2005/12/13 - PL. ÚS 6/05: EVALUATION OF A DEADLINE

HEADNOTES

1) A deadline, prima facie, without anything further, does not and can not demonstrate elements of unconstitutionality; those can appear only from the "specific circumstances" of the evaluated matter, in other words, evaluation of the constitutionality of a deadline is an evaluation in context. According to the existing case law of the Constitutional Court, these "specific circumstances," or the viewpoints for evaluation in context of the constitutionality of a deadline, are:
1. disproportionality of the deadline in relation to the time-limited possibility for exercising a constitutionally guaranteed right (claim), or to the defined time period for limitation of a subjective right. From that point of view, the Constitutional Court, in judgment file no. Pl. US 5/03 (Collection of Decisions, volume 30, judgment no. 109; promulgated as no. 211/2003 Coll.), annulled § 3 and § 6 of Act no. 290/2002 Coll., which were a disproportionate limitation of property rights, and violated Art. 11 par. 1 in connection with Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms (in the context, the Court considered constitutional a legal framework which would establish such a limitation only in a completely essential timeframe, which can be understood as only a minimal, and clearly, prima facie "transitional" period, but not a period of ten years);
2. arbitrariness by the legislature when setting the deadline (establishing or canceling it). The Court applied this aspect for evaluating the constitutionality of a deadline in the matter file no. Pl. US 2/02 (Collection of Decisions, volume 32, judgment no. 35; promulgated as no. 278/2004 Coll.), in which it found unconstitutional the annulment of § 879c to § 879e of the Civil Code (the "CCC") implemented by Act no. 229/2001 Coll., whereby the legislature interfered in the legitimate expectation of a precisely defined circle of subjects a mere one day before the expiration of the time period in which property rights would have been acquired, as a result of which, subjects who acted in confidence in the conditions previously set by the state were, a mere one day before the expiration of the time period, confronted with the arbitrary steps taken by the state, which the court found inconsistent with Art. 1 of the Protocol to the Convention (with reference to the case law of the European Court of Human Rights in the cases Broniowski v. Poland of 2002, Gratzinger and Gratzingerová v. the Czech Republic of 2002, and Zvolský and Zvolská v. the Czech Republic of 2001);
3. the constitutionally unacceptable inequality of two groups of subjects which results from the annulment of a certain statutory condition for exercising a right due to unconstitutionality, where this annulment does not, without anything further, create an opportunity to exercise rights for the affected group because of the expiration of deadlines as a result of derogation. With this "specific circumstance" as a starting point, in judgments file no. Pl. US 3/94 (Collection of Decisions, volume 1, judgment no. 38, promulgated as no. 164/1994 Coll.) and file no. Pl. US 24/97 (Collection of Decisions, volume 11, judgment no. 62; promulgated as no. 153/1998 Coll.) the Constitutional Court, by annulling the provisions setting the beginning of the time period to exercise a restitution claim, created an opportunity to exercise them for those entitled persons who, as a result of the condition of permanent residence, could

not successfully exercise their claims by the original deadlines. In this regard, the Court stated that "therefore these persons were de facto excluded from the circle of entitled person who could seek financial compensation, and were thus – compared to other entitled persons – unconstitutionally disadvantaged and found themselves in an unequal legal position compared to the others."
2) The deadlines established in § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll., impose a time limitation on the exercise of the right of entitled persons under § 11 par. 2 of the Act on Land for the issuance of substitute land, i.e. a right which does not have the benefit of an effective procedural means, wherefore, in terms of the criteria for evaluating in context the constitutionality of the deadlines, this is legislative arbitrariness, inconsistent with the constitutional principle of protecting the citizens' justified confidence in the law, which is a component of a law-based state (Art. 1 par. 1 of the Constitution), and in the present context also inconsistent with the principle of legitimate expectations when exercising property rights arising from Art. 1 of the Protocol to the Convention.

Thus, a contrario at the same time the possibility to exercise the right of an entitled person (restituent) for the issuance of substitute land under § 11 par. 2 of the Act on Land, limited by a proportional deadline, is constitutional, of course, on the condition that there is a valid effective procedural means to protect that right. Such a procedural means may be established by express inclusion in a statute and the corresponding practice in application, or it can be developed and settled by case law. The prerequisite for the constitutionality of it being established judicially is that the subject matter of a complaint be specifically defined, that the procedural means for protection of the right be settled in the decision making practice of the courts, and that their decision making be predictable.

CZECH REPUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová a Michaela Židlická decided on a petition from a group of senators of the Senate of the Parliament of the Czech Republic and a group of deputies of the Chamber of Deputies of the Parliament of the Czech Republic seeking the annulment of § 13 par. 6 and 7 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by Act no. 253/2003 Coll., and Art. VI part three of Act no. 253/2003 Coll., which amends Act no. 95/1999 Coll., on the Conditions for Transfer of Agricultural and Forest Lands from

the State to Other Persons and amending Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations, and Act no. 357/1992 Coll., on Inheritance Tax, Gift Tax, and Real Estate Transfer Tax, as amended by later regulations, as amended by Act no. 253/2001 Coll., and certain other acts, as follows:

The provisions of § 13 par. 6 and 7 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll., as far as they concern entitled persons who have a right to another piece of land under § 11 par. 2 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by § 11 par. 2 of Act no. 229/1991 Coll. [Act] no. 183/1993 Coll., and their heirs, are annulled as of the day this judgment is announced.

REASONING

I.
Definition of the Matter and Recapitulation of the Petition

On 7 February 2005 the Constitutional Court received a petition from a group of 24 senators of the Senate of the Parliament of the Czech Republic, represented by senator RNDr. J. S., and a group of 57 deputies of the Chamber of Deputies of the Parliament of the Czech Republic, represented by deputy Ing. V. N., both represented by JUDr. P. Š., attorney, seeking the annulment of § 13 par. 6 and 7 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by of Act no. 253/2003 Coll., and Art. VI part three of Act no. 253/2003 Coll., which amends Act no. 95/1999 Coll., on the Conditions for Transfer of Agricultural and Forest Lands from the State to Other Persons and amending of Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations, and Act no. 357/1992 Coll., on Inheritance Tax, Gift Tax, and Real Estate Transfer Tax, as amended by later regulations, as amended by of Act no. 253/2001 Coll., and certain other acts.

After summarizing the passage of the contested Act by the Parliament of the Czech Republic, the petitioners point to the background report to the draft Act, according to which it was conceived as a response to experience with the sale of state land under Act no. 95/1999 Coll. its main aim was to permit completing the process of settling restitution claims under Act no. 229/1991 Coll. (also the "Act on Land") in the foreseeable future, and for that purpose the regulation was supposed to harmonize the disposal authorizations under acts no. 229/1991 Coll., no. 569/1991 Coll. and no. 95/1999 Coll. The attempt to speed up and make more efficient the sale of state agricultural land and speedily settle restitution claims was cited in favor of passing the law; at the same time, the need to implement a maximum of land transfers in the seven year transitional period after entry into the European Union was cited.

The petitioners believe that these aims, which were supposed to be achieved by amending § 13 par. 6 and 7 of Act no. 229/1991 Coll., appear correct at first glance, but in fact these provisions, by giving preference to the interest in the transfer of state land suppress and limit the rights of restituents, including the rights which they already acquired in the past. The contested legal framework does not distinguish in any way between land which the state, as owner and party to a private law relationship, transfer to other persons, and land which the state is obligated to hand over to entitled persons – restitutents – on the basis of restitution regulations. Maximum simplification of the process for transferring state land would be achieved by removing the problem of unsettled restitutions. However, in the opinion of the group of senators and the group of deputies, restitution must be understood not as a barrier to privatization, but also as one of the forms of privatization.

The purpose of the Act on Land is to hand over a specific piece of land to restitutents, and only in exceptional cases, if circumstances foreseen by the Act arise, then if the land can not be handed over, the Land Fund of the Czech Republic (the "Land Fund" shall transfer to the entitled person, free of charge, other land owned by the state, in a procedure under § 8 par. 4 of Act no. 284/1991 Coll., if possible in the same municipality where the majority of the original lands are located, and if the entitled person agrees.

The petitioners believe that the amendment of the Act on Land implemented by Act no. 253/2003 Coll. significantly interfered in the execution phase of the restitution process, worsened the position of the restituents – the creditors of the state – in comparison with other natural persons and legal entities in the position of creditors of the state, as well as in relation to several tens of thousands of entitled persons who already achieved satisfaction of their claims in one form or another in the past, which the petitioners see as violation of one of the fundamental principles of a law-based state, the principle of legal certainty and confidence in the law, as it follows from Art. 1 par. 1 of the Constitution, as well as from the principle of equality under Art. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter").

Pointing to the findings of fact contained in the Constitutional Courts judgment file no. III. US 495/02, the petitioners consider the statement justified that the Land Fund, even before Act no. 253/2003 Coll. was passed, proceeded incorrectly in managing the state property entrusted to it, and also proceeded incorrectly when fulfilling the obligations arising from the restitution laws. in that judgment the Constitutional Court said the following:

"The Constitutional Court made use of its statutory ability and obtained the publicly available audit results of the Supreme Audit Office of the Czech Republic (the "SAU"), which indicates that the Fund erred in applying § 11 par. 2 of the Act on Land. On the basis of an audit performed from August 2002 until March 2003, stated that: " … In the case of the claims of entitled persons – the original owners – for cost-free transfer of another piece of land under § 11 par. 2 of Act no. 229/1991 Coll., there were (as of 31 December 2002) 44.9% of restitution claims left to settle, which were decided with legal effect. However, Act no. 253/2003 Coll., which amends Act no. 229/1991 Coll. and certain other acts,

indicates that if the decision of the Land Office went into legal effect before 6 August 2003, the period for transfer of lands ends on 31 December 2005. That Act also newly regulates a two year period for the right to cost-free transfer of other land, and thus set a deadline for the so-called "full stop at the end of restitution." In exercising the right to cost-free transfer of another piece of land the restituent is referred only to what is available from the LF of the CR, which, in connection with the sale of state land, is considerably limited. … The Fund, with reference to § 11 par. 2 made cost-free transfers of other lands to persons who do not have the status of entitled persons under Act no. 229/1991 Coll.. … The transfers were also made in municipalities where not all restitution claims filed by entitled persons have been settled yet, outside the so-called "public offering." … When selling state land the Fund violated the obligations of an administrator of state-owned real estate, when it exceeded the authorization defined by statute by selling, on public offer, land owned by the state to persons on the basis of a right of first refusal which they claimed, but for which these persons did not meet the statutory conditions. … The Fund gave priority to the sale of state land over the settlement of claims of entitled persons in restitution. Entitled persons can also apply within the framework of sale of land to offer or tender, but in the sale of land restitutents have the standing of claimants, not creditors. The price of land being sold is set according to a different price regulation than in restitutions, where it is derived from the price regulation in effect as of 24 June 1991. Through the Fund, the state sells agricultural land for a minimal price, despite the fact that the state's obligations arising from restitution laws have not been met." (part 3 of the Bulletin of the Supreme Audit Office, 2003: "02/14 State-owned real estate administered by the Land Fund of the Czech Republic"; pages 218-219, the "audit conclusion," obtained from http://www.nku.cz/kon-zavery/K02014.pdf).)."

The petitioners also argue on the basis of the content of a letter from the Chairman of the Executive Committee of the Land Fund, Ing. J. M., dated 9 April 2004 no. PF 14294/04 1064/MI, addressed to senator RNDr. J. S., which, however, they did not present to the Constitutional Court and did not propose stating its content as evidence, which allegedly indicates that as of 31 December 2003 at least 39% of all restitution claims, with a total amount of CZK 2,660.6 million, had still not been settled. From this they then conclude that the contested statutory provisions affect a wide circle of restituents.

They are aware that the Land Fund makes an offer about four times a year, but they do not consider it relevant; in their opinion it is not aimed at specific restituents, but is only a kind of listing of state agricultural land which the Land Fund is at that time offering for transfer to other persons, regardless of the grounds on which that transfer is made. They believe that even those restituents, who apply for replacement land are not satisfied for various reasons, in particular because of the lack of an offer in an appropriate locality, or because unsuitable land is offered, or because in making land transfers the Land Fund gives preference to persons who make claims to the offered lands on the basis of other grounds.

The petitioners also point to inequality between the group of restituents whose claim is successfully satisfied and a second group, whose claim is not satisfied, even in cases of

objective difficulties caused neither by the debtor (the state) nor the creditor (the entitled person).

They emphasize the fact that if the debtor generally has an obligation to refrain from conduct which would prevent satisfaction of the creditor, then the constitutional principle of equality indicates that the state, as a debtor, also may not frustrate the satisfaction of creditors with claims whose existence was confirmed by a decision by a state body. They point out that this is by its nature a private law relationship, and it is constitutionally inconsistent for the state, in this regard, to assign itself a significantly more advantageous position than that of all other debtors in the private law sphere. They also critically point to the concept of the Act on Land, under which the offer to satisfy an obligation is not even addressed to the creditor, i.e. the entitled party, but the state leaves it up to that person whether he will offer his land to another circle of persons or will seek out land suitable for satisfying his claim.

However, in the opinion of the petitioners, the change brought by the amendment of Act no. 229/1991 Coll. implemented by Art. V and Art. VI of Act no. 253/2003 Coll., significantly worsened the position of persons who had a claim for cost-free transfer of another piece of land – creditors – and unjustifiably gave an advantage to the state, as debtor, by putting a time limit on its obligation to perform without regard to whether the state failed to fulfill its obligation as a result of its own inaction or the incorrect function of bodies to which it entrusted the fulfillment of its tasks. According to the petitioners, the contested provisions impermissibly connect the time limit on the state's obligations, which they compare to the institution of a statute of limitations, to the possibility of the state's inaction.

According to the petitioners, the provision of § 11 par. 2 of the Act on Land, under which transferred land is supposed to be, whenever possible, in the same municipality where the majority of the original land is located, and the entitled person must agree with the transfer of this land, places entitled person before the alternative of accepting any land, even unsuitable land, or financial compensation. Moreover, the contested provisions necessarily divide entitled persons whose claim to cost-free transfer of land has been recognized into two groups, the group of those whose claim will be satisfied by the statutory deadline, and those whose claims will not be satisfied by the final deadline. Yet, according to the petitioners, the entitled persons will not be able to directly influence their classification in one or the other group, and as a result the state will thus treat differently individual citizens who find themselves in the same situation, without these differences being in any way objectively justifiable. This process, they believe, shows signs of arbitrariness, violates the constitutional principles of equality and a law-based state, especially the principle of predictability of law, its understandability and internal consistency.

According to the group of senators and the group of deputies the contested provisions of the Act on Land remove the legitimate expectation of issuance of property, which is also protected by the Protocol to the Convention on the Protection of Human Rights and

Fundamental Freedoms (the “Convention”), and replace it with financial compensation using prices as of 24 July 1991, i.e. prices which do not even correspond to the prices for which it was possible to confiscate this property, so this does not concern either confiscation for compensation, but taking away of property and its replacement by a completely disproportionate financial compensation. Thus, in their opinion, the provisions of § 13 par. 6 and 7 of the Act on Land and Art. VI of Act no. 253/2003 Coll. also affect the rights arising from the Protocol to the Convention. Based on the foregoing, the group of 24 senators of the Senate of the Parliament of the Czech Republic and the group of 57 deputies of the Chamber of Deputies of the Parliament of the Czech Republic propose annulling § 13 par. 6 and 7 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by of Act no. 253/2003 Coll., and Art. VI part three of Act no. 253/2003 Coll., which amends Act no. 95/1999 Coll., on the Conditions for Transfer of Agricultural and Forest Lands from the State to Other Persons and amending of Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations, and Act no. 357/1992 Coll., on Inheritance Tax, Gift Tax, and Real Estate Transfer Tax, as amended by later regulations, as amended by of Act no. 253/2001 Coll., and certain other acts.

II.
Recapitulation of the Essential Parts of the Statement from the Party to the Proceedings

The Constitutional Court, under § 42 par. 4 and § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, sent the petition to the Chamber of Deputies. In its statement of 15 March 2005, the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, PhDr. Lubomír Zaorálek, states that the background report to the draft of Act no. 253/2003 Coll. states that its purpose is to permit, in the near future, completing the process of settling restitution claims under Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by later regulations. According to him, the time limitation did not restrict the property rights of entitled persons, nor did it establish their unequal status, as the petitioners claim. He also sees the problem of the existing widespread failure to satisfy the claims of entitled persons to alternative land in the opposite aspect than that raised by the petitioners, in the fact that, despite improved conditions and the approaching deadline of the “full stop” to restitution, interest in the land offered is low. According to him there is high interest only in land within municipalities or land for which they can in future expect use other than agricultural use, and certain entitled persons have not thought a long time about the offers of the Land Fund, others are interested, but for various reasons their claims have not been satisfied, for example because they choose an attractive piece of land in which multiple entitled persons are interested.

He further describes the current procedure followed by the Land Fund, which processed the offers of substitute land so that the structure of the land offered corresponded to the structure of the claims, and entitled person could thus use their absolute priority. He states that although the compensation is supposed to be provided for agricultural land, the

interest of many entitled persons is focused only on land where one can, in view of the local conditions and other circumstances, expect use other than agricultural use, and there are not enough of those, in view of the extent of the claims. According to him, many entitled persons prefer cash, and sell their claims; others wait for better offers. He further notes that a large percentage of the claims belongs to persons who bought the restitution claims, and these persons, whether legal entities or natural persons, are only interested in being issued very lucrative land.

According to the Chairman of the Chamber of Deputies, the purpose of introducing the time limit was to induce entitled persons to considerably greater activity, so that the restitution process could be completed as soon as possible and so that unsettled restitution claims would not be a barrier to the development of economic relationships and ties and not bring uncertainty into property relationships. In view of the need to set a time framework for completing restitution claims and to thus create a transparent environment in the land market, the contested provisions of the Act on Land appear justified to him. Due to the foregoing, he states the assumption that the current regulation in this area creates a sufficient framework and space for priority satisfaction of entitled persons, and he does not consider the solution to the situation to be the annulment of the provisions establishing the so-called "full stop to restitution," but proper and speedy satisfaction of the claims of entitled persons by the Land Fund. On the basis of these reasons, the party to the proceedings believes that the conditions set in the contested provisions of the Act ensure proportionate protection for the rights of entitled persons and do not establish inequality in the possibilities for satisfying various subjects according to the extent of their claims. He points to the fact that certain specifics of the Land Fund as debtor and entitled persons as creditors must be seen precisely in the specifics of the restitution issue.

The Chairman of the Chamber of Deputies also confirmed, in accordance with the requirements contained in § 68 par. 2 of Act no. 182/1993 Coll., as amended by later regulations, that Act no. 253/2003 Coll., which contains, in part three, the amendment of Act no. 229/1991 Coll. and Art. VI, was approved by the necessary majority of deputies of the Chamber of Deputies of the Parliament of the Czech Republic, was signed by the appropriate constitutional officials, and duly promulgated in the Collection of Laws. In the conclusion of the statement he says that in this situation he can not but state the opinion that the evaluated Act was passed and issued within the bounds of constitutionally specified jurisdiction and in a constitutionally prescribed manner, as well as the opinion that the legislative assembly acted in the belief that the passed Act was consistent with the Constitution, the constitutional order, and international treaties by which the Czech Republic is bound, and that it is up to the Constitutional Court to evaluate the constitutionality of the Act in connection with the submitted petition and to issue the appropriate decision. Under § 42 par. 4 and § 69 of Act no. 182/1993 Coll., as amended by later regulations, the Constitutional Court also sent the petition to the Senate of the Parliament of the Czech Republic. In the introduction to his statement, of 18 March 2005 the Senate Chairman MUDr. P. S. points out the purpose of Act no. 229/1991 Coll., which was primarily to mitigate the consequences of certain property crimes, which were committed against owners of agricultural and forest property in the years from 1948 to 1989, to renew ownership relationships to land, and thus to improve the care for

agricultural and forest land and also regulate ownership relationships to land in accordance with the interests of rural economic development and with the requirements for the creation of the landscape and the environment. Unlike in the case of Act no. 87/1991 Coll., on Extra-judicial Rehabilitation, the mitigation of the consequences of property crimes did not consist in handing over things, but in renewing the ownership rights to the confiscated things, so that the owner could freely exercise his property rights.

The main aim of the proponents of the draft of Act no. 253/2003 Coll. was to permit the completion of the process of settling restitution claims, to make more efficient the process of selling land by reducing the administrative burden, and to set criteria for applying the priority of persons acquiring land so that the first place would be given to persons with a claim for substitute land in the locality where the original un-issued land was found, and the second place would go to a tenant with a limited claim for a transfer.

Concerning the submitted petition from the group of senators and the group of deputies, the statement then says that the draft Act regulating the termination of deadlines for settling property relationships to land and other agricultural property was the subject of extensive discussions in the Senate, especially in the committees assigned to discuss the draft, and also in the Senate's plenary session which took place on 26 and 27 June 2003. It was stated, above all, that a significant part of the transfers of agriculture land had already been implemented through restitution entitlements, transfers to municipalities and other institutions, or by sale without connection to restitution claims. It was also pointed out that at the time the draft Act was discussed restitution claims for the issuance of land under Act no. 229/1991 Coll. had not been settled, and the introduction of the so-called "full stop to restitution" was perceived as an attempt to end the process of transferring land to entitled persons, although at the same time limiting the claims of the group of entitled person to only financial settlement and simultaneously removing the possibility of issuing substitute land. On the other hand, according to the Senate Chairman, there were serious concerns that introducing the "full stop to restitution," would injure those who have no claim for the return of their original lands on statutory grounds, but expressed interest in substitute land which, however, could not be issued to them without their causation – e.g., because the demand for certain substitute lands exceeded the supply. The objection was also raised that interfering in the proposed manner in the Act on Land was dangerous in terms of destabilizing the existing situation given the already settled interpretation of the law and the Constitutional Court's case law. Some speakers expressed concerns about violation of equal rights in access to the conduct of business, because, in their opinion, enacting the so-called "full stop to restitution" significantly prioritized and advantaged a tenant over those who do not lease land, and yet do business with it, and can not buy it until tenants with preferential rights declare that they have no interest in the land. In this regard a request was made to reevalute the conditions for the sale of state land to tenants with the aim of finding a more balanced relationship between the individual groups of persons interest in buying land, in such a manner as not to lead to discrimination. According to the Senate Chairman, in the detailed debate the foregoing reasons then led to the submission of an amending proposal which deleted from the Act the part amending Act no. 229/1991 Coll., i.e. the "full stop to restitution."

The statement then states that the Senate, on 27 June 2003, in its 7th session, by resolution no. 150 returned to the draft Act which amends Act no. 95/1999 Coll., on Conditions for the Transfer of Agricultural and Forest Lands from the State to Other Persons and amending of Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations, and f Act no. 357/1992 Coll., on Inheritance Tax, Gift Tax, and Real Estate Transfer Tax, as amended by later regulations, as amended by of Act no. 253/2001 Coll., and certain other acts, to the Chamber of Deputies with amending proposals, by vote no. 38, in which out of 64 senators present 60 were in favor and none were against.

III.
Basis for Decision Making under § 48 par. 2 of Act no. 182/1993 Coll.

Pursuant to § 48 par. 2 of Act no. 182/1993 Coll. the Constitutional Court requested from the Land Fund data concerning the current list of settlements of un-issued land under the Act on Land, as well as a list of court disputes between entitled persons exercising a claim under § 11 par. 2 of the Act on Land and the Land Fund.

According to a report from the Chairman of the Land Fund's Executive Committee, Ing. J. M., dated 28 November 2005 ref. no. PF 2258/05MI-64297, out of the total amount of claims for un-issued land from decisions of land offices, with a value of CZK 7,346,154.44 thousand, as of 18 November 2005 the remaining unsettled claims for un-issued land amount to CZK 1,872,183.08 thousand, of which the balance of direct claims amounts to CZK 660,432.31 thousand and the balance of assigned claims CZK 1,211,750.77 thousand. In 2004 direct claims in the amount of CZK 115,833.02 thousand and assigned claims in the amount of CZK 395,606.98 thousand were settled; in 2005 (as of 18 November 2005) direct claims in the amount of CZK 108,892.17 thousand and assigned claims in the amount of CZK 465,212.03 thousand were settled. Thus, in 2004 the share of settled assigned claims was 77.35% of the total amount of settled claims, and for the period from 1 January 2005 to 18 November 2005 that share was 81.03%.

In 2004 and 2005 the Land Fund introduced a so-called "structured" offer, i.e. it offered land in municipalities from which as yet unsettled claims for un-issued land originated, whereby, with the exception of Prague and some large cities, it offered in all municipalities a greater number of land than the claims of entitled persons amounted to. Thus, according to the Land Fund, the structured offer in 2004 amounted to CZK 1,495,200 thousand, and in 2005 it amounted to CZK 3,035,210 thousand, yet despite this targeted offer the interest of entitled persons in the land offered in 2004 was ca. 24% and in 2005 ca. 26%.

According to the report from the Chairman of the Land Fund's Executive Committee, a total of 360 complaints for the satisfaction of claims under § 11 par. 2 of Act no. 229/1991 Coll., as amended by of Act no. 183/1993 Coll. were filed against the Land Fund; out of

those, 9 complaints were filed by 31 December 1999, 28 complaints from 1 January 2000 to 30 April 2005, and 323 complaints from 1 May 2005 to 24 November 2005. Legally effective decisions have not yet been issued in suits begun in 2005; regarding suits started in the past and concluded with legal effect the report refers to the case law of the Supreme Court, under which a claim for the provision of substitute land does not include the entitled person's right to choose the substitute land (2 Cdon 522/96, 26 Cdo 1478/2000 and others).

In order to provide an opportunity to respond, the report from the Chairman of the Land Fund's Executive Committee Ing. Josef Miškovský, of 28 November 2005 ref. no. PF 2258/05MI-64297 was delivered to the petitioners and the party to the proceedings (§ 60 par. 3 of Act no. 182/1993 Coll.).

The petitioners took this opportunity, and in a filing delivered to the Constitutional Court on 9 December 2005 they state that, although they do not intend to question the statistical data presented in the report from the Chairman of the Land Fund's Executive Committee, they consider it necessary to point out the fact that the claim that the supply of suitable land fundamentally exceeds the amount of claims can be true only in terms of nationwide statistics. A nationwide comparison includes both land registration areas where many more pieces of land were offered than the number of unsettled claims in that area, as well as land registration areas where no land was offered at land registration areas in the former district of Nový Jičín, where the Land Fund offered no substitute land at all, and they point out that there are also areas where the Land Fund did not even have any suitable land available. In the conclusion of the statement, they express the belief that if the Constitutional Court's decision in the matter were to be based on the report from the Chairman of the Land Fund's Executive Committee, it would have to be specified in more detail, in particular, instead of general claims relating to the entire territory of the Czech Republic, it would have to provide a picture of the status of settlements of claims for un-issued land in smaller territories, ideally according to the former districts.

IV.
Waiver of Hearing

Under § 44 par. 2 of Act no. 182/1993 Coll. the Constitutional Court, with the consent of the parties, can waive a hearing, if it can not be expect to clarify a matter further. In view of the fact that both parties, i.e. the petitioners through their legal representative, in a filing delivered to the Constitutional Court on 30 November 2005, as well as through persons entitled to act in their name, in a filing delivered to the Constitutional Court on 2 December 2005, and the party to the proceedings, in the statement by the Chairman of the Chamber of Deputies of the Parliament of the Czech Republic, delivered to the Constitutional Court on 1 December 2005, and the Chairman of the Senate of the Parliament of the Czech Republic, delivered to the Constitutional Court on 8 December 2005, consented to waive a hearing, and in view of the fact that the Constitutional Court believes that a hearing can not be expected to clarify the matter further, a hearing in the

matter was waived.

V.
The Text of the Contested Legal Regulation

Under § 13 par. 6 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll.: "An authorized person has a right to transfer of state-owned land for 2 years from the day when the decision of the Land Fund takes legal effect. If the Land Fund does not decide on the transfer of land, an entitled person has a right to transfer of state-owned land for 2 years from the time when it could have first exercised the claim for a transfer with the Land Fund." Under paragraph 7 of that provision: "After the expiration of the time specified in paragraph 6 the right to transfer of state-owned land terminates."

Under Art. VI of Act no. 253/2003 Coll.: "If the decision of the Land Fund went into legal effect or the claim to a transfer was exercised before this Act went into effect, the time limit for transfer of land ends on 31 December 2005."

VI.
Conditions for the Active Standing of the Petitioners

The petition seeking or the annulment of § 13 par. 6 and 7 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by of Act no. 253/2003 Coll., and Art. VI part three of Act no. 253/2003 Coll., which amends Act no. 95/1999 Coll., on the Conditions for Transfer of Agricultural and Forest Lands from the State to Other Persons and amending of Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations, a of Act no. 357/1992 Coll., on Inheritance Tax, Gift Tax, and Real Estate Transfer Tax, as amended by later regulations, as amended by of Act no. 253/2001 Coll., and certain other acts, as submitted by a group of 24 senators of the Senate of the Parliament of the Czech Republic, represented by senator RNDr. Jitka Seitlová, and a group of a 57 deputies of the Chamber of Deputies of the Parliament of the Czech Republic, represented by deputy Ing. Veronika Nedvědová. Thus, we can state that the petitioners have met the conditions for active standing in proceedings to review a norm under § 64 par. 1 let. b) of Act no. 182/1993 Coll.

VII.

Constitutionality of Jurisdiction and the Legislative Process

The Constitutional Court, in accordance with § 68 par. 2 of Act no. 182/1993 Coll., as amended by later regulations, is required, in proceedings to review a norm, to evaluate

whether the contested statute, its individual provisions, or another legal regulation or its individual provisions, was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

It was determined from chamber of Deputies publications and transcripts, as well as from the party's statement, that the Chamber of Deputies approved the draft of the Act in question in the 3rd reading at its 16th session on 22 May 2003 by resolution no. 505, when, out of 192 deputies present, 118 deputies voted in favor, and 63 voted against.

On 27 June 2003, at its 7th session, the Senate, by resolution no. 150, returned the act to the Chamber of Deputies with amending proposals, in vote no. 38, in which, out of 64 senators present, 60 voted in favor and none against.

The Chamber of Deputies voted on the draft of the Act returned by the Senate at its 198th session on 22 July 2003; by 124 votes out of 196 deputies present, with 57 voting against, it confirmed the draft of the Act as passed to the Senate (resolution no. 621).

The Act was signed by the appropriate constitutional authorities and was duly promulgated as no. 253/2003 Coll. in part 86 of the Collection of Laws, which was distributed on 6 August 2003, and, under Art. VII, went into effect on the day of promulgation, i.e. the day that part the Collection of Laws was distributed.

VIII.
Consistency of the Content of the Contested Statutory Provisions with the Constitutional Order

VIII./a

Significance and Purpose of the Act on Land

The significance and purpose of the Act on Land, according to its preamble, is to mitigate the consequences of certain property crimes, which were committed against owners of agricultural and forest property in the years from 1948 to 1989, to improve the care for agricultural and forest land by renewing ownership relationships to land, as well as to regulate ownership relationships to land in accordance with the interests of rural economic development and with the requirements for the creation of the landscape and the environment.

The Act on Extra-judicial Rehabilitation, the second key "restitution law" compared to the Act on Land, defines its purpose more narrowly in its preamble. Its purpose is to mitigate the consequences of certain property and other crimes which occurred in the period from

1948 to 1989.

The difference in the legislative mechanism for mitigating the crimes of the communist régime corresponds to the difference in these purposes.

Under the Act on Extra-judicial Rehabilitation, a natural person has a claim for issuance of a thing if it meets the conditions for being an entitled person (§ 3), if the thing is in the possession of an obligated person (§ 4), if the statutory conditions for issuing the thing exist (§ 6), and finally if there are no statutory grounds for not issuing the thing (§ 8 par. 1 to 4). If there are grounds for not issuing the thing and the other conditions for restitution are met, there is a subsidiary entitlement to the provision of financial compensation (§ 8 par. 5).

Under the Act on Land, a natural person has a claim for issuance of land if he meets the conditions for being an entitled person (§ 4), if the land is in the possession of an obligated person (§ 5), if the statutory conditions for issuing the land exist (§ 6), and finally, if there are no statutory grounds for not issuing the land (§ 11 par. 1). As the purpose of the Act is not only to mitigate crimes, but also to renew rural areas, if there are grounds to not issue land, there is a subsidiary claim for cost-free transfer of other land to the entitled person (§ 11 par. 2). It is only for land which is not issued under this Act and for which the entitled person can not be given a different piece of land that the Act on Land establishes a second, subsidiary claim, the claim for financial compensation (§ 16 par. 1).In cases where the conditions for issuing the original, or substitute land, the Act establishes as an alternative the possibility for entitled persons to settle their claims by transfer or ownership of real estate owned by the state and administered by the Land Fund [§ 18a, § 17 par. 3 let. a) of the Act on Land].

VIII./b

Points of the Petition

The first point in the petition is the objection that the contested statutory provisions create inequality, of three kinds: first, the inequality caused by the lack of justified differentiation between land which the state, as the owner and party to a private law relationship, transfers to other persons and land which the state is required to issue to entitled persons – restituents – on the basis of restitution regulations, second inequality between the group of restituents, whose claims are successfully satisfied and a second group, whose claims are not satisfied, both in cases of objective difficulties not caused either by the debtor (the state) or the creditor (the entitled person), and in cases caused by the actions of the Land Fund, and finally, inequality between the value of substitute land and the amount of financial compensation.

The second point in the petition is the objection of interference with the constitutional principle of protection of the citizen's justified confidence in the law (legitimate expectation), seen both in terms of the principle of a ban on arbitrariness and legal certainty (arising from the principle of a law-based state), and in terms of the right arising from the Protocol to the Convention (which also protects property claims).

VIII./c

Aspects for Review of Constitutionality of Deadlines

The subject matter of the petition for review of norms are statutory provisions which establish a deadline for exercising the right to issuance of substitute land under § 11 par. 2 of the Act on Land.

In judgment file no. Pl. US 33/97 [Collection of Decisions of the Constitutional Court (the "Collection of Decisions"), volume 9, judgment no. 163; promulgated as no. 30/1998 Coll.] the Constitutional Court stated at the most general level regarding the concept of a deadline as a legal fact: "The purpose of the legal institution of a deadline is to reduce entropy (uncertainty) in the exercise of rights, or powers, providing a time limit for a state of uncertainty in legal relationships (which plays an important role especially in terms of evidence in disputes), and speeding up the process of decision making with the aim of realistically reaching the intended aims. These reasons led to establishing deadlines a thousand years ago."

The Constitutional Court expressed its fundamental legal opinion defining the scope of constitutional review of statutory provisions establishing deadlines in judgment file no. Pl. US 46/2000 (Collection of Decisions, volume 22, judgment no. 84; promulgated as no. 279/2001 Coll.), in connection with evaluating the constitutionality of the deadline for exercising claims arising from the Act on Judicial Rehabilitation (§ 6 of Act no. 119/1990 Coll.): "The task of the Constitutional Court is review of constitutionality. In this framework the Court may only annul unconstitutional regulations, or parts thereof, but it is not its task to repair the consequences which arose because the petitioner did not exercise its right by the specified deadline. Annulling deadlines violates the principles of a law-based state, because it significantly interferes in the principle of legal certainty, which is one of the fundamental components of contemporary democratic legal systems. A deadline can not be unconstitutional in and of itself. However, it can become unconstitutional in specific circumstances. The petitioners claim that he did not have confidence in the Czechoslovak courts and also did not have the necessary information, and therefore did not exercise his right by the deadline specified in § 6 of Act no. 119/1990 Coll., on Judicial Rehabilitation, does not release him from the obligation to comply with valid legal norms."

Thus, the tenor of this opinion consists of the fact that a deadline, prima facie, without anything further, does not and can not demonstrate elements of unconstitutionality; those can appear only from the "specific circumstances" of the evaluated matter, in other words, evaluation of the constitutionality of a deadline is an evaluation in context.

According to the existing case law of the Constitutional Court, these "specific circumstances," or the viewpoints for evaluation in context of the constitutionality of a deadline, are:

1. disproportionality of the deadline in relation to the time-limited possibility for exercising a constitutionally guaranteed right (claim), or to the defined time period for limitation of a subjective right. From that point of view, the Constitutional Court, in judgment file no. Pl. US 5/03 (Collection of Decisions, volume 30, judgment no. 109; promulgated as no. 211/2003 Coll.), annulled § 3 and § 6 of Act no. 290/2002 Coll., which were a disproportionate limitation of property rights, and violated Art. 11 par. 1 in connection with Art. 4 par. 4 of the Charter (in the context, the Court considered constitutional a legal framework which would establish such a limitation only in a completely essential timeframe, which can be understood as only a minimal, and clearly, prima facie "transitional" period, but not a period of ten years);

2. arbitrariness by the legislature when setting the deadline (establishing or canceling it). The Court applied this aspect for evaluating the constitutionality of a deadline in the matter file no. Pl. US 2/02 (Collection of Decisions, volume 32, judgment no. 35; promulgated as no. 278/2004 Coll.), in which it found unconstitutional the annulment of § 879c to § 879e of the Civil Code (the "CCC") implemented by Act no. 229/2001 Coll., whereby the legislature interfered in the legitimate expectation of a precisely defined circle of subjects a mere one day before the expiration of the time period in which property rights would have been acquired, as a result of which, subjects who acted in confidence in the conditions previously set by the state were, a mere one day before the expiration of the time period, confronted with the arbitrary steps taken by the state, which the court found inconsistent with Art. 1 of the Protocol to the Convention (with reference to the case law of the European Court of Human Rights in the cases Broniowski v. Poland of 2002, Gratzinger and Gratzingerová v. the Czech Republic of 2002, and Zvolský and Zvolská v. the Czech Republic of 2001);

3. the constitutionally unacceptable inequality of two groups of subjects which results from the annulment of a certain statutory condition for exercising a right due to unconstitutionality, where this annulment does not, without anything further, create an opportunity to exercise rights for the affected group because of the expiration of deadlines as a result of derogation. With this "specific circumstance" as a starting point, in judgments file no. Pl. US 3/94 (Collection of Decisions, volume 1, judgment no. 38, promulgated as no. 164/1994 Coll.) and file no. Pl. US 24/97 (Collection of Decisions, volume 11, judgment no. 62; promulgated as no. 153/1998 Coll.) the Constitutional Court, by annulling the provisions setting the beginning of the time period to exercise a restitution claim, created an opportunity to exercise them for those entitled persons who,

as a result of the condition of permanent residence, could not successfully exercise their claims by the original deadlines. In this regard, the Court stated that “therefore these persons were de facto excluded from the circle of entitled person who could seek financial compensation, and were thus – compared to other entitled persons – unconstitutionally disadvantaged and found themselves in an unequal legal position compared to the others.”

In the present matter, the task for the Constitutional Court is therefore to evaluate whether, in the case of the statutory provisions setting a deadline for exercising the right to issuance of substitute land under § 11 par. 2 of the Act on Land, there are “specific circumstances” which make these provisions inconsistent with the constitutional order or not. “Specific circumstances” under 1. and 2. can also be considered an adequate test of the impermissibility of extreme disproportionality (the rational basis test), and under 3. the test of a procedure arising from the principle of proportionality (suspect classification) [regarding this distinction see Constitutional Court judgment file no. Pl. US 7/03 (Collection of Decisions, volume 34, judgment no. 113; promulgated as no. 512/2004 Coll.); among doctrinaire sources, see, e.g. W. Brugger, Einführung in das öffentliche Recht der USA[Introduction to Public Law in the USA]. München 1993, p. 116 et seq.; J. E. Nowak, R. D. Rotunda, Constitutional Law 4th Ed., St. Paul 1991, p. 568 et seq.].

VIII./d

The Legal Regime for Issuing Substitute Land

The Act on Land also seeks to achieve its aims, which, as previously stated, are to mitigate the consequences of certain property crimes, which were committed against owners of agricultural and forest property in the years from 1948 to 1989, to improve the care for agricultural and forest land by renewing ownership relationships to land, as well as to regulate ownership relationships to land in accordance with the interests of rural economic development and with the requirements for the creation of the landscape and the environment (the preamble), by applying the principle of giving priority to returning the original land and other real estate to entitled persons and the principle of giving priority to in-kind compensation if it is not possible to return the original land. These principles are reflected in § 11 par. 2 of Act no. 229/1991 Coll., as amended by later regulations, under which, if the land can not be issued, “the Land Fund shall transfer to the entitled person, cost-free, other state-owned land in a procedure under § 8 par. 4 of Czech National Council Act no. 284/1991 Coll., on Land Adjustments and Land Offices, as amended by later regulations, as far as possible in the same municipality where the majority of the original land is located, if the entitled person agrees.”

If the entitled person agrees with the transfer of the offered substitute land, the Land Fund is required to perform this in-kind compensation. The provision of § 8 of Act no. 284/1991 Coll., under which the substitute land is to be provided, indicates that this land should correspond to the replaced land in size and be of the same quality. Thus, the

replaced land is defined in terms of type – generically.

Thus, the Act connects issuance of substitute land with the mechanism of land adjustments, limits discretion regarding land offered by the condition of subsidiarity (under which offers of land in a different locality are possible if there is no corresponding land in the original locality), as well as by the consent of the entitled person.

The Constitutional Court took a position on the question of the relationship between the transfer of land which the state, as owner, transfer to other persons, and transfers of land which the state is required to issue to entitled persons – restituents – on the basis of restitution regulations in judgment file no. III. US 495/02 of 4 March 2004 (Collection of Decisions, volume 32, judgment no. 33): "Claims arising under the Act on Land have priority, which follows both from the ratio legis of the Act on Land and the text of § 11 par. 2 (cf. the words "shall transfer"), and from § 19 par. 1 of the Act on land Transfers. If the Fund applies the opposite interpretation, it is outside the framework of the authorization given to it by the Act (cf. Art. 2 par. 2 of the Charter). Such an interpretation can not stand up to systematic analysis. The law (§ 2 par. 1 of Act no. 569/1991 Coll., on the Land Fund of the Czech Republic, as amended by later regulations) orders the Fund to act only within the framework of the Act on Land, whose purpose is to satisfy the claims of entitled persons. The framework later passed in the Act on Land Transfers could change nothing about this legal situation, in view of the principles of protection of legitimate expectations and legal certainty … In other words, the Fund may not de facto give precedence to proceeding under the Act on Land Transfers over satisfying the obligations of the state under § 11 par. 2 of the Act on Land, which the state recognized, because that is inconsistent with its competence in the framework of fulfilling obligations imposed on the state by the Act on Land. The purpose of the Act on Land can not be ignored by reference to Act no. 95/1999 Coll. being a special law. The valid wording of § 1 par. 2 let. a) of Act no. 95/1999 Coll. (under which that Act regulates the procedures of the Land Fund in transferring agricultural land to entitled persons) must evidently be interpreted in view of the principles of protecting material interests (Art. 1 par. 1 of the Protocol to the Convention) and legal certainty, and in view of § 19 par. 1 of the Act on Land Transfers, which declares that it does not affect the Act on Land."

The fundamental question which arises from that legal opinion is the question of legal instruments which pertain to the entitled person for securing his claims against the Land Fund, especially for ensuring their priority.

According to the consistent position of case law and doctrine, the transfer of substitute land is not decision making in administrative proceedings, and the relationship between the Land Fund and the entitled person is not a relationship of power, but is characterized by equality of both subjects, is a private law relationship, and is a debtor-creditor relationship (cf. Supreme Court decision of 10 May 2000, file no. 24 Cdo 212/2000, decision of the special panel under Act no. 131/2002 Coll., on Deciding Certain Jurisdictional Disputes, of 24 November 2004, file no. Konf 80/2003, L. Kopáč, J. Švestka, Úvaha nad možností převodu restitučních nároků k zemědělským pozemkům [Consideration of the

Possibility for Transfer of Restitution Claims to Agricultural Land], Právní rozhledy [Legal Perspectives], 6, 1995, p. 224). According to the Supreme Court decision of 10 May 2000, file no. 24 Cdo 212/2000, in transfers of substitute land the Act on Land Adjustments can not be applied directly to the legal relationship between an entitled person and the Land Fund. However, under settled case law an entitled person can not file a civil complaint seeking the issuance of a particular parcel of land which he chose himself (cf. Supreme Court decision of 29 January 1997, file no. 2 Cdon 522/96, decision of the District Court of Prague 8 of 2 August 2000, file no. 8 C 165/2000, decision of the Regional Court in Ústí nad Labem of 29 February 2000, file no. 35 Co 4/2000; in its decision of 18 January 2001, file no. 26 Cdo 1478/2000, the Supreme Court expressly said: "A claim for the provision of substitute land does not include the entitled person's right as against the Land Fund to choose the substitute land. It is up to the Land Fund to announce which state-owned land may be provided as substitute land. This announcement can not be considered an offer to conclude a contract on the transfer of substitute land.")

If the creditor does not have the opportunity to choose, i.e. the choice for specific definition of the requested verdict, then the question must be answered what claim the creditor in this private law relationship can seek to enforce through a court complaint. Doctrine reacted to this problem with the following legal construction: "If an entitled person wants substitute land from the Land Fund, it can sue for a declaration that the Land Fund has an obligation to conclude a contract on the transfer of such land with him. Act no. 229/1991 Coll. provides an obligation to conclude a contract, but does not specify by what means it is to be obtained. Therefore … the general regime applies. Under § 161 par. 3 of the CPC a legally effective decision imposing the declaration of will replaces that declaration ... Given the complete insufficiency of special provisions in Act no. 229/1991 Coll. ... we ...work our way to the Civil Code as the most general private law regulation, and to the fact that the law also does not impose anything further on the Land Fund regarding which land in a municipality (if there is more than one parcel) it is obligated to transfer to the entitled person. Of course, if it is possible to meet the obligation in more than one way, under § 561 par. 1 of the Civil code it is the debtor who has the right to choose. ... In this situation the requested verdict must necessarily provide alternatives and include (using the conjunction "or") all parcels of land in the real estate registration area of the municipality which come under consideration" (M. Kindl, Restituce v soudní praxi. [Restitution in Court Practice] Prague 1997, p. 20). Taking this doctrinaire position as a starting point, the District Court in Děčín, in the matter file no. 19 C 155/2000, ruled that entitled persons can not exercise their claims against the Land Fund for provision of substitute land in the form of cost-free transfer if it is verified that by an acceptable deadline their entitled claims have not yet been satisfied or have not yet begun to be addressed at all, and "a complaint seeking a declaration replacing the expression of will for a contract on cost-free transfer of land is derived from the claim of entitled persons to the provision of substitute land, so – from the viewpoint of maintaining the precision, definiteness and understandability of the requested verdict – it is necessary to make the requested verdict specific, which can not be achieved otherwise than by stating the relevant parcels of land which can be subject to cost-free transfer to entitled persons. The court is then bound by the scope of substitute parcels which the entitled persons raised in the proceedings; from the parcels of land which are specified in the requested verdict, it shall take those parcels which meet the conditions for cost-free transfer to the entitled

persons who are plaintiffs, in proportional extent (value) to the un-issued parcels, with the provision that the defendant is also authorized to (alternatively) issue to the plaintiffs other parcels in the real estate registration area of the same municipality, which would come into consideration in the given case. Thus, in the beginning phase of the complaint, when the entitled persons do not know whether a restitution claim has been exercised for particular parcels of land or it can not be issued due to other statutory reasons, the alternative requested verdict meets the criteria in order for the court to be able to address the matter on the merits, with the provision that in the appropriate phase of the dispute (after verification of suitable parcels of land which can be used as compensation or for cost-free transfer) the entitled persons may modify their complaint with an appropriate dispositional act (§ 95 of the CPC). Thus, using an alternative requested verdict eliminates speculation that the complaining entitled persons are seeking only a particular parcel (parcels) of land without a substantive law entitlement, but that they are exercising the execution of their right arising from their entitlement to cost-free transfer of land under § 11 par. 2 of Act 229/1991 Coll."

In the cited judgment, file no. III. US 495/02, the Constitutional Court evaluated the justification of the grounds for the complaint for the issuance of a certain parcel of land by entitled persons under § 11 par. 2 of the Act on Land. It stated that "the plaintiffs' entitlement for the issuance of substitute land had not been satisfied for a long time. The courts had an obligation to review whether this situation was not the result of arbitrariness or even self-servingness by the Fund in implementing the Act on Land. They had to deal with objections that the Fund had no interest in issuing land, because it had benefits from administering it, and that its public offers were not capable of satisfying the statutory claims of entitled persons, who were thus de facto forced to give up their claim in favor of financial settlement. Such actions by the Fund are a clear violation of Art. 2 par. 2 of the Charter, or Art. 2 par. 3 of the Constitution." It also stated that although the relationship between the Land Fund and the entitled person under § 11 par. 2 of the Act on Land is a private law relationship (i.e. ruled by the principle of equality) it is impossible not to be aware that the Land Fund is "a public institution, because it fulfills a public purpose," and thus, "if the general courts are to meet their constitutional obligation to provide protection to interests protected by law, they must, when evaluating the procedures followed by the state, or by persons authorized by it (fulfilling the state's obligations), consider whether self-serving conduct occurs."

In this regard the Constitutional Court took a position on the previous relevant case law of the general courts: As regards the legal opinion of the Supreme Court, contained in the decision of 18 January 2001, file no. 26 Cdo 1478/2000, under which "a claim for the provision of substitute land does not include the entitled person's right to choose the substitute land," and "an announcement by the Land Fund of the Czech Republic as to which land can be offered as substitute land is not an offer to conclude a contract,: the Constitutional Court stated that "this legal opinion must be applied and interpreted in a constitutionally consistent manner," the Supreme Court decision (which took over its older legal opinion from the decision of 29 January 1997, file no. 2 Cdon 522/96) "clearly comes out of the presumption that the Fund duly performs its statutory obligations and limits a claim to seek a specific substitute parcel of land only so that the allocation of land will be

fair. The reference to the Supreme Court's legal opinion can not serve to legitimize a procedure in allocation of substitute land which would (from an objective point of view) be arbitrary or discriminatory. Self-serving conduct or dilatoriness in allocating land is illegal and illegal conduct can not be giving judicial protection. A complain seeking the issuance of a particular parcel of land may be the only means of defense against self-serving conduct. The Constitutional Court also points out that the constitutional ban on denial of justice gives rise to an obligation on the general courts to fill in gaps in the laws where the opposite would make entitlements de facto impossible to exercise. In any case, another Supreme Court decision, of 22 February 2002, file no. 28 Cdo 1847/2001 shows that the Supreme Court too is aware of its obligation to ensure that a claim be enforceable under § 11 par. 2 of the Act on Land."

In the conclusion of the decision, the Constitutional Court expressly emphasized that its review was limited to questions of constitutionality, and respected the maxim of not replaced the function of the general courts in the interpretation and application of simple law, and therefore stated the following: "in conclusion, the Constitutional Court points out that even if the general courts continued to maintain that a complaint can not identify a specific parcel of land, it must also take into account its obligation (in view of the ban on denial of justice, or the obligation to provide protection to legitimate expectations) to guide the plaintiffs to amend their requested verdict so that, if they succeed, it will be possible to impose on the Fund an obligation to issue, within a specific time, a parcel of land designated by the court, so that its valued, based on the size, location, and quality, will as much as possible approach the current value of the original land. This requirement arises from the text of § 11 par. 2 of the Act on Land, which presumes the consent of the entitled person with the offered land. We must also point out that the administration of state property was always subject to the rules which are now expressis verbis expressed in the Act on the Property of the Czech Republic, under which "The property must be used purposefully and economically to fulfill the functions of the state and for the performance of the specified activities; the property can be used or disposed of in another manner only under conditions specified by a special legal regulation or this Act." (§ 14 par. 1 of Act no. 219/2000 Coll., on the Property of the Czech Republic and Its Functions in Legal Relationships, which also binds the Fund – § 2 par. 2 of the cited Act). The Fund can not ignore the already existing obligations of the state which it took upon itself in § 11 par. 2 of the Act on Land.".

VIII/e Ratio decidendi

Thus, the case law of the general courts on the question of grounds for a complaint applying to the entitled person in exercising the right to issuance of substitute land under § 11 par. 2 of the Act on Land can be generalized with two statements: it can be considered relevant and settled only insofar as it defines the grounds negatively (i.e. if it does not consider the transfer of substitute land to be decision making in administrative proceedings and if it rules out the entitled person's choosing the land in a claim for provision of substitute land against the Land Fund); insofar as the general courts, in some

previous decisions defined the entitled person's grounds for a complaint positively, we can not yet speak of a settled and predictable case law.

Under § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., an entitled person has a right to transfer of state-owned land for 2 years from the day a decision of the Land Fund goes into legal effect; if the Land Fund does not decide on the transfer, for 2 years from the time when he could first have exercised the claim for a transfer before the Land Fund, and this deadline expires.

If a decision of a Land Office went into legal effect or a claim for a transfer was exercised before Act no. 253/2003 Coll. was in effect, i.e. before 6 August 2003, under Art. VI of the Act the period for transfer of land ends on 31 December 2005.

Thus, Art. VI of Act no. 253/2003 Coll. set a minimum period of two years, four months and 25 days (i.e. until 31 December 2005) for the exercise of claims for issuing substitute land for cases where the decision of a Land Office, as grounds for issuance, went into effect before Act no. 253/2003 Coll. went into effect (i.e. 6 August 2003), as well as for cases where there were other grounds for issuance on the day actionis nata also before the day Act no. 253/2003 Coll. went into effect (i.e. 6 August 2003).

The provisions of § 13 par. 6 and 7 of the Act on Land provide a period of two years for those cases where a decision of the Land Office, as grounds for issuing land, went into legal effect after the day that Act no. 253/2003 Coll. went into effect, and for those cases where there are other grounds for issuing land on the day actionis nata also after the day that Act no. 253/2003 Coll. went into effect.

At this point we must note the points in the petition from the group of senators and the group of deputies, the objection of inequality caused by the lack of justifiable differentiation between grounds which the state, as the owner and a party to a private law relationship transfers to other persons, and land which the state iw required to issue to entitled persons – restituents – on the basis of restitution claims, and the inequality between the group of restituents whose claims are successfully satisfied and the group of restitutents whose claims are not satisfied [both in cases of objective problems not caused either by the debtor (the state) or the creditor (the entitled person) and in cases caused by the procedures of the Land Fund], as well as the objection that this violates the constitutional principle of protection for the citizen's justified confidence in the law (legitimate expectations), both in terms of the principle of a ban on arbitrariness and legal certainty (arising from the principle of a law-based state) and in terms of the right arising from the Protocol to the Convention (protection property entitlements).

The Constitutional Court already fully accepted the first and third objections in judgment file no. III. US 495/02; the following maxims apply for the evaluation of all three

objections:

Without disputing the claim of the Land Fund on the adequacy of a "structure offer" for satisfying the claims of entitled persons under § 11 par. 2 of the Act on Land (see report from the Chairman of the Land Fund's Executive Committee Ing. J. M., of 28 November 2005, ref. no. PF 2258/05MI-64297) and also without disputing the claim of the petitioners concerning observance of the principle vigilantibus iura by entitled persons, the Constitutional Court is of the opinion that there is no evidence which would permit it to verify these claims in proceedings to review a norm. Such verification is conceivable only given an effective procedural means for protection of the right whose purpose is to verify the sufficiency of an offer for a specific entitled person Such a procedural means may be established by express inclusion in a statute and the corresponding practice in application, or it can be developed and settled by case law.

By analyzing the relevant regulations in the Act on Land, as well as the existing relevant case law of the general courts and the Constitutional Court we can not but conclude that none of the cited alternatives has been met. Legal doctrine is of a similar opinion in this regard: "The entire process of providing other land is – apart from its legal, organizational and territorial-technical difficulty – also affected by significant subjective influences, which can lead to doubts about the objectivity in the procedures followed by particular local offices of the Land Fund of the CR. … In my opinion, all these considerations – which, in many respects go beyond analysis of the valid legal regulations – can lead to only one conclusion. The legislature's idea that there is nothing simpler than to provide different land to the entitled person instead of the non-issued land, obviously appears to be, at the very least, naïve. However, if the valid legal regulation is based on this principle of material compensation, it is also necessary to pay sufficient attention to legal regulation of the procedure in which it is supposed to take place. And in my opinion, as regards the process of providing other suitable land, that has not yet been achieved (despite all the more or less successful amendments of the relevant provisions of the Act on Land)." (I. Průchová, Restituce majetku podle zákona o půdě. [Restitution of Property Under the Act on Land.] Prague 1997, p. 194.)

The foregoing indicates that entitled persons under § 11 par. 2 of the Act on Land have no effective procedural means for exercising their right to the issuance of substitute land (in other words, at the level of simple law a subjective right is established without a claim, that is, without a procedural means for enforcing it). For the Constitutional Court, in proceedings to review norms (review of constitutionality of § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll.), this then leads to the statement that the deadlines established in § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll., impose a time limitation on the exercise of the right of entitled persons under § 11 par. 2 of the Act on Land for the issuance of substitute land, i.e. a right which does not have the benefit of an effective procedural means, wherefore, in terms of the criteria for evaluating in context the constitutionality of the deadlines, this is legislative arbitrariness, inconsistent with the constitutional principle of protecting the citizens'

justified confidence in the law, which is a component of a law-based state (Art. 1 par. 1 of the Constitution), and in the present context also inconsistent with the principle of legitimate expectations when exercising property rights arising from Art. 1 of the Protocol to the Convention.

Thus, a contrario at the same time the possibility to exercise the right of an entitled person (restituent) for the issuance of substitute land under § 11 par. 2 of the Act on Land, limited by a proportional deadline, is constitutional, of course, on the condition that there is a valid effective procedural means to protect that right.

In this regard the Constitutional Court has repeatedly pointed out that such a procedural means must be established by express statutory provisions and corresponding practice in application, or it may be developed by the case law of the general courts. The prerequisite for the constitutionality of it being established judicially is that the subject matter of a complaint be specifically defined, that the procedural means for protection of the right be settled in the decision making practice of the courts, and that their decision making be predictable.

VIII./f

The Function of Financial Compensation

In the key restitution laws, Act no. 87/1991 Coll. and Act no. 229/1991 Coll., financial compensation, in terms of the original intentions of the legislature, did not fulfill the function of an equivalent of the non-issued thing or land.

This fact can also be confirmed by speech made by the joint reporter of the committees of the Chamber of the People of the Federal Assembly, deputy Václav Benda, during discussions of the draft Act on Extra-Judicial Rehabilitation at a joint session of the Chamber of the People and the Chamber of Nations of the Federal Assembly of the CSFR on 19 February 1991, who stated: “We, deputies from the majority of committees and from the initiating group which worked on the drafts, fundamentally supported in-kind restitute whenever possible, but we did not want to widely introduce financial or even, as in the original drafts, monetary restitution.”

Similarly, the proponent of the Act on Land was guided by the same intentions on the question of financial compensation as was the case with the Act on Extra-Judicial Rehabilitation. The background report to the draft Act on Land states: Instead of land and buildings which it will not be possible to return, there will be an entitlement to monetary compensation, which will be provided to the original owners by the appropriate central administration body of the republic in the same scope and under analogous conditions as compensation is provided in extra-judicial rehabilitation.”

In both of the cited restitution laws, the principle of giving priority to in-kind restitution over financial compensation resulted in a construction under which financial compensation did not fulfill the purpose of equivalent value for the non-issued thing or land, and functioned only as symbolic satisfaction. This construction arose from the economically limited abilities of the state, after 1989, to mitigate through financial compensation certain crimes caused by the communist totalitarian regime.

At this point the Constitutional Court refers to its extensive settled case law, in which it formulated the aspects of constitutional review of the category of equality [see, especially judgments file no. Pl. US 16/93 (Collection of Decisions, volume 1, judgment no. 25; promulgated as no. 131/1994 Coll.), file no. Pl. US 36/93 (Collection of Decisions, volume 1, judgment no. 24; promulgated as no. 132/1994 Coll.), file no. Pl. US 4/95 (Collection of Decisions, volume 3, judgment no. 29; promulgated as no. 168/1995 Coll.), file no. Pl. US 5/95 (Collection of Decisions, volume 4, judgment no. 74; promulgated as no. 6/1996 Coll.), file no. Pl. US 9/95 (Collection of Decisions, volume 5, judgment no. 16; promulgated as no. 107/1996 Coll.), file no. Pl. US 33/96 (Collection of Decisions, volume 8, judgment no. 67; promulgated as no. 185/1997 Coll.), file no. Pl. US 15/02 (Collection of Decisions, volume 29, judgment no. 11; promulgated as no. 40/2003 Coll.), file no. Pl. US 33/03 (Collection of Decisions, volume 35, judgment no. 151; promulgated as no. 584/2004 Coll.), file no. Pl. US 47/04 (promulgated as no. 181/2005 Coll., to be published in volume 36 of the Collection of Decisions)]. in its understanding of the principle of equality it agreed with the conclusion of the Constitutional Court of the CSFR (judgment file no. Pl. US 22/92, Collection of Decisions of the Constitutional Court of the CSFR, judgment no. 11, p. 37). In it, the Constitutional Court of the CSFR understood equality as a relative category, which requires the elimination of unjustified differences. Therefore, the principle of equal rights must be understood such that legal differentiation in access to certain rights may not be an expression of arbitrariness; however, this does not mean that everyone must be granted any right at all. The Constitutional Court thereby shifted the content of the principle of equality into the area of constitutional acceptability of aspects for distinguishing subjects and rights. It sees the first aspect as ruling out arbitrariness. The second aspect in evaluating the unconstitutionality of a legal regulation which establishes inequality is the interference it creates in one of the fundamental rights and freedoms. In other words, in its case law the Constitutional Court interprets the constitutional principle of equality in terms of accessory and non-accessory equality. Thus, a particular legal regulation which advantages one group or category of persons over others can not be described as a violation of the principle of equality without anything further. The legislature has a certain discretion to decide whether to establish such preferential treatment. In doing so, it must take care that the preferential approach is based on objective and reasonable grounds (a legitimate aim of the legislature) and that there is a proportional relationship between that aim and the means for achieving it (a legal advantage) (see, e.g., decisions of the European Court of Human rights in the matters Abdulaziz, Cabales and Balkandali of 1985, § 72; Lithgow of 1986, § 177; Inze of 1987, § 41).

Based on these aspects of constitutional evaluation of the category of equality, because the legislature based the differentiation between subjects and rights in the present matter

on objective and reasonable grounds we can not agree with the petitioners' objection that the contested statutory provisions are inconsistent with the constitutional order due to unconstitutional inequality between the price of substitute land and the amount of financial compensation.

VIII./g

Modification Rationis Decidendi: the Legal Position of Assignees

Legal doctrine took a position on the interpretation of § 11 par. 2 of the Act on Land during the 1990s (see L. Kopáč, J. Švestka, Úvaha nad možností převodu restitučních nároků k zemědělským pozemkům, [Thoughts about the Possibilities for Transfers of Restitution Claims to Agricultural Land] Právní rozhledy [Legal Perspectives], 6, 1995, p. 224), according to which claims under the Act on Land "are a right to performance from a legal obligation relationships, which is generally governed by the Civil Code(§ 488 – § 852)," and thus "they can be assigned on the basis of § 524 of the CC; for the abovementioned reasons, this assignment is not prevented by § 525 par. 1 of the CC," and "upon assignment of the claim the assignee acquires not only the right to have the obligated party fulfill the obligation, but all rights which the assignor had at the time of assignment (§ 524 par. 2 of the CC). These rights include the right to choose alternative performance, if the assignor has not yet made that choice." Finally, "the right to substitute land under § 11 par. 2 of the Act on Land can not be considered a receivable to which § 33a applies, because § 33a concerns only receivables the subject of which is the provision of proportional financial compensation. However, claims for the return of restituted land or issuance of substitute land must be considered receivables under § 488 of the CC."

This interpretation was subsequently confirmed by the amendment of Act no. 95/1999 Coll., implemented by Act no. 253/2001 Coll., which provided in Art. I point 5: "In § 1 par. 2 letter a) reads: 'a) the procedure of the Land Fund in transferring agricultural land to entitled persons who have a right to other land under § 11 par. 2 of Act no. 229/1991 Coll., Regulating Ownership of Land and Other Agricultural Property, as amended by later regulations, (the 'Act on Land') and to natural persons or legal entities to whom that right devolved or was transferred ('entitled persons'),'" Thus, this statutory provision includes in the set identified by the legislative abbreviation "entitled persons" the subset of entitled persons under § 11 par. 2 of the Act on Land and the subset of their heirs, and finally the subset of assignees.

The background report said the following regarding interpretation of the provision: "The regulation confirms the possibility of assigning claims to other land."

The fundamental question which must be answered in this context is whether grounds for derogation which favor annulling § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll. apply not only to

entitled persons under § 11 par. 2 of the Act on Land, but also to assignees. In other words, whether or not it is justified to extend the unconstitutionality of the contextual deficit of statutory deadlines established in these provisions, consisting of the lack of an effective procedural means to protect rights, both to entitled persons under § 11 par. 2 of the Act on Land, and to assignees.

The settled practice of the general courts in a similar context [when evaluating the reasons for income tax exemptions under § 4 par. 1 let. g) of Act no. 586/1992 Coll., on Income Tax, as amended by later regulations, in the case of income from the sale of issued real estate] distinguishes the rights of original restituents and assignees: "Income from the sale of real estate acquired under the Act Regulating Ownership of Land and Other Agricultural Property can not be exempted from individual income tax if the taxpayer acquired this real estate on the basis of succession to a restitution claim exercised under provisions of the Civil Code – this is because the tax payer did not become an entitled person under provisions of the Act Regulating Ownership of Land and Other Agricultural Property." (decision of the Municipal court in Prague of 10 June 2003, file no. 28 Ca 709/2002, decision of the Regional Court in Brno of 2 September 2003, file no. 29 Ca 415/2001, decision of the Supreme Administrative Court of 27 October 2004, ref. no. 5 Afs 29/2004-74). The Regional Court in Ústí nad Labem, in its decision of 27 March 2003, file no. 15 Ca 201/2001, states regarding the reasons for this distinction: The common element of exempt incomes under the Income Tax act is the fact that the exempt incomes in fact do not represent an increase in the taxpayer's property, because they involve compensation for property taken away in the past, or income obtained by sale of issued property." The case law of the general courts, which in this regard distinguishes the legal position of original restituents and assignees, was subsequently confirmed by the Constitutional Court (decision file no. I. US 406/2000, file no. IV. US 439/04). The Constitutional Court emphasized that this distinction is justified by the fact that "the concept of § 4 par. 1 let. g) of the Act on Income Taxes indicates the obvious intent of the legislature to give tax exemptions to person previously injured, to whom property was returned, and not to other persons; real estate issued under a special regulation, as the cited provision has in mind, must mean real estate issued to entitled persons on the basis of legal facts specified for the purpose of eliminating property crimes, and not real estate issued on the grounds of another, derivative entitlement" (file no. IV. US 439/04).

The significance and purpose of the legal construction under which claims under the Act on Land are a right to performance from an obligational legal relationship, generally regulated by the Civil Code (§ 488 – 852), and which can therefore be assigned on the basis of § 524 of the CC, was to expand the range of alternatives for satisfying the claims of restituents. However, one can not conclude from it that the purposes of the Act on Land, as established in the preamble, also apply to assignees. Therefore, the same consideration applies in this context as that which guided the general courts in evaluating the grounds for income tax exemption under § 4 par. 1 let. g) of the Act on Income Tax. In this case, with assignees, the pecuniary purposes of assignment are different from the purpose of issuing substitute land under § 11 par. 2 of the Act on Land to original restituents. When these receivables were assigned, the assignees must have been aware not only of the possible advantages, but also the risks of that assignment in view of the manner in which

the offers and allocation of substitute land by the Land Fund were made; therefore, when evaluating the constitutionality of § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll., as regards their situation these statutory provisions can not be said to be inconsistent with the constitutional principle of protecting the citizen's justified confidence in the law, which is a component of a law-based state (Art. 1 par. 1 of the Constitution), or, in this context, inconsistency with the principle of legitimate expectation of property rights arising under Art. 1 of the Protocol to the Convention.

VIII./h

Formulation of the Verdict of the Derogation Judgment

Thus, the ratio decidendi of the judgment applies only to part of the entire circle of persons subject to § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll.; that part is entitled persons under § 11 par. 2 of the Act on Land (i.e. original restituents) and their heirs, but not assignees.

However, annulling § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll. in their entirety would also apply to persons to whom the grounds for derogation do not apply. In judgment file no. Pl. US 24/94 (Collection of Decisions, volume 3, judgment no. 19; promulgated as no. 80/1995 Coll.), which was followed by case law in proceedings to review norms, the Constitutional Court defined the concept of a statutory provision to mean any part of the text of a legal regulation with normative content, that is, an expression, containing any linguistic means, which expresses a legal norm or one of the components of its elements (e.g. the circle of subjects or situations), or its legal consequences (i.e. a legal obligation or penalty). The provision of § 1 par. 2 let. a) of Act no. 95/1999 Coll., as amended by of Act no. 253/2003 Coll., introduced the legislative abbreviation "entitled persons" both for entitled persons, who have a right to other land under § 11 par. 2 of the Act on Land, and for natural persons or legal entities to whom that right devolved or was transferred.

Thus, § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll. contain an implicit definition of the set of persons concerned as the subset of entitled persons under § 11 par. 2 of the Act on Land and their heirs, and the subset of assignees.

In derogation judgments file no. Pl. US 34/04, file no. Pl. US 43/04 (promulgated as no. 355/2005 Coll. and no. 354/2005 Coll., both to be published in volume 38 of the Collection of Decisions) the Constitutional Court, in comparable cases, annulled a certain statutory provision only for a precisely defined subset of the entire set of persons concerned, the subset to which the grounds for derogation applied.

Based on the reasons explained above, the Constitutional Court annulled § 13 par. 6 and 7 of Act no. 229/1991 Coll., as amended by of Act no. 253/2003 Coll., and Art. VI of Act no. 253/2003 Coll., insofar as they apply to entitled persons who have a right to other land under § 11 par. 2 of Act no. 229/1991 Coll., as amended by of Act no. 183/1993 Coll., and to their heirs, due to inconsistency with the constitutional principle of protection of the citizen's justified confidence in the law, which is a component of a law-based state (Art. 1 par. 1 of the Constitution), and due to inconsistency with the principle of legitimate expectations in the exercise of property rights arising under Art. 1 of the Protocol to the Convention. Under § 58 par. 1 of the Act on the Constitutional Court, judgments in which the Constitutional Court decided on a petition to annul a statute or another legal regulation or their individual provisions under Art. 87 par. 1 let. a) a b) of the Constitution are executable on the date they are promulgated in the Collection of Laws, unless the Constitutional Court decides otherwise. In this case the Constitutional Court decided that the judgment goes into effect on the day it is announced [it acted likewise in the matter file no. Pl. US 13/05 (the judgment was promulgated as no. 283/2005 Coll. and will be published in volume 37 of the Collection of Laws)], for reasons of achieving protection of constitutionality in the adjudicated matter.

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

Brno, 13 December 2005