2004/03/09 - PL. ÚS 2/02: BASIC PRINCIPLES

HEADNOTES

The amendment to the Civil Code effected by Part Two, Art. II of Act No. 229/2001 Coll. violated one of the basic principles of the law-based state, namely the principle of legal certainty and of trust in law, as emerges from Art. 1 para. 1 of the Czech Constitution. In view of the fact that the legislature changed the rules virtually the day before the expiration of the time period laid down for the acquisition of the right, it renounced its moral obligation to set an example in terms of respect law.

The legislature's encroachment exhibit strong features of arbitrariness. Such a means of proceeding disrupts trust in law, which is one of the elementary attributes of the law-based state. The legislature's manner of proceeding did not correspond to the basic principles of a law-based state, which include the tenets of the foreseeability of laws, of their comprehensibility, and of their internal consistency.

The above-described manner in which the legislature proceeded also resulted in a violation of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. In keeping with the legal rules laid down in § 879c of the Civil Code, the affected subjects anticipated, from 1 July 2000 until 30 June 2001, that on the day following, that is on 1 July 2001, property rights would accrue to them in the plots of land in which until then they had held a right of permanent use.

The contested amendment changed the equal status of the affected subjects, which had continued to exist until 30 June 2001, into that of inequality among individual groups of these subjects. This inequality does not correspond to any public interest. The interest in providing an advantage to one group of subjects and simultaneously disadvantaging a second group, under the circumstance that all subjects stood at the same starting position of § 879c of the Civil Code, cannot qualify as such a public interest. The Constitutional Court judges an inequality introduced in this way, which cannot be said to correspond to a public interest, to be a violation of Art. 1 of the Charter of Fundamental Rights and Basic Freedoms, which expresses the principle of equality in rights.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court of the Czech Republic decided today in the Plenum composed of Justices JUDr. František Duchoň, JUDr. Vojen Güttler, JUDr. Pavel Holländer, JUDr. Dagmar Lastovecká, JUDr. Jiří Malenovský, JUDr. Jiří Mucha, JUDr. Jan Musil, JUDr. Jiří Nykodým, JUDr. Pavel Rychetský, JUDr. Pavel Varvařovský a JUDr. Miloslav Výborný in the matter of the petition of the District Court in Příbram proposing the annulment of „Part Two“ of Act No. 229/2001 Coll., entitled „Amendments to the Civil Code Art. II“, as follows:
Part Two of Act No. 229/2001 Coll., entitled „Amendments to the Civil Code Art. II.“, shall be annulled as of 31 December 2004.

REASONING

The District Court in Příbram submitted the petition proposing the annulment of Part Two of Act No. 229/2001 Coll. (Art . II.), which amends Act No. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations as amended by Act No. 492/2000 Coll., due to conflict with the Constitution of the Czech Republic.

It made this submission in connection with deciding the lawsuit initiated by the cooperative, JEDNOTA Příbram, which has its headquarters in Příbram II, Dlouhá 155 (hereinafter „plaintiff“), against the defendant, the Czech Republic, represented by the Office for State Representation in Property Matters, which has its office in Prague 2, Rašínovo nábřeží 42, on the determination of property rights in the parcel of land designated for building No. 99 – having a built-upon surface area measuring 362 meters square registered in the municipality and the Land Registry in Jablonná, under consideration at the District Court in Příbram as file no. 7 C 139/2001.

The core of the given dispute is the fact that the plaintiff, the owner of building No. 26 (an assorted goods store) in the Municipality of Jablonná, former District of Příbram, considers itself also to be the owner of the above-indicated building plot which is situated in part beneath the mentioned building. Ownership certificate No. 98, which is kept both for the Municipality and the Land Registry of Jablonná, lists the Czech Republic as the owner of

this plot of land with a permanent right of use for the plaintiff's benefit. The plaintiff seeks a determination of who owns the property rights in the given plot of land because it is of the opinion that it became the owner of it pursuant to Act No. 103/2000 Coll. – in particular, pursuant to § 879c para. 1 of the Civil Code. According to this provision, the right of permanent use of a plot of land under § 70 of Act No. 109/1964 Coll., the Management Code, upon which stands a building or structure owned by the person for whose benefit it was created, which continues in existence until the day this Act takes effect (that is, on the date 1 July 2000), shall, with the passage of one year from the day this Act takes effect, change into the property of the legal person for whose benefit it was created. In view of the fact that, pursuant to § 879c para. 4 of the Civil Code, the plaintiff requested from the State, within the set time period, the transformation of the right of management to a right of property, the transformation of his permanent right of use of the plot of land into a property right therein occurred. Nothing can change that, not even the fact that § 879c of the Civil Code was repealed by Part Two, Art. II of Act No. 229/2001 Coll. because this provision is a retroactive norm, which is to be disregarded.

The District Court in Příbram (hereinafter „petitioner") concurred with the plaintiff's legal opinion and added that, as of 1 July 2000, the subjects listed in § 879c of the Civil Code were given the right to request that their right of use be converted into property and that this right remained in existence until 30 June 2001, inclusive. While the repeal of the cited provision effected, as of 30 June 2001, by Part Two, Art. II of Act No. 229/2001 Coll. did not result in the mentioned subjects being deprived of property (that would have come into being only as of 1 July 2001), yet they were deprived, with retrospective effect, of the right to request the conversion of their right of use into property. This was an already-acquired right in the sense of Art. 1 of the Constitution of the Czech Republic. In the petitioner's view, the legislature carried out these changes in a constitutionally impermissible form of retroactivity, which is in conflict with Art. 1 of the Czech Constitution. All subjects fulfilling the requirements of § 879c of the Civil Code were disadvantaged by the the repeal of this provision because they were divested of a right that had already been granted by law, that is, the right to the creation of a property right. The annulment of Part Two, Art. II of Act No. 229/2001 Coll. would not deny the rights of other subjects (in particular natural persons to whom apartments and non-residential space had passed pursuant to Act No. 72/1994 Coll.) to the creation of property in the plot of land beneath the structure or house that they own pursuant to § 60a and following of Act No. 229/2001 Coll. On the contrary, it merely revives the state of affairs established by the provisions of § 879c of the Civil Code and pursuant § 879d and 879e.

The Constitutional Court assessed first of all whether the formal requirements for the submission of a petition were met. The petition was submitted by the District Court in Příbram in connection with its decision-making in the case of the plaintiff, the cooperative JEDNOTA Příbram, against the defendant the Czech Republic concerning the determination of property rights in a plot of land. In resolving that case, Act No. 219/2000 Coll., on the Property of the Czech Republic and Representation of the State in Property Matters, as amended by Act No. 492/2000 Coll., and Act No. 229/2001 Coll. must be applied. The petition was thus submitted by an authorized petitioner and fulfills the conditions of Article 95 para. 2 of the Constitution of the Czech Republic and of § 64 para. 4 of Act No. 182/1993 Coll., on the Constitutional Court, as amended by later acts (hereinafter „Act on

the Constitutional Court“). The petition also meets the requirements of admissibility under § 66 of the Act on the Constitutional Court.

In conformity with § 69 para. 1 of the Act on the Constitutional Court, the Constitutional Court requested the Assembly of Deputies and the Senate of the Parliament of the Czech Republic to give their views. The Assembly of Deputies and the Senate gave their views on the petition.

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It was established that the contested statute was adopted and issued within the bounds of competence laid down in the Constitution of the Czech Republic and in the manner prescribed in the Constitution.

Following this initial finding, the Constitutional Court moved on to consider the content of the contested provision of Part Two, Art. II of Act No. 229/2001 Coll., from the perspective of its conformity or conflict with the Czech Republic’s constitutional order and came to the conclusion that the petition is well-founded.

The provisions contested by the petitioner read as follows: „In Act No. 40/1964 Coll., the Civil Code, as amended by Act No.58/1969 Coll., Act No. 131/1982 Coll., Act No. 94/1988 Coll., Act No. 188/1988 Coll., Act No. 87/1990 Coll., Act No. 105/1990 Coll., Act No. 116/1990 Coll., Act No. 87/1991 Coll., Act No. 509/1991 Coll., Act No. 264/1992 Coll., Act No. 267/1994 Coll., Act No. 104/1995 Coll., Act No. 118/1995 Coll., Act No. 89/1996 Coll., Act No. 94/1996 Coll., Act No. 227/1997 Coll., Act No. 91/1998 Coll., Act No. 165/1998 Coll., Act No. 159/1999 Coll., Act No. 363/1999 Coll., Act No. 27/2000 Coll., Act No. 103/2000 Coll., Act No. 227/2000 Coll. and Act No. 367/2000 Coll., § 879c, § 879d and § 879e, including the designation of chapters and headings, shall be repealed.“

Sec. 879c was included in the Civil Code by Art. VII, Part the Fifth (Amendments to the Civil Code) of Act no. 103/2000 Coll., of 4 April 2000, and § 879d a § 879e were placed into the Civil Code by an act amending that Code, No. 367/2000 Coll. of 14 September 2000. Sec. 879c formed a part of the Civil Code from 1 July 2000 (that is, from the day Act No. 103/2000 Coll. entered into force) until 20 June 2001, that is, until the day Act No. 229/2001 Coll. entered into force.

Stated in brief § 879c, § 879d and § 879e were by these means removed from the text of the Civil Code. For a better comprehension of the problem, it would appear desirable to quote the precise wording of the repealed provisions, §§ 879c to 879e, from which the problem arises:

§ 879c
(1) The right of permanent use of a plot of land under § 70 of Act No. 109/1964 Coll., the Management Code, upon which stands a building or structure owned by the person for whose benefit the right of permanent use was created, and the plot of land related thereto, if such plot of land is connected with the operation of that building or structure, which continues in existence until the day this Act takes effect, shall, with the passage of

one year from the day this Act takes effect, change into the property of the legal person for whose benefit the right of permanent use was created.

(2) The provisions of paragraph 1 shall apply analogously as well to the right of loan or of lease, which substituted for the right of permanent use of the plot of land, if it was created for the benefit of a residential cooperative or for the benefit of the person to whom title to an apartment or a non-residential space was transferred pursuant to§ 23 of the Act on the Ownership of Apartments.

(3) If the right of permanent use was created for more than one person in a common plot of land, such persons shall become, pursuant to para. 1, co-owners with equal shares.
(4) If a legal person for whose benefit the right of permanent use was created does not, within a period of one year from the day this Act takes effect, request from the State that this right be changed into property, the change of this right into that of property, pursuant to paras. 1 or 2, shall not occur, and the right of permanent use shall terminate with the expiration of one year from the day this Act takes effect.

§ 879d
For the purposes of § 879c, a person for whose benefit a right of permanent use was created shall refer as well to a residential cooperative of citizens or an association of citizens which has come into being or is deemed to have come into being pursuant to Act No. 83/1990 Coll., on Associations of Citizens, as amended by subsequent acts, to the extent that the right of permanent use mentioned in § 879c para. l shall have passed to such residential cooperative or the association of citizens.

§ 879e § 879c para. 1 shall apply analogously as well to the right of loan or lease under § 879c para. 2, created at the latest on 31 December 2000 for the benefit of the person to whom title to an apartment or a non-residential space was transferred pursuant to§ 23 of the Act on the Ownership of Apartments. The conversion of such right of loan or rental into ownership shall come about on 1 July 2001.

The petitioners arguments consist in the assertion that § 879c of the Civil Code accorded to the subjects there indicated the right to request that their rights of use be converted into property rights and that they were divested of this right, an already acquired right, by the contested provision of Act No. 229/2001 Coll. In the petitioner's view, this occurred by means of an impermissible form of retroactivity, which is in conflict with Article 1 of the Czech Constitution.

The Constitutional Court has dealt with the issue of retroactivity in a large number of its judgments. Perhaps its most extensive treatment of this problem was in its judgment No. 63/1997 Coll., the reasoning of which can be referred to in this connection. In that case, the Constitutional Court expressed, among other things, the postulate that the principle of the protection of citizens' trust in law, as well as the related principle prohibiting the retroactive effect of legal norms, belong among the basic principles which define the category of the law-based state. While the prohibition on retroactivity of legal norms is expressly provided for, in respect of the field of criminal law, in Art. 40 para. 6 of the Charter of Fundamental Rights and Basic Freedoms, its operation for other branches of law must be deduced from Art. 1 of the Czech Constitution. A legal norm can be considered

retroactive in the case that it lays down legal consequences for such factual conditions as already came into being prior to the dates the norm came into effect.

In the given case, the factual conditions laid down in § 879c of the Civil Code for the conversion of the property right on 1 July 2001 can be considered as just such factual conditions. The acquisition of property rights pursuant to § 879c of the Civil Code was tied to the fulfillment of two condition (§ 879c paras.1, 4). The first condition was the submission of a request to the competent state body, and the second was the passage of time, that is, the lapsing of the one-year period running from the day that Act No. 103/2000 Coll. came into effect, in other words from 1 July 2000. That term would have expired on 1 July 2001. This did not occur however, because the fulfillment of this second condition was excluded by operation of Part Two, Art. II of Act No. 229/2001 Coll., promulgated on 29 June 2001 in Issue 85 of the Collection of Laws, with effect from 30 June 2001, which among other things repealed § 879c of the Civil Code in its entirety. The legislature thus managed, prior to the end of the one-year term, to eliminate the legal consequences foreseen in § 879c of the Civil Code in the case that period elapsed. This was a manner of proceeding, however, in which none of the subjects upon whom the benefaction of § 879c of the Civil Code was conferred were deprived of any property right because such right never came into being. The right to the delivery of title to a plot of land, which was established on 1 July 2000 by § 879c and following of the Civil Code, would have arisen only as of 1 July 2001. Thus the repeal of the cited provisions of the Civil Code by the contested Part Two of Act No. 229/2001 Coll., did not constitute the deprivation of a property right.

In the dispute which the District Court of Příbram is deciding, it was determined that the plaintiff submitted the required request. He thus met the first condition, but was not given the opportunity to meet the second condition because Part Two, Art. II of Act No. 229/2001 Coll., in effect from 30 June 2001, did not enable him to fulfill it. In this context it must be concluded that the mere submission of the request, in the sense of § 879c para. 4 of the Civil Code, within the time limit set down therein, established no property right in the plaintiff. The Constitutional Court, therefore, does not consider the contested provisions to be retroactive.

It follows however from the above-mentioned facts that, in the period from the entry into effect of Act No. 103/2000 Coll. (that is, from 1 July 2000), to all those subjects who met the conditions in § 879c, which were introduced into the Civil Code by the mentioned statute, and who conducted themselves in conformity with them, a legitimate expectation arose consisting in the belief that with the passage of one year, that is from 1 July 2001, they would become the owners of the plots of land falling within the regime of §§ 879c to 879e of the Civil Code. The already-mentioned manner in which the legislature proceeded encroached upon this legitimate expectation a mere day before the expiration of the period in which the acquisition of the property right would have occurred. This means that subjects who acted with confidence in the conditions laid-down in advance by the state were confronted with an entirely different stance on the part of the State a mere day before the expiration of the mentioned deadline.

In this connection the Constitutional Court refers to the decisional law of the European Court for Human Rights in Strasbourg (hereinafter ECHR) relating to the application of Art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. According to this article: „Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law (see the decision of the ECHR in the case of J. Broniowski versus Poland, from 2002). It might include both „existing entitlements" and property values, including claims, on the basis of which the complainant might assert that he has a „legitimate expectation" (ésperance légitime) in attaining the effective enjoyment of a property rights (see the case Gratzinger and Gratzingerová versus the Czech Republic from 2002 or the case Zvolský and Zvolská versus the Czech Republic from 2001).

The object of protection in the mentioned article is thus not only acquired, that is existing property, but also the legitimate expectation of the acquisition of such property. It is undisputed that each of the subjects who, up until 30 June 2001, abided by the rules in § 879c of the Civil Code had just such a legitimate expectation. They did not acquire the property solely due to the fact that the legislature acted arbitrarily by changing the rules one day before the lapse of the mentioned one-year period.

It appears worthwhile at this juncture to make reference to the particular manner in which the law of property in land evolved in the former Czechoslovakia after 1948. In an effort to attain the collectivization of the land the State gradually created various „institutes of use" in land, which were meant to displace private property, ideologically considered to have been historically obsolete. In the case of land owned by the State, there were such institutes of use, in particular the „provisional administration of national property", „the right to manage national property", which were also designated as „the administration of national property", „the right of permanent use of immovable national property" or the „right of personal use of a plot of land".

The provisional administration of national property was regulated by Regulation No. 61/1986 Coll. The right to manage national property, or its administration, was governed by § 63 and following of Act No. 109/1964 Coll. (the Management Code) and the regulation implementing this statute, No 119/1988 Coll.

The right of permanent use of immovable national property was also regulated by the Management Code, specifically § 70 para. 1 thereof, according to which a portion of the national property could be transferred, free of charge, to the permanent use of some organization other than the State, in particular a cooperative or a civil association. The

right of personal use of a plot of land was regulated in § 198 and following of Act No. 40/1964 Coll., that is, the Civil Code.

Regardless of the fact that these institutes were designated as ones of use, in essence they were institutes corresponding to the right of property, or substituting for the right of property. This was so in particular for „the right of permanent use of immovable national property“ and „the right of personal use of a plot of land“. Even the legislature was cognizant of this fact, as one of the first steps it took when restoring the classic property institutes was to amend the Civil Code, effected by Act No. 509/1991 Coll., as a result of which the then existing right of personal use of a plot of land was converted into property held by natural persons (§ 872 of the Civil Code).

In the area of the right of permanent use of immovable national property under § 70 of the Management Code, there was a somewhat more complex development that endured considerably longer. In relation to this property, § 876 para.1 of the Civil Code, which was likewise inserted by Act No. 509/1991 Coll., provided that, until such time as a special act is issued, the relations of permanent use under § 70 of Act No. 109/1964 Coll., the Management Code, should be judged in accordance with the laws then in effect.

In this instance as well the legislature made it possible to convert this right into a property right, which it did in Part Five of Act No. 103/2000 Coll., which amended the Civil Code by the insertion of § 879c. Further elaboration was then added by Act No. 367/2000 Coll., which with effect from 1 January 2001 inserted two new provisions into the Civil Code, §§ 879d and 879e.

As was already stated above, the right to the delivery of title to a plot of land, which was established by § 879c and following of the Civil Code, would have arisen only as of 1 July 2001. No property rights were divested in consequence of the repeal of the mentioned provision of the Civil Code, as effected by the contested Part Two of Act No. 229/2001 Coll.; this was not a case of the deprivation of property. On the other hand, up until 30 June 2001 the subjects upon whom the benefaction of § 879c of the Civil Code was conferred lived in the legitimate expectation that on the day following they would, without charge, become the owners of the affected plots of land. This expectation was genuine, entirely legitimate, and very strong, a conclusion which is supported by, among other things, the above-given overview of the conversion of certain relations of use in plots of land into property relations.

On the basis of the considerations laid out above, the Constitutional Court has come to the conclusion that the manner in which the legislature proceeded constituted an encroachment upon the legitimate expectations of the above-mentioned subjects, in the sense of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Under the circumstances that there has been an encroachment, it is necessary to review whether this encroachment was conditioned by the existence of a public interest. Any sort of interference with the enjoyment of a right or freedom recognized by the Convention must in any case pursue a legitimate aim. The principle of a ‘fair balance‘, which is

inherent in Art. 1 of Protocol No. 1, presupposes the existence of a general interest (see the case of Beyeler versus Italy from 2000).

In its statement of views, the Assembly of Deputies asserted that its aim in adopting Act No. 229/2001 Coll. was to remove interpretive problems which had appeared in practice when applying § 879c of the Civil Code. In particular a question arose as to whether a plot of land passes into ownership in the form it was registered under the plot number in the land registry, as well as to ambiguity concerning plots of land in relation to which, as of 1 January 2001, an easement came into being pursuant to § 21 para. 5 and 7 of the Act on the Ownership of Apartments. It also concerned the preferential treatment of certain subjects in the group of legal persons who, on 1 July 2000, had the use of a plot of land owned by the State and the discrepancy consisting in the failure to exclude the passage of ownership in an entire plot of land, although only a very small portion thereof was connected with the operation of a structure. During the course of the mentioned one-year time period, the legislature became aware of certain problems connected with the passage of plots of land pursuant to § 879c of the Civil Code, and, by amendment to the Act on the Property of the Czech Republic effected by Act No. 229/2001 Coll., incorporated therein a complete resolution of the problems of transformation of plots of land in the permanent use of legal persons. This point also emerges from the part of the Explanatory Report relating to Part Two (amendment to the Civil Code) of Act No. 229/2001 Coll., according to which the aim was to repeal the existing rules, which would not take effect until 1 July 2001, and comprehensively resolve the transfer of plots of land free of charge in the amendment to Act No. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations.

However, Act No. 229/2001 Coll. resolved the "comprehensive assignment of plots of land free of charge" such that it enabled one group of select subjects to acquire plots of land free of charge and made it more difficult for other groups to acquire them. According to its own designation, this Act is one amending the Act on Property of the Czech Republic, No. 219/2000 Coll. In reality, first and foremost it governs the acquisition from the State of plots of land by residential cooperatives, owners of family homes, owners of apartments, garages and non-residential spaces in houses, if such structures stand on state land.

Whereas § 879c of the Civil Code enabled all non-State legal persons who held permanent rights of use in plots of State land pursuant to § 70 of the Management Code, to acquire property in those plots, as the result of Act No. 229/200l Coll., solely the subjects listed in the immediately preceding paragraph retained such right to acquire. The remaining subjects, consumer or manufacturing cooperatives and civic associations in particular, lost this opportunity as the result of the repeal of § 879c of the Civil Code, and their legal status in relation to the plots of land of which they had use was considerably weakened. Whereas, as long as § 879c remained in effect, all subjects using plots of land under the regime of § 70 of the Management Code were of equal standing, the change ushered in by Act No. 229/2001 Coll. introduced a basic inequality among them.

That is, Art. IV paras. 1 and 2 of Act No. 229/2001 Coll., contained in Part Four (Transitional Provisions), provide that any then existing relationship of permanent use

under § 70 of the Management Code, which had not changed into a loan pursuant to § 59 para. 1 of Act No. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations, was transformed, on the day this act took effect, into a fixed-term loan lasting until 1 January 2004, inclusive.

Although, pursuant to the rules concerning agreements on a loan found in § 659 and following of the Civil Code, such loan is free of charge, it is only for limited period of time, in this case, until 1 January 2004, as mentioned above. These subjects have the opportunity, by proceeding in conformity with § 59 para. 2 of Act No. 219/2000 Coll., to acquire ownership of the plot of land free of charge, but only in the case that the requirements of § 22 para. 2 of the same act are met, namely that an item of property may be assigned free of charge only if such is in the public interest, should an assignment free of charge be more economic than some other disposition of the item, or if a special enactment so provides.

As was demonstrated above, the adoption of Act No. 229/2001 Coll. considerably worsened the position of subjects who had a legitimate expectation under § 879c of the Civil Code. Not only did they not acquire property rights, but the regime of permanent use became one of temporary loan, and the opportunity to acquire plots of land free of charge was considerably worsened by the fact that it is tied chiefly to the public interest, which is not however sufficiently defined.

While it follows from the Constitutional Court's constant jurisprudence that it is a matter for the State to decide that it will bestow upon one group less advantages than upon another, yet it may not proceed arbitrarily, and it must be clear from its decision that it is acting in the public interest and not, for example, in order to conceal deficiencies in the administration of public affairs (see judgment no. Pl. ÚS 17/99, published as 3/2000 Coll.). After all the Assembly of Deputies itself confirmed in its expression of views that the aim of its amendment was, among other things, to resolve interpretive problems connected with the future application of § 879c of the Civil code, which had been adopted less then a year earlier.

The contested amendment thus changed the equal status of the affected subjects, which had continued to exist until 30 June 2001, into that of inequality among individual groups of these subjects. In the Constitutional Court's conclusion, this inequality does not correspond to any public interest. The interest in providing an advantage to one group of subjects and simultaneously disadvantaging a second group, under the circumstance that all subjects stood at the same starting position of § 879c of the Civil Code, cannot qualify as such a public interest. The Constitutional Court judges an inequality introduced in this way, which cannot be said to correspond to a public interest, to be a violation of Art. 1 of the Charter of Fundamental Rights and Basic Freedoms, which expresses the principle of equality in rights.

As concerns an encroachment upon the right to the peaceful enjoyment of possessions under Art. 1 of Protocol No. 1, in the matter of Beyeler versus Italy from 2000, the ECHR stated: „In order to be compatible with the general rule set forth in the first sentence of Article 1, such an interference must strike a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Furthermore, the issue of whether a fair balance has been

struck becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary".

In the same matter the ECHR reiterated that lawfulness represents a basic prerequisite for measures resulting in an encroachment to be compatible with Art. 1 of Protocol No. 1. That provision also requires that an interference by a state body upon the right to the enjoyment of property be statutorily-based. The principle of lawfulness also entails the existence of sufficiently accessible, precise, and foreseeable domestic law norms (see the matter of Hentrich versus France 1994).

In light of the above-mentioned principles by which the ECHR case-law is governed, the Constitutional Court is persuaded that the provisions of Act No. 229/2001 Coll. proposed for annulment do not meet the above-mentioned criteria of legality, especially not the principle of foreseeability. The legislature's encroachment exhibit strong features of arbitrariness. Such a means of proceeding disrupts trust in law, which is one of the elementary attributes of the law-based state. The legislature's manner of proceeding did not correspond to the basic principles of a law-based state, which include the tenets of the foreseeability of laws, of their comprehensibility, and of their internal consistency.

The Constitutional Court thus concludes that the above-described manner in which the legislature proceeded resulted in a violation of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. In keeping with the legal rules laid down in § 879c of the Civil Code, the affected subjects anticipated, from 1 July 2000 until 30 June 2001, that on the day following, that is on 1 July 2001, property rights would accrue to them in the plots of land in which until then they had held a right of permanent use. The day before the said one-year period was to expire, however, the amendment to the Act introduced a completely different outcome, as averted to above.

The amendment to the Civil Code effected by Part Two, Art. II of Act No. 229/2001 Coll., as described above, also violated one of the basic principles of the law-based state, namely the principle of legal certainty and of trust in law, as emerges from Art. 1 para. 1 of the Czech Constitution. In view of the fact that the legislature changed the rules virtually the day before the expiration of the time period laid down for the acquisition of the right, it renounced its moral obligation to set an example in terms of respect for law.

After weighing all mentioned grounds, the Constitutional Court has decided to grant the petition and has, pursuant to § 70 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, annulled the contested statutory provision due to its conflict with Art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, with Article 1 para. 1 of the Czech Constitution, and with Article 1 of the Charter of Fundamental Rights and Basic Freedoms.

In norm control proceedings, the Constitutional Court acts as a „negative legislature", authorized, in the case that it grants a petition, solely to derogate from the contested legal enactment (see judgment No. Pl. ÚS 21/01 – published as No. 95/2002 Coll.). Consequently, the annulment of the contested enactment may also result solely in

its „elimination“ from the legal order of the Czech Republic, and not to the effective establishment of a new rule in the form of the „revival“ of an already repealed enactment.

This particular case, however, concerns the annulment of a derogating provision of Act No. 229/2001 Coll. In this connection, the Constitutional Court refers to its judgment No. Pl. ÚS 5/1994 – published as No. 8/1995 Coll. In that judgment the Constitutional Court annulled point 198 of Act No. 292/1993 Coll., which amended and supplemented Act No. 141/1961 Coll., on Criminal Court Proceedings (the Criminal Procedure Code). Point 198 of the said act removed from the Criminal Procedure Code its § 324, which governed decision-making on the modification of the manner in which sentences are carried out. The referred to derogation of the derogating provision, point 198 of Act No. 292/1993 Coll., resulted in the „rehabilitation“ of § 324 of the Criminal Procedure Code, which remains a part thereof until today. The Court thus affirms the petitioner's view that the annulment of Part Two, Art. II of Act No. 229/2001 Coll. revives the state of affairs established by §§ 879c, 879d, and 879e of the Civil Code.

Naturally this fact could result in a considerable amount of legal uncertainty coming into being, not only in relation to the rights of subjects to which the rules in §§ 879c to 879e of the Civil Code apply, but even for third parties. Accordingly, the Constitutional Court has decided to defer the coming into effect of the annulment of the contested provisions of Act No. 229/2001 Coll. until 31 December 2004, in order to allow the Parliament of the Czech Republic a sufficiently long period of time in which to adopt a appropriate legal rule.

Notice: There is no appeal against a judgment of the Constitutional Court.

Brno, 9 March 2004