# 1994/09/13 - PL. ÚS 9/94: CITIZENSHIP

**HEADNOTES**

**1. We cannot agree with the petitioners' assertion that any foreigner whatsoever may acquire citizenship of the Czech Republic by a declaration pursuant to § 6 of Czech National Council Act No. 40/1993 Coll.1) Ties to their state of origin (Czechoslovak Republic, Czechoslovak Socialist Republic, Czech and Slovak Federal Republic) must always be manifested, and these ties must be continuous and lasting, even from the perspective of the principle cives origo facit. The issue of the possibility of other citizenships which the individual might have acquired is not inquired into within the framework of the declaration because that declaration is legally based on the existence of citizenship of the Czech and Slovak Federal Republic, and it merely puts citizenship of the newly created Czech Republic into concrete form.**

**2. It is the conditio sine qua non of every democratic government that decision-making on a series of specialized issues be entrusted to members of the government and to their respective offices; this is also true from the point of view of the ordinary and necessary division of power. The government is the supreme body of executive power (§ 67, para. 1 of the Constitution). So other executive bodies are naturally subordinate to it. The ministries are subordinated to the government not only by means of legal enactments such as generally binding normative acts, but also by means of internal normative instructions and individual acts (§ 21 of Czech National Council Act No. 2/1969 Coll., concerning the Establishment of Ministries and other Central Authorities of State Administration of the Czech Republic, according to which the ministries in all of their activities shall follow constitutional and other acts and government resolutions). The relationship between the government and the ministries is also explicitly stated in § 28, para. 1 of Czech National Council Act No. 2/1969 Coll., according to which the government of the Czech Republic directs, supervises and harmonizes the activities of the ministries. In its capacity as the supreme body of executive power, the government is, at the same time, the representative of that power in relation to the Assembly of Deputies as well. In their given sector, the ministries deal with issues assigned to their competence, and in prescribed areas of state policy, it submits them to the government as a whole for its consideration. The competent minister is the bearer of constitutional political responsibility for the actions of the ministry, and in this respect the common methods of parliamentary democracy, such as interpellation (Article 53, para. 1, 2 of the Constitution), the subpoena right of the Assembly of Deputies and its bodies or investigating commissions (Art. 30, Art. 38, para. 2 of the Constitution), provide oversight of his actions.**

**3. The Czech Republic resolved the issue of the acquisition of Czech citizenship by a domestic enactment, Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., which contains the principle of the prevention of the creation of dual citizenship and prevention of the creation of statelessness. In this way, it was linked to the legal enactments currently in force in the Czech and Slovak Federal Republic, and it was based on the fact that analogous principles are found in the legal**

**enactments of other European states as well. On the contrary, it must be emphasized that on the day the independent states (the Czech and Slovak Republics) came into existence, the citizens of each of the states became foreigners in the other state. Therefore, as an independent state, the Czech Republic may set the conditions for the acquisition of citizenship quite independently of the legal rules of another state (the Slovak Republic). This right was exercised by the adoption of Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., which, among other things, provided for the acquisition of citizenship by foreigners. It is precisely this relationship (that is, the relationship to the Czech Republic) which must be manifested in an appropriate fashion, and not merely by ties to the territory, rather it must also be objectively manifested to the Czech Republic as such. Precisely this manifestation was included among the conditions under which it was possible to acquire citizenship of the Czech Republic. It is necessary to repeat again that each sovereign state has the right to set the conditions under which its citizenship can be obtained.**

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

**JUDGMENT**

**IN THE NAME OF THE CZECH REPUBLIC**

The Plenum of the Constitutional Court of the Czech Republic [hereinafter "Court"], concerning the petition of a group of Deputies of the Assembly of Deputies of the Parliament of the Czech Republic proposing the annulment of § 6,1) § 11,2) § 12, para. 3,3) § 18, para. 1, letters a), c)4) and § 18a, letters a), b)5) of Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, as amended by Act No. 272/1993 Coll., decided thusly: The petition is rejected on the merits.

**REASONING**

I.

On 14 April 1994, the Court received the petition of a group of 46 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic (hereinafter "group of Deputies") to initiate a proceeding seeking the annulment of § 6,1) § 11,2) § 12, para. 3,3) § 18, para. 1, letters a), c)4) and § 18a, letters a), b)5) of Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, as amended by Act No. 272/1993 Coll.

Since the submission met the requirements stated in § 64 of Act No. 182/1993 Coll., on the Constitutional Court, and the petition was admissible pursuant to § 66 of the same act, the Court initiated a proceeding and requested the Parliament of the Czech Republic to submit its views thereon within the period defined by statute. Pursuant to § 42, para. 3 and § 69 of Act No. 182/1993 Coll., the petition in question was sent to the Assembly of Deputies [the lower chamber of Parliament] for its opinion. The Chairman of the Assembly of Deputies, Dr. Milan Uhde, confirmed the position that the Assembly of Deputies took when it voted on the act. He stated that the purpose of the adopted act is, with regard to the creation of an independent state (the Czech Republic), to newly regulate the institution of citizenship and to give it comprehensive treatment. He referred to the fact that the act is based on the principal that each citizen should be the citizen of only one state, that such a legal rule is found in several other states of Europe, and that it is not new even to our legal system. He further emphasized that each citizen should have the possibility, while observing the legally prescribed conditions, to acquire or lose citizenship of the Czech Republic. For that reason, in addition to defining the conditions, it was necessary, as exactly as possible, to establish the grounds upon which it is possible to waive some of the conditions for citizenship. In relation to citizens of the Slovak Republic, the act then contains a special procedure which enables them to acquire citizenship of the Czech Republic if they meet the prescribed conditions. The amendment to the act then took care of the situation which developed in applying the act, when, as a result of the experience gained in applying the act, it was discovered that certain of its provisions might be considered as too severe by certain groups of citizens. In conclusion, he stated that the adopted act was closely tied to the creation of an independent Czech state, that it contained a complete legal regime concerning citizenship in conformity with internationally protected human rights and fundamental freedoms.

II.

Citizenship can generally be defined as a relationship between an individual and a state which is not limited in duration and not restricted to the state's territory, which, as a rule, is not revocable against the will of the individual, and on the basis of which is founded an individual's capacity for reciprocal rights and duties, consisting primarily of the right of the individual to the state's protection both within its territory and without, the right of the individual to reside in the territory, and the right to take part in the administration of public affairs. The primary duties of the citizen consist in fidelity to the state, commitment to its defense, the performance of certain tasks for which he is competent, and the observance of legal enactments of the state, even when outside of its territory. The specific content of the citizenship right is determined by the legislation of individual sovereign states. It is the sovereign prerogative of the state to determine the conditions under which its citizenship is acquired and lost.

Citizenship is unambiguously an institution of a state's domestic law, and other states are guided by the principle of the non-interference in the internal affairs of another state. However, the fact that a person is the citizen of one country can have impact even outside that country in consideration of the fact that citizenship extends protection to the individual who bears it even in the territory of other states. Of course, in such cases a conflict of interests might result, and in this way the institution of citizenship comes

within the purview of international law. The international application of the recognition of citizenship in each individual case must be based on the national law of the effected state; the decision of the state to grant its own citizenship does not have to be internationally accepted without question. In the Nottebohm case, the International Court of Justice adjudged that "a state is not entitled to expect that the rules which it lays down governing the acquisition of citizenship have a claim to recognition by other states if it does not comport itself in conformity with the universal goals of the legal bond of citizenship, pursuant to which the individual has 'genuine' ties to the state which protects its citizens from other states." (ICJ Rep., 1955, p. 23). In other words, from the international perspective, other states do not have to recognize a state's grant of its citizenship to an individual who does not have close ties to the state granting the citizenship. Even though the decision of the International Court of Justice is only binding on the states which were parties to the case, from the perspective of general international law, it can be asserted that, with the exception of the application of certain international treaty commitments, the set of rules a state adopts for the granting of citizenship (including setting down the category of persons upon whom citizenship may be conferred and the conditions and the procedures which an individual must fulfill in order to have citizenship conferred on him) is a matter for each state to determine independently (Nottebohm case, ICJ Rep., 1955, p. 20).

III.

The petitioners claim that § 6 of Czech National Council Act No. 40/1993 Coll.,1) is not in conformity with Art. 1 of the Czech National Council Constitutional Act No. 4/1993 Coll.,6) on Measures Connected with the Dissolution of the Czech and Slovak Federal Republic. § 6 of the cited act1) governs the acquisition (by declaration) of Czech citizenship by persons who on 31 December 1992 were citizens of the Czech and Slovak Federal Republic but whom it was not possible to designate as either a Czech citizen or a Slovak citizen. According to the petitioners, the wording of § 6 of the cited act1) permits a foreign citizen to acquire Czech citizenship by a mere declaration. They further assert that "on 1 January 1969 and on 31 December 1992, the possibility was ruled out that someone could be a Czechoslovak citizen and not at the same time be a citizen of the Czech (or Slovak) Republic. There was not a group of individuals who were Czechoslovak citizens and who would not at the same time have also been either Czech or Slovak citizens." However, this assertion does not pass muster. § 6 of the cited act1) in its present form is not applicable to foreigners (to persons with foreign citizenship) because the basic condition for the application of this provision is that the person have held citizenship of the Czech and Slovak Federal Republic on 31 December 1992. Such a legal situation would come into consideration if a citizen of the Czech and Slovak Federal Republic were at the same time a citizen of another state (therefore, one holding dual citizenship). With regard to § 6 of the cited act,1) however, the objection of foreign citizenship does not come into consideration, because this section does not provide for the new acquisition of citizenship by means of a grant to foreigners (in which case the condition that the person be released from ties to his state of origin would have to be satisfied), rather it is only a confirmation of the existing original citizenship of the Czech

and Slovak Federal Republic and the transformation of it into Czech citizenship. The existence of a second (foreign) citizenship is not decisive in this instance.

However, it is important to answer the question whether on 31 December 1992 it was possible for individuals to be citizens of the Czech and Slovak Federal Republic without being designated either as citizens of the Czech Republic or of the Slovak Republic. By analyzing the previous legal rules concerning the acquisition and loss of citizenship, without doubt one may come to the conclusion that such a legal state of affairs was indeed possible. The institution of citizenship of the Czech Socialist Republic was constituted by Act No. 39/1969 Coll. Pursuant to § 2, para. 1 of the cited act, a person who had citizenship of the Czechoslovak Socialist Republic on 1 January 1969, was a citizen of the Czech Socialist Republic, if he was born in the Czech Socialist Republic. Pursuant to § 2, para. 2 of the cited act, a citizen of the Czechoslovak Socialist Republic who was born abroad was a citizen of the Czech Socialist Republic, if on 1 January 1969 he had applied for permanent residence in the Czech Socialist Republic, or possibly even if the last permanent residence that he or his parents had prior to going abroad was in the Czech Socialist Republic. However, Czech National Council Act No. 39/1969 Coll., even contained provisions (in its § 3) resolving the situation of individuals who had citizenship of the Czechoslovak Socialist Republic, but whose citizenship (of the Czech Republic or the Slovak Republic) could not be determined. The above-mentioned legal state-of-affairs, that is, individuals having citizenship of the Czechoslovak Socialist Republic without it being possible to designate them either as citizens of the Czech Socialist Republic or of the Slovak Socialist Republic, could actually have existed, for citizenship of the national republics was created subsequently in 1969. Under the preceding legal rules (Act No. 194/1949 Coll., on the Acquisition and Loss of Czechoslovak Citizenship), a person acquired citizenship by birth in the Czechoslovak Republic to parents who were citizens (basic method - § 1, para. 1 of the cited act), and under § 1, para. 1 of the cited Act, even if a child was born abroad, provided the father and mother were citizens of the Czechoslovak Republic. Under those conditions, an individual could have Czechoslovak citizenship (and, pursuant to Czech National Council Act No. 39/1969 Coll., citizenship of the Czechoslovak Socialist Republic, and even subsequently of the Czech and Slovak Federal Republic), even if the condition of permanent residency was not satisfied either by him or by his parents. That is to say that, with such parents, Czechoslovak citizenship might have been acquired by "inheritance" from ancestors. Pursuant to § 3 of Czech National Council Act No. 39/1969 Coll.,7) these individuals were able to acquire citizenship of the Czech Socialist Republic by declaration. However, these individuals, in this case citizens of the Czechoslovak Socialist Republic, had the right to make such a declaration, not the duty. Of course, it is necessary to emphasize at the same time that the cited legal regime did not provide for any deadline for the exercise of this right and did not even lay down the legal consequences of a possible failure to exercise this right. It is possible to easily deduce from these facts that the right to acquire citizenship of the Czech Socialist Republic by declaration was created as a right to which no time limit was attached and which did not expire by the passage of time. It is, therefore, evident that a legal state-of-affairs could have existed by which an individual could have citizenship of the Czechoslovak Socialist Republic (and later of the Czech and Slovak Federal Republic) and at the same time not have citizenship of the Czech Republic or the Slovak Republic, and by which, under the current law, he could designate by declaration whether his national

citizenship was tied to the Czech Republic or the Slovak Republic. This legal rule was then taken over, in its entirety, by Czech National Council Act No. 40/1993 Coll.

For that reason, we cannot agree with the petitioners' assertion that any foreigner whatsoever may acquire citizenship of the Czech Republic by a declaration pursuant to § 6 of Czech National Council Act No. 40/1993 Coll.1) Ties to their state of origin (Czechoslovak Republic, Czechoslovak Socialist Republic, Czech and Slovak Federal Republic) must always be manifested, and these ties must be continuous and lasting, even from the perspective of the principle cives origo facit. The issue of the possibility of other citizenships which the individual might have acquired is not inquired into within the framework of the declaration because that declaration is legally based on the existence of citizenship of the Czech and Slovak Federal Republic, and it merely puts citizenship of the newly created Czech Republic into concrete form. The condition that a person must be released from the bonds of some other citizenship, as was already stated above, is not inquired into because we are not concerned here with a newly granted citizenship. It is also necessary to remember that the report of the Interior Ministry confirmed that we are dealing with quite exceptional cases (at most 10 persons in the course of a year).

Thus, it is in no way possible to deduce from the above-stated facts that the provisions of § 6 of Czech National Council Act No. 40/1993 Coll.,1) is not in conformity with Art. 1 of the Czech National Council Constitutional Act No. 4/1993 Coll.,6) because on 1 January 1969 and on 31 December 1992 there existed a legal state of affairs which, under § 3 of Czech National Council Act No. 39/1969 Coll.,7) enabled citizens of the Czechoslovak Socialist Republic the right, without time limitation, to chose citizenship of the Czech Socialist Republic by declaration.

IV.

The petition of the group of Deputies is further directed against § 112) and § 12, para. 33) of Czech National Council Act No. 40/1993 Coll., which, according to the petitioners, are not in conformity with the provisions of Art. 67, para. 1 of the Constitution of the Czech Republic.8) The petition states that, according to this provision, the government, and not the Interior Ministry, is responsible for issues of state executive power at the highest level. It further states that these provisions also violate Art. 2, para. 2, Art. 9, para. 2 of the Constitution of the Czech Republic and Art. 1, and Art. 2, para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter "Charter") to the effect that state power must serve all citizens in conformity with the essential requirements of the democratic legal state, without being bound to any exclusive ideology or religious confession and while respecting the equality of all persons before the law.

§ 11 of Czech National Council Act No. 40/1993 Coll.,2) as amended by Act No. 272/1993 Coll., contains the right of the Interior Ministry to waive, for an applicant:

- the condition set down in § 7, para. 1, letter a)2) of the cited act (namely, the uninterrupted permanent residence status in the republic for at least five years), if other conditions listed in § 11, para. 1, letters a) through f)2) are fulfilled, (namely, if the person was born in the Czech Republic, if he has lived here continuously for at least 10

years, if he had in the past citizenship of the Czech Republic or of the Czech and Slovak Federal Republic, if the person irrevocably acquired citizenship of the Czech Republic, if the person's spouse is a citizen of the Czech Republic, or if at least one of his parents is a citizen of the Czech Republic;

- the condition set down in § 7, para. 1, letter b) of the cited act (namely, release from ties to another state) if the person also fulfills the other conditions listed in § 11, para. 2 of the cited act (namely, if the applicant has had continuous permanent residence status in the Czech Republic for at least five years, provided that the legal rules of the country of which the applicant is a citizen does not permit him to be released from ties to the state or if that state refuses to issue documents concerning the release of the applicant from his ties to the state),

- the condition set down in § 7, para. 1, letter d) of the cited act (namely, knowledge of the Czech language) in cases meriting special consideration.

Then § 12, para. 3 of the cited act3) also sets down the right of the Interior Ministry to waive the taking of the oath of citizenship.

In its petition, the group of Deputies objects that "the exercise of this power was entrusted to the exclusive jurisdiction of the Interior Ministry, so that it is a power exercised in isolation from the government, and the law did not provide for the possibility that the legality of its decision in these matters be reviewed, which failing constitutes a violation of the provisions of Art. 2, para. 1 and Art. 67, para. 1 of the Constitution and of Art. 2 of the Charter, according to which governmental power must be exercised in a hierarchical fashion such that the government at the highest level is responsible for it and so that it serve all citizens in conformity with all essential requirements of a democratic legal state (Art. 9, para. 2 of the Constitution). When decisions are made about the granting of citizenship, priority is to be given to the public interest, which is defined by the division of state power (Art. 2 of the Constitution) and by democratic values, and which may not be dictated either by ideological or religious motives (Art. 2, para. 1 of the Charter) or by the particular interests of only certain individuals (Art. 1 of the Charter concerning the equality of people before the law)".

None of the above-mentioned articles of the Constitution nor the Charter are infringed by the contested provisions of § 11,2) § 12, para. 33) of Czech National Council Act No. 40/1993 Coll., and in this respect no connection was designated or proven. It is the conditio sine qua non of every democratic government that decision-making on a series of specialized issues be entrusted to members of the government and to their respective offices; this is also true from the point of view of the ordinary and necessary division of power. The government is the supreme body of executive power (§ 67, para. 1 of the Constitution). So other executive bodies are naturally subordinate to it. The ministries are subordinated to the government not only by means of legal enactments such as generally binding normative acts, but also by means of internal normative instructions and individual acts (§ 21 of Czech National Council Act No. 2/1969 Coll., concerning the Establishment of Ministries and other Central Authorities of State Administration of the Czech Republic, according to which the ministries in all of their activities shall follow constitutional and other acts and government resolutions). The relationship between the government and the ministries is also explicitly stated in § 28, para. 1 of Czech National

Council Act No. 2/1969 Coll., according to which the government of the Czech Republic directs, supervises and harmonizes the activities of the ministries. In its capacity as the supreme body of executive power, the government is, at the same time, the representative of that power in relation to the Assembly of Deputies as well. In their given sector, the ministries deal with issues assigned to their competence, and in prescribed areas of state policy, it submits them to the government as a whole for its consideration. It is the government which presents these issues to the Assembly of Deputies in the form of general documents and reports or in the form of a legislative initiative.

The competent minister is the bearer of constitutional political responsibility for the actions of the ministry, and in this respect the common methods of parliamentary democracy, such as interpellation (Article 53, para. 1, 2 of the Constitution), the subpoena right of the Assembly of Deputies and its bodies or investigating commissions (Art. 30, Art. 38, para. 2 of the Constitution), provide oversight of his actions. The possibility to recall him from his office is a further supervisory mechanism by which a minister's actions are observed and he is made accountable under constitutional law. Pursuant to Art. 74 of the Constitution, this supervisory mechanism was conferred on the Prime Minister (proposal to recall a minister) and on the President of the Republic (the recall itself). It unambiguously follows from these facts that the activities of the ministry, as the state administrative authority to which the power to grant citizenship has been delegated by Act of Parliament (and there is no doubt that is was so delegated by Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, as amended by Act No. 272/1993 Coll. - Art. 79, para. 1 of the Constitution), is subject to all procedures which are common in parliamentary democracies. The Interior Minister may be supervised by these means, and it may be inferred that the minister is held accountable under constitutional, if in the course of performing his office he violates the prescribed rules of conduct.

The assertion that the power to grant Czech citizenship was entrusted to the exclusive jurisdiction of the Interior Ministry, so that it is a power exercised in isolation from the government, thus, does not correspond to the facts.

Considering the foregoing discussion, it may be considered that the provisions of § 112) and § 12, para. 33) of Czech National Council Act No. 40/93 Coll., as amended by Act No. 272/1993 Coll., do not conflict with the provisions of the Constitution or the Charter as the petitioners have asserted, and no relation between the assertion of the petitioners and a violation of the cited provisions has been shown.

V.

Finally, the petition of the Deputies also touches upon the provisions of § 18, para. 1, letters a, c)4) and § 18a, letters a, b)5) of Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., which regulate the election of Czech citizenship by citizens of the Slovak Republic.

Under the provisions of § 18 of the cited act, citizens of the Slovak Republic had the right to elect Czech citizenship until 30 June 1994, if they fulfilled the conditions set out in paragraph 1, letters a) through c). These conditions include:

- at least 2 years of uninterrupted permanent residence in the Czech Republic,
- release from ties to the Slovak Republic,
- a good character (had not been finally convicted in the past five years for the intentional commission of a criminal act).

§ 18a of the cited act then governs acquisition, by election, of Czech citizenship by citizens of the Slovak Republic who were born in the Slovak Republic on 31 December 1939 or earlier and whose parents, or at least one of them, were born in the Czech Republic, or who had, in 1993 at the latest, reached the age of 60 and at the same time fulfilled the following two conditions,

- at least 2 years of uninterrupted permanent residence in the Czech Republic,
- a good character (had not been finally convicted in the past five years for the intentional commission of a criminal act).

According to the petition of the group of deputies, these provisions are discriminatory due to the fact that they set down for citizens of the Slovak Republic, who were originally also citizens of the Czech and Slovak Federal Republic, special conditions for acquiring citizenship of the Czech Republic, that is conditions which were not part of the previous legislation of the common state. Thus, it is alleged not to conform to the provisions of Art. 26 of the International Convention on Civil and Political Rights, according to which all persons are equal before the law and have a general right to equal and effective protection from discrimination on any grounds.

As an introduction to this issue, it must be emphasized that after the formation of the Czechoslovak Federation, the legal rules in the area of citizenship were found in Art. 5 of Constitutional Act No. 143/1968 Coll.,9) on the Czechoslovak Federation, as amended by Constitutional Act No. 125/1970 Coll., and in Act No. 165/1968 Coll., on the Principles for the Acquisition and Loss of Citizenship, in Czech National Council Act No. 39/1969 Coll., as amended by the legislative measures of the Presidium of the Czech National Council, No. 124/1969 Coll., and in Slovak National Council Act No. 206/1968 Coll. The wording of Art. 5 of Constitutional Act No. 143/1968 Coll.,9) results from the principle of the primary nature of citizenship of the Czech Republic or of the Slovak Republic (and a citizen of either republic was at the same time a citizen of the Czechoslovak Republic). An amendment to this Article was introduced by Constitutional Act No. 125/1975 Coll., which amended and supplemented Constitutional Act No. 143/1968 Coll., on the Czechoslovak Federation, which declared that Czechoslovak citizenship is unitary and that each Czechoslovak citizen is at the same time a citizen of either the Czech Republic or of the Slovak Republic, as well as stating that this provision should be given more concrete form by means of statutes of both republics. No such statutes were adopted; nevertheless in theory and in practice the view that republican citizenship was primary prevailed. In addition, the article authorized the Federal Assembly to set down in a statute the principles for the acquisition and loss of citizenship of the republics. This was done in Act

No. 165/1968 Coll., which set down the criteria for determining which Czechoslovak citizens were citizens of the Czech Republic and which were citizens of the Slovak Republic. It further provided that, as a result of the acquisition (loss) of citizenship of the Czech Republic or the Slovak Republic, a person also acquired (lost) Czechoslovak citizenship, and it also specified that a person who was a citizen of one republic and acquired citizenship of the other republic (for example, by election or grant) lost citizenship of the second [Note: seems like an error, and should read "first" or "original"] republic. This legal rule was based on the principles that an individual may be a citizen of only one republic and that he immediately lost the citizenship of one republic the moment he acquired citizenship of the second republic.

Details concerning the designation of citizenship of the Czech Republic or the Slovak Republic by citizens of what had, until that time, been a unitary state were set down in Acts Nos. 39/1969 Coll. and 206/1968 Coll., as were conditions for the election of citizenship of one republic by citizens of the other republic (at that time, it was possible to make an election until 31 December 1969) and the means for acquiring and losing citizenship of the republics. After the period for the election of citizenship of the Czech Republic expired, citizens of the Slovak Republic were able to request that they be granted citizenship of the Czech Republic, and they only had to fulfill the condition of permanent residence in the Czech Republic, and the fulfillment of this condition could be waived. As soon as a person was granted citizenship of the Czech Republic, he automatically lost citizenship of the Slovak Republic, and for this reason he did not need to submit proof that he had been released from ties to the Slovak Republic.

It must be kept in mind that, in connection with the expected division of the Czech and Slovak Federal Republic, a way was sought to make possible the simplest and quickest resolution of the citizenship issue. This way was based on the principle of the prevention of the creation of dual citizenship and of the prevention of the creation of statelessness. It was also based on the principle, that it is possible to change the then current citizenship of an individual only on the basis of his own expressed wish. This proceeded from the fact that on 31 December 1992 each citizen of the Czech and Slovak Federal Republic was a citizen of either the Czech Republic or the Slovak Republic. The adoption of a bilateral treaty between the Czech and Slovak Republics appeared to be optimal, and a draft treaty was prepared and submitted by the Czech side. The draft treaty was based on the following principles:

- individuals who had citizenship of one republic on 31 December 1992 were also citizens of that republic from 1 January 1993 on,

- persons who were at that time citizens of the Slovak Republic were allowed the right to elect Czech citizenship and vice versa (a six month period to make the choice was provided for), and the condition therefor was three year permanent residence in the republic the citizenship of which the individual was choosing,

- the acquisition by an individual of the citizenship of one of the contracting parties meant for that individual the automatic loss of the citizenship of the other contracting party,

- the prevention of the creation of dual citizenship for children, one of whose parents was a citizen of one of the contracting parties and the second a citizen of the other contracting party, by allowing the parents to make the election of citizenship for the child; and at the same time, it set the criteria for the designation of citizenship of only one of the contracting parties for children whose parents did not make an election of citizenship.

Thus, the above-mentioned report of the Interior Ministry (the top director of the second section) indicated that such a treaty would have simplified as much as possible the procedure for the acquisition of citizenship of one contracting party by citizens of the other contracting party and that, at the same time, it would prevent the creation of dual citizenship and statelessness. The same report also stated that the Slovak side did not accept this draft treaty and was favorably inclined toward the possibility of dual citizenship.

For that reason, the Czech Republic resolved the issue of the acquisition of Czech citizenship by a domestic enactment, Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., which contains the principle of the prevention of the creation of dual citizenship and prevention of the creation of statelessness. In this way, it was linked to the legal enactments currently in force in the Czech and Slovak Federal Republic, and it was based on the fact that analogous principles are found in the legal enactments of other European states as well.

Citizens of the Slovak Republic who had not by 31 December 1992 submitted an application for the grant of citizenship of the Czech Republic might have acquired citizenship of the Czech Republic pursuant to Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll.:

a) By the election of citizenship under § 184) or § 18a5) (by 30 June 1994),

b) By grant under § 19,10) by 30 June 1994,

c) By grant under § 711) (there is no time limitation upon this method).

The above-mentioned method for the acquisition of citizenship was, pursuant to § 184) and § 191é) of Czech National Council Act No. 40/1993 Coll., available only for a limited period, namely this declaration had to be made by 31 December 1993 at the latest, although this deadline was subsequently extended to 30 June 1994, by virtue of Czech Government Order No. 337/1993 Coll. from 15 December 1993. By virtue of Constitutional Act No. 542/1992 Coll., concerning Measures relating to the Dissolution of the Czech and Slovak Federal Republic, the Czech and Slovak Federal Republic ceased to exist as an independent state on 31 December 1992, and on 1 January 1993 two new independent states came into existence. Without a doubt they possess the sovereign power to govern their own internal affairs. Naturally, the acquisition of citizenship comes within that category. It is possible to entirely agree with the petitioners' assertion that, as a result of the dissolution of the common state, citizens of the Slovak Republic became foreigners in the Czech Republic (and, of course, vice versa). Of course, the assertion that the dissolution of the Czech and Slovak Federal Republic, as well as the termination of citizenship of that state, took place without the directly expressed will of the citizens of the Czech and Slovak Federal Republic and in an undetermined number of cases against

their will, is in the given situation unsubstantiated and speculative. On the contrary, it must be emphasized that on the day the independent states (the Czech and Slovak Republics) came into existence, the citizens of each of the states became foreigners in the other state. Therefore, as an independent state, the Czech Republic may set the conditions for the acquisition of citizenship quite independently of the legal rules of another state (the Slovak Republic). This right was exercised by the adoption of Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., which, among other things, provided for the acquisition of citizenship by foreigners. The petitioners' assertion that in the case of citizens of the Slovak Republic we are not dealing with foreigners simply does not hold water, nor does their assertion that the choice brought on by the termination of federal citizenship may be conditioned only upon the subjective wish of the citizen and by his so-called objective relationship to the territory. It is precisely this relationship (that is, the relationship to the Czech Republic) which must be manifested in an appropriate fashion, and not merely by ties to the territory, rather it must also be objectively manifested to the Czech Republic as such. Precisely this manifestation was included among the conditions under which it was possible to acquire citizenship of the Czech Republic. It is necessary to repeat again that each sovereign state has the right to set the conditions under which its citizenship can be obtained. The petitioners further make the irrelevant assertion that since the continuation of dual citizenship of the Czech and Slovak Federal Republic and the Czech Republic had not been qualified by a requirement of good character, then there may not be such a requirement now. In addition, no further statutory restrictions have been placed on their legal status and on the states of affairs which came about before the new statute came into effect, rather those that came about on the day it went into effect and subsequently. As has already been said, when a citizen of the Slovak Republic elects citizenship of the Czech Republic, it is necessary to take as a starting point the rules to which foreigners in general are subject in connection with citizenship. In this regard, the conditions set down for citizens of the Slovak Republic are different and more favorable precisely for them. Naturally, from the perspective of our past co-existence within a common state and the societal, professional and family ties which were created during that period, in general these conditions were motivated by grounds which can be called entirely decent and humane. However, not even in this field can we consider matters voluntaristically. The prescribed conditions are suitable to the permanent situation, sufficiently generalize and objectify the relationship to the Czech Republic, and are in no way discriminatory. It is then appropriate to say the following concerning these conditions: in the view of the Constitutional Court, the concept of permanent residency concerns a permanent residency which is manifested in reality and not one that is reflected only in official files - such as an application for permanent residency filed at the appropriate office - but in a real sense. Thus, permanent residency must be understood to mean that the person lives at his place of continuous residence, that is, generally at the place where he has his family, parents, apartment or employment and also the place where he lives with the intention of staying there permanently (in accord with the decision of the Superior Court in Prague sp. zn. 3 Cdo 76/93). Two years of permanent residency as a condition for electing citizenship was also set down with a view toward Slovak National Council Act No. 206/1968 Coll., which required two years of permanent residency in Slovakia as a condition for the grant of Slovak citizenship to citizens of the Czech Republic. At the time the law on the acquisition of citizenship of the Czech Republic was

adopted, this Slovak National Council act was still in effect, and for that reason and in accord with the principle of reciprocity, this time period can be considered suitable. It is appropriate to remember that even in the case a person had a shorter period of permanent residency, the Interior Ministry was empowered to grant citizenship of the Czech Republic to an applicant pursuant to § 1910) or to § 711) of Czech National Council Act No 49/1993 Coll. Concerning the issue of a final conviction for an intentional criminal act during the preceding five years, it must be emphasized that this provision refers to an intentional criminal act (and not, therefore, one involving negligence) and in this connection it must be stated, keeping in mind the explanatory report accompanying the adoption of the act on citizenship of the Czech Republic, that as far as it concerns persons who were finally convicted for an intentional criminal act, they will meet the above-stated conditions for the grant of citizenship of the Czech Republic if their convictions are expunged by a court. In accord with the Penal Code and the Code of Criminal Procedure, these persons (whose convictions are expunged) are, thus, viewed as persons who were not convicted, and the conviction is not included in the extract from their criminal record. It also must be added that petty larcenies, for example, are generally dealt with as minor offenses, while the criminal act of larceny refers to an illegal act by which the offender appropriates property of a higher value which belongs to someone else. Certain peculiarities resulting from the dissolution of the federation were actually taken into account in those temporary extraordinary rules designated for the possibility of electing citizenship of the Czech Republic. Somewhat more favorable conditions for the election were set down for the group of citizens of the Slovak Republic who are staying abroad and who, prior to going abroad, had permanent residency in the Czech Republic, but this preference must again be understood as a humane gesture which shows respect for possible family and other general human ties which these citizens might have to the Czech Republic. Of course, it is unnecessary to mention the possibility of these emigrants obtaining citizenship of the Czech Republic during the period when provisional legal rules are in effect. Concerning these facts, it is further necessary to point out that, in the overwhelming majority of cases, these persons remained outside the Czech Republic for more than 5 years, and thus could not have been convicted in the Czech Republic (the criminal record only includes convictions which occurred in the Czech Republic). It would be problematic to request such documents from foreign authorities because certain countries do not issue them to individuals, and in the case that the criminal record was submitted, it would be difficult to assess the character of the criminal act. Further problems would evidently arise if such a person lived in several countries. Thus, it is not possible, under these circumstances, to speak about discrimination against a certain group of persons. If we can discuss it at all, then we can only discuss discrimination in the positive sense: foreigners who are citizens of the Slovak Republic were granted a more favorable status than that granted to foreigners who are citizens of states other than the Slovak Republic or to apoliticals [Translator's note: probably refers to stateless persons], as a result of the modification of rights which occurred from the perspective of international law when the state was divided.

A practical approach to the current state of affairs is found in the Interior Ministry report, to the effect that citizens of the Slovak Republic who did not submit an application for the grant of citizenship of the Czech Republic, who had permanent residence in the Czech Republic on 31 December 1992 and whose stay here is still continuing, may submit an application for a Czech permanent residency permit. These applicants do not have to

submit the documents required for other foreigners, rather they need only show the entry concerning permanent residence in their civil identity booklet and prove citizenship of the Slovak Republic. The legal status of citizens of the Slovak Republic who have permanent residence in the Czech Republic is almost the same as the status of a citizen of the Czech Republic. For this purpose, more than 40 treaties were concluded between the Czech and Slovak Republics, and it is evident from these and from a series of legal enactments that, for example, the right to free education, health care, unemployment benefits, welfare benefits, etc. depend on permanent residence and not on citizenship. The institution of citizenship of the Czech Republic differs only in respect of the right to vote, the qualifications for holding certain positions (judge, soldier, prosecutor), and the duty to perform military service.

Finally, it is appropriate to keep in mind that the Czech Republic is not bound by the legal rules relating to citizenship of the Czech and Slovak Federal Republic, considering the fact that that institution ceased to exist in conjunction with the dissolution of the federation. By virtue of the Constitutional Act of the Czech National Council No. 4/1993 Coll., concerning Measures relating to the Dissolution of the Czech and Slovak Federal Republic, which came into effect on 31 December 1992, the legal enactments in force prior to the creation of the Czech Republic were incorporated into its legal system, however, provisions conditioned only on the existence of the Czech and Slovak Federal Republic and the Czech Republic's affiliation with it may not be applied. Czech National Council Act No. 40/1993 Coll., came into force on 1 January 1993, and in § 28, paras. 1 and 2, it annulled the original legal rules, namely those in Czech National Council Act No. 39/1969 Coll., as amended by Czech National Council Act No. 92/1990 Coll. and Act No. 165/1968 Coll.

In view of the above-stated facts, the Constitutional Court has come to the conclusion that the provisions of § 18, para. 1, letters a) and c)4) and § 18a, letters a) and b)5) of Czech National Council Act No. 40/1993 Coll., as amended by Act No. 272/1993 Coll., is not inconsistent with the provisions of Art. 26 of the International Convention on Civil and Political Rights, as the petitioners claim, and no connection between the petitioners' assertion and a violation of the cited provisions have even been shown.

**Notice: Decisions of the Constitutional Court cannot be appealed.**

Justices JUDr. Vladimír Čermák and JUDr. Pavel Varvařovský made use of their right, pursuant to § 14 of Act No. 182/1993 Coll., on the Constitutional Court, to append a separate opinion dissenting from the decision of the Court on the petition to annul § 18, para. 1, letters a) and c) and § 18a letters a) and b) of the contested act.

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**DISSENTING OPINION**

The opinion of Justice JUDr. Vladimír Čermák and Justice JUDr. Pavel Varvařovský dissenting from the Judgment of the Constitutional Court of 13 September 1994, which rejected on the merits the petition of a group of Deputies seeking the annulment of several provisions of Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, as amended by Act No. 272/1993 Coll., submitted in accordance with § 14 of Act No. 182/1993 Coll., on the Constitutional Court.

The undersigned Justices hold the view that the petition of the group of Deputies, so far as it concerns the point proposing the annulment of § 18, para. 1, letters a) and c) and § 18a, letters a) and b) of Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic, as amended by Act No. 272/1993 Coll., should have been granted, for the following reasons:

I.

Article I of the Constitution of the Czech Republic proclaims the Czech Republic to be a democratic law-based state, founded on respect for the rights and freedoms of persons and citizens. Apart from that, the Preamble to the Constitution professes allegiance to the traditions of Czechoslovak statehood, which, among other things, is manifested in the reception of the legal order of the previous state and even some of its symbols. It declares itself in favor of the notion that Czechoslovakia should be a stabilizing democratic area in Central Europe, founded on humanistic principles and on the principles of democracy. The Preamble to the Constitution places emphasis on the civic and not on the national principle of the new state.

A state which aspires to be a democratic law-based state must necessarily acknowledge the requirement of its own constitutional self-limitation, for along with that concept necessarily belongs the recognition of the supranational origin of the basic human rights, therefore the recognition of the autonomy of human beings and of the civic society. It is not possible to apply to the state, in contrast to citizens, the principle that everything which is not expressly forbidden is permitted.

Without question there can be no objection to the statement that, as an independent state, the Czech Republic may set the conditions for the acquisition of its citizenship quite independently of the legal rules in some other state, and thus even of the legal rules in the Slovak Republic. However, the undersigned justices are of the opinion that, for citizens of the Czech and Slovak Federal Republic, the federal citizenship was de facto the citizenship to which priority was given, in particular in the legal consciousness of the citizens of the state. From the international perspective, there was a single citizenship. Therefore, the criteria for the transformation of citizenship for citizens of the federation who were citizens of the Slovak Republic should be considerably different than the criteria for the acquisition of citizenship by foreigners. The statement that the rules contained in the provisions of § 18 or § 18a of Act No. 40/1993 Coll. are considerably different and in fact more favorable is unconvincing. The above-mentioned provisions, which were placed into

the third part entitled "Extraordinary Provisions concerning Citizenship of the Czech Republic in connection with the Dissolution of the Czech and Slovak Federal Republic", are in essence extraordinary in name only. The only "advantage" which these provisions grant to citizens of the Slovak Republic living within the Czech Republic as compared with real foreigners is that the period for uninterrupted permanent residence was reduced from five years to two, and certain provisions that had harsh impact on elderly persons were eliminated (the subsequently added § 18a). The conditions set down decisively do not constitute the right of election, which one would expect to be included in the legal order of a state which faithfully adheres to principle and to legal continuity, such as are mentioned in section I of this opinion. We can agree with the opinion of the group of deputies that, as a result of these provisions, discriminatory conditions were introduced for obtaining citizenship by former citizens of the Czech and Slovak Federal Republic, who thereby became foreigners in a part of their original homeland. Statutory restrictions were (subsequently) placed after the fact on legal states of affairs and facts which came about and existed prior to the time when Act No. 40/1993 Coll., entered into force. In addition, these rights were limited in a manner which, for reasons which are difficult to understand, are not even the same for all citizens of the Slovak Republic. It may be considered especially discriminatory that those citizens of the Slovak Republic who might have proven their relationship to the Czech Republic by long-term permanent residence within its territory had the least favorable conditions for obtaining citizenship. The non-waivable condition of five-years without criminal conduct was applied to them, as it was to real foreigners, but the fulfillment of this condition was not demanded of foreigners who lived abroad permanently and who prior to going abroad had permanent residence in the Czech Republic without time limitation. Substantially more favorable conditions, a more genuine right of election, are applied to former citizens of the Czech and Slovak Federal Republic for whom it was not possible to designate the citizenship of either of the republics (§ 6 of Act No. 40/1993 Coll.). The undersigned justices take the position that the principle of the election of citizenship such as is laid out in § 6 of the act is the standard solution in a state which desires to be a democratic law-based state and which sincerely professes allegiance to the traditions of Czechoslovak statehood. Any sort of rule that falls below this standard is discriminatory.

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**Overview of the most important legal regulations**

1. § 6 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, governs acquiring citizenship by declaration as follows: a natural person who was a citizen of the Czech and Slovak Federal Republic as of 31 December 1992 but did not have citizenship of the Czech Republic may choose citizenship of the Czech Republic by declaration.

2. § 11 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides in par. 1 that the Ministry of the Interior may waive the condition provided in § 7 par. 1 letter a) (granting citizenship on the basis of an application to a natural person who has had uninterrupted residence in the Czech Republic for at least five years as of the date the application is filed), if the applicant has permanent residence in the Czech Republic and a) was born in the Republic, or b) has lived in the Czech Republic uninterruptedly for at least 10 years, or c) in the past had citizenship of the Czech Republic, or d) was adopted by a citizen of the Czech Republic, or e) his husband (wife) is a citizen of the Czech Republic, or f) at least one of whose parents is a citizen of the Czech Republic, or g) moved to the Czech Republic by 31 December 1994 on the basis of an invitation from the government, or h) is homeless or has been granted refugee status in the Czech Republic.

3. § 12 par. 3 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides that the Ministry of the Interior may waive the taking of the citizenship oath. In that case a natural person acquires citizenship of the Czech Republic on the day when the decision to waive the taking of the citizenship oath goes into effect.

4. § 18 par. 1 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, governs choice of citizenship and provides that a citizen of the Slovak Republic may choose citizenship of the Czech Republic by a declaration made no later than 31 December 1993, a) if he has had uninterrupted residence in the Czech Republic for at least two years, b) if he submits a document on release from the citizenship of the Slovak Republic, c) if he was not sentenced with legal effect in the last five years for an intentional crime.

5. § 18 a of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides that a citizen of the Slovak Republic, who was born in its territory by 31 December 1939 and whose parents, or at least one of them, were born in the territory of the Czech Republic, or a citizen of the Slovak Republic who reached or will reach the age of 60 no later than in 1993, may choose citizenship of the Czech republic by declaration made by 31 December 1993 at the district office according to his place of permanent residence, provided he has not already acquired this citizenship, a) if he has had uninterrupted permanent residence in the Czech Republic for at least two years and b) if he was not sentenced with legal effect in the last five years for an intentional crime.

6. Art. 1 of Act no. 4/1993 Coll., on Measures Related to the Dissolution of the Czech and Slovak Federal Republic, provides in paragraph 1, that constitutional acts, statutes, and

other legal regulations of the Czech and Slovak Federal Republic in effect on the day of the dissolution of the Czech and Slovak Federal Republic in the territory of the Czech Republic remain in effect; however, a provision conditional only on the existence of the Czech and Slovak Federal Republic and the Czech Republic being a part of it can not be used. Par. 2 provides that if constitutional acts, statutes and other legal regulations passed before the dissolution of the Czech and Slovak Federal Republic tie rights and obligations with the territory of the Czech and Slovak Federal Republic and citizenship of the Czech and Slovak Federal Republic, this is understood to mean the territory of the Czech Republic and citizenship of the Czech republic, unless the law provides otherwise.

7. § 3 of Act no. 39/1969 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides that a Czechoslovak citizen whose state citizenship can not be determined under § 2 (determination of state citizenship on the basis of birth, registration for permanent residence or last permanent residence), and who does not become a citizen of the Slovak Socialist Republic under an act of the Slovak National Council, can choose state citizenship by declaration, if he wishes to become a citizen of the republic.

8. Art. 67 par. 1 of Act no. 1/1993 Coll., the Constitution of the Czech Republic, provides that the government is the highest body of executive power.

9. Art. 5 par. 1 of the National Assembly Constitutional Act no. 143/1968 Coll., provided that a citizen of each of the two republics is simultaneously a citizen of the Czech and Slovak Federal Republic.

Note: the Act was repealed for the Czech Republic by Act no. 1/1993 Coll.

10. § 19 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides that until 31 December 1993 the Ministry of the Interior may grant citizenship of the Czech Republic upon request to a citizen of the Slovak Republic, in the case of a minor over the age of 15, at least one of whose parents is a citizen of the Czech Republic, or in the case of a natural person whose husband (wife) is a citizen of the Czech Republic if a) the applicant has permanent residence in the territory of the Czech Republic and b) submits a document evidencing release from the citizenship of the Slovak Republic.

11. § 7 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the Czech Republic, provides that citizenship of the Czech Republic can be granted to a natural person who simultaneously meets these conditions: a) as of the date of filing the application he has had permanent residence in the territory of the Czech Republic for at least five years and has been primarily present here for that time, b) he proves that by acquiring citizenship of the Czech Republic he will lose his previous citizenship or proves that he has lost his previous citizenship, except for a homeless person or a person who has been granted refugee status in the territory of the Czech Republic, e) in the last five years he has not been convicted with legal effect of an intentional crime, d) he proves knowledge of the Czech language.