2001/10/16 - PL. ÚS 5/01: MILK QUOTA REGULATION

HEADNOTES

The Constitutional Court has already ruled in judgment no. 96/2001 Coll. that constitutional delimitation of derivative law-making by the executive branch must respect the following principles: - a decree must be issued by an authorized entity, - a decree may not interfere in matters reserved to statutes, - the legislative intent for regulation above the statutory standard must be evident (room must be made for the sphere of regulation).

A conclusion that would require all obligations to be set directly and exclusively by statute would obviously lead to absurd results, denying the purpose of secondary (and in some cases even primary) norm creation, as part of the concept of each legal norm is the definition of certain rights and obligations of those to whom it is addressed.

In reviewing the use of property, which may also consist of rent regulation, it is necessary to carefully consider the existence of a public interest which authorizes the implementation of regulatory (monitoring) measures and a selection of detailed rules for implementing these measures. State intervention must observe a commensurate (fair) balance between the requirements of general public interest and the requirement of protection of an individual's fundamental rights. This means that there must be a reasonable (justified) proportionality relationship between the means used and the aims pursued. Otherwise, i.e. if a particular restriction is purposeless or unreasonable, the regulation in question would be clearly inconsistent with Art. 4 para. 4 of the Charter, under which, in employing provisions on limitations on fundamental rights and freedoms, their essence and significance must be preserved. Such limitations may not be misused for purposes other than those for which they were laid down.

Finally, the Constitutional Court states by way of introduction that, under its settled case law – in accordance with its constitutional and statutory definition – in proceedings on review of statutes it is bound by the filed petition's statement of claim and may not exceed it.

Neither the constitutional order nor international agreements on human rights and fundamental freedoms prohibit the legislature from introducing limitations on the amounts of farm production, distribution or consumption.

The Constitutional Court does not share the petitioners' opinion that Community law is not relevant for the Constitutional Court of the Czech Republic, as a state outside the European Union, in evaluating constitutionality. This claim is impermissibly over-simplified and sketchy. One of the sources of primary Community law is the general legal principles which the European Court of Justice excerpts from the constitutional traditions of European Union member states. They contain fundamental values which are common to all its members. General legal principles are contained in the concepts of a state based on the rule of law, including fundamental human rights and freedoms

and fair proceedings within that framework. Likewise, the Constitutional Court of the Czech Republic has repeatedly applied general legal principles which are not expressly contained in legal regulations, but are applied in European legal culture (e.g. the principle of reasonableness) - see Pl. US 33/97. The Constitutional Court has thus subscribed to European legal culture and its constitutional traditions. It also interprets constitutional regulations, primarily the Charter of Fundamental Rights and Freedoms in light of general legal principles. Thus, primary Community law is not foreign to the Constitutional Court, but to a wide degree permeates – particularly in the form of general legal principles of European law – its own decision making. To that extent it is also relevant to the Constitutional Court's decision making.

The charge that introducing production quotas on milk is serious interference in, even prevention of, a free market is unacceptable. A completely free market, free of all legal regulation, is not a fundamental, constitutionally required or guaranteed value in the organization of Czech society. An individual's right to it is not a fundamental right expressed in the Constitution of the CR, the Charter or international agreements on human rights and fundamental freedoms. Even in the European Union, which, at the highest level (Art. 2 of the Treaty Establishing the European Community) declares the economy of the whole community and within individual member states to be a market economy, agricultural regulation is not seen as a violation of this principle, because other equally valid aims are recognized, for example the convergence of economic productivity, economic and social cohesiveness, etc.. Agricultural regulation by market regulations is also expressly permitted by a provision of primary law on agriculture (Art. 34 of the Treaty Establishing the EC).

Therefore, the legislature may (of course, only within the bounds set by constitutionally guaranteed human rights and freedoms) in its discretion establish price or quantity regulation of production in a particular branch of the economy, define or influence the kind and number of entities active in that branch, or somewhat restrict freedom of contract in placing production on the market or in buying raw materials. The claim that restricting the prescribed possibilities for regulating the conduct of business or other economic activity applies only to qualification and similar prerequisites can be described as an unreasonably narrow interpretation of the relevant provision of the Charter (Art. 26 para. 2). It is evident from Art. 41 para. 1 of the Charter that economic, social and cultural rights, which include Art. 26 of the Charter, can be claimed only within the bounds of statues which implement these provisions. The nature of these rights is fundamentally different from other fundamental rights (e.g. civil and political rights) and the legislature's ability to set more detailed conditions and limitations on them is therefore significantly greater and is basically limited only by the above cited principle, enshrined in Art. 4 para. 4 of the Charter.

There is also no justification for the objection that any limitation on the fundamental right enshrined in Art. 26 para. 1 of the Charter can only be implemented b y a statue (and not a government decree), which the decree in question allegedly does not respect, and thereby becomes inconsistent with Art. 4 para. 2 of the Charter. In this

case the government observed the principles relevant for issuing the contested decree - on the basis of an express statutory authorization - and the decree (except for § 14 para. 2 and § 4 para. 2) only specifies in more detail the cited statutory authorization, i.e. the issues governed in the basic features of the statute itself. In this case the bounds of the fundamental rights and freedoms were provided directly by law (Art. 4 para. 2 of the Charter) and obligations arising from the decree are therefore imposed "on the basis of and within the bounds of law" (Art. 4 para. 1 of the Charter).

Limiting the production amount of any product is naturally a limitation on the right to use that product. However, such a limitation is not expropriation, as the product owner himself may - although to a limited degree - still control it, use it or even destroy it. Thus, it does not lead to a passing or transfer of property rights to the product (produced over the specified amount) to another person. However, an entitlement to obtaining a particular price on the market is not part of the fundamental right to own property.

The penalty levy of a specified amount derived from the minimum price of milk per delivery is then a necessary instrument which the state must have at its disposal in implementing any - including a quantitative - regulation of economic life.

Imposing penalty levies can not be considered expropriation or forced limitation of property rights.

The quota system thus corresponds to the system enshrined in Art. 4 para. 3 of the Charter, under which statutory limitations on the fundamental rights and freedoms "must apply in the same way to all cases which meet the specified conditions." From a constitutional law viewpoint it is important that the rules for the quota system (i.e. for milk) are general, accessible and foreseeable, and therefore in that sense the objection of inequality is unjustified.

CZECH REOUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided today on a petition from a group of 28 deputies of the Chamber of Deputies of the Parliament of the Czech Republic, represented by attorney JUDr. R. W., seeking annulment of government decree no. 445/2000 Coll., on Setting Production Quotas for Milk for 2001 to 2005, as follows:

As of 31 December 2001, § 4 para. 2 and § 14 para. 2 government decree no. 445/2000 Coll., on Setting Production Quotas for Milk for 2001 to 2005 are annulled.

The rest of the petition is denied.

REASONING

I.

The group of 28 deputies of the Chamber of Deputies of the Parliament of the Czech Republic (the "group of deputies") filed with the Constitutional Court a petition to annul government decree no.445/2000 Coll., on Setting Production Quotas for Milk for 2001 to 2005 (the "decree"). This decree was issued under § 2 para. 5 and § 12 para. 3 to 5 of Act No. 256/2000 Coll., on the State Agricultural Intervention Fund and Amending Certain Other Acts (the State Agricultural Intervention Fund Act).

The group of deputies believes that the contested decree creates legal regulation of milk production and processing which is incompatible with the fundamental rights guaranteed by the Charter of Fundamental Rights and Freedoms (the "Charter") and by the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), as well as with provisions of ordinary laws, particularly Act No. 256/2000 Coll. In the reasoning of their petition, the deputies primarily claim that the penalty levies – introduced by § 13 of Act No. 256/2000 Coll. – causes the given volume of milk to become unsalable, as its price would have to be raised to 215 % of the minimum price. The essence of the penalty levy is that a producer, processor, or sales organization which produces a volume of milk or receives it for processing or sales from the producer, if it exceeds the allocated individual production quota, pays a penalty in the amount of 115% (§13 para. 3 of Act No. 256/2000 Coll.) of the officially determined minimum price (§10 of the decree; now CZK 7.60). This individual production quota consists of an individual delivery quota and an individual direct sales quota. Yet, under Act No. 256/2000 Coll. the producer is not required to apply for allocation of a production quota.

The group of deputies also believes that limiting the production amount is impermissible interference with the constitutionally guaranteed right to own property (Art. 11 of the Charter), as it means an expropriation which is not based on the public interest and which takes place without compensation (para. 4 of the same article). Setting production quotas and allocating them without pay among the current producers, as well the possibility of free trade with the quotas, allegedly burdens current and future producers who want to invest in the distribution of milk, which the petitioners also see as impermissible limitation on property rights. The group of deputies believes that introducing quantitative regulation in the production of milk leads to restriction of the free market. They claim that in the Czech Republic the supply of milk does not exceed demand, and reject the need to introduce this regulation of production and sales of milk in view of the Czech Republic's entry into the European Union. They say that it is also in the public interest to enable the use of privately owned things, which it supports with the concept of the public interest under the case law of the First Republic ("...a public interest exists if a matter is undertaken for the purpose of meeting the living needs of some wider whole ..." / position of the Supreme Administrative Court of the CSR in the judgment file no. Boh. adm. no 14224). They conclude that a public interest in a limitation on the property rights of milk producers is lacking in this cases, so there is inconsistency with Art. 11 para.4 of the Charter and with Art. 1 of the Protocol to the Convention.

The group of deputies claims that the mechanism introduced, production quotas tied to sanctions for overproduction, represents the introduction of de facto price regulation, which causes unconstitutional discrimination against some owners (producers) directed against those milk producers who do not apply for allocation of production quotas.

The group of deputies objects that the system of production quotas is also an impermissible limitation of the right to conduct business and other economic activity(Art. 26 para.1 of the Charter). According to them the law may only set qualification and similar prerequisites for the conduct of business or similar activity, but such limitations can not be applied to the process of conducting business itself. Moreover, the interference is sufficiently intense that it violates the very essence of the right to conduct business. Quantitative regulation of production means a limitation on the entrepreneur's responsibility and his freedom to make decisions about his business, which is allegedly inconsistent with statutory principles (§ 2 of the Commercial Code). In the petitioners' opinion, a system of production quotas can be introduced only by statute, not by a subsidiary regulation (Art. 26 para.1 in connection with Art. 4 para. 2 of the Charter), because in this case the bounds of (limitations on) the fundamental right to conduct business are at issue.

The group of deputies believes that setting production quotas on the basis of milk production in the previous year, i.e. in 2000 (§ 3-4 of the decree) does not meet the requirement of equal treatment of all applicants (§12 para.6 of Act No. 256/2000 Coll.) and does not observe an objective manner of calculation, as it does not take into account an affected producer's possible short-term decline in milk production, which could be caused by various influences and facts. These influences are also not paid attention to in setting quotas for individual future years.

The group of deputies also sees the contested provision as a violation of the legal principles of openness toward new producers (§ 12 para.7 of Act No. 256/2000 Coll.), in

the manner of increasing existing individual production quotas and allocating new individual production quotas when increasing the sum of individual production quotas from the reserve (§ 3 and § 4 para. 1, 3 and 4 of the decree), which allegedly exceeds the limits set by Act No. 256/2000 Coll.. The petitioners also see as unconstitutional inequality (Art. 1 of the Charter) the disadvantaging of producers doing business exclusively in dairy farming, whereby – as a penalty – an individual production quota can not be increased (§ 4 para. 2 of the decree). This penalty allegedly has no basis in law, which the petitioners also see as exceeding the bounds provided by Act No. 256/2000 Coll. Finally, the group of deputies sees as unconstitutional authorization for tertiary norm creation the Ministry of Agriculture's right, no later than 30 days before the beginning of the applicable quota year, to announce the amount of the reserve in the Bulletin of the Ministry of Agriculture (§ 14 para. 2 of the decree). Similarly, the petitioners criticize the producer's obligation to inform the processor or sales organization about its individual production quota and the processor's or sales organization's obligation to inform the producer about its fulfillment (§ 11 para. 3, or § 12 para. 5 and § 13 para. 5 of the decree); these are claimed to be obligations set by government decree (not by statutes), so they are imposed in conflict with Art. 4 of the Charter.

Finally, during a hearing before the Constitutional Court, the attorney of the group of deputies pointed to the fact that in the adjudicated matter one allegedly cannot use community law as an argument, as the Czech Republic is not yet a member of the European Union.

II.

The Constitutional Court asked for a position statement on the petition to annul the contested decree from the party to the proceedings, the government of the CR (as the body which issued the contested decree - § 69 para.1 of Act No. 182/1993 Coll., on the Constitutional Court). ...

In its statement, the government of the Czech Republic proposes that the Constitutional Court deny in full the petition of the group of deputies. It states that the decree issued to implement Act No. 256/2000 Coll., on the State Agricultural Intervention Fund, creates market regulation of the production and sale of milk in the Czech Republic which is comparable to the market regulation introduced by the European Community in all member states. This is necessary for the Czech Republic's future membership in the European Union. In any case, by the Europe Agreement establishing an Association between the European Communities and their Member States, of he one part, and the Czech Republic, of the other part (published under no. 7/1995 Coll.) the Czech Republic committed itself to implement EC law into Czech law. In this regard, it points to the basic features of community regulation of milk production in member states of the European Communities. They are based on centrally determined national production quotas (of individual member states), from which individual quotas are then allocated to individual agricultural businesses. The aim of the regulation is to stabilize the agricultural sector, in which, according to the government, the rules for protection of economic competition are not applied (Art. 36 of the Treaty Establishing the EC). In its statement, the government expressly refers to EC Council directives no. 3950/92, no. 1255/99 and no. 1258/99. It

especially emphasizes its authorization to support a particular form of agriculture under § 2 para. 5 of Act No. 256/2000 Coll. It claims the petitioners are contesting only the cited decree and not Act No. 256/2000 Coll., even though the substance of the objections is actually directed against the Act. With regard to the claimed violation of property rights, the government says that the Convention does not prohibit states from passing laws which they consider necessary to regulate the use of property in accordance with the public interest. Therefore, the government also does not see inconsistency between the contested decree and the cited articles of the Charter, because – with reference to Constitutional Court judgment no. 231/2000 Coll. – it goes on the assumption that price regulation does not prevent anyone from conducting business or conducting another economic activity, because everyone has an opportunity to freely decide whether or not to conduct business in a particular area under the given circumstances. The government derives the possibility of limiting quotas for producers who do business exclusively in dairy farming from § 2 para. 5 of Act No. 256/2000 Coll., which establishes the authorization to support particular forms of agriculture, in this case "ecological" agriculture.

For all the foregoing reasons, the government of the CR proposes that the petition to annul government decree no. 445/2000 Coll. be denied ...

III.

Before the Constitutional Court considered the merits of the submitted petition, it considered the question of whether procedural prerequisites for proceedings before the Constitutional Court had been met.

In this regard it states that, under § 64 para. 2 let. b) of Act No. 182/1993 Coll., on the Constitutional Court, a group of at least 25 deputies is entitled to file a petition to annul a legal regulation or its individual provisions. In the adjudicated matter the petition was signed by 28 deputies of the Chamber of Deputies, so there is an entitled petitioner.

The Constitutional Court also considered the issue of whether the contested government decree had been passed and issued within the bounds of constitutionally prescribed jurisdiction and in a constitutionally prescribed manner (§ 68 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court in fine). In this regard, it stated that the contested government decree was passed and issued within the bounds of constitutionally prescribed jurisdiction and in a constitutionally prescribed manner under § 68 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court. Therefore, the Constitutional Court could consider it on the merits.

IV.

The Constitutional Court also considered the issue of the legislative jurisdiction of the government and the Ministry of Agriculture to set a quota system. In this regard it stated that, in the Czech Republic, quantitative limitation of production, delivery or the consumption of particular goods, or the provision, brokering or accepting of certain

services, within the framework of the fundamental right to free choice of profession, the right to conduct business or to conduct other economic activity (Art. 26 para. 1 of the Charter) – similarly as with setting other conditions or limitations – can only be introduced by law (Art. 26 para. 2 of the Charter). Defining the details related to these restrictions or specifying framework conditions more closely can be done by a subsidiary legal regulation, if the relevant body issued it under authorization of the Constitution of the CR or an ordinary statute. The Constitution distinguishes between the government's right to issue a decree "to implement statutes and remaining within their bounds" (Art. 78 of the Constitution of the CR) and the right of ministries, other administrative offices and local government bodies "to issue regulations on the basis of and within the bounds of a statute, if they are so empowered by statute" (Art. 79 para. 3 of the Constitution of the CR).

The system of milk production quotas is based on Act No. 256/2000 Coll., on the State Agricultural Intervention Fund. The Act defines a production quota (§ 2 para. 5) and financial penalties which apply to a producer, processor or distributor in the event a quota is exceed or in the event of production (sales, processing) without an allocated quota (§ 13). It also sets principles for allocating production quotas (e.g. § 12 para. 6). The Act directly charges the government (§ 12 para.1), by decree, within three months after the Act goes into effect, to set conditions and principles for implementing further measures for the organization of the market in agricultural products and food under § 1 para. 2 let. b) and c) and, by decree, to set production quotas and conditions for the system of production quotas (§ 12 para. 3). Thus, it is evident that in issuing the contested decree, in addition to the constitutional authorization for the government, statutory authorization was also applied.

In this regard, the Constitutional Court states that it does not agree with the claim of the group of deputies that the contested decree diverges from the bounds set by Act No. 256/2000 Coll. and that it is inconsistent with Art. 4 of the Charter, under which obligations may be imposed only on the basis of and within the bounds of law and limitations may be placed on the fundamental rights and freedoms only by law. The Constitutional Court has already ruled in judgment no. 96/2001 Coll. that constitutional delimitation of derivative law-making by the executive branch must respect the following principles: - a decree must be issued by an authorized entity, - a decree may not interfere in matters reserved to statutes, - the legislative intent for regulation above the statutory standard must be evident (room must be made for the sphere of regulation).

In the case of the contested decree the Constitutional Court – for the above mentioned reasons – states that all the cited principles for issuing it were observed, as the contested decree was issued by the government as an authorized entity, the substance of the decree does not interfere in matters reserved to statutes (no. 256/2000 Coll.) and the delineation of the substance of the contested decree set by the legislature (§ 12 of Act No. 256/2000 Coll.) is sufficiently specific so that it is possible to deduce the clear legislative intent in the above mentioned sense. Thus, we can summarize that the contested decree does not violate the statutory reservation, because it merely, on the basis of express statutory authorization, provides specifics for issues whose basic features are already regulated by statute. The contrary conclusion, which would require all obligations to be set directly and exclusively by statute would obviously lead to absurd results, denying the purpose of secondary (and in some cases even primary) norm creation, as part of the concept of each

legal norm is the definition of certain rights and obligations of those to whom it is addressed.

Therefore, in this regard the Constitutional Court found the contested government decree to be neither unconstitutional nor unlawful.

In contrast, the Constitutional Court considers unconstitutional and unlawful the sub-statutory delegation according to which the level of the reserve, announced by the Ministry in the Bulletin of the Ministry of Agriculture (§ 14 para. 2 of the decree), is set. The text of the cited provision does not clearly indicate who sets the amount of the reserve. We can conclude from the manner of publication that it is done by the Ministry (Minister) of Agriculture. However, deciding on the level of the reserve is an inseparable component of the milk production quota system in the CR. The law provides that the system of production quotas for individual agricultural commodities is introduced by the government of the CR, by decree (§ 12 para. 3), which, in accordance with the Constitution of the CR and Act No. 309/1999 Coll., on the Collection of Laws and the Collection of International Agreements § 1 para. 1 let. d) is published in the Collection of Laws. Thus it is not a matter for the Ministry of Agriculture either by law or under the Constitution. As the Constitutional Court ruled in judgment no. 96/2001 Coll., because "the legislature can not delegate to the executive branch an area of regulation of relationships intended for regulation by law, and thereby resign its legislative responsibility, all the more so the executive power can not itself adopt the right to such regulation with reference to a law which evidently has a different purpose and meaning."

Therefore, the Constitutional Court concludes that for this reason § 14 para. 2 of the contested decree is inconsistent with Art. 79 para. 3 of the Constitution of the CR.

V.

After evaluating the legislative jurisdictional aspects of the government decree at issue, the Constitutional Court continued with an analysis on the merits, taking in turn the petitioners' individual objections in turn. However, first it is necessary to present several comments of a more general nature.

A) Under Art. 83 of the Constitution of the CR, the Constitutional Court is the judicial body for protection of constitutionality. Under Art. 87 para. 1 let. b) of the Constitution it is authorized to decide on the annulment of other legal regulations or their individual provisions, if they are inconsistent with a constitutional act, a statute or an international agreement under Art. 10. Thus, in its decision making it can evaluate only the constitutionality (or lawfulness, as the case may be) of the contested legal regulation and not its appropriateness or suitability to its aim. Likewise, in the adjudicated matter, which involves a case of "abstract" review of norms, the Constitutional Court considered only constitutional law aspects of the contested decree and gives no opinion on its appropriateness or suitability to its aim from the viewpoint of, e.g. the existence of a free market and so on (see below).

B) The Constitutional Court further states that it has already taken a position on the issue of regulation in judgment no. 231/2000 Coll. In that judgment, while it evaluated the constitutionality and lawfulness of decree no. 176/1993 Coll., concerning the regulation of apartment rents, nonetheless, in the Constitutional Court's opinion, some general conclusions contained in that judgment can also be applied commensurately in the adjudicated matter. Therefore, the Constitutional Court points out, first of all, that in the reasoning of the cited judgment it concluded that in reviewing the use of property, which may also consist of rent regulation, it is necessary to carefully consider the existence of a public interest which authorizes the implementation of regulatory (monitoring) measures and a selection of detailed rules for implementing these measures. State intervention must observe a commensurate (fair) balance between the requirements of general public interest and the requirement of protection of an individual's fundamental rights. This means that there must be a reasonable (justified) proportionality relationship between the means used and the aims pursued.

C) Finally, the Constitutional Court states by way of introduction that, under its settled case law – in accordance with its constitutional and statutory definition – in proceedings on review of statutes it is bound by the filed petition's statement of claim and may not exceed it. Thus, in the adjudicated matter it could concern itself only with the constitutionality and lawfulness of the contested government decree and not the constitutionality of other regulations, particularly of Act No. 256/2000 Coll. Therefore, on the basis of the filed petition, the Constitutional Court could only evaluate whether the contested decree is inconsistent with a statute, a constitutional act or an international agreements Art. 10 of the Constitution, but not whether the statute itself – not contested by a complaint – is unconstitutional.

VI.

Concerning the first group of the petitioners' objections concerning the freedom to conduct business and permissibility of limiting it (Art. 26 para. 1, 2 of the Charter).

Under Art. 26 para. 1 of the Charter, everybody has the right to the free choice of profession and training for it, as well as the right to conduct business and conduct other economic activity. Under para. 2 of that article, the law may set conditions and limitations on the exercise of certain professions or activities.

In this regard the petitioners object that the law may only set qualification and similar prerequisites for the conduct of business or similar activity, not limitations on the process of conducting business itself, in the form of de facto price regulation which is so intense that it violates the very essence of the right to conduct business.

In response to this the Constitutional Court states that in judgment no. 231/2000 Coll. it stated that "price regulation does not prevent anyone from conducting business or conducting another economic activity, because everyone has an opportunity to freely decide whether or not to conduct business in a particular area under the given circumstances." In the adjudicated matter the Constitutional Court further emphasizes that neither the constitutional order nor international agreements on human rights and

fundamental freedoms prohibit the legislature from introducing limitations on the amounts of farm production, distribution or consumption. In this connection, it is not inappropriate to point out the fact that a certain amount of limitation on the amounts of farm production and distribution happens routinely at the international level, through the inspection of import or export of goods between states which contractually liberalize their mutual trade in goods (e.g. the relevant provisions of the Treaty Establishing the EC or the General Agreement on Tariffs and Trade).

Thus it is basically up to the Parliament of the CR (i.e. the legislative assembly), to take into account, when issuing ordinary statutes, the general interest in the regulation of relationships in a particular branch of the economy. The economic purpose and social acceptability of a particular regime should be subject to political control. On the other hand, one must consistently insist – as the Constitutional Court already stated in point V.B) – that in each particular case it is necessary to carefully consider the existence of a public interest which authorizes the implementation of regulatory measures, as state intervention must observe a fair balance between the general public interest of society on one hand and the protection of an individual’s fundamental rights on the other. This means that there must be a corresponding reasonable relationship between the means used and the aims pursued. Otherwise, i.e. if a particular restriction is purposeless or unreasonable, the regulation in question would be clearly inconsistent with Art. 4 para. 4 of the Charter, under which, in employing provisions on limitations on fundamental rights and freedoms, their essence and significance must be preserved. Such limitations may not be misused for purposes other than those for which they were laid down.

However, the introduction of production quotas (for the production, sales and processing of milk) by the contested decree does not show the cited elements of purposelessness or unreasonableness. Limitation of the supply of milk and milk products (as one of the basic food groups) through the setting of production quotas is not a danger, in view of the long-term milk surpluses. As the Ministry of Agriculture and the State Agricultural Intervention Fund correctly state in their statement on the petition, the job of the production quota system is to protect the market from speculators and establish conditions such that every producer will secure sales and receive an appropriate minimum price, i.e. so that a balance between production and sales will be guaranteed. Setting minimum milk prices (§ 10 of the decree), whose obvious aim is to stabilize the market in the event of price declines, is also not inconsistent with this public interest.

The Constitutional Court accepts the government’s position that introducing milk production quotas is an approximation of Czech legal regulations to those in the European Union and its member states, caused by long-term overproduction of milk in western Europe (see Europe - European Union - European Commission - Agriculture: Agriculture - Situation and Outlook: Dairy Sector, in: ww.europa.eu.int/comm/agriculture/public/pac2000/dairy/index_en.htm#top). Thus, the regulation introduced by the contested decree – as the government of the CR correctly states- basically represents a transfer of the community model (regulation) to Czech agriculture, both in terms of legal-technical means (production quotas and penalty levies for overproduction), and in terms of setting amounts. We can accept the government’s opinion that community regulation of milk production is based on the principle that individual quotas are allocated to individual producers from the centrally set national

production quotas of individual member states. Therefore, the contested government decree is a step which brings agriculture in the CR closer to European standards and thus to a certain extent facilities the Czech Republic's entry into the European Union. Moreover, the regulation implemented means fulfillment of the provision on approximation of Czech law with community law, as provided and required (though not expressly) by Art. 70 of the Europe Agreement establishing an Association between the European Communities and their Member states, of the one part, and the Czech Republic, of the other part of 1993 (no.7/1995 Coll.).

The Constitutional Court considers it appropriate to emphasize that it does not share the petitioners' opinion (stated during the hearing) that Community law is not relevant for the Constitutional Court of the Czech Republic, as a state outside the European Union, in evaluating constitutionality. This claim is impermissibly over-simplified and sketchy. One of the sources of primary Community law is the general legal principles which the European Court of Justice excerpts from the constitutional traditions of European Union member states. They contain fundamental values which are common to all its members. General legal principles are contained in the concepts or a state based on the rule of law, including fundamental human rights and freedoms and fair proceedings within that framework. Likewise, the Constitutional Court of the Czech Republic has repeatedly applied general legal principles which are not expressly contained in legal regulations, but are applied in European legal culture (e.g. the principle of reasonableness) - see Pl. US 33/97. The Constitutional Court has thus subscribed to European legal culture and its constitutional traditions. It also interprets constitutional regulations, primarily the Charter of Fundamental Rights and Freedoms in light of general legal principles. Thus, primary Community law is not foreign to the Constitutional Court, but to a wide degree permeates – particularly in the form of general legal principles of European law – its own decision making. To that extent it is also relevant to the Constitutional Court's decision making.

The charge that introducing production quotas on milk is serious interference in, even prevention of, a free market is unacceptable. A completely free market, free of all legal regulation, is not a fundamental, constitutionally required or guaranteed value in the organization of Czech society. An individual's right to it is not a fundamental right expressed in the Constitution of the CR, the Charter or international agreements on human rights and fundamental freedoms. Even in the European Union, which, at the highest level (Art. 2 of the Treaty Establishing the European Community) declares the economy of the whole community and within individual member states to be a market economy, agricultural regulation is not seen as a violation of this principle, because other equally valid aims are recognized, for example the convergence of economic productivity, economic and social cohesiveness, etc.. Agricultural regulation by market regulations is also expressly permitted by a provision of primary law on agriculture (Art. 34 of the Treaty Establishing the EC). In this regard the Constitutional Court points out again that in its decision making activity it can evaluate only the constitutionality (or lawfulness) of the contested legal regulation and not its suitability or appropriateness for a purpose. Thus, this objection by the petitioners is unjustified.

Therefore, the legislature may (of course, only within the bounds set by constitutionally guaranteed human rights and freedoms), in its discretion, establish price or quantity regulation of production in a particular branch of the economy, define or influence the

kind and number of entities active in that branch, or somewhat restrict freedom of contract in placing production on the market or in buying raw materials. The claim of the group of deputies that restricting the prescribed possibilities for regulating the conduct of business or other economic activity applies only to qualification and similar prerequisites can be described as an unreasonably narrow interpretation of the relevant provision of the Charter (Art. 26 para. 2). It is evident from Art. 41 para. 1 of the Charter that economic, social and cultural rights, which include Art. 26 of the Charter, can be claimed only within the bounds of statues which implement these provisions. The nature of these rights is fundamentally different from other fundamental rights (e.g. civil and political rights) and the legislature's ability to set more detailed conditions and limitations on them is therefore significantly greater and is basically only limited by the above cited principle, enshrined in Art. 4 para. 4 of the Charter.

In response to the objection that price regulation restricts the responsibility a business has for its results (§ 2 of the Commercial Code), it must be said that a producer's legal independence – despite the evidently strict regulation of milk production – remains preserved. Even now a milk producer can make a profit or suffer a loss, depending on the productivity of his work, its quality and external influences. He continues to be responsible for his production, similarly to other businesses. His position is not like that of an employee, managed by an employer. Every state regulation of business or economic activity affects the business environment, the level of realistically possible revenues and profits and the risk of losses. In the case of strict regulation of milk production it is certainly possible to conclude that revenues from milk production are relatively easy to foresee, in view of the factual impossibility of selling milk above a certain amount. However, the contested regulation does not change anything about the substance of doing business in milk production.

Every limitation on business or setting of prerequisites and conditions for it must have a certain purpose, must pursue a certain public interest. Purposeless restrictions – as already stated above – represent the "failure to preserve" the essence and significance of fundamental rights, forbidden by the Charter. In view of the particular social, economic and ecological characteristics of agriculture, stabilization of prices, and thereby of the revenues of agricultural businesses and private farmers is a public interest which is sufficient grounds for state intervention in the milk market, including regulating the amount of production.

In this regard we also can not agree with the petitioner's claim that there is a balance between milk supply and demand in the CR. The annual consumption of milk in the CR (of course, in the form of various milk products) was 2.1 million tons, while production was 2.789 million tons (see the Statistical Yearbook of the CR 2000, Czech Statistical Office, Prague, 2000, p. 278 and p. 713). The excess, which also results from increasing imports, is, with great difficulties, primarily exported. Without export subsidies provided from state funds, this export would be done at a great loss, and it would only be possible to continue it for a transitional period.

To conclude this part of the judgment, the Constitutional Court points out that (in principle) it is not its role to evaluate the economic aspects of the need and urgency of limitations on the conduct of business or the setting of conditions for the conduct of business in view of the need to ensure separate public interest, often parallel or even

conflicting. The choice of limiting (monitoring) instruments and the degree to which they are applied is primarily the job of the legislature. In our constitutional system, only the Parliament, as a representative body, can take such steps. Its responsibility for recognizing problems in the economy which require regulation, choice of instruments and their effects, which can sometimes also be negative, is primarily political, and in this case the Constitutional Court can intervene in its legislative activity only if it finds it to be unconstitutional. However, in the adjudicated matter the legislature, by Act No. 256/2000 Coll. (which was not itself subjected to review by the Constitutional Court), set clear rules of authorization and bounds for issuing a government decree, and the government observed this authorization in issuing the contested decree. Thus, one can conclude that the present government decree is not inconsistent with Art. 26 para. 1 and 2 of the Charter.

Finally, as the Constitutional Court stated above (in point IV.) - there is also no justification for the objection that any limitation on the fundamental right enshrined in Art. 26 para. 1 of the Charter can only be implemented by law (and not a government decree), which the decree in question allegedly does not respect, and thereby becomes inconsistent with Art. 4 para. 2 of the Charter. In this case the government observed the principles relevant for issuing the contested decree – on the basis of an express statutory authorization – and the decree (except for § 14 para. 2 and § 4 para. 2) only specifies in more detail the cited statutory authorization, i.e. the issues governed in the basic features of the statute itself. Thus, it is evident that the contested decree as a whole is not unconstitutional in this respect either; in this case the bounds of the fundamental rights and freedoms were provided directly by law (Art. 4 para. 2 of the Charter) and obligations arising from the decree are therefore imposed “on the basis of and within the bounds of law” (Art. 4 para. 1 of the Charter).

For the sake of completeness the Constitutional Court adds that in this case the system of milk production quotas is also not unreasonable from a comparative viewpoint, with regard to the similar regulation of the milk market in European Union member states. Comparable regulation of the market in milk and some other agricultural products exist not only in these countries, but also in other developed democratic western European countries (see Council Directive no. 3950/92, Commission Directive no. 536/93). Although they are often subject to strong criticism due to their strictness and problematic competitive and structural effects, this criticism is not based on doubts about the compatibility of regulation of the milk market with the European and universal standard of human rights.

VII.

Concerning the second group of the petitioners’ objections on the nature of property rights and the permissibility and conditions for restricting them (Art. 11 of the Charter and Art. 1 of the Protocol to the Convention)

Under Art. 11 para. 1 of the Charter everyone has the right to own property. Each owner’s property right has the same content and enjoys the same protection. Under para. 4 expropriation or other mandatory limitation upon property rights is possible in the public interest, on the basis of law, and for compensation. Under Art. 1 of the Protocol to the

Convention 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 petitioners basically claim that limiting the amount of milk production is an impermissible intervention into property rights, is not based on the public interest, and takes place without compensation.

In response to this the Constitutional Court stats that limiting the production amount of any product is naturally a limitation on the right to use that product – as an object of ownership – produced over the established production quota and this leads to a certain form of limitation on property. In particular, this concerns limiting or even preventing sale of such a product on the market for a certain price. However, such a limitation is not expropriation (which the petitioners do not claim in any case), as the product owner himself may – although to a limited degree – still control it, use it or even destroy it. Thus, it does not lead to a passing or transfer of property rights to the product (produced over the specified amount) to another person. Through regulation the product only becomes difficult to sell, or even impossible to sell. However, an entitlement to obtaining a particular price on the market is not part of the fundamental right to own property. In response to the objection that a quota system is a forced limitation of the right of ownership, the Constitutional Court again points out (see point V.B) that this system is a form of controlling the use of property, with which it is necessary to carefully consider both the existence of a public interest which authorizes the implementation of regulatory (monitoring) measures and a selection of detailed rules for implementing these measures. State intervention must observe a commensurate (fair) balance between the general public interest and protection of an individual’s fundamental rights. This means that there must be a reasonable (justified) proportionality relationship between the means used and the aims pursued. In the Constitutional Court’s opinion – as far as the contested decree is concerned – a public interest (i.e. stabilization of the milk market) legitimating the state in introducing a quota system does exist, and the means chosen to achieve this aim (the quota system) are quite proportionate from a constitutional viewpoint.

In this regard it must be pointed out that e.g. tightening the qualitative requirements for the production of goods in the conduct of business or other economic activity also often means creating, for the party conducting business or economic activity, a price disadvantage for the products it makes or raw materials and facilities which it uses for production. However, such regulation is often necessary in order to better secure a palette of often inadequately protected important public interests. However, in such cases the objection that property rights are restricted would undoubtedly be considered unacceptable.

As the Ministry of Agriculture of the CR correctly states in its position statement, under the contested decree, every producer who wants to increase milk production or wants to start milk production as a result of increased demand has a chance to apply for allocation of a new quota or for an increase of his existing quota from the reserve, or can acquire a quota by contractual transfer from another producer. Thus, it is evident that the quota system is

not a fundamental and unjustified limitation of property rights, but is – in its essence – a purposefully protectionist measure. To a certain extent and in a certain regard this may be subjectively perceived as a restriction on the property rights of milk producers; however, it can not be overlooked that such a measure – its final effects under clearly defined conditions set in advance – objectively protects and develops the producers' property rights. The purpose of the quota system is creating conditions such that every producer will have secured sales and that he will obtain the corresponding minimum price. However, the answer to the question of whether this is the optimal and economically most advantageous measure obviously cannot be given by the Constitutional Court.

The logic of the newly introduced quota system comes from the fact that given a long-term greater supply of milk than demand for it (see point VI.) the profitability of milk production in the CR is ensured only by increasing state subsidies. Investment in such production under these conditions are an attempt to take advantage of them. Yet, the impact of introducing a system of milk production quotas, created day by day, is basically only a potential one. The penalty levy of a specified amount derived from the minimum price of milk imposed for production in an amount exceeding an individual production quota (§ 13 of Act No. 256/2000 Coll.) is then a necessary instrument which the state must have at its disposal in implementing any – including a quantitative – regulation of economic life. Its purpose is precisely to deter producers from a legally prohibited or generally undesirable behavior. A state which, for important reasons, introduces limits on amounts produced can also prohibit production exceeding a set amount. Undoubtedly, it can impose penalties for violation of such a ban. A less intrusive limitation, which merely makes overproduction of milk above set production quotas or outside their system disadvantageous, but does not forbid them, is also admissible (the argument a maiori ad minus). Thus, imposing penalty levies can not be considered expropriation or forced limitation of property rights in the above mentioned sense. Moreover, as the Constitutional Court has already stated, the ability of the State Agricultural Intervention Fund (SAIF) to impose penalty levies is regulated in Act No. 256/2000 Coll. and not in the contested decree. However, the petitioners did not contest that act, and therefore the Constitutional Court could not review it within the proceedings on abstract review of norms.

The Constitutional Court did not overlook the fact that setting quotas for the production of milk (or any other goods) by the very nature of the matter manifests the state's efforts to deter potential investors from further – in this case quantitative – development of an economic sector in which there is no public interest. Such deterrence from investment may also mean changes in qualitative regulations, changes in taxes (restrictive taxation) or even changes in purchases of goods or services by public entities appointed to ensure public services. Thus, deterrence of investment in milk production can not be considered limitation of ownership to means whose use in other economic sectors current and potential producers could consider (in view of the cited circumstances). These means can – generally speaking – be used for the development of a number of other economic sectors (including agricultural ones) whose quantitative growth is not a barrier to an important public interest.

From a comparative viewpoint, we must also point to the case law of the European Court of Justice (ECJ), which addressed the issue of limiting the fundamental right to property in connection with the application of community regulations on agricultural production. In

the case of Hauer (44/79, in: P. Craig and G. de Búrca, EU Law, Text, Cases, and Materials, Oxford University Press, 1998, pp. 306-307), the ECJ pointed out that Art.1 of the Protocol to the Convention (on the right to own property) does not rule out the state's right to use such regulations as the state considers necessary to regulate the exercise of property rights in accordance with the public interest. In that case, the German authorities, in applying community law, specifically EEC Council Directive no.1162/76, on adapting vineyards to the needs of the market, did not permit a winegrower from the German land of Nordrhein-Westfalen to plant grapevines on her property, precisely with regard to community limitation of production.

VIII.

Concerning the third group of the petitioners' objections to application of the principle of equality and the ban on discrimination (Art. 1 of the Charter)

Under Art. 1 of the Charter all people are free, have equal dignity, and enjoy equality of rights. The fundamental rights and basic freedoms are inherent, inalienable, non-prescriptible and not subject to repeal. The principle of equality and the ban on discrimination are further specified in Art. 3 para. 1 of the Charter ("Everyone is guaranteed the enjoyment of his fundamental rights and freedoms without regard to gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth or other status"). We must also point to Art. 4 para. 3 of the Charter, under which "Statutory limitations on the fundamental rights and freedoms must apply in the same way to all cases which meet the specified conditions."

The petitioners find violation of the principle of equality in the fact that the system of milk production quotas introduces a certain form of de facto price regulation, which introduces two prices for milk. The method of calculating the primary allocation of production quotas is allegedly not objective, as it does not take into account factors which, in 2000, could have negatively affected a particular producer's production of milk. Finally, the limitation arising under § 4 para. 2 of the contested decree, under which producers doing business exclusively in dairy farming will not have their allocated individual production quota raised, nor will they be allocated a new individual production quota from the reserve, allegedly discriminates against a certain group of producers, those doing business exclusively in dairy farming.

First, the Constitutional Court points out that the issue of equality was already addressed by the Constitutional Court of the CSFR, which ruled (judgment Pl. US 22/92, Collection of Judgments and Resolutions of the Constitutional Court of the CSFR, p. 37 and p. 38): "The equality of citizens before the law was not seen as an abstract category, but was always attached to a particular legal norm, taken in the mutual relationships of various subjects of law, etc. Insofar as equality was made a right, every individual is entitled to have the state, insofar as it is able, remove all actual inequalities. However, this construction only applies if we consider equality to be absolute. Relative equality, as all modern constitutions understand it, only requires the removal of unjustified differences. (.) Special norms may set special criteria of equality for certain fields, criteria which do not

arise from the general principle, because application of the principle of equality does not set such strict bounds as to rule out any consideration by those who apply it."

In the adjudicated matter, the Constitutional Court again emphasizes that the purpose of the production quota system is to create conditions so that every producer will have sales secured and will receive a corresponding minimum price. Thus, it is evident that this system was not created for the purpose of giving advantages or disadvantages to any group of milk producers, but quite the contrary: its purpose is to ensure equal conditions on the market and to protect producers and consumers from undesirable large price fluctuations. The objection of two milk prices is therefore unjustified, as the price of milk remains the same for all producers, and the penalty levy in the amount of 115% of the minimum or regulated price (§ 13 of Act No. 256/2000 Coll.) is not a ("second") milk price, but a penalty for violating the rules of the quota system. In other words, if they observe the rules, all milk producers have an equal position, and precisely for that reason, in order to achieve the aim of the quota system, market stability, the law (not the contested decree) set penalties for violating the rules of the system.

One must also see the fact that creating a production quota system does not discriminate against those entities which do not join it. The objection of inequality or discrimination is groundless in this sense, because in this case distinguishing between individual producers is based on a choice by the affected entity. The producer has an opportunity to apply for an individual production quota, or to not take advantage of this opportunity. Thus, the quota system corresponds to the principle enshrined in Art. 4 para. 3 of the Charter, under which statutory limitations on the fundamental rights and freedoms "must apply in the same way to all cases which meet the specified conditions." In view of the factual impossibility to produce milk outside the production quota system – with regard to the unsalability of milk, the purchase of which the state would burden with a penalty levy – the allocation of production quotas represents an analogous mechanism, e.g. with entrepreneurs' activities related to defining the quantitative scope of their business. From a constitutional law viewpoint it is important that the rules for the quota system (i.e. for milk) are general, accessible and foreseeable, and therefore in that sense the objection of inequality is unjustified.

Of course, it is obvious from the nature of the matter – as was already stated – that creating a system of milk production quotas must somewhat "deter" new entities from entering this sector. The aim of production quotas is to stabilize production at a certain maximum level, which, in the present situation, de facto means a certain decrease. Unrestricted access to the sector could thwart any effect of the production quotas. Thus, the purpose of limiting the amount of production is to deter persons from entry into the sector, as well as from future investments where there is a public interest in limiting them. A certain disadvantaging of potential future producers vis-à-vis current producers is a natural and irremovable characteristic of all limitations of the amount of production, and it cannot be seen as a violation of the constitutionally guaranteed principle of equality, because – as was already said – equality in modern constitutional systems can not be seen as an absolute category, but as a relative one. Therefore, the Constitutional Court also could not agree with the petitioners' objections that the contested decree is inconsistent with § 12 para. 7 of Act No. 256/2000, under which "The system of production quotas will permit new entities to enter the market and will ensure that entities which enter the

market will have the same opportunity to obtain production quotas as entities already active in the market, through allocation of the reserve, but with a maximum level of the current annual quota."

Allocation of individual production quotas among individual farmers according to their production in the previous calendar year (§ 3 para. 1 et seq. of the decree) can not in practice be fully consistent with the principle of equality – which the petitioners claims is violated – enshrined in § 12 para. 6 let. a) of Act No. 256/2000 Coll., if this principle is understood as an absolute (abstract) concept. One can reason, e.g. that in 2000 some producers might not have produced a lot of milk, as they had primarily heifers and calves in their stables for various reasons, their businesses might have been struck by natural disasters of disease, and so on. Nonetheless, most such cases are taken into account by the formula for calculating individual delivery quotas, provided in appendix no. 1 to the contested decree. Therefore, a certain inequality could arise if the producer, for a certain period, due to natural disasters or cattle stocks unbalanced in age or in other respects, delivered only a limited amount of milk. However, this inequality can not be considered unconstitutional, because any legally regulated manner of determining individual production quotas could, in a particular case, under certain circumstances, lead to a subjectively perceived unjust result. However, if the legal regime wanted to eliminate these cases, there would be another – no less serious – danger, consisting of the risk of a certain arbitrariness in "eliminating harshness" when allocating production quotas. Thus, even here one can not find the contested decree to be unconstitutional (or unlawful).

Concerning producers doing business exclusively in dairy farming, the Constitutional Court considers that the preference, in the allocation of new production quotas or increasing of existing ones, for ecological raising of dairy cattle under a special Act (no. 242/2000 Coll., on Ecological Agriculture and Amending Act No. 368/1992 Coll., on Administrative Fees, as amended by later regulations) can not – in and of itself – be considered unconstitutional discrimination. The legislature has a right to resort to it precisely for reasons of the public interest, which improved treatment of animals (see also the position of the Ministry of Agriculture on animal welfare) certainly is. This is an activity which is surely correct and acceptable. State support can take the form of, e.g., subsidies or other forms of public support. Thus, the legislature has the right to enshrine this preference in the law in connection with allocating further production quotas or reducing them.

However, the government can not do so – beyond the framework of the law – at the stage of issuing a sub-statutory implementing regulation.

Therefore, the government of the CR – in this regard – is mistaken, if it claims that § 2 para. 5 of Act No. 256/2000 Coll. authorizes it to give preference to a particular form of agriculture in the way that it does in § 4 para. 2 of the present decree. That provides that producers who do business exclusively in dairy farming, shall not have their allocated individual production quota increased, nor be allocated a new individual production quota for milk from the reserve. The cited § 2 para. 5 of Act No. 256/2000 Coll. only states that "A production quota may be conditioned on the provision of a particular form of agricultural support." That means that the purpose of the cited statutory provision evidently lies in permitting positive preferences for a particular form of agriculture (typically, e.g., ecologically oriented) through state support, if the condition of participation in the system of production quotas is met. However, at the same time it is

evident that one cannot draw from the wording of the cited provision a statutory authorization for the government to exclude certain producers from the possibility of increasing their current production quotas or allocating a new one as provided by § 4 para. 2 of the contested decree.

Therefore, this provision clearly does not observe the statutory reservation and is thus in conflict with Art. 4 para. 1 and 2 of the Charter.

IX.

For all the cited reasons the Constitutional Court annulled § 4 para. 2 of government decree no. 445/2000 Coll., on Setting Production Quotas for Milk for 2001 to 2005, due to inconsistency with Art. 4 para. 1 and 2 of the Charter, and §14 para. 2 of the decree, due to inconsistency with Art. 79 para. 3 of the Constitution of the CR.

In accordance with § 58 para. 1 and § 70 para. 1 of Act No. 182/1993 Coll., on the Constitutional Court, the Constitutional Court annulled these provisions as of 31 December 2001, in order to give the government sufficient time for necessary measures and adjustments.

The Constitutional Court denied the remaining part of the petition to annul the contested government decree.

Instruction: Decisions of the Constitutional Court can not be appealed.

Brno, 16 October 2001

Dissenting Opinion

of judges JUDr. P. H. and JUDr. A. P. to the reasoning of the Constitutional Court's judgment file no. Pl. US 5/01, on the petition of the group of deputies to annul government decree no. 445/2000 Coll., on Setting Production Quotas for Milk for 2001 to 2002

The dissenting opinion, filed to the reasoning of Constitutional Court judgment file no. Pl. US 5/01, is based on these reasons:

In its judgment in the matter of setting the value of a point in health insurance (file no. Pl. US 24/99), the Constitutional Court expressed the constitutional law classification of price regulation restrictively: "An essential component of the democratic state based on the rule of law is protection of the freedom of contract, which is a derivative of the constitutional protection of property rights under Art. 11 para. 1 of the Charter (a fundamental component of which is ius disponendi). Therefore, price regulation is an exceptional measure, acceptable only under quite limited conditions."

In its judgment in the matter file no. Pl. US 3/2000, the Constitutional Court again addressed the issue of price regulation, this time in connection with evaluating the constitutionality of legal rent regulation. It took as its starting point Art. 1 para. 2 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides states the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, and also the case law of the European Court of Human Rights. Under it, such laws are particularly necessary and usual in the area of housing, which is becoming a central issue of social and economic policy in modern societies, and for the purpose of which legislation must have a wide margin for consideration (evaluation) ("wide margin of appreciation"), both in determining whether there is a public interest which authorizes the implementation of regulatory (monitoring) measures and in selection of detailed rules for implementing these measures. As the European Court of Human Rights emphasized in the case James et al., state intervention must observe a the principle of a "fair balance" between the requirements of general public interest and the requirement of protection of an individual's fundamental rights. There must be a reasonable (justified) proportionality relationship between the means used and the aims pursued.

Thus, in this matter the Constitutional Court accepted a possible price regulation of rent, but on the condition of applying the principle of reasonableness (for comprehensive discussion of all components of the reasonableness principle see Constitutional Court judgments file nos. Pl. US 4/94, Pl. US 15/96, Pl. US 16/98). Although the Constitutional Court acknowledge the presence of the first component, i.e. the suitability of the means used in relation to the aim pursued, it found a failure to observe the principle of necessity, i.e. the subsidiarity of the means used in relation to other possible means, from the viewpoint of the limited fundamental right (in the given matter, the property right): "In order that the apartment building owners could meet their stated obligations, and that the individual's right to adequate housing under Art. 11 of the International Covenant on Economic and Social Rights, the path chosen could have been, for example, that taken by the legislation of the First Republic, which, in § 9 para. 4 of Act No. 32/1934 Coll., as

amended by later regulations, permitted increasing rent for reasons of paying expenses for temporary or exceptional necessary repairs and renovation of the building." On the basis of these arguments the Constitutional Court concluded that there was violation of Art. 4 para. 3 a 4 of the Charter, in connection with Art. 11 para. 1 of the Charter.

From a general perspective, in the judgment in question the Constitutional Court also formulated another criterion for evaluating the constitutionality of price regulation: "Price regulation, if it is not to exceed constitutional bounds, may not obviously decrease a price so that, in view of all the demonstrated and necessarily incurred expenses, it would eliminate the possibility of their being at least repaid, because in that cause it would actually imply denial of the purpose and all functions of ownership."

Where the Constitutional Court decided on the issue of production quotas for sugar, in evaluating the constitutionality of government decree no. 51/2000 Coll., it limited its argumentation to the question of observance of safeguards contained in Art. 78 of the Constitution.

The system of milk production quotas under Act No. 256/2000 Coll. and government decree no. 445/2000 Coll. are established by penalty price regulation under § 13 of the cited act, affecting that part of production by which the producer exceeds the set quotas.

From a general perspective, the Act on Prices considers acceptable reasons for introducing price regulation to be danger to the market from the effects of limiting economic competition or from an exceptional market situation (§ 1 para. 6 of Act No. 526/1990 Coll. on Prices, as amended by later regulations). In this regard it also fully corresponds to the paradigms of democratic economic thinking (see P. A. Samuelson - W. Nordhaus, Economics, Prague 1991). The Act on the State Agricultural Intervention Fund, insofar as it establishes the possibility of price regulation in agriculture, is a lex specialis to the Act on Prices.

From the perspective of the Constitutional Court's existing case law, the reasoning in the majority opinion has not observed all the safeguards, which arise from the principle of reasonableness. It did not analyze fulfillment of the condition of subsidiarity to possible alternative means permitting the achievement of the pursued aim as the Constitutional Court did in the matter under file no. Pl. US 3/2000.

If price regulation is interference in contractual freedom, which is a derivative of constitutional protection of property rights under Art. 11 para. 1 of the Charter (a fundamental component of which is ius disponendi), it is essential in the present matter to evaluate the observation of constitutional safeguards for limitation on property rights under Art. 11 para. 3 and 4 of the Charter and Art. 1 para. 2 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

From the perspective of the meaning and purpose of the cited provisions, which are components of the constitutional order of the Czech Republic, Art. 1 para. 2 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms applies to the matter (on interpretation of the concept of mandatory limitation of property rights, see, in particular, Constitutional Court judgment Pl. US 15/96). In this regard, a key

aspect is interpretation of the concept of public interest, which is the basis for the regulation of use of property and the related limitation of property rights.

In the matter under file no. III. US 31/97 the Constitutional Court applied European Community law as an interpretative tool of domestic law when it stated that the interpretation based on competition rules governed by the Treaty Establishing the European Community cannot be considered unconstitutional, because that Treaty, just like the Treaty on European Union, is based on the same values and principles on which the constitutional order of the Czech Republic is based.

Starting from the stated legal opinion, the authors of this dissenting opinion find application of Art. 1 para. 2 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms to be key for the reasoning of the Constitutional Court’s judgment in matter file no. Pl. US 5/01, from the interpretative perspective which is given by European standards contained in Community law.

Brno, 16 October 2001