2 of the Building Act can, in many cases, be just as liquidatory as a fine of CZK 500,000 Kč for infractions which the legislature considers "more serious," defined in § 106 par. 3 of the Building Act. Moreover, the continued existence of the contested provision would confirm an imbalance between penalties for otherwise serious infractions of building law envisaged by the Building Act as amended after the Constitutional Court's intervention in 2002.

Beyond the framework of the foregoing arguments, the Constitutional Court emphasizes that it did not review the circumstance of the individual application of administrative punishment which occurred in the preceding administrative proceedings, as proceedings on a petition to annul part of a statute under Art. 87 par. 1 let. a) of the Constitution are a means of abstract inspection of norms. The Constitutional Court's conclusion does not anticipate the result of specific review and proceedings on the infracting conduct by the Fund for Children and Youth "in liquidation" which is now taking place before the Regional Court in Ústí nad Labem, Liberec branch. Likewise, the Constitutional Court can speak only peripherally concerning the reference to limiting the Fund's administrator under the legal framework given by a special statute (this is, of course, similar with, e.g., bankruptcy

administrators). The prohibition on assuming new commitments can not prevent fulfilling obligations in an important public interest. Obligations arising from regulations which ensure important public interests (here the Building Act) must take precedence before a framework which determines the handling of property, or that framework must be interpreted in such a manner as to permit the fulfillment of those obligations. The argument which consists of the opinion that a legal entity in liquidation has a lower level of responsibility for the condition and administration of property which it owns, being dependent on the momentary property and organizational situation, could create de facto inequality between the content of property rights for individual owners.

In view of the cited arguments, largely already articulated in the Constitutional Court's case law, the Constitutional Court believes that the contested provision, or part of it, is incompatible with the principles of a state governed by the rule of law, the Charter and Art. 1 of the Constitution, and is inconsistent with Art. 1 and Art. 11 par. 1 of the Charter and Art. 1 of the Additional Protocol. Therefore, the Constitutional Court had no choice but to annul it, under § 70 par. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations.

**Notice: Judgments of the Constitutional Court can not be appealed.**

Brno, 10 March 2004