# 2002/03/11 - PL. ÚS 19/02: EQUALITY OF RIGHTS

**HEADNOTES**

**Art. 96 para. 1 of the Constitution of the CR enshrines, as one of the key principles of the functioning and implementation of the judicial power in the CR, the procedural principle of the equality of rights in parties before the court. This constitutional principle thus guarantees the equal procedural status of parties in judicial proceedings concerning rights which are granted to parties of a particular type of proceedings by the legal order. One can conclude form this principle, among other things, that a particular type of proceedings must have a single court jurisdiction, understood in the substantive and functional dimension, and that framework must be implemented by statute.**

**It is evident that the legislature can set varying degrees of procedural rights and obligations for various types of proceedings with different subject matter. In other words, the equality of parties to proceedings must be interpreted so that the same scope of procedural rights and obligations must be observed in proceedings which match the same subject of proceedings. However, it is impermissible for the distinguishing criterion to be, instead of the subject matter of the proceedings, the party himself – even if, for example, defined by his procedural status in any previous proceedings.**

**Art. 37 para. 3 of the Charter of Fundamental Rights and Freedoms provides that all parties to proceedings are equal. This provision of the Charter must be interpreted to the effect that this is a principle which guarantees the equal procedural rights and obligations of particular parties in particular proceedings. In this, this provision of the Charter differs from Art. 96 para. 1 of the Constitution, which generally foresees the equality of parties in proceedings with the same subject matter.**

**CZECH REPUBLIC**
**CONSTITUTIONAL COURT**

# JUDGMENT

## IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided on a petition from the High Court in Olomouc to annul § 24 para. 4 of Act no. 328/1991 Coll., on Bankruptcy and Settlement, as amended by later regulations, with the participation of the Chamber of Deputies of the Parliament of the CR and of the Senate of the Parliament of the CR as parties to the proceedings, as follows:

**The provision of § 24 para. 4 of Act no. 328/1991 Coll., on Bankruptcy and Settlement, as amended by later regulations, is annulled.**

## REASONING

I.

On 15 August 2002, the Constitutional Court received, under Art. 95 para. 2 of the Constitution of the CR and § 64 para. 4 of Act no. 182/1993 Coll., on the Constitutional Court, a petition from the High Court in Olomouc to annul § 24 para. 4 of Act no. 328/1991 Coll., on Bankruptcy and Settlement, in the valid wording.

Under § 104a of the Civil Procedure Code, the High Court in Olomouc receives for decision matters in which the parties to the proceedings, regional courts, or district courts, believe that the bankruptcy court lacks substantive jurisdiction to decide on a creditor's complaint to determine a claim or the district court lacks jurisdiction to decide on a creditor's complaint in proceedings opened at the district court before bankruptcy filings were made. In these cases the High Court in Olomouc is to decide on the substantive jurisdiction under the contested § 24 para. 4 of the Bankruptcy and Settlement Act.

The petitioner justified its petition on the grounds that Act no. 105/2000 Coll., which amends Act no. 328/1991 Coll., on Bankruptcy and Settlement, as Amended by Later Regulations, and Certain Other Acts, effective as of 1 May 2000, inserted in the newly formulated § 24 of the Bankruptcy and Settlement Act a fourth paragraph which provides that if, before bankruptcy filings were made, proceedings were opened on a denied claim and these proceedings were suspended [§ 14 para. 1 let. c)], the denied claim shall be determined in the proceedings already opened; new proceedings on the denied claim are not opened [§ 14 para. 1 let. d)]. The petition to continue the suspended proceedings must be filed by the deadlines provided by the Act (§ 23 para. 4 and 5 and § 24 para. 1 and 2);

those whom the Act identifies as parties (§ 23 para. 2 a 3 a § 24 para. 1 a 2) become parties to the proceedings.

In the petitioner's opinion the legislature did not adequately consider the range of cases which this provision affects. By application of this provision in various procedural situations bankruptcy creditors whose non-executable claims were denied in the review proceedings are placed in an unequal position. In some cases they find themselves in an unsolvable procedural situation, in other cases, on the contrary, they are at an advantage compared to other bankruptcy creditors.

In its petition, the High Court in Olomouc further stated that § 24 para. 4 of the Bankruptcy and Settlement Act applies if proceedings on a denied claim were opened before bankruptcy filings were made ant those proceedings were suspended through the filing for bankruptcy. In the petitioner's opinion, § 24 para. 4 does not take into account cases where a decision was already made in the proceedings before the court of the first level and the decision has not yet gone into legal effect, not has it been contested by an appeal, by a protest, or by objections. In these cases, the court is bound by the announced decision under § 156 para. 3 and § 170 para. 1 of the Civil Procedure Code In that situation, in the petitioner's opinion neither the parties nor the petition can be changed, as the matter has already been decided. On the other hand, however, the contested provision prohibits opening new proceedings on the denied claim. Therefore, the petitioner believes that in this case a creditor with a non-executable claim does not have a procedural opportunity to obtain a decision in his dispute over the denied claim in bankruptcy proceedings.

The petitioner also believes that § 24 para. 4 of the Bankruptcy and Settlement Act can, however, lead to violation of the equality of bankruptcy creditors, not only to the disadvantage of the creditor whose claim was at issue in proceedings before the filing for bankruptcy, but also by giving him an advantage over the other bankruptcy creditors. This is because § 24 para. 4 of the Bankruptcy and Settlement Act gives the court an obligation to specify the circle of parties to the proceedings and issue the judgment verdict even without a petition. Therefore, in cases where the bankruptcy creditor imprecisely or incorrectly formulates a petition to continue already opened proceedings, § 24 para. 4 of the Bankruptcy and Settlement Act gives him an advantage compared to other bankruptcy creditors whose claims were also denied during the review proceedings.

The petitioner sees the abovementioned facts as grounds for the unconstitutionality of the contested provision of the Bankruptcy and Settlement Act, and it therefore petitioned for a judgment which will annul § 24 para. 4 of the Bankruptcy and Settlement Act in the presently valid wording.

II.

The reporting judge requested, in accordance with § 42 para. 4 and § 69 para. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, position statements from both houses of the Parliament of the CR.

A) The Chamber of Deputies, represented by its chairman, PhDr. Lubomír Zaorálek, in its position statement of 10 October 2002, stated that the legislature's motive for including § 24 para. 4 of the Bankruptcy and Settlement Act on determination of a disputed claim within the already opened proceedings suspended by the filing for bankruptcy was to simplify and make more economical the manner of addressing the disputed claim for purposes of bankruptcy. In his opinion, this provision is supposed to make possible a reduction in the number of incidental disputes where it would otherwise be necessary to open new proceedings through a separate complaint to determine the disputed claim. As a rule, a number of items of evidence which were already presented in the suspended proceedings on the same claim can be used. In discussion the Act, the legislature began with the purposes of the Act and the aims of bankruptcy proceedings, and was convinced that it was meeting the requirements of the Constitution of the CR a of the Charter of Fundamental Rights and Freedoms.

In the conclusion of his statement, the chairman of the Chamber of Deputies of the Parliament of the CR stated that Act no. 105/2000 Coll., which amends and supplements Act no. 328/1991 Coll., on Bankruptcy and Settlement, as amended by later regulations, was approved by the Chamber of Deputies at its 21st session on 28 January 2000; 128 out of 152 present voted in favor or it. The Senate of the Parliament of the CR approved the draft act submitted by the Chamber of Deputies as amended by amending proposals at its 16th session on 1 March 2000, and the Chamber of Deputies subsequently approved the draft act in the version approved by the Senate; out of 181 deputies present, 98 voted in favor and 81 against. The Act was thus approved by the necessary majority of deputies in the legislative assembly, was signed by the appropriate constitutional representatives, and was duly promulgated. In the opinion of the Chamber of Deputies, the legislative assembly acted in the conviction that the passed act was consistent with the Constitution of the CR and the constitutional order, and that it is solely up to the Constitutional Court to evaluate the constitutionality of the contested provision in connection with the filed petition and to issue an appropriate decision.

B) The Senate of the Parliament of the CR, in its position statement of 16 October 2002, signed by its chairman, doc. JUDr. Petr Pithart, stated that the draft act was submitted to the Senate on 7 February 2000. The Senate discussed the draft at its 16th session of its second term of office, held on 1 March 2000, and by resolution no. 302 returned the draft act to the Chamber of Deputies with amending proposals. Out of a total of 53 senators present, 52 voted to return the draft act and 1 senator abstained from voting. The Chamber of Deputies again discussed the draft act on 4 April 2000 at its 24th session. The draft act, as amended by amending proposals, was approved by Chamber of Deputies resolution no. 902; out of 181 deputies present 98 deputies voted in favor and 81 deputies were against.

In Senate committees, the issues of § 24 para. 4 of the Act were extensively discussed in connection with the aim that "incidental" disputes always be decided by a court, even though otherwise these were claims which a court did not have the authority to decide, which does not correspond to § 7 para. 1 of the Civil Procedure Code. The conception under which bankruptcy courts should decided incidental disputes, including, for example also administrative and tax claims, appeared inconsistent in relation to § 24 para. 4 of the amendment to the Act, because, in the opinion of some, this overlooked the fact that,

under § 14 para. 1 let. c), not only judicial, but also other proceedings, are suspended. Thus, continuing in the proceedings would take place not before the court, but before the body (administrative, tax) at which the proceedings were opened.

According to the Senate's statement, the committees concluded that the party proposing the Act apparently did not take into account the fact that any outcome of a dispute on the authenticity, amount, or order of claims does not establish the obstacle of pending litigation for claims applied in proceedings which were suspended by the filing for bankruptcy. This consequence appeared particularly important in a situation where, under § 45 para. 2 of the Bankruptcy and Settlement Act, claims which were considered ascertained for purposes of bankruptcy, but which the bankrupt party denied after the cancellation of bankruptcy proceedings, would not be grounds for execution. It was also pointed out in discussion that the wording of § 23 para. 2 last sentence may be in direct conflict with § 24 para. 4 of the Act, because in the abovementioned opinions the order of a claim should be decided by a court in proceedings which are being continued, and which need not be judicial proceedings.

As the chairman of the Senate stated further in his statement, despite the abovementioned discussions and proposals to delete § 24 para. 4 from the draft act, subsequently the inclination to retain the submitted wording of this provision prevailed in the committees. The Senate session did not consider the issues further.

III.

Under § 44 para. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the Constitutional Court can, with the consent of the parties, omit oral proceedings if they can not be expect to clarify the matter further. Therefore, in accordance with this provision, the Constitutional Court asked the parties to the proceedings for a statement as to whether they agreed with omitting oral proceedings. By a filing of 5 March 2003, the High Court in Olomouc, and by filings of 4 March 2003, likewise the Chamber of Deputies of the Parliament of the Czech Republic and of 7 March 2003, the Senate of the Parliament of the Czech Republic, gave their consent to omit oral proceedings in the adjudicated matter.

IV.

Before the Constitutional Court turned to evaluating the content of the contested statutory provision in the aspects defined by § 68 para. 2 of Act no. 182/1993 Coll., on the Constitutional Court, i.e. in terms of the consistency of § 24 para. 4 of the Bankruptcy and Settlement Act with constitutional statutes, it reviewed whether the formal requirements for passing the relevant legal norm had been met.

The draft act which amends and supplements Act no. 328/1991 Coll., on Bankruptcy and Settlement, as amended by later regulations, was submitted to the Chamber of Deputies as

a proposal from deputies on 29 April 1999. From the stenographic record of the 21st session of the Chamber of Deputies, 3rd election term, the Constitutional Court determined that on 28 January 2000 the Chamber of Deputies, according to Chamber of Deputies document 219, as amended by approved amending proposals, agreed with this draft; out of 152 deputies present 128 voted for the draft and one deputy voted against it.

The stenographic report on the 16th session of the Senate, 2nd election term, showed that on 1 March 2000, the draft act, together with passed amending proposals, was returned to the Chamber of Deputies; out of 53 senators present, 52 voted in favor and one senator abstained from voting.

From the stenographic record of the 24th session of the Chamber of Deputies, 3rd election term, the Constitutional Court determined that the Chamber of Deputies, on 4 April 2000, passed the draft act which amends Act no. 328/1991 Coll., on Bankruptcy and Settlement, as Amended by Later Regulations, and Certain Other Acts, in the version approved by the Senate; out of 181 deputies present 98 voted in favor and 81 against.

After being passed, Act no. 105/2000 Coll., which amends Act no. 328/1991 Coll., on Bankruptcy and Settlement, as Amended by Later Regulations, and Certain Other Acts, was signed by the appropriate constitutional representatives and published in part 32 of the Collection of Laws, which was distributed on 25 April 2000. The Act went into effect, in accordance with Art. VIII., on 1 May 2000.

Therefore, the Constitutional Court, under § 68 para. 2 of the Act on the Constitutional Court, found that Act no. 105/2000 Coll., which inserted § 24 para. 4 into the Bankruptcy and Settlement Act, was passed and issued within the bounds of the legislative jurisdiction of the Parliament of the CR prescribed by the Constitution of the CR and in a constitutionally prescribed manner, as, in any case, the Constitutional Court already stated in the matter Pl. ÚS 36/01.

V. - A

The provision of § 24 para. 4 was inserted into the Bankruptcy and Settlement Act when it was amended by Act no. 105/2000 Coll., which amends Act no. 328/1991 Coll., on Bankruptcy and Settlement, as Amended by Later Regulations, and Certain Other Acts, with effect as of 1 May 2000. The contested § 24 para. 4 affects situations where a bankruptcy trustee or bankruptcy creditor, in review proceedings, denied a non-executable claim of a creditor, arising from a claim which was registered in the bankruptcy proceedings. If the bankruptcy creditor, before the bankruptcy filing was made, applied any part of this claim in proceedings which were suspended by the bankruptcy proceedings, it is impermissible to open new incidental proceedings, but proceedings to determine the authenticity, amount or order of the registered claim are to be conducted before the court which conducted the proceedings which were suspended by law by the bankruptcy filing.

As indicated by the background report to Act no. 105/2000 Coll., in this case it was the intent of the legislature to rationalize and make more economical incidental proceedings caused by bankruptcy proceedings. The legislature's aim was to reduce the number of incidental proceedings so that the Act would permit making use of the outcomes of proceedings which were suspended as a result of a bankruptcy filing, and thus continue on from the proceedings on the claim which were conducted before the bankruptcy filing.

It is also evident from the background report to the Act and from the statements of the parties to the proceedings that the legislature constructed § 24 para. 4 of the Bankruptcy and Settlement Act in the conviction that in the future it would not be necessary to open new proceedings to determine the denied claim, but that the original proceedings would continue on from their current position, and, in particular, all factual and other judgments would be used.

The Constitutional Court agrees with the petitioner's opinion that the legislature did not sufficiently consider the range of all procedural situations to which the provision can apply, the practical consequences of that concept, but also its constitutional law dimension.

V. - B

Art. 96 para. 1 of the Constitution of the CR enshrines, as one of the key principles of the functioning and implementation of the judicial power in the CR, the procedural principle of the equality of rights in parties before the court. This constitutional principle thus guarantees the equal procedural status of parties in judicial proceedings concerning rights which are granted to parties of a particular type of proceedings by the legal order. One can conclude form this principle, among other things, that a particular type of proceedings must have a single court jurisdiction, understood in the substantive and functional dimension, and that framework must be implemented by statute.

The constitutional provision is supposed to guarantee the institution of equality in its procedural form, which, of course, has substantive law effects. The role of ordinary statutes, procedural regulations, is to transfer the constitutionally protected institution of equality, thus understood, into procedural guarantees which will ensure the fulfillment of this equality.

It is evident that the legislature can set varying degrees of procedural rights and obligations for various types of proceedings with different subject matter. In other words, the equality of parties to proceedings must be interpreted so that the same scope of procedural rights and obligations must be observed in proceedings which match the same subject of proceedings. However, it is impermissible for the distinguishing criterion to be, instead of the subject matter of the proceedings, the party himself – even if, for example, defined by his procedural status in any previous proceedings.

The interpretation of Art. 38 para. 1 of the Charter of Fundamental Rights and Freedoms also develops from this interpretation of Art. 96 para. 1 of the Constitution of the CR, because determining the statutory judge must be preceded by the constitutional statutory setting of court jurisdiction. The principle under which the legal regulation of court

jurisdiction is reserved to statute includes not only the postulate under which only a statute may set the powers and jurisdiction of a court to review a particular matter, but also the requirement that the statute define such power and jurisdiction equally for all cases of the same type and not make unjustified differences in the jurisdiction of courts, understood substantively and functionally.

The substantive jurisdiction of courts to review disputes caused by bankruptcy or settlement is governed by § 9 para. 3 of the Civil Procedure Code so that it is entrusted to regional courts as courts of the first level. These disputes are, among other things, disputes to determine the authenticity, amount and order of registered claims which were denied during bankruptcy proceedings. In these cases the bankruptcy creditor is forced to exercise his claim by prescribed deadlines and to observe other formal requisites in special (incidental) proceedings which were caused by the bankruptcy. In these cases, under the abovementioned § 9 para. 3 of the Civil Procedure Code and § 23 para. 2 of the Bankruptcy and Settlement Act, the court of substantive jurisdiction is the bankruptcy court, i.e. basically the regional court.

However, § 24 para. 4 of the Bankruptcy and Settlement Act, contested by the petition, represents a special definition of the substantive jurisdiction of a court, as it limits the conduct of special incidental proceedings before the bankruptcy court and constructs for the given type of disputes, i.e. disputes to determine the authenticity, amount and order of a claim, the special substantive jurisdiction of the court which previously conducted proceedings opened on the claim of the current creditor with the denied claim, the subject of which was connected to the denied non-executable claim.

The consequence of § 24 para. 4 is the fact that it constructs a double regime for substantive jurisdiction of courts. One can conclude that the relationship between § 9 para. 3 of the Civil Procedure Code, § 23 para. 2 and § 24 para. 4 of the Bankruptcy and Settlement Act is a relationship between a general regulation (lex generalis) and a special regulation (lex specialis), and that the constitutional requirement of statutory establishment of court jurisdiction was observed. However, as was already state above, it is impermissible for a statute to create an unjustified difference n defining substantive jurisdiction for cases which have identical subject matter. The conception of the legal framework of § 24 para. 4 of the Bankruptcy and Settlement Act creates a duality of substantive jurisdiction in disputes to determine the authenticity, amount and order of claims denied in bankruptcy proceedings. Yet, in terms of the subject matter of proceedings, these disputes are the same. Application of § 24 para. 4 of the Bankruptcy and Settlement Act thus causes a difference in the substantive, and possibly functional jurisdiction, where in one case the regional court, as the bankruptcy court, decides in incidental proceedings, and in another the district court decides, if it conducted proceedings opened on a complaint from the current creditor with a denied claim, the subject of which was related to the denied claim and which were suspended by the bankruptcy filing. In that case, the decision making to determine the authenticity, amount and order of the denied claim is concentrated at the court which had subject matter and territorial jurisdiction in the original, suspended proceedings, i.e. at a court which is not the bankruptcy court. Subject matter and territorial jurisdiction established under § 24 para. 4 of the Bankruptcy and Settlement Act thus derives from the subject matter and territorial, or sometimes functional, jurisdiction of the court in the preceding proceedings,

which were suspended by the bankruptcy filing under § 14 para. 1 let. c) of the Bankruptcy and Settlement Act; in fact, however, it derives from the status of the creditor as plaintiff in the original proceedings.

This conception leads to inequality in the procedural position of individual creditors who exercise in court their denied, non-executable claims under different procedural regimes.

This is because § 24 para. 4 sets the circle of parties to the proceedings ex lege (i.e. those persons whom the Act identifies as parties to the proceedings become parties to the proceedings), and the court thus has the obligation itself to newly identify parties to the proceedings, and itself to remove defects in the petition to continue the proceedings if it does not contain the appropriate requisites (e.g. identification of the parties, a proposed judgment, etc.), in a situation where the original petition to open proceedings on the claim which was related to the denied claim suffered from defects which the plaintiff did not remove. In contrast, in incidental proceedings the creditor has the obligation, under § 23 of the Bankruptcy and Settlement Act, to precisely identify the parties to the proceedings and precisely specify the entire claim by a specified deadline. It is evident from this that a party to the proceedings (creditor), who filed a petition to continue proceedings under § 24 para. 4 of the Bankruptcy and Settlement Act finds himself in an advantaged position in comparison with a party to the proceedings (creditor), who files a petition to open special (incidental) proceedings before the bankruptcy court under § 23 para. 2 of the Bankruptcy and Settlement Act.

The procedural inequality of creditors who exercise their denied, non-executable claims under different procedural regimes is also caused by the fee obligations under the regimes. If the original proceedings were suspended in a situation where the creditor, as a party to the proceedings, had not yet met his statutory fee obligation, and then filed a petition to continue the proceedings under § 24 para. 4 of the Bankruptcy and Settlement Act, he will be unjustifiably advantaged in comparison to a creditor on whose claim incidental proceedings are being opened. This is because a petition to continue suspended proceedings does not, under Act no. 549/1991 Coll., on Court Fees, as amended by later regulations, create a fee obligation for the party, and despite the fact that the fee was not paid in the original proceedings, the court will be required to decide the matter. The consequence of not paying the court fee in the incidental proceedings, in contrast, will be that the proceedings will be stopped. In a situation where the party paid a higher court fee in the original proceedings than he would be required to pay in incidental proceedings, this discrepancy can not be removed, because it is impossible to perform acts in proceedings which are suspended by law.

This conception, with the consequences of unequal rights and obligations of parties to proceedings to determine the authenticity, amount and order of a denied claims, is inconsistent with Art. 96 para. 1 of the Constitution of the CR, whose content, concerning the extent of its effect, was laid out above. The legislature impermissibly assigns different procedural rights and obligations to parties to proceedings with the same subject matter, which sometimes leads to advantages, sometimes to disadvantages, for various parties. Yet, the different procedural regime derives solely from the procedural status of a creditor in preceding proceedings, the subject matter of which was only related to the denied claim.

The current decision making practice of courts when applying § 24 para. 4 of the Bankruptcy and Settlement Act shows that the unconstitutionality of this provision can not be overcome by an interpretation which would be constitutional.

The unconstitutional consequences of the framework are not removed by the interpretation applied by some general courts (see, for example, Resolution of the High Court in Olomouc of 10 September 2002, file no. 4 Cmo 305/2002), under which § 24 para. 4 of the Bankruptcy and Settlement Act establishes a special type of "proceedings within proceedings," that is, proceedings which differ from the original proceedings in their subject matter and circle of parties and which are connected to the original proceedings only ex lege, while the subject of the previous proceedings is not subsumed in the proceedings under § 24 para. 4 of the Bankruptcy and Settlement Act, and they can be continued after the bankruptcy is finished. This interpretation does not remove the abovementioned discrepancy in rights and obligations of the parties to "proceedings within proceedings" and incidental proceedings.

V. – C

Art. 37 para. 3 of the Charter of Fundamental Rights and Freedoms provides that all parties to proceedings are equal. This provision of the Charter must be interpreted to the effect that this is a principle which guarantees the equal procedural rights and obligations of particular parties in particular proceedings. In this, this provision of the Charter differs from Art. 96 para. 1 of the Constitution, which generally foresees the equality of parties in proceedings with the same subject matter, as laid out above.

The ultimate effect of applying § 24 para. 4, compared to applying § 23 para. 2 of the Bankruptcy and Settlement Act (incidental proceedings) is to establish the unequal status of creditors falling under these two procedural regimes when satisfying their claims within schedule proceedings (§ 30 of the Bankruptcy and Settlement Act). If an incidental dispute is understood as formalized evidentiary proceedings, the results of which are binding on the bankruptcy court, then it is evident that the original procedural duality established by the Act also has effects, in terms of equality, on the procedural status of creditors in the particular bankruptcy proceedings.

VI.

Therefore, the Plenum of the Constitutional Court, with regard to the foregoing situation, decided, under § 70 para. 1 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, to annul § 24 para. 4 of the Bankruptcy and Settlement Act, in its present wording, due to inconsistency with Art. 96 para. 1 of the Constitution of the CR and Art. 37 para. 3 of the Charter of Fundamental Rights and Freedoms; this judgment shall become executable on the day it is published in the Collection of Law.

However, in this regard, the Constitutional Court also had to deal with the question of what influence the annulment of this provision would have on proceedings conducted by courts whose jurisdiction was established by the contested provision.

If already opened proceedings conducted by courts whose jurisdiction was established by the contested provision were to continue in the current regime, even after the Constitutional Court judgment which annuls § 24 para. 4 of the Bankruptcy and Settlement Act became executable, this would lead to a continuation of the unconstitutional inequality created by that provision. Therefore, the Constitutional Court states that, when the judgment becomes executable, the substantive jurisdiction of courts established by § 24 para. 4 of the Bankruptcy and Settlement Act ceases to have a statutory basis.

However, at the same time the Constitutional Court emphasizes that the general courts, in resolving this procedural situation must act so that their procedure does not permit justice to be denied (denegationis iustitiae). A procedure whereby a court would prevent a party of proceedings in progress from exercising the opportunity to exercise his rights before an independent and impartial court, as guaranteed by Art. 36 para. 1 of the Charter of Fundamental Rights and Freedoms, would mean a violation of a party's right to a fair trial, and in its consequences would violate the principles of a state governed by the rule of law (Art. 1 para. 1 of the Constitution of the CR). Such a procedure would thus lead to further unconstitutional consequences.

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

Brno, 11 March 2003