2010/09/07 - PL. ÚS 12/10: JUDGES´ PAY 2010

HEADNOTES

"As regards the constitutionality of the subsequent statutory removal of part of the pay of judges, to which a statutory entitlement was given before this measure was adopted, we can draw the following basic, general theses:
- reviewing the constitutionality of valid restrictions applicable to judges for a particular year falls within the framework defined by the principle of judicial independence,
- the constitutional positions of judges, on the one hand, and representatives of the legislative and executive branch, especially state administration, on the other hand, differ, in view of the principle of separation of powers and the principle of an independent judiciary, from which follows the different discretion for the legislature as regards pay restrictions on judges, in comparison with the discretion for such restrictions in other areas of the public sphere,
- interference in the material security of judges guaranteed by law may not be an expression of arbitrariness by the legislature, but must, based on the principle of proportionality, be justified by unusual circumstances, e.g. the state being in a difficult financial situation, but even if this condition is met the different functions of judges and representatives of the legislative and executive branch, especially the state administration, must be taken into account; such interference may not give rise to concerns that it will limit the dignity of judges, e.g. that it is not an expression of constitutionally impermissible pressure by the legislative and executive branch on the judicial branch.

The principle of an independent judiciary is one of the essential requirements of a democratic state governed by the rule of law (Art. 9 par. 2 of the Constitution). The requirement of an independent judiciary comes from two sources: the neutrality of judges, as a guarantee of a just, impartial and objective trial, and from ensuring the rights and freedoms of individuals by a judge who is separate from the political power. The independence of judges is guaranteed by guarantees of a special legal status (these must include that they cannot be demoted, recalled, or transferred), as well as by guarantees of organizational and functional independence from bodies representing the legislative and, especially, the executive branch, as well as separation of the judiciary from the legislative and executive branches (by applying the incompatibility principle). In terms of content, judicial independence is ensured by the fact that judges are bound only by the law, i.e. by ruling out any elements of subordination in judicial decision making. The Constitutional Court comprehensively addressed the fundamental components of the principle of an independent judiciary in judgment file no. Pl. ÚS 7/02 (Collection of Decisions of the Constitutional Court, volume 26, judgment no. 78; promulgated as no. 349/2002 Coll.).

Arbitrary interference by the legislature in the area of the material security of judges, including restrictions on pay, must be included in the sphere that is

protected by the principle of judicial independence for two reasons. First, the independence of judges is conditioned on their moral integrity and level of expertise, but it is also tied to appropriate material security. The second reason for including a prohibition on arbitrary interference in the material security of judges (restrictions on pay) in the principle of judicial independence is to rule out the possibility of pressure from the legislative branch, or the executive branch, on judicial decision making. In other words, to rule out arbitrary interference in the material security of judges as a possible form of 'penalizing' judges by the legislative and executive branch, and thereby also to rule out forms of pressure on their decision making."

The Constitutional Court concludes that in the event of exceptional circumstances, e.g. the state being in a difficult financial situation, judges should not be disadvantaged in this manner next time, and in order for the legislature to be able to impose pay restrictions, it should obtain a relevant statement from the representatives of the judicial branch, which should become part of the background report.

In Constitutional Court judgment file no. Pl. ÚS 1/08 (N 91/49 SbNU 273; 251/2008 Coll.) the Constitutional Court adopted methods of legal history, comparative legal studies, and legal philosophy, as aides to legal studies. In this adjudicated matter we can also apply arguments from the point of view of these disciplines. Art. III. part I. second sentence of the Constitution of the United States of America, of 17 September 1787 states "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."

The Constitutional Court states that it is evident, just from the frequency of its case law mentioned above, that judges' salaries, unlike the salaries of other "state servants," have, for a long time, even with the following intended perspective, been subject only to restrictions. The measures concerning them then no longer seem exceptional and proportional, but appear to be a targeted process aimed at returning judges' salaries to lower levels, and thus removing the, from the point of view of the legislative and executive branches, "error" in setting the rules for calculating judges pay, previously committed in the mid-1990s. The consequences of such leveling necessarily lead to reducing the status of judges in the social middle class, degradation of its compensation in relation to other legal professions, and diminution of its necessary social prestige.

In order the declaring a state of legislative emergency would be constitutionally conforming, it is not necessary the legislature evaluates the requirements for declaring a state of legislative emergency in the form of the threatened considerable economic damage with the bill of the particular act that was to avert the danger of considerable economic damage. A decision as to whether there is a danger of considerable economic damage is not a decision on damage in the true sense of the word, but arises from deliberations about wider political consequences. A decision as to whether the state faces considerable economic damage under A decision as to whether the state is in danger of

considerable economic damage, under § 99 par. 1 of the Rules of Procedure need not contain an evaluation of the extent to which the submitted bill is to avert or reduce the danger of considerable economic damage, in a sort of analogy to § 417 par. 1 of Act no. 40/1964 Coll., the Civil Code.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 7 September 2010, the Plenum of the Constitutional Court, consisting of the Chairman of the Court, Pavel Rychetský and judges Stanislav Balík (judge rapporteur), František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, ruled on a petition from the Municipal Court in Brno, represented by JUDr. Ivana Chlupová, seeking the annulment of § 3 par. 4 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives , as amended by Act no. 418/2009 Coll., as regards judges, and the first part of Article I of Act no. 418/2009 Coll., as regards judges, with the participation of the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic as parties to the proceeding, as follows:

The provision of § 3 par. 4 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 418/2009 Coll., as regards judges, is annulled as of 30 September 2010.

REASONING

I. Recapitulation of the Petition

1. On 5 March 2010 the Constitutional Court received a petition from the Municipal Court in Brno seeking the annulment of "§ 3 par. 4 of Act no. 236/1995 Coll., as amended by Act no. 418/2009 Coll., as regards judges, the first part of Article I. of Act no. 418/2009 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and amending and supplementing Act no. 143/1992 Coll., on Pay and Compensation for Being On Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as regards judges.". Joined to this petition was a petition for priority treatment of the petition under § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll.

2. The petitioner stated that it is handling a complaint, file no. 33 C 18/2010, in which a judge of the Municipal Court in Brno seeks from the Czech Republic, through the Municipal Court in Brno, payment of CZK 2,596. Legally speaking, this is a claim for pay under § 28 to 31 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, (also referred to as "Act no. 236/1995 Coll."). The claims in the complaint are that he was not paid for January 2010 the full pay to which he would have been entitled had judges' pay not been reduced by the first part of Article I of Act no. 418/2009 Coll. The contested provisions led to the fact that the level of a judge's pay in the period from 1 January 2010 to 31 December is 96% of the pay under Act no. 236/1995 Coll. and under Art. XLVIII of Act no. 261/2007 Coll., on Stabilization of Public Budgets. As a result, judges' pay for 2010 was reduced by 4%. In addressing the matter, i.e. when handling the dispute cited in article I. of the petition, the petitioner concluded, in accordance with Art. 95 par. 2 of the Constitution of the Czech Republic (the "Constitution") that the provisions cited in the requested judgment, which lead to a reduction in pay from 1 January 2010 to 31 December 2010, and which are to be applied in resolving this dispute, are inconsistent with Art. 1 par. 1 in connection with Art. 82 par. 1 of the Constitution, or with Art. 2 par. 1, and also with Art. 1 of the Charter of Fundamental Rights and Freedoms. Therefore, the petitioner filed a petition under § 64 par. 3 of the Act on the Constitutional Court, as amended by later regulations, (the "Act on the Constitutional Court"), seeking the annulment of the contested provisions.

3. In the petition, the petitioner firstly raised objections concerning defects in the legislative process, presented general constitutional law arguments, constitutional law arguments for evaluating the particular matter, presented economic arguments, and described the history of pay restrictions for judges.

4. The petitioner claimed that the prerequisites for the Chairman of the Chamber of Deputies to declare a state of legislative emergency, provided in § 99 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, as amended by later regulations, (the "Rules of Procedure"), had not been met. It described the procedure that preceded the declaration of a state of legislative emergency, and paraphrased the content of resolution of the government of the Czech Republic of 21 September 2009, no. 1 231, decision of the Chairman of the Chamber of Deputies, no. 58 of 21 September 2009 and the content of the background report to the Act, which was subsequently adopted as no. 418/2009 Coll. It concluded – unlike the government and the Chairman of the Chamber of Deputies – that there was no situation of danger of considerable economic damage to the state under § 99 par. 1 of the Rules of Procedure, for which it gave economic grounds, consisting primarily of the fact that "the amount saved is 0.008% of state budget spending," and thus, in its opinion, in this case the declaration of legislative emergency was misused in order to circumvent the regular legislative process, because such a relatively small expected saving in state budget spending could not meet the requirement of danger of "considerable" the economic damage.

5. In its general constitutional law arguments, the petitioner pointed to the Constitutional Court's case law concerning restriction of the pay of judges, in particular judgments file no. Pl. ÚS 13/99 of 15 September 1999 (N 125/15 SbNU

191; 233/1999 Coll.), Pl. ÚS 18/99 of 3 July 2000 (N 104/19 SbNU 3; 320/2000 Coll.), Pl. ÚS 16/2000 of 3 July 2000 (N 105/19 SbNU 23; 321/2000 Coll.), Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309; 198/2003 Coll.), Pl. ÚS 9/05 of 14 July 2005 (N 140/38 SbNU 81; 356/2005 Coll.), Pl. ÚS 34/04 of 14 July 2005 (N 138/38 SbNU 31; 355/2005 Coll.), and Pl. ÚS 43/04 of 14 July 2005 (N 139/38 SbNU 59; 354/2005 Coll.), as well as, in its opinion, the essential statements of law made in these judgments.

6. In the constitutional law arguments presented for the evaluation of this matter, the petitioner emphasized, in particular, that, in contrast to the original intent of the sponsor of the contested Act, there was no reduction in pay for other persons who are paid from public funds, which resulted in a situation where the only group that is paid from the state budget whose pay was reduced as of 1 January 2010 are the constitutional authorities specified in Act no. 236/1995 Coll. and state prosecutors. Reducing the pay for this limited group of persons grossly violates the principle of proportionality, which is especially marked in relation to judges, not to mention the further fact that in this situation the financial savings in state budget spending is quite negligible. Reducing judges' pay by 4% for the year 2010 in a situation where only a very limited group of persons was affected by this reduction departs from the framework of extraordinary and completely exceptional measures adopted to solve a difficult situation that the state is in. The legislature has been intervening in judges' pay by removing so-called since 1997; it has frozen pay increases regularly since 2002. Such measures cease to be exceptional or extraordinary, qualities which the Constitutional Court has emphasized as legitimate in connection with addressing the consequences of extraordinary events, such as, for example, the extensive floods in 2002. In the petitioner's opinion, exceptional circumstances that would justify intervention in judges' pay have not arisen. Finally, the petitioner recapitulated the history of freezing judges' pay since 2002 and pointed out that a legislative process has already begin that would restrict judges' pay from 2011 into the future.

7. In its economic arguments, the petitioner emphasized that regulation of the same relationships in professional categories that are not the same is clearly illegitimate interference. The petitioner stated that judges' pay is increased only if there is an increase in the average nominal monthly wage of individuals in the non-entrepreneurial sphere, according to published data from the Czech Statistical Office for the calendar year two years previous to the current one. In other words, if the average nominal wage in the non-entrepreneurial sphere does not increase, salaries under Act no. 236/1995 Coll. cannot be adjusted. That indicates that judges' pay is not in an economic vacuum, but that their salaries are directly connected to the growth of average wages in the non-business sphere, in other words in the sphere of employees predominantly paid from public funds. Therefore, the adjustment principle in Act no. 236/1995 Coll. can be applied only if the average wage in the non-entrepreneurial sphere increases. However, such an increase in average wage is largely in the hands of the legislature.

8. The petitioner then closed by saying that, in view of the foregoing, it concluded that the provisions stated in the requested judgment, which are to be applied in resolving the dispute, are inconsistent with Art. 1 par. 1 in connection with Art. 82

par. 1 of the Constitution, or with Art. 2 par., and also with Art. 1 of the Charter of Fundamental Rights and Freedoms.

9. In a filing that the Constitutional Court received on 18 August 2010 the petitioner added to its arguments the claim that the legislature's interference through the contested legal regulation is unsystematic and violates the principles of equality and proportionality.

II. Conduct of the Proceeding and Recapitulation of the Statements from the Parties

10. In accordance with § 69 of the Act on the Constitutional Court, the Constitutional Court called on the Chamber of Deputies of the Parliament of the Czech Republic (the "Chamber of Deputies") and the Senate of the Parliament of the Czech Republic (the "Senate") to respond to the petition.

11. The Chamber of Deputies, through its Chairman, Ing. Miloslav Vlček, stated that the bill subsequently adopted as Act no. 418/2009 Coll. was presented to the Chamber of Deputies by the government on 21 September 2009 as Chamber of Deputies publication 920. The Prime Minister proposed that the Chairman of the Chamber of Deputies, in accordance with § 99 par. 1 of the Rules of Procedure, declare a state of legislative emergency for discussion of the bill on the grounds of extraordinary circumstances, where the state is in danger of considerable economic damage, and that, under § 99 par. 2 of the Rules of Procedure, the bill be discussed in shortened debate within the framework of legislative emergency. On the basis of that request, the Chairman of the Chamber of Deputies, in decision no. 58 of 21 September 2009, a state of legislative emergency for the period from 21 September 2009 to 30 September 2009. In connection with declaring a state of legislative emergency, the Chairman of the Chamber of Deputies issued decision no. 59 of 21 September 2009, in which he decided that Chamber of Deputies publication 920 would be discussed, under § 99 par. 2 of the Rules of Procedure, in shortened debate, assigned Chamber of Deputies publication 920 to the Budget Committee for discussion, and gave it a non-extendable deadline to submit a resolution by 23 September 2009 at midnight. The Budget Committee discussed Chamber of Deputies publication 920 on 23 September 2009, recommended to the Chamber of Deputies that it discuss it by 25 September 2009 at 4:00 p.m., that it discuss it in general debate and not discuss any part of it in detailed debate. Pursuant to § 99 par. 4 of the Rules of Procedure, the Chamber of Deputies, before discussing the draft agenda for its 63rd session in its 5th electoral term, in vote no. 2 confirmed the continuing state of legislative emergency for the discussion of Chamber of Deputies publication 920, out of 191 deputies present, 182 deputies were in favor, and none against. The Chamber of Deputies, pursuant to § 99 par. 5 of the Rules of Procedure, in vote no. 8, stated that with Chamber of Deputies publication 920 conditions still existed for discussing the government bill in shortened debate; out of 155 deputies present, 140 were in favor and 1 against. The statement provides the position that the Chamber of Deputies discussed the bill in a state of legislative emergency, and observed the statutory conditions. In Chamber of Deputies publication 920, the government stated that the proposed legal framework conforms to the constitutional order and legal order of the Czech

Republic and does not conflict with any international treaties by which the Czech Republic is bound. The European Union leaves judges' pay to domestic legislation. The Budget Committee recommended that the Chamber of Deputies approve Chamber of Deputies publication 920 without notes. In the second reading of Chamber of Deputies publication 920 deputies B. Sobotka and O. Liška submitted an amending proposal, which did not concern judges' pay. In the third reading of Chamber of Deputies publication 920, the bill was approved by 182 votes in favor and 2 votes against, out of 188 deputies present. The Chamber of Deputies discussed the bill again at its 64th session after the Senate returned the bill to the Chamber of Deputies with amending proposals, which did not concern the contested provisions. The Chamber of Deputies approved the bill again in the version that was passed to the Senate, with 142 votes in favor and 3 votes against, out of 161 deputies present. The President signed the Act on 13 November 2009, and it was promulgated in the Collection of Laws as no. 418/2009 Coll. In closing, the statement says that the legislative assembly acted in the belief that the adopted Act is consistent with the Constitution and our legal order. It is up to the Constitutional Court to review the constitutionality of the contested provisions and issue the appropriate decision.

12. The Senate, through its Chairman, MUDr. Přemysl Sobotka, stated that after being approved in the Chamber of Deputies, the bill was delivered to the Senate on 25 September 2009, and was discussed as Senate publication no. 173, concurrently with Senate publication no. 172, which was a bill amending certain Acts in connection with the Act on the state budget of the Czech Republic for 2010. Senate publication no. 173 was discussed in two committees, the Constitutional Law Committee, which was the guarantee committee, and in the Committee for the Economy, Agriculture, and Transportation. The Senate's statement describes the discussion in the committees in detail; the Constitutional Law Committee discussed judges' pay, responding to the opposed position of the Judges' Union of the Czech Republic and a request from representatives of the Judges' Union of the Czech Republic in relation to certain members of the committee, that judges be removed from the proposed reduction in pay. The sponsor's representatives also addressed these questions, and after debate the majority opinion of the Constitutional Law Committee was to not interfere in this matter in the legislation submitted by the Chamber of Deputies and preserve the legislation proposed by the government, based on the aim, in connection with the urgent need to make savings, of saving 4% of funds for salaries in 2010 in the entire state sector. Amending proposals in the committee addressed other matters. The Committee for the Economy, Agriculture, and Transportation discussed the bill at its meeting on 5 October 2009, and in its resolution no. 221 it recommended that the Senate approve the bill in the version provided by the Chamber of Deputies. The Senate discussed the bill at its 12th session on 5 October 2009, and after debate it adopted resolution no. 290, by which it returned the bill to the Chamber of Deputies, as amended by the adopted amending proposals provided in the attachment; these were amending proposals that the Constitutional-Legal Committee recommended for adoption of the bill. Out of 65 senators present, 65 voted in favor of the resolution, and no one was against. The Chamber of Deputies then on 4 November 2009 passed its own draft, and on 27 November 2009 the Act was promulgated in the Collection of Laws as number 418/2009 Coll. As regards the petitioner's objections that the requirements for declaring a state of legislative emergency, in which a bill can be discussed in

shortened debate, were allegedly not met, these objections do not apply to the discussion of a bill in the Senate. In its statement, the Senate adds that at the time the bill was being discussed, it could not have expected that the Chamber of Deputies would subsequently violate the principle of unity, and could not subsequently take this change into consideration. The statement concludes that it is fully up to the Constitutional Court to review the constitutionality of the contested provisions and make a ruling. In its position on the supplement to the petition, the Senate pointed out that part of the petitioner's argumentation was premature, as, in the Senate's opinion, it was connected more to aims de lege ferenda.

III. The Text of the Contested Provisions

13. The contested provision of § 3 par. 4 of Act no. 236/1995, as amended by Act no. 418/2009 Coll., reads:
"From 1 January to 31 December 2010 the pay of a deputy, representative, judge, or member of the European Parliament is 96% of the pay set under this Act and under Art. XLVIII of Act no. 261/2007 Coll.".
The contested Article I of the first part of Act no. 418/2009 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Certain Other Benefits of State Attorneys and amending and supplementing Act no. 143/1992 Coll., on Pay and Compensation for Being On Call at Work in State Budget Organizations and in Certain Other Organizations and Bodies, as amended by later regulations, reads:
"In § 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2002 Coll., Act no. 309/2002 Coll., Act no. 427/2003 Coll., Act no. 626/2004 Coll. and Act no. 261/2007 Coll., paragraph 4 is added, which reads:
"(4) From 1 January do 31 December 2010 the pay of a deputy, representative, judge, or European Parliament representative is 96% of the pay under this Act and under Art. XLVIII of Act no. 261/2007 Coll."."

IV. Petitioner's Active Standing

14. Under Art. 95 par. 2 of the Constitution, if a court concludes that a statute that is to be applied in resolving a matter is inconsistent with the constitutional order, it shall submit the matter to the Constitutional Court. More detail on this authorization is provided in § 64 par. 3 of the Act on the Constitutional Court, under which a court may submit to the Constitutional Court a petition seeking the annulment of a statute or its individual provisions. The prerequisite for addressing such a petition on the merits is that Art. 95 par. 2 of the Constitution must have been met, in the sense that this must be a statute that is to be applied in resolving the matter, i.e. the statute, or the provision, that is proposed to be annulled, is to be directly applied by the petitioner in resolving the particular dispute. The Constitutional Court found that this prerequisite had been met, because the

petitioner will review a complaint seeking the payment of CZK 2,596, the difference between the pay that the plaintiff would have been entitled to before the contested provisions were adopted and the pay after the reduction implemented by the contested provisions.

V. Constitutional Conformity of the Legislative Process

15. In a proceeding on a petition to annul a statute or part thereof the Constitutional Court reviews whether the contested regulation was adopted and issued within the bounds of constitutionally provided competence and in a constitutionally prescribed manner (§ 68 par. 2 of the Act on the Constitutional Court). The petitioner contests the constitutional conformity of the legislative process as regards the discussion of the bill later adopted as Act no. 418/2009 Coll., during a state of legislative emergency in the Chamber of Deputies. As regards discussion in the Senate, the petitioner raises no objections regarding the constitutional conformity of the legislative process. The Constitutional Court verified that in the Senate the bill was not discussed in shortened debate, and the Senate did not consider the question of shortened debate at all.

16. In view of these facts concerning the constitutional conformity of the legislative process, the Constitutional Court further focused only on the petitioner's objections concerning the discussion of the bill in the Chamber of Deputies. First, the Constitutional Court points out that in Constitutional Court judgment file no. Pl. ÚS 7/03 (N 113/34 SbNU 165; 512/2004 Coll.) it stated that "if the legislative framework of the legislative process, which is a component of simple law, is not an expression of a constitutional principle, possible violation of it does not establish grounds for derogation, in the meaning of § 68 par. 2 of Act no. 182/1993 Coll., as amended by later regulations, due to failure to observe the constitutionally prescribed manner of adoption of a statute or other legal regulation." The Constitutional Court was then guided by that principle in other judgments, in particular file no. Pl. ÚS 24/07 (N 26/48 SbNU 303; 88/2008 Coll.).

17. In the presently adjudicated matter, first, we cannot fully agree with the petitioner that the legislature should have balanced meeting the requirements for declaring a state of legislative emergency, in the form of the threatened considerable economic damage, with the bill of the particular act that was to avert the danger of considerable economic damage. A decision as to whether there is a danger of considerable economic damage is not a decision on damage in the true sense of the word, but arises from deliberations about wider political consequences. A decision as to whether the state faces considerable economic damage under under § 99 par. 1 of the Rules of Procedure need not contain an evaluation of the extent to which the submitted bill is to avert or reduce the danger of considerable economic damage, in a sort of analogy to § 417 par. 1 of Act no. 40/1964 Coll., the Civil Code.

18. In the adjudicated matter we cannot overlook the fact that in the voting to confirm the state of legislative emergency a considerable majority of deputies always voted in favor, that during discussion of the bill in the Chamber of Deputies and its committees no distinct minority was formed whose rights could be seen to

have been abridged, and in the voting in the third reading and the voting after the bill was passed back by the Senate a considerable majority of deputies was in favor. Thus, in this particular case, the Constitutional Court, keeping in mind the principle of minimizing interference, agreed with the position of the Chamber of Deputies that "it discussed the bill in a state of legislative emergency and observed the statutory requirements."

VI. The Constitutional Court's Legal Review

19. The petition is justified, as regards the claimed unconstitutionality of the contested provisions.

20. The Constitutional Court has considered the issue of judges' pay several times in the past. It summarized its older case law in Constitutional Court judgment file no. Pl. ÚS 55/05 (N 9/44 SbNU 103; 65/2007 Coll.), to which it also referred in its most recent judgment concerning the issue of judges' pay, file no. Pl. ÚS 13/08 (no. 104/2010 Coll.). As it is evident that this case law is familiar to the parties, the Constitutional Court does not consider it necessary to summarize it in detail again.

21. The basic starting point for the further development of case law are the theses stated in Constitutional Court judgment file no. Pl. ÚS 13/08: "in view of the principles of a democratic state governed by the rule of law, the Constitutional Court could hardly approve of an action by the legislature that would lead not to slowing the rate of growth of judges' pay, but to removal, even partial removal, of the level of material security for judges already achieved. This is especially so if it were shown that this fundamentally impermissible restriction affects only or primarily the income of judges, and not the income of other state "servants." It is appropriate to expressly point out the Constitutional Court's conclusions in its judgment file no. Pl. ÚS 34/04.". The related footnote no. 8 in that judgment reads: "As regards the constitutionality of the subsequent statutory removal of part of the pay of judges, to which a statutory entitlement was given before this measure was adopted, we can draw the following basic, general theses:
- reviewing the constitutionality of valid restrictions applicable to judges for a particular year falls within the framework defined by the principle of judicial independence,
- the constitutional positions of judges, on the one hand, and representatives of the legislative and executive branch, especially state administration, on the other hand, differ, in view of the principle of separation of powers and the principle of an independent judiciary, from which follows the different discretion for the legislature as regards pay restrictions on judges, in comparison with the discretion for such restrictions in other areas of the public sphere,
- interference in the material security of judges guaranteed by law may not be an expression of arbitrariness by the legislature, but must, based on the principle of proportionality, be justified by unusual circumstances, e.g. the state being in a difficult financial situation, but even if this condition is met the different functions of judges and representatives of the legislative and executive branch, especially the state administration, must be taken into account; such interference may not give rise to concerns that it will limit the dignity of judges, e.g. that it is not an

expression of constitutionally impermissible pressure by the legislative and executive branch on the judicial branch.
The principle of an independent judiciary is one of the essential requirements of a democratic state governed by the rule of law (Art. 9 par. 2 of the Constitution). The requirement of an independent judiciary comes from two sources: the neutrality of judges, as a guarantee of a just, impartial and objective trial, and from ensuring the rights and freedoms of individuals by a judge who is separate from the political power. The independence of judges is guaranteed by guarantees of a special legal status (these must include that they cannot be demoted, recalled, or transferred), as well as by guarantees of organizational and functional independence from bodies representing the legislative and, especially, the executive branch, as well as separation of the judiciary from the legislative and executive branches (by applying the incompatibility principle). In terms of content, judicial independence is ensured by the fact that judges are bound only by the law, i.e. by ruling out any elements of subordination in judicial decision making. The Constitutional Court comprehensively addressed the fundamental components of the principle of an independent judiciary in judgment file no. Pl. ÚS 7/02 (Collection of Decisions of the Constitutional Court, volume 26, judgment no. 78; promulgated as no. 349/2002 Coll.).
Arbitrary interference by the legislature in the area of the material security of judges, including restrictions on pay, must be included in the sphere that is protected by the principle of judicial independence for two reasons. First, the independence of judges is conditioned on their moral integrity and level of expertise, but it is also tied to appropriate material security. The second reason for including a prohibition on arbitrary interference in the material security of judges (restrictions on pay) in the principle of judicial independence is to rule out the possibility of pressure from the legislative branch, or the executive branch, on judicial decision making. In other words, to rule out arbitrary interference in the material security of judges as a possible form of 'penalizing' judges by the legislative and executive branch, and thereby also to rule out forms of pressure on their decision making."

22. Chapter Four of the Constitution regulates the "judicial power." Under Art. 81 of the Constitution, the judicial power shall be exercised in the name of the Republic by independent courts. Under Art. 82 par. 1 of the Constitution, judges shall be independent in the performance of their duties. Nobody may threaten their impartiality.

23. Inter omnes constat, that the independence of courts, judges, and the judicial branch contains a number of components, "systemic, political and institutional conditions created for the exercise of a truly independent judicial branch," that is, administrative independence, and "the independence and freedom from influence of each individual judge, his ability to resist any (political, media, or civic pressure)," i.e., subjective independence (cf. also J. Jirsa, L. Vávra, K. Janek, P. Meduna, Klíč k soudní síni. [The Key to the Courtroom] Prague 2006, p. 17). The judicial branch consists of the competence with which courts are endowed, a community of persons who, after taking the oath of office, took on the judicial function, traditionally described as the "judicial corps" or the "judicial estate," and, finally, each individual judge. The attributes of judicial independence include dignity. "The fact that the judiciary was heretofore seen only as a certain kind of

administration signals the deep lack of understanding of the unique position of the judiciary in society. This view is incorrect, and often led to various negative effects on courts and judges. It must be emphasized that courts are unique state bodies that represent an independent power, firmly defined by constitutional principles … This must also be reflected in the social position of employees of the judiciary, especially judges." (cf. D. Burešová, Najít cestu ke skutečné nezávislosti soudu [Finding a path to true judicial independence], Socialistická zákonnost [Socialist Lawfulness] no. 3/1990, p. 121).

24. Guarantees of judicial independence are conceived not as privileges for judges, but for the benefit of those for the protection of whose rights the courts were established. Some of these guarantees restrictively limit judges to a certain degree, as compared to representatives of the legislative and executive branches, or other "servants" of the state. These guarantees include, e.g. the incompatibility of judicial office with a number of political, entrepreneurial, or employment activities. The judicial estate in the Czech Republic does not have an independent representative body – unlike the majority of legal professions in the service of justice in a wider sense (attorneys, notaries, court executors). The judges' union of the Czech Republic is not a professional association or a public law entity, an interest-based self-administering body that includes all members of the judicial estate; it is merely a civil association, and membership in it is not mandatory. Judges may not organize in unions, and are not subject to labor law regulations concerning, e.g. collective bargaining, strikes, etc.

25. The contested provisions were adopted by the legislature in a one-sided act, without audiendi alterae partis. The opportunity for the representatives of the Judges' Union of the Czech Republic to speak for the judges' estate – as the Senate's statement indicates – was only of the nature of a private recommendation. In terms of the opportunity to relevantly express their will and defend themselves in the question of pay, the judges found themselves in a worse position than other professions for which implementation of pay restrictions was also being considered, which led to the result that in the end they remained among those whose pay the legislature was actually able to reduce. The Constitutional Court concludes that in the event of exceptional circumstances, e.g. the state being in a difficult financial situation, judges should not be disadvantaged in this manner next time, and in order for the legislature to be able to impose pay restrictions, it should obtain a relevant statement from the representatives of the judicial branch, which should become part of the background report.

26. The Constitutional Court could not do otherwise than to agree with the petitioner that "reducing pay only for a limited group of persons grossly violates the principle of proportionality, which is especially marked as regards judges, not to mention the further fact that the financial savings in the state budget in this situation is quite negligible." At that time the Constitutional Court took into consideration the fact that "a professional group whose opportunity to earn income other than salaries is considerable restricted by law has been taking part, long-term in the reduction of state budget deficits" (cf. dissenting opinion of Judge Vlasta Formánková to judgment file no. Pl. ÚS 13/08, available at http://nalus.usoud.cz), and it also could not overlook the following passage from the dissenting opinion of Judge Eliška Wagnerová to judgment file no. Pl. ÚS 13/08:

“Thus, reducing pay, just like freezing pay, was not general, it did not affect any state employees. It seems to me that in recent years an unfortunately disliked professional group – judges – which, moreover, has an irreplaceably unique position in the constitutional system, which arises from the function that judges fulfill, has become a sort of hostage of politics, an instrument in its populist actions which, however, as indicated above, have no real effect. Yet, the relevant (official) authorities regularly keep silent about the fact that the compensation for certain state employees may be a multiple of judges’ pay, because their wages, unlike those of judges, need not consist merely of fixed tariffs, but also other, either regularly repeating amounts (personal assessment), and/or supplemented by one-time amounts (bonuses).” The Constitutional Court also took into account the arguments from the dissenting opinion of Judge Vladimír Kůrka to judgment file no. Pl. ÚS 13/08, according to which, “it is worth emphasizing, as the Constitutional Court has also repeatedly mentioned [and as was stated in the Recommendation of the Committee of Ministers of the Council of Europe (94) 12 of 13 October 1994], that “due working conditions” include “ensuring the proportionality of the status and compensation of judges, in view of the dignity of their profession and their workload.” In this context, protection of the dignity of judges can also be ensured by seeing to it that they will not be repeatedly and on a long-term basis exposed to concentrated pressure form the executive branch (or the legislative branch) for the gradual reduction of their – heretofore guaranteed by law – material status and corresponding social expectations; it does not suit the dignity of judges for them, each time they lose a dispute with the executive branch (which is a tradition, because they do not have any defenders), in the context of a feeling of shame created by the media, in the role of supplicants, to have to resort to the hope that the Constitutional Court will help them.”

27. In Constitutional Court judgment file no. Pl. ÚS 1/08 (N 91/49 SbNU 273; 251/2008 Coll.) the Constitutional Court adopted methods of legal history, comparative legal studies, and legal philosophy, as aides to legal studies. In this adjudicated matter we can also apply arguments from the point of view of these disciplines.

28. Art. III. part I. second sentence of the Constitution of the United States of America, of 17 September 1787 states “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.”

29. In its judgment of 11 June 2003, file no. Pl. ÚS 11/02 (N 87/30 SbNU 309; 198/2003 Coll.), the Constitutional Court, in a similar context stated that “… the salaries of judges, in a wider sense, should be a stable, non-reducible value, not a variable factor, which one or another government group re-calculates because it thinks that judge’s salaries are too high compared to the salaries of state employees or compared to the salaries of another professional group. In other words, if we can accept the applicability of the principle of equality in the abovementioned sense to the economically justified reduction of everyone’s salaries, one cannot accept the equality of all the abovementioned groups (even as a target category) as regards the final salary level. Striving for such equality deviates from constitutionality, it is a political aim that has no support in the

constitutionally understood principle of equality. This principle finds its limits, in the material sense, in the statement that "identical matters may not be arbitrarily regulated in a non-identical manner, but at the same time non-identical matters may not be arbitrarily regulated identically." The principle of equality cannot be understood as a leveling in results, but it must be interpreted as a guaranteed of equal sporting chances."

30. The Constitutional Court states that it is evident, just from the frequency of its case law mentioned above, that judges' salaries, unlike the salaries of other "state servants," have, for a long time, even with the following intended perspective, been subject only to restrictions. The measures concerning them then no longer seem exceptional and proportional, but appear to be a targeted process aimed at returning judges' salaries to lower levels, and thus removing the, from the point of view of the legislative and executive branches, "error" in setting the rules for calculating judges pay, previously committed in the mid-1990s. The consequences of such leveling necessarily lead to reducing the status of judges in the social middle class, degradation of its compensation in relation to other legal professions, and diminution of its necessary social prestige.

31. "I think it is not necessary to prove that our judiciary is in crisis. Our republic pays so little attention to its judiciary that it has been in heavy crisis for a number of years. Immediately after the overthrow, our public, particularly our legislators, considered it obvious that the authority and independence of the judiciary must be defended and fortified using all means. But, said in Slovak: the republic does not treat either the judge or the political official equally," wrote the then-first president of the Supreme Court of the Czechoslovak Republic, later professor of civil law, minister of justice, and post-war Czechoslovak representative at the Permanent International Court in the Hague Vladimír Fajnor (1875–1952) in 1933 (cf. V. Fajnor, Reforma súdnictva [Reform of the Judiciary]. Právný obzor [Legal Horizon] no. 11/1933, p. 361). The Constitutional Court adds to this, that the legislature should also not overlook legal ethical aspects when ruling out arbitrariness.

32. In resolution file no. Pl. ÚS 13/10 of 27 May 2010 (available at http://nalus.usoud.cz) the Constitutional Court stated: "For too long we had a system of government by one party, in which even the judiciary belonged to that party. This view of the judiciary survives in many minds even today. The idea still survives of a judge not as a representative of the judicial branch, but as a state official, loyal to the state, dependent on the state, and paid by the state as the whim of the governing group decides … The independence and impartiality of the judiciary … is not its privilege, but is a necessary prerequisite for it to function for the good of the entire society, in particular in "uncomfortable" times."

33. For the abovementioned reasons, the Constitutional Court concluded that the requirements for reducing the pay of judges were not met in this matter, and in the context of its case law cited above, it concluded that the contested provision is inconsistent with Art. 1 par. 1 in connection with Art. 81 and Art. 82 par. 1 of the Constitution, wherefore it ruled, under § 70 par. 1 of the Act on the Constitutional Court, that this provision is annulled as of 30 September 2010.