CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

HEADNOTES

The following fundamental, general theses regarding the constitutionality of salary restrictions on judges arise from the case law of the Constitutional Court, as well as from comparison with the case law of European constitutional courts (see, in particular, decisions of the Constitutional Court of the Polish republic file no. P 1/94 of 8 November 1994, K 13/94 of 14 March 1995, P 1/95 of 11 September 1995, P 8/00 of 4 October 2000, K 12/03 of 18 February 2004):

- **evaluation of the constitutionality of salary restrictions on judges for a specific period of a specific year falls within the framework defined by the principle of judicial independence,**
- **the constitutional position of judges, on the one hand, and representatives of the legislative and executive branches, especially the state administration, on the other hand, differ in view of the principle of the separation of powers and the principle of judicial independence, from which follows the different scope of discretion for the legislature concerning salary restrictions on judges, compared to the scope of discretion for such restrictions in other areas of the public sector,**
- **interference in the material security of judges guaranteed by law may not be an expression of arbitrariness by the legislature, but must, based on the principle of proportionality, be justified by extraordinary circumstances, e.g. the state being in a difficult financial position; even if this condition is met, account must be taken of the different functions of judges and representatives of the legislative and executive branches, in particular the state administration; such interference may not give rise to concerns that it limits the dignity of judges [see recommendation of the Committee of Ministers of the Council of Europe Rec(94)12E of 13 October 1994], or that it is an expression of constitutionally impermissible pressure by the legislative branch and executive branch on the judicial branch.**

Under the settled case law of the Constitutional Court, the principle of an independence judiciary is one of the essential requisites of a democratic state governed by the rule of law (Art. 9 par. 2 of the Constitution). The requirement of an independent judiciary comes from two sources: the neutrality of judges as a guarantee of a fair, impartial and objective court process, and from ensuring the rights and freedoms of individuals by a judge separated from the political power. The independence of judges is guaranteed by guarantees of a special legal status (these must include that judges cannot be demoted, recalled or transferred), by guarantees of organizational and official independence from bodies representing the legislative and especially the executive branch, as well as by separation of the judiciary from the legislative branch and the executive branch (in particular by applying the principle of incompatibility). From the viewpoint of content, judicial independence is ensured by judges being bound only by law, i.e. ruling out any elements of subordination in judicial decision making. The Constitutional Court comprehensively considered the fundamental components of the principle of judicial independence in judgment file no. Pl. ÚS 7/02 of 18 June 2002 (N 78/26 SbNU 273; 349/2002 Coll.).

Peripherally to § 3 par. 3 a § 3b par. 2 of the Salaries Act, it remains only for the Constitutional Court to repeat the statement it made in judgment file no. Pl. ÚS 12/10: "judges' salaries, unlike the salaries of other 'state servants,' have, for a long time, even with the following intended perspective, been subject only to restrictions. The measures concerning them then no longer

seem exceptional and proportional, but appear to be a targeted process aimed at returning judges' salaries to lower levels, and thus removing the, from the point of view of the legislative and executive branches, "error" in setting the rules for calculating judges pay, previously committed in the mid-1990s. The consequences of such leveling necessarily lead to reducing the status of judges in the social middle class, degradation of its compensation in relation to other legal professions, and diminution of its necessary social prestige." Nothing in this is changed by the claim made by the presenter of the Act, that the framework contained in § 3b par. 2 of the Act on judge's salaries returns the base salary "approximately" to the level of 2007 to 2009. On the contrary, the restriction contained in reducing the coefficient for determining the base salary from a multiple of three to a multiple of 2.6 times the average nominal monthly salary of individuals in the non-business sector (§ 3 par. 3 of the Salaries Act, as amended by Act no. 425/2010 Coll.) is disproportionate interference, aimed only against judges; it does not meet the requirements that the Constitutional Court established in the cited case law for acceptable restrictions on judges' salaries.

VERDICT

The Plenum of the Constitutional Court, consisting of František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Vladimír Kůrka, Dagmar Lastovecká, Jan Musil, Jiří Mucha, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný and Michaela Židlická, ruled in file no. Pl. ÚS 33/11, on 3. May 2012, on a petition from the Municipal Court in Brno seeking the annulment of point 2 Art. I of Part One of Act no. 425/2010 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits of State Attorneys and Amending and Supplementing Act no. 143/1992 Coll., on Pay and Compensation for Being on Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as regards the judges of District, Regional and High courts, the Supreme Court and the Supreme Administrative Court, in eventum annulment of the words "a 2.5 multiple" in § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 309/2002 Coll. and Act no. 425/2010 Coll., and seeking the annulment of § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll., as follows:

I. The provision of § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll., expressed by the words "a 2.5 multiple" is annulled as of the end of 31 December 2012.

II. The provision of § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll., is annulled as of the day this judgment is promulgated in the Collection of Laws.

III. The rest of the petition is denied.

REASONING

I.
Definition of the Matter and Recapitulation of the Petition

On 3 November 2011 the Constitutional Court received a petition from the Municipal Court in Brno seeking the annulment of point 2 Art. I Part One of Act no. 425/2010 Coll., which amends Act no.

236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits of State Attorneys and Amending and supplementing of Act no. 143/1992 Coll., on Pay and Compensation for Being on Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as amended by later regulations, as regards the judges of district, regional, and high courts, the Supreme Court, and the Supreme Administrative Court, in eventum annulment of the words "a 2.5 multiple" in § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 309/2002 Coll. and Act no. 425/2010 Coll., together with a petition for a priority decision in the matter under § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll. The petition was supplemented by filings made by the petitioner, delivered to the Constitutional Court on 8 November 2011 and 26 March 2012, containing appendices, in particular, data published by the Czech Statistical Office, the Ministry of Finance, contained in the Council of Europe Report on the Situation of Compensation of Judges and State Attorneys, as well as in the public media. In addition, in the supplement to the petition delivered to the Constitutional Court on 26 March 2012, the petitioner expanded the requested judgment by a petition to annul § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll.

The Municipal Court in Brno filed the petition under § 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, after concluding, in connection with its decision-making activity in accordance with Art. 95 par. 2 of the Constitution of the Czech Republic (the "Constitution"), that

- The provisions of point 2 Art. I, Part One of Act no. 425/2010 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits of State Attorneys and amending and supplementing Act no. 143/1992 Coll., on the Pay and Compensation for Being on Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as amended by later regulations, as regards the judges of District, Regional and High Courts, the Supreme Court, and the Supreme Administrative Court, in eventum the provision expressed by the words "a 2.5 multiple" in § 3 par. 3 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 309/2002 Coll. and Act no. 425/2010 Coll., and
- the provisions of § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll.,

which are to be applied in resolving the case file no. 35 C 35/2011, are inconsistent with Art. 1 par. 1 in connection with Art. 81 and Art. 82 par. 1 of the Constitution, with Art. 2 par. 1 of the Constitution, with Art. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter") and with Art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Protocol").

In case file no. 35 C 35/2011, the Municipal Court in Brno is deciding on a complaint in which a judge of the District Court Brno-venkov seeks against the Czech Republic – the District Court Brno-venkov – payment of the amount of the difference between the plaintiff's entitlement to salary under § 28 to 31 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, ("Act no. 236/1995 Coll.," or the "Salaries At") and the entitlement to a multi-purpose flat amount reimbursement of expenses ("reimbursement of expenses") under § 32 par.

1 let. a) of Act no. 236/1995 Coll., based on the original complaint entitlement for January, under the expanded complaint also for September 2011, and between the actual paid salary and reimbursement of expenses reduced with effect as of 1 January 2011 by Act no. 425/2010 Coll., which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits of State Attorneys and Amending and supplementing of Act no. 143/1992 Coll., on Pay and Compensation for Being on Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as amended by later regulations.

In view of the original complaint entitlement of the plaintiff in the proceeding before the Municipal Court in Brno the cited court interrupted the proceeding in the case file no. 35 C 35/2011 and, in accordance with § 64 par. 3 of Act no. 182/1993 Coll., as amended by later regulations, submitted to the Constitutional Court a petition seeking the annulment of § 3 par. 1 and 3 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll. The Constitutional Court ruled on the petition by judgment of 2 August 2011 file no. Pl. ÚS 16/11 (267/2011 Coll.) and annulled § 3b par. 1 of Act no. 236/1995 Coll., as of the day this judgment is promulgated in the Collection of Laws.

The petitioner states in the petition presently being reviewed by the Constitutional Court that § 3b par. 1 of Act no. 236/1995 Coll. set the base salary of judges for 2011 at CZK 54,005, and when it was annulled by judgment file no. Pl. ÚS 16/11 a situation arose where the base salary of judges for 2011 is no longer CZK 54, 005 under § 3b par. 1 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll., and therefore the general regulation of judges' base salary applies, as set forth in § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll. Under this provision, the base salary from 1 January to 31 December of a calendar year is a 2.6 multiple of the average nominal monthly wage of natural persons in the non-business sphere, according to data published by the Czech Statistical Office for the next to last calendar year; the amount of the base salary for a particular calendar year is announced by the Ministry of Labor and Social Affairs in the Collection of laws through a notification. This notification was promulgated in the Collection of laws on 16 September 2011 as no. 271/2011 Coll., and the base salary for judges for 2011 was set at CZK 57,747.50. After annulment of § 3b par. 1 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll., as the petitioner then states, the plaintiff's salary for January 2011 is CZK 78,000 and reimbursement of expenses is CZK 3,200. In view of the fact that in January 2011 the plaintiff was paid a salary in the amount of CZK 73,000, the difference between CZK 78,000 and CZK 73,000 is CZK 5,000. As regards reimbursement of expenses the difference is CZK 200, the difference between CZK 3,200 and CZK 3,000. In view of the foregoing calculation, the petitioner considers it evident that, regarding the complaint for January 2011, it was possible to rule on the amount of CZK 5,200, as the sum of the remaining salary of CZK 5,000, and expense reimbursement in the amount of CZK 200. Therefore, the Municipal Court in Brno, in accordance with § 112 par. 2 of the CPC, ruled to remove the proceeding on the matter concerning payment of the CZK 5,200 to a separate proceeding. Thus, the matter removed for a separate proceeding was that concerning the difference between the plaintiff's salary calculated under § 3 par. 3 of Act no. 236/1995 Coll., as amended by Act no. 425/2010 Coll., (temporarily based on the base salary calculated as a 2.5 multiple of the average nominal wage in the non-business sector, in the amount of CZK 23,099, which is CZK 57,747.50) and the pay that was actually paid to the plaintiff in January 2011 (based on a base salary under § 3b par. 1 of Act no. 236/1995 Coll., as amended by of Act no. 425/2010 Coll., in the amount of CZK 54,005). The Municipal Court in Brno ruled on this separated matter in its decision of 11 October 2011, ref. no. 35 C 130/2011-113, and granted this part of the complaint.

As already stated, after his salary for September 2011 was due, the plaintiff expanded his complaint to include the remaining salary and expense reimbursement for that month. Thus, for the month of September 2011, the plaintiff requests both the remaining salary and reimbursement of expenses for the period until the promulgation of Constitutional Court judgment of 2 August 2011, file no. Pl. ÚS 16/11 and the subsequent promulgation of notification of the Ministry of Labor and Social Affairs on the amount of base salary for 2011, and for the period after promulgation of the judgment and the

notification. Stated in numbers, the difference in pay for September 2011 is CZK 17,754.50 and the difference in reimbursement of expenses is CZK 763.60. The petitioner allowed the amendment of the complaint by its decision of 24 October 2011, ref. no. 35 C 35/2011-125. After his salary for January 2012 was due, the plaintiff expanded the complaint to include remaining salary and reimbursement of expenses for that month, in the amount of CZK 17,100, which is the difference between the salary paid out and reimbursement of expenses determined based on the base salary set forth in § 3b par. 2 of the Salaries Act for the years 2012 through 2014 and the salary and reimbursement of expenses determined based on the base salary representing three times the average nominal monthly salary of individuals in the non-business sector for the next to last calendar year. The Municipal Court in Brno allowed the amendment of the complaint, by resolution of 14 February 2012, ref. no. 35 C 35/2011-168. The resolution became legally valid on 24 February 2012.

The petitioner's active standing is based on the statement that it already sought annulment of § 3 par. 3 of the Salaries Act, as amended by Act no. 309/2002 Coll. and by Act no. 425/2010 Coll., in the proceeding that the Constitutional Court conducted as file no. Pl. ÚS 16/11; the petition for annulment of § 3 par. 3 of the Salaries Act (part V of the judgment) was denied for lack of active standing, i.e. as a petition submitted by an evidently unauthorized person. In the petitioner's opinion this verdict does not prevent it from submitting the petition in question after that provision is to be expressly applied to the plaintiff's case, for the part of the claim concerning January 2011, and in particular for the claim concerning September 2011, which was the expanded complaint in file no. 35 C 35/2011, the amendment of which the petitioner permitted with legal effect. The petitioner concluded, in accordance with Art. 95 par. 2 of the Constitution, that § 3b par. 2 of the Salaries Act, as amended by Act no. 425/2010 Coll., which is to be applied in resolving the matter in question, is inconsistent with Art. 1 par. 1 in connection with Art. 81 and Art. 82 par. 1 of the Constitution, Art. 1 of the Charter Art. 1 of the Protocol.

The petitioner bases the justification of the substantive law unconstitutionality of the contested statutory provisions on recapitulation of the relevant case law of the Constitutional Court applicable to this issue. In its opinion, the case law contains the following basic theses:
- evaluating the constitutionality of salary restrictions concerning judges for a particular period of a particular year falls within the framework defined by the principle of judicial independence [Constitutional Court judgment file no. Pl. ÚS 55/05 of 16 January 2007 (N 9/44 SbNU 103; 65/2007 Coll.), point 49];
- the constitutional status of judges, on the one hand, and representatives of the legislative and executive branches, especially the state administration, on the other hand, are different, in view of the principle of separation of powers and the principle of judicial independence, which also gives rise to the different scope of discretion for the legislature regarding salary restrictions on judges in comparison with the scope of discretion for such restrictions in other areas of the public sphere [Constitutional Court judgment file no. Pl. ÚS 55/05 (point 49)];
- interference in the material security of judges guaranteed by law may not be an expression of legislative arbitrariness, but must, based on the principle of proportionality, be justified by extraordinary circumstances, e.g. the state being in a difficult financial situation, and even if this condition is met, account must be taken of the different functions of the courts and the representatives of the legislative and executive branches, in particular the state administration; such interference cannot give grounds for concerns that it limits the dignity of judges, e.g., that it is not an expression of constitutionally impermissible pressure by the legislative and executive branches on the judicial branch [Constitutional Court judgment file no. Pl. ÚS 55/05 (point 49)];
- the principle of an independent judiciary is one of the essential requisites of a democratic state governed by the rule of law under Art. 9 par. 2 of the Constitution [Constitutional Court judgment file no. Pl. ÚS 55/05 (point 50)];
- arbitrary interference by the legislature in the area of material security of judges, and within that also salary restrictions, must be included in the framework protected by the principle of their independence for two reasons. The independence of judges is first conditioned on their moral integrity and level of expertise, but it is also connected to their appropriate material security. The second reason for including the prohibition on arbitrary interference in the material security of judges (salary

restrictions) in the framework of their independence is to rule out the possibility of possible pressure by the legislative branch, or the executive branch, on the decision making of judges. In other words, ruling out arbitrary interference in the material security of judges as a possible form of "penalizing" judges by the legislative and executive branches, and thus also forms of pressure on their decision making [Constitutional Court judgment file no. Pl. ÚS 43/04 of 14 July 2005 (N 139/38 SbNU 59; 354/2005 Coll.)];
- the salaries of judges, in a wider sense, are meant to be a stable, non-reducible value, not an adjustable facture, which one or another government grouping calculates, for example because it finds judges' salaries too high compared to the salaries of other state employees or in comparison with another profession. Striving for such equality departs from the sphere of constitutionality if it is a political aim that has no basis in the constitutionally understood principle of equality [Constitutional Court judgment file no. Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309; 198/2003 Coll.)];
- a measure that removes or reduces the entitlement component of a judge's remuneration, without that removal or reduction being compensated by an increase in another entitlement component of remuneration, must be considered a salary restriction [Constitutional Court judgment file no. Pl. ÚS 55/05 (point 55)];
- the freezing of statutorily expected increases in the income of judges or other constitutional officials must also be considered a salary restriction; the Constitutional Court would undoubtedly consider „permanent" freezing of salary to be a constitutionally impermissible step. The salaries of judges, in a wider sense, are meant to be a stable, non-reducible value, unless exceptional, extraordinary state circumstances arise [Constitutional Court judgment file no. Pl. ÚS 13/08 of 2 March 2010 (N 36/56 SbNU 405; 104/2010 Coll.; point 41); similarly, judgment file no. Pl. ÚS 55/05 (point 55)];
- a distinct element of the guarantee of appropriate security of judges, from the viewpoint of the principle of separation of state powers into the legislative, executive, and judicial branches, and the requirement of balance among them, must also be considered to be a direct connection between the salaries of representatives of the legislative branch, on the one hand, and the salaries of judges, on the other hand. Thus, the structure of the Act on Salaries of State Representatives, which, with the help of a uniform base salary and statutorily defined coefficients guarantees that, together with an increase in the pay of representatives of the legislative and executive branches, the salaries of judges will automatically increase by the same proportion, is significant insurance, built into the legal order, that the relationship in the material security of representatives of the individual branches will be preserved in the future [Constitutional Court judgment file no. Pl. ÚS 55/05 (point 59)].

The petitioner emphasizes that the Constitutional Court also maintained these theses in its most recent case law [see judgments file no. Pl. ÚS 12/10 of 7 September 2010 (N 188/58 SbNU 663; 269/2010 Coll.); Pl. ÚS 22/09 of 7 September 2010 (N 186/58 SbNU 633; 309/2010 Coll.), point 40].

In support of a conclusion that the contested statutory provisions are unconstitutional, the Municipal Court in Brno also points to a number of international documents. First, it refers to the Recommendation of the Committee of Ministers of the Council of Europe of 17 November 2010 on Judges CM/Rec(2010)12 (appendix no. 5) [http://www.coe.int], which replaced the earlier recommendation Ree (94)12. Articles 53 to 55, which concern the remuneration of judges, indicate that:
- the principal rules of the system of remuneration for professional judges should be laid down by law,
- judges' remuneration should be commensurate with their responsibilities and be at a sufficient level,
- during periods of illness and maternity leave the maintenance of a reasonable level of remuneration should be ensured,
- judges' pensions should be reasonably related to their previous salaries,
- specific legal provisions should exist to prevent the reduction of judges' salaries.

Among other international documents, the petitioner points to the report of the European Commission for Democracy through Law (the Venice Commission), adopted on 12 to 13 March 2010 (appendix no. 6 – part III, article 6) [http://www.venice.coe.int], which states: "The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. ... The level

of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants." Finally, in the comparative analysis it also argues using the conclusions of the Consultative Council of European Judges within the Council of Europe, Conseil consultatif de juges européens (CCJE) of 2001 [Opinion no. 1 (Avis No 1)], which (points no. 61 and 62) emphasize the need for legal provisions to guarantee judicial salaries against reduction and to ensure at least de provision for salary increases in line with the cost of living. (http://wcd.coe.int/).

In the next part of its petition the Municipal Court in Brno recapitulates the development of the law governing the material security of judges, in particular the development of its intent, as well as the change of the relationship to the material security of public administration employees. The material security of judges through their salary and multi-purpose reimbursement of expenses was established in the second half of the 1990s in Act no. 236/1995 Coll.; a judge's salary was constructed as the multiple of the base salary and a coefficient corresponding to his employment classification, and the reimbursement of expenses was determined by a 5.5% share of the base salary. The base salary was established as double the amount of the highest tariff for a ministry official. The petitioner emphasizes the fact that the principles by which this framework was guided and which were part of the discussion of this concept for compensation of judges included, among others, the principle of an unchangeable salary relationship between individual functions and the principle of identical and automatic adjustment of salaries and other benefits in the circle of state officials and state employees; at the same time, the assumption was made that „for once and for all the often undignified and politically misusable negotiations in Parliament about salaries will cease" (transcript of the 34th session of the Parliament of the Czech Republic, PS 1993–1996, part 6/32 – appendix no. 9). In 2002 [Act no. 309/2002 Coll., Amending the Laws Related to the Adoption of the Act on Service by State Employees in Administrative Offices and Remuneration of These Employees and Other employees in Administrative Offices (the "Civil Service Act"), called the accompanying Act to the bill of the Civil Service Act, government bill presented to the Chamber of Deputies as publication 794 – appendix no. 10] the structure of the base salary was changed (with effect as of 1 January 2004) so that it is a three times multiple of the average salary in the non-business sphere for individuals in the next to last year, based on data published by the Czech Statistical Office (§ 3 par. 3 of the Salaries Act). Regarding this change, the petitioner states that it resulted in a decline in the relationship between a judge's salary in relation to the salary in the public sphere; in its opinion the reasons that led to the marked decline in the relationship between the salaries of judges and employees in the public sphere (from the original ratio of ca. 4.3 to 3.0) were never convincingly presented and Parliament in fact never considered them. Publication 794 stated, in the background report to Art. XXXV, that tying the salary tariff of ministry employees and the base salary of constitutional officials led to differences in salary increases, and also – in particular – it pointed to the proposed Civil Service Act, which was meant to considerable tighten the conditions for service in the state administration and lead to "corresponding salary remuneration of civil servants." If the existing manner of setting the base salary were maintained, the salaries of constitutional officials would automatically increase, "without a change in the conditions for performing their office." Therefore, an amendment was proposed, "in order to create a stable connection between the salaries of constitutional officials and the growth of salaries in the non-business sphere. In relation to the possible differentiation of salaries … an appropriate relationship between the base salary and the average salary in the non-business sphere can be considered to be a multiple of three." However, the municipal court points out that a fundamental requisite for reducing the base salary and changing its structure was not met at all: the Civil Service Act has not yet gone into effect, and state administration officials still have obligations within the framework of the Labor Code. However, the amount of the base salary has not been re-evaluated. According to the petitioner, the structure of the base salary as a triple of the average salary of individuals in the non-business sphere for the last year but one (i.e. with a two year time delay) represented considerable interference in the level of judges' salaries; of course, in the situation after the great floods in 2002 it could appear as acceptable interference for the future growth of remuneration of judges. The change was tied to the shift to a 16-class system of remuneration of state officials, where the highest pay grades grew from 2002 to 2004 from CZK 18,570 to CZK 27,700 (government directive no. 330/2003 Coll., on the salaries of employees in the public services and administration), and preservation of the original system of the base salary would lead to it growing accordingly, which, as the petitioner states, the

executive branch did not want to accept. Therefore, according to the petitioner, the salaries of judges were left at the same level from the year 2002, so that the base salary would decline as needed; the petitioner considers it significant that in the background report to publication 133 this restriction is described as the "evolutionary method for correcting the erroneously set base salary."

The petitioner also analyzes the declared legislative aims of the contested legislation. Starting with an outline of the development in the first decade after the year 2000, it poses the question to what extent the aims to fix the relationship between salaries of constitutional officials and those of public sector employees as a three times multiple were honorable and true. In its opinion, doubts to the effect that, even at that time, the actual intent was to reduce the salaries of constitutional officials far more, and thus reach an ultimate leveling, arise from the following facts: Under Act no. 427/2003 Coll., which, for 2004, sets an extraordinary measure for determining the level of salary and certain reimbursement of expenses related to the exercise of office of state representatives and certain state bodies, members of the European Parliament, judges and state prosecutors, the level of additional salary for these person for the first half of 2004, and which amends certain related Acts (government bill, publication 392) the base salary for 2002 was to remain frozen until 2006, and starting with 2007 it was to be connected to the average salary in the non-business sector – the argument used here was the need for "solidarity with the consequences of reforming public finance." In its opinion, the real reason was the fact that the state budget did not at that time have sufficient funds to finance a transition to a 16-grade compensation system in the form that the Act's authors expected (The Civil Service Act also had not gone into effect). Hence the promotion of "solidarity" on the part of constitutional officials, whose salaries were to be frozen until 2007. In actuality they were frozen "only" in 2002-2004, because as of 1 January 2005 the Senate, in an amending proposal when discussing the draft Act on annulment of all forms of additional salaries, ended the freezing of the base salary and implemented full application of the three-times multiple rule (nothing else was even possible, as salaries in the non-business sector were growing at a high rate, so the base salary fell to the level of a three times multiple very quickly during 2003 and 2004). This Act (no. 626/2004 Coll., Amending Certain Acts in Connection with Implementation of Public Finance Reform in the Area of Remuneration) was approved by the Chamber of Deputies on 26 November 2004, and as early as 8 December 2004 the government presented to the Chamber of Deputies a draft Act (publication 839) whose purpose was to fix the salary level reached after the end of the freeze on 1 January 2005 for another three years – in relation to judges – (2005, 2006, 2007), and for other officials even to decrease it to the level in effect before 1 January 2005. This was to ensure [per the background report to publication 839 (IV electoral term)], "that, starting with 2006, there would not be a further increase, difficult to justify, in the disproportion in the salary level of the cited persons to the detriment of those persons whose base salary will not increase in 2005." According to the petitioner, "cost-saving" measures in the compensation of public sector employees, only appeared to be such, as the rate of growth of average pay in the non-business sector in 2002-2007 (the period of restrictions then being planned on constitutional officials) was 5 to 10% per year. According to data from the Czech Statistical Office, public sector pay grew between 2004 and 2005 from CZK 20,490 to CZK 22,307, i.e. by CZK 1,817 (8.9%), and an increase was recorded in average pay in central government offices from CZK 22,978 to CZK 25,824 between 2004 and 2005 (by CZK 2,846, i.e. 12.4%). The highest pay grades for ministry employees under government directive no. 330/2003 Coll. grew in the years 2004-2006 from CZK 27,700 to CZK 33,250 (by CZK 5,550, i.e. by 20%). According to the petitioner, the reality was completely different from the reasons that were meant to lead to freezing the salaries of constitutional officials in 2002-2007 (salaries in the public sector grew at a high rate), and even fundamentally different from the intentions of the legislature when it changed the concept of the base salary as of 1 January 2004; the Civil Service Act did not go into effect, and the scope of obligations and restrictions on officials, that were to be reflected in salary levels, did not change substantially.

The Chamber of Deputies stopped discussion of the bill (publication 839) and did not return to it; however, in the opinion of the Municipal Court in Brno, the debate at the time (2005) showed the consequences that can come from constant government pressure for repeated interference in the salaries of constitutional officials (in this regard the petitioner points out that the deputies criticized the government for failure to clarify its concepts and for the complete lack of any studies). Further

interference in the remuneration of judges came from Art. XLVIII of Act no. 261/2007 Coll., on Stabilization of Public Budgets, in the form of an "extraordinary measure in determining the level of salary and certain reimbursement of expenses of state authorities and certain state bodies and judges in the years 2008 to 2010." This "extraordinary measure" consisted of freezing the base salary at the level reached on 31 December 2007 and in the suspension of the rule contained in § 3 par. 3 of the Salaries Act (the multiple of three) for the period of 2008-2010. This Act (background report – publication 222) described the method of setting the base salary as automatic increasing, which would not be applied "during the period allocated for consolidation of public finances" (publication 222/0, part 2/22). The structure of the base salary, which determines a judge's salary level and multipurpose reimbursement of expenses, based on the principle of a three times multiple of the average pay of individuals in the non-business sector for the next to last year, was thus suspended for the predefined period of three years up to 31 December 2010. The base salary was CZK 56,847 (notification of the Ministry of Labor and Social Affairs no. 582/2006 Coll., on Announcing the Base Salary for Determination of Salaries and Certain Expense Reimbursements under Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, in 2007).

In terms of constitutional law arguments, the petitioner first raises – based on the outline of the development of material security for judges after 1995 – violation of legitimate expectations. It bases this on the statement that § 3 par. 3 of the Salaries Act (which sets the rule for determining the base salary as a three times multiple of the average salary in the non-business sector for the next to last year) was inserted into the Salaries Act by Act no. 309/2002 Coll. with effect as of 1 January 2004, was part of it in this for seven years, as the rule that replaced the original structure, tying the base salary to the highest pay grade for a ministry official. Thus, in the time since the adoption of Act no. 309/2002 Coll. all judges (but also all other constitutional officials) had a legitimate expectation that this already-reduced level for their income is a socially accepted level, and that it will be provided to them, as a component of the material security that is part of the framework of judicial independence. When this level was suspended during the predefined period, the judges had a legitimate expectation that upon the expiration of that period they would again receive salaries that would guarantee that socially settled ratio. The Chamber of Deputies approved the government bill, which had been submitted to it on 12 October 2010, on 10 December 2010, i.e. 20 days before the end of the three-year moratorium, and thereby reduced the salary ratio to a multiple of 2.5 – in absolute terms from CZK 69,297 (average pay in 2009: CZK 23,099 x 3 = CZK 69,297) to CZK 57,747. The senate approved the bill six days later, on 16 December 2010, and the President signed it the following day, after delivery, on 17 December 2010. In the petitioner's opinion, the actions of the legislature document concerns about possible late adoption of this Act. The interference in the legitimate expectations took place a mere few days before the expiration of the period after which matters would have returned to the expected state. The Act was promulgated on 30 December 2010, only one day before the expected return to the previous situation.

According to the Municipal Court in Brno, the legislature thus, by lowering the ration of the base salary to the average salary in the non-business sector, interfered in the legitimate expectations of judges under Art. 1 of the Protocol, under the case law of the European Court of Human Rights [Judgment of the European Court of Human Rights of 22 June 2004, Broniowski v. Poland (Application no. 31443/96, Reports 2004-V)] and Art. 1 of the Constitution (which establishes the principle of legitimate expectations as a component of a democratic state based on the rule of law).

If it was the true intention of the executive branch to reduce the level of compensation of constitutional officials far more than it indicated in 2002, then, according to the petitioner, it should have announced in advance, based on clear studies, how far it intended to reduce the level of judges' compensation, and freeze the level accordingly for a number of years. However, the executive branch could not set a specific level for the base salary (three times the average pay in the non-business sphere), create legitimate expectations that this was the true and actual intent (during a period of seven years), and then, several days before the return to the original situation, basically annul the general framework of the base salary and replace it with absolute numbers determined ad hoc for a period of 4 years; from

the viewpoint of timing, the legislature could and should have done so substantially earlier (most probably in 2002, when it was setting the new rules, if that was its true and actual intention).

According to the Municipal Court in Brno, the judges' expectation was realistic, completely legitimate, and very strong (supported by years of salary restrictions and other restrictions in material security, as will be discussed in other parts of the petition). Thus, the legislature, by lowering the ration of the base salary to the average salary in the non-business sector, interfered in the legitimate expectation of judges under Art. 1 of the Protocol and Art. 1 of the Constitution (the principle of legitimate expectation as a component of a democratic state governed by the rule of law). The petitioner also believes that this interference was not sufficiently justified by a public interest. Any interference in the rights and freedoms protected by the Convention for the Protection of Human Rights and Fundamental Freedoms and by the Constitution must pursue a legitimate aim. According to the background report and stenographer's transcripts from the discussion of the bill (publication 133, Senate publication 9) the amendment of § 3 par. 3 was inserted into the Salaries Act as insurance, addressing in advance the consequences of a potential verdict of reversal by the Constitutional Court (in this regard the petitioner states its surprise at the belief of the executive branch, and apparently also the legislature, that this procedure can be used to create the "material core" of the Salaries Act, which we be beyond the reach of the Constitutional Court). It considers this aim to be grossly inconsistent with the principle of a democratic state governed by the rule of law (submitting and adopting laws as insurance against possible intervention by the Constitutional Court). It points to Constitutional Court judgment file no. Pl. ÚS 16/11, which contained a statement that such actions by the legislature must be seen as departing from the framework of principles of a democratic, constitutional political culture. After the judgment of reversal in file no. Pl. ÚS 16/11, it is necessary to apply, for the year 2011, this reduced base salary in the amount of 2.5 times the average salary in the non-business sector in the year 2009; of course, in 2012 to 2014 the provisions setting an ad hoc base salary are to be applied again, that being in an amount lower than in 2011 (as the petitioner states, under Constitutional Court judgment file no. Pl. ÚS 16/11, these provisions cannot, of course, be evaluated as part of the complex of changes implemented by Act no. 425/2010 Coll., due to lack of active standing). Here the Municipal Court in Brno points out, somewhat ironically, that the intention to make savings in all areas financed from the state budget, as declared by the background report to publication 133 (the government bill), is, in and of itself, undoubtedly an admirable intention; in order for it to conform to the Constitution, it must be proved that this normative means is in accordance with the declared aim, and will stand up from the viewpoint of necessity (given the multiple possible normative means for the intended aim and their subsidiary in terms of limiting Constitutionally protected values).

The salaries of judges were frozen in 2002-2005 and again in 2007-2010. According to the Municipal Court in Brno, a restriction, if it is really to be only a restriction, and not permanent interference in the security of judges, must be relatively short-term, and must, after the reasons that led to its implementation have ceased to exist, lead to a return to the originally established values. According to the petitioner, the normative means chosen by the legislature (reducing the base salary from a multiple of three to a multiple of 2.5, i.e. by 16.6%), demonstrates clear signs of arbitrariness, which is inconsistent with the principles of a state governed by the rule of law, because this means was chosen as "insurance" against annulment of the provisions by the Constitutional Court and lacks proportionality in relation to measures in the area of remuneration in the non-business sector. It also states that, according to data from the Czech Statistical Office, in 2011 the amount of salary funds allocated for remuneration in the public sector was 10% less than in the previous year; the decrease of the nominal average salary in the non-business sphere is estimated at around 1%, and in 2010 the nominal decrease was 0.8%. In its opinion these are the first negative effects on remuneration of cost-saving measures in public administration; nonetheless, it considers these effects to be disproportional in relation to the judicial branch, in view of the restrictions on the judicial branch beginning in 2000, in view of the economic situation in the Czech Republic until 2010 and in 2011, in view of the relationship of the base salary and the average salary of individuals in the non-business sector in 1996-2014, in view of the development of the ratio of the average salary of judges and the average salary (based on adjusted numbers) in the non-business sector in nominal amounts and real levels in 1997-

2010 and finally in view of the development of the remuneration of officials in central state administration bodies according to data published in the media.

Based on the foregoing, the petitioner presents the claim of the government, as the submitter of Act no. 425/2010 Coll., in the background report (publication 133), that the thus-set base salary "is relatively higher than in previous years" (the base salary frozen until 31 December 2010 was CZK 56,847, while the base under § 3 par. 3 of the Salaries Act as of 1 January 2011 is CZK 57,747), and concludes that the nominal difference of + CZK 900.50 after years of stagnation, bringing a steep decline in the real value of salaries, moreover, for a period of a single year with the vision of a return to the previously frozen amount for the period of the following here years, does not change the cited trend of a decline in the salaries of judges. According to the petitioner, the government did not in any way justify (apart from enumerating the expenses in the state budget connected with renewing the statutory mechanism of the base salary as three times the average salary in the public sector) why it considers this interference (reducing the base by almost 17%, if we consider the base in the amount of the three times multiple reached in 2005) in the statutory relationships, long seen as legitimate, to be necessary and essential.

The Municipal Court in Brno says it believes that up to 2011 (beginning in 2002) no group of state employees contributed to the stabilization of public finances, or reform of them, or addressing the consequences of the recent economic crisis as much as judges did. The savings amounted to billions of crowns and every judge contributed hundreds of thousands; the savings on the salary of a district court judge from the beginning of his 6th year of practice is, for the years 2008, 2009, 2010 and 2011, CZK 425,100 (the petitioner estimates that the savings on all approximately 3,000 judges for the period was at least CZK 1.3 billion). According to the court, the judicial branch cannot be accused of not honoring the principle of solidarity; up to 2011 it was exclusively judges and other constitutional officials who showed solidarity with the state. The court considers the long-term trend of lowering the level of judges' salaries to be a populist gesture. For these reasons, the petitioner is of the opinion that after decades of constant interference in the remuneration of judges the matter can no longer be viewed only through the simple prism of nominal numbers; the decline in the salary ratios, as described in this petition, leads to a steep actual decline in the level of remuneration of judges, as the only such group that is paid from the state budget. Yet, this is supposed to be a group with which the discretion for interference is far more restricted than with other groups. Moreover, states the petitioner, the lower level of judges' salaries compared to the salaries of higher state officials leads to direct conflict with the thesis stated in Constitutional Court judgment file no. Pl. ÚS 55/05 that the attained ratio in material security of the representatives of the individual branches is to be preserved in the future. In conflict with this thesis, the salaries of higher officials in the state administration categorically exceed the salary of a judge at the beginning of his career (a judge at a court of first instance with eight years' experience); indeed, they also exceed the salaries of other constitutional officials, which, according to the petitioner testifies to the destruction of the system of remuneration for constitutional officials as a whole, one of the causes of which is the reduction over several years of the base salary (the decline in 2007-2010 from a value of 3 to a value of 2.57) and now the nominal reduction through a one-time strong measure (reduction by 16.6%). The petitioner objects to the inequality in relation to the salary restrictions in public administration for the year 2011 in view of the fields in which there were no restrictions, or in which the volume of salaries was increased (education and health care).

Act no. 236/1995 Coll. was adopted, among other things, with the aim of stabilizing the situation in the judiciary in connection with the departure of judges to more lucrative employment in the legal field. The result after 15 years is, as the Municipal Court in Brno documents in its petition, a drop in the relationship of the base salary to the average salary in the public sector from a ratio of 4.38 in 1996 to 2.5 in 2011, i.e. by 43%, or almost half.

The petitioner presents another argument supporting its claim about the disproportionate relationship between the salaries of judges and salaries in the public sector. As § 3 par. 3 of the Salaries Act uses data on the average salary of individuals for setting the base salary, it makes the base salary dependent on data that was abandoned for statistical purposes by the Czech Statistical Office in 2009, and does

not take into account employees length of employment, so it suffers from distortion. The average salary of a judge was calculated from the volume of gross salaries paid compared to the adjusted number of judges. The year 1997 was chosen as a starting point, in view of the start of the new system of judges' remuneration, the increase in prices is stated according to Czech Statistical Office data. Deviations in the curve of the average judge's pay are caused – in the petitioner's opinion – by the payment of so-called "other" salaries for the years 2002, 2003, 2004, in 2003 and 2005 as the consequences of Constitutional Court judgments. These data indicate that, if the relationship from 1997 between the average salaries in the non-business sector and the average salaries of judges was to be maintained, it would be necessary to set the base salary as a multiple of 3.4. If the relationship from 2005 was to be maintained (when the base salary was temporarily "unfrozen"), then according to the petitioner the base salary would have to be increased to 3.2 times the average salary. According to the petitioner, until 2010 judges suffered an unprecedented decline in the real value of their average salary in comparison with the average salary in the non-business sector – in the years 2005-2010 the real average salary in the non-business sector rose to 106% (taking the year 2005 as 100%), while the average salary of a judge fell all the way to 82% in 2010. No other public sector employee suffered such a decline in the real value of his income. The petitioner considers this development relevant for evaluating the proportionality of reducing the base salary as of 1 January 2011. It considers preservation of the triple ratio to be a guarantee that the steep decline in remuneration of judges will be partly halted.

The petitioner points to the government's program announcement, in which it "perceives the office of a judge as the peak of all legal professions," and presents in opposition to this thesis the data on the relationship between the salary of a judge and salaries in the public sector. According to the petitioner, a district court judge with eight years of experience should have had a monthly salary in 2011 of CZK 54,600; after intervention by the Constitutional Court in judgment file no. Pl. ÚS 16/11, that salary in 2011 is CZK 58,400, and in 2014 it is to be CZK 57,500. In relation to the average salary in the public sector attained in these years, these will be multiples of 2.5-2.3. According to CSU data the average salary of a university graduate in 2010 was CZK 45,909, and the average salary of a lawyer was CZK 51,244, which indicates that the cited judge's salary is only slightly above these average salaries. The data on the actual level of salaries in the central state administration lead the petitioner to state the hypothesis that the salaries of higher ministry officials (managers, head managers, and deputy ministers) routinely exceed a judge's salary two or three times. The remuneration allocated to these officials adds up to hundreds of thousands to millions annually – according to information from the public media, in 2011 for semi-annual compensation alone ministries expended more than CZK 100 million (the reduction of the base salary for judges by 5% in 2011 was supposed to save CZK 104.5 million). According to the petitioner, the national financial statements for 2010, available at www.mf.cr (part C. Report on the Results of Management of the State Budget) shows that the central state administration bodies had no substantial decrease in average salaries in 2010 compared to 2009 (-0.8%). According to CSU data, the average salary of a university graduate in the category of managers and directors in 2010 was CZK 86,198. In general, the average salaries of persons with university education grew from 2002 to 2009 by 32% (from CZK 31,835 to CZK 46,801), while the abovementioned salary of a judge with eight years of experience in the years 2002-2009 shows growth that is 10% lower (in 2002 it was CZK 47,000, and in 2009 it was CZK 57,500); thus, the salary of a judge did not even increase at the same rate as salaries of university graduates generally.

Another supporting argument in the petition from the Municipal Court in Brno is a reference to further restrictions to which judges are subject: These include the reduction in security during illness as of 1 January 2011 (per part ten, Art. XVII of Act no. 347/2010 Coll., which Amends Certain Acts in Connection with Cost-cutting Measures in the Competence of the Ministry of Labor and Social Affairs), which lack regard for the nature of the work of a judge, to whom matters are assigned for review and decision regardless of his absence due to illness or vacation. They further include the taxation of multi-purpose compensation and its subjection to social security payment (under § 6 par. 10 of Act no. 586/1992 Coll., on Income Tax, as amended by Act no. 346/2010 Coll.), in contrast to, for example, reimbursements under § 6 par. 7 let. c) of that Act, which are received by an employee and which are not subject to tax. In this regard the petitioner points to the increase of so-called

"ceilings" on payments for social security from 2010 and including 2011 (under § 15b of Act no. 589/1992 Coll., on Premiums for Social Security and Contributions to State Employment Policy, as amended by Act no. 362/2009 Coll. and Act no. 347/2010 Coll.), in consequence of which the net income of part of the judiciary declined in 2010 and 2011. The petitioner points to the fact that the scope of restrictions on judges' personal lives is greatest out of all state service employment relationships, in particular, with the prohibition on replacing a loss of income through other work activities.

Peripherally to the argument that the restrictions were necessary as a result of the economic crisis, the petitioner states that in January 2012 the Ministry of Finance published its macroeconomic forecast for the Czech Republic, in which the increase in average nominal wage in 2011 was ca. 2.2%; in 2012 the Ministry of Finance expects average wage growth of 2%, mild growth of GDP in 2012 of 0.2%, and in 2013 economic production should increase by 1.6%. The petitioner emphasizes the fact that it does not in any way underestimate the consequences of developments in the Eurozone, but it nevertheless emphasizes that in the case of security for judges the interference is long-term (i.e., not in response to current developments), cumulative (the combination of long-term freezing of salaries, reduction of the base salary, and other restrictions in material security), and lacks any proportion in relation to remuneration in the public sector. The petitioner is also not aware of any country in geopolitical proximity to the Czech Republic implementing similar long-term restrictions as regards judges.

The petitioner concludes that all these facts lead to lowering the social prestige of the judicial profession, and here refers to Constitutional Court judgments file no. Pl. ÚS 12/10 and Pl. ÚS 16/11, according to which "… the consequences of such leveling necessarily lead to reducing the status of judges in the social middle class, degradation of its compensation in relation to other legal professions, and diminution of its necessary social prestige."

In relation to the claimed unconstitutionality of § 3b par. 2 of the Salaries Act, the petitioner also states that the legislature, when setting the base salary for the years 2012-2014 chose the method of expressly stated, fixed amounts, but for this purpose calculated ad hoc: for 2012-2014 the amount is CZK 2 higher than for the years 2008-2010, and CZK 898.50 lower than in 2011. In this regard it points to the Constitutional Court's position in judgment file no. Pl. ÚS 16/11, rejecting the arguments in the background report (publication 133) to the bill of Act no. 425/2010 Coll. concerning evolutionary correction of the previously "erroneously" set base salary and proportionality regarding the announced cost savings in the public sector. Regarding the chosen method for regulating the remuneration of judges it refers to the opinion contained in judgment file no. Pl. ÚS 55/2000 of 18 April 2001 (N 62/22 SbNU 55; 241/2001 Coll.) [as well as in judgments file no. Pl. ÚS 29/09 of 3 November 2009 (N 233/55 SbNU 197; 387/2009 Coll.) and Pl. ÚS 24/08 of 17 March 2009 (N 56/52 SbNU 555; 124/2009 Coll.)]: "The fundamental principles of a material law-based state include the maxim of general legal regulation." It states that the legislature conceived of salary restrictions in various ways in the past; a typical method was, for example, that it suspended the application of the general rule for the structure of the base salary, and determined that the level of base salary attained would be used for a certain number of years (so-called "freezing"). However, the present matter involves a different situation – the legislature, by setting, in § 3b par. 2 of the Salaries Act, a specific value, expressed in absolute numbers, of the base salary for judges, created an individual act aimed against addressees designated by name for a certain period (without explaining in more detail how it arrived at the defined amount). This is a situation which, according to the petitioner, the Salaries Act adopted in the mid-1990s expressly wanted to prevent, i.e. to eliminate a situation where the legislature determines ad hoc, perhaps every year, based on the momentary political mood, how to remunerate judges. Moreover, the petitioner believes that it is evident in the present matter that this regulation corresponds to the period of an electoral term.

Finally, the petitioner also applies comparative arguments. It refers to the Council of Europe report of 2010 on European Judicial Systems, including all member states, which contains data from 2008 [available at www.coe.int/ (Systéme judiciaires européens, édition 2010)], which, in part 11.3, describes that remuneration of judges and state prosecutors. Table 11.11 of the report compares a

judge's gross income at the beginning of his career with the average gross salary. The average ratio in countries in the Council of Europe is 2.5, while the Czech Republic's value in 2008 was 2.1, i.e. lower than the Council of Europe average: the values are higher in states such as Armenia, Bosnia-Herzegovina, Azerbaijan, Lithuania, Latvia, Estonia, Montenegro, Romania, Russia, Serbia, and Slovakia. In a number of Council of Europe countries judges enjoy a number of other advantages (special pensions, compensation related to housing, reduced taxes, special types of life or health insurance, cars with drivers, representation costs and other types of benefits). Compared to that, the petitioner considers the 5.5% reimbursement of expenses for representation and professional literature provided to Czech judges to be disproportional. It considers the further decline in remuneration of judges to be a degradation of the Czech Republic, as a country that has been trying for 20 years to renew the values of a democratic state governed by the rule of law.

The comparative arguments include a reference to the case law of European constitutional courts. The Constitutional Court of the Polish Republic permits interference in judges' salaries only in a situation when the Polish Constitution forbids general indebtedness of the state [that is, a situation when the public debt exceeds 3/5 of the annual gross domestic product (decision file no. K 12/03)]. The Constitutional Court of the Slovak Republic, in judgment file no. PL. ÚS 12/05, pronounced unconstitutional of a statute (statutes) that for several years (2003-2006) postponed the entry into effect of a statute under which judges were entitled to remaining salary. In the opinion of that Constitutional Court, with reference to the principle of legitimate expectation, clarity, stability, and legal certainty, arising from the general principle of a state governed by the rule of law, it is not possible to speak of measures being "temporary" if they last several years. These arguments were also used by the Constitutional Court of the Latvian Republic (file no. 2009-11-0), in an economic situation substantially worse than in our country, and in a situation where the relationship of a judge's salary at the beginning of his car and the average salary showed a more positive trend than in the Czech Republic [per the report from the Council of Europe – the European Commission for the Efficiency of Justice (CEPEJ) 2010 – appendix no. 8].

The petitioner believes that the legislature, by interfering in the level of the base salary, violated, in relation to judges, the majority of maxims previously raised by the Constitutional Court: it did not respect the different room for discretion regarding judges, it violated the principle of proportionality, it had a political aim in seeking to lower the ratio of salaries in the judicial branch compared to the executive branch, and the interference in the base salary violated the principle of legitimate expectation as a principle immanent to a democratic state governed by the rule of law. This restriction was not discussed with the judicial branch. Due to the foregoing, the petitioner considers the interference in § 3 par. 3 of the Salaries Act to be inconsistent with Art. 1 par. 1 of the Constitution in connection with Art. 81 and Art. 82 par. 1 of the Constitution, Art. 1 of the Charter, as well as with Art. 1 of the Protocol, which all give rise to the state's obligation to secure independence for judges, including material security, as a guarantee for impartial and fair decision-making, which also give rise to the principle of legitimate expectation and the right to good laws, as well as with Art. 1 par. 1 of the Charter, which provides for equality in rights, because the legislature adjusted the remuneration of judges with the aim of approaching a leveling of salaries as a result.

As regards the legal effect of the proposed annulment, the Municipal Court in Brno states that this matter involves a situation analogous to the one that the Constitutional Court already reviewed in judgment file no. Pl. ÚS 2/02 of 9 March 2004 (N 35/32 SbNU 331; 278/2004 Coll.), when it decided that it was appropriate to annul the amendment of a statute, and the consequence was the renewal of the legal situation before the unconstitutional interference. It believes that in the case of the interference in § 3 par. 3 of the Act on salaries by Act no. 425/2010 Coll. we must speak not only of an amendment to the Act, but materially about an ad hoc departure from generally set rules that were clearly defined by the previous wording of the Act. The general rule of the base salary was not to be used all the way to 2015, unless it was to go into effect as "insurance" against intervention by the Constitutional Court (which in fact happened, and that "insurance" came to life for the year 2011). In its opinion, conceiving a statute as "insurance" against the Constitutional Court, moreover without any of the necessary discussion with the judicial branch (the fundamental change of the base salary was not

discussed with the judicial branch at all) means abandoning the constitutional conformity of the legislative process. Therefore, the Municipal Court is of the opinion that the conditions have been met for derogation of the derogation (i.e. for annulment of the amendment made to § 3 par. 3 of the Salaries Act by Act no. 425/2010 Coll.). It believes that this is also not barred by judgment file no. Pl. ÚS 16/11, in which the Constitutional Court reviewed analogous arguments, of course, in view of the conclusions reached then regarding the petitioner's active standing. However, in its opinion, these conclusions can be applied only in relation to the newly inserted § 3b par. 1 of the Act on salaries, which was annulled by the Constitutional Court. Therefore it has formulated the proposed verdict as an alternative; in the event that the Constitutional Court did not share the petitioner's opinion on reversal of the amendment implemented by Act no. 425/2010 Coll. (the primary proposed judgment), it then proposes annulling the limit of the multiple of the average pay in the non-business sector in effect for 2011 (the alternative proposed judgment), and thus opening space for the legislature to change this unconstitutionally adopted legislative framework concerning the judicial branch.

As regards the temporal consequences of a possible derogatory judgment, the petitioner adds that between the promulgation of a judgment and the necessary actions by the legislature the essential grounds of the judgment should apply, and the base salary of judges should be set as three times the average salary in the non-business sector for the next to last year, as, in its opinion, the Constitutional Court approved that level of the base salary in its previous decisions [cf. judgments file no. Pl. ÚS 55/05, Pl. ÚS 13/08 (oba viz výše), Pl. ÚS 15/09 of 8 July 2010 (N 139/58 SbNU 141; 244/2010 Coll.)].

The petitioner also proposed that the Constitutional Court, in accordance with § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by Act no. 48/2002 Coll., rule on the submitted petition as a matter of priority, arguing on the basis of the legislature's repeated interference to restrict the salaries of judges, its intensity, and the general effect on decisions in the matter of a high number of complaints by judges seeking additional salary and reimbursement of expenses for January 2011.

II.
Recapitulation of the Essential Parts in the Brief from the Party to the Proceedings

Under § 42 par. 4 a § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, the Constitutional Court sent the petition to the Chamber of Deputies. In her brief of 20 December 2011 the chairwoman of the Chamber of Deputies of the Parliament of the Czech Republic, Miroslava Němcová, refers to the facts contained in the Chamber of Deputies' brief regarding the petition seeking annulment of parts of Act no. 425/2010 Coll., file no. Pl. ÚS 16/11 of 19 April 2011. She also states that the draft Act, which amends Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by later regulations, and Act no. 201/1997 Coll., on the Pay and Other Benefits of State Attorneys and Amending and Supplementing Act no. 143/1992 Coll., on Pay and Compensation for Being on Call for Work in Budgetary Organizations and Certain Other Organizations and Bodies, as amended by later regulations, as amended by later regulations, was submitted to the Chamber of Deputies by the government on 12 October 2010 and was distributed as Chamber of Deputies publication 133. The bill was discussed by the Budget Committee and the Constitutional Law Committee, whose proposals did not affect the government's proposed wording of § 3 par. 3, just like the proposals of deputies who spoke in the second reading on 7 December 2010. The bill was adopted in a final vote in which the Chamber of Deputies approved the wording of the draft Act as follows: out of 162 deputies present, 147 in favor, 1 against. On 10 December 2010 the Chamber of Deputies passed the draft Act to the Senate, which discussed it and approved it at its session on 16 December 2010. The President signed the Act on 17 December 2010. The approved Act was delivered for signature to the Prime Minister, and was promulgated in the Collection of Laws on 30 December 2010.

In the conclusion of her brief, the chairwoman of the chamber of Deputies states that Act no. 425/2010 Coll. was adopted after a properly conducted legislative process, and that it is up to the Constitutional Court, in connection with the petition from the Municipal Court in Brno seeking annulment of the Act, to evaluate its constitutionality and issue the appropriate decision. At the request of the Constitutional Court, a brief from the chairwoman of the Chamber of Deputies of the Parliament of the Czech republic was delivered on 25 April 2012, regarding the supplement to the petition concerning annulment of § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll. The brief states that during discussion of this provision by the Chamber of Deputies, the wording proposed by the government was amended by an amending proposal from the Constitutional Law Committee, which was then not adopted in the third reading of the bill, when, out of 164 deputies present, 65 voted in favor and 71 against its adoption. As regards other matters the brief refers to the brief of 20 December 2011.

Under § 42 par. 4 a § 69 of Act no. 182/1993 Coll., as amended by later regulations, the Constitutional Court sent the petition to the Senate of the Parliament of the Czech Republic. In his brief of 7 December 2011, the Senate chairman, Milan Štěch, states that the petitioner, the Municipal Court in Brno, submitted to the Constitutional Court on 3 November 2011 – in the form of alternatives – a petition seeking annulment of provisions of statutes concerning regulation of the base salary for judges, consisting of a permanent change of the coefficient used to calculate the base salary (reduction from a multiple of three to a multiple of 2.5). In his opinion, this is a matter that is tied to the previous petition, which was reviewed by the Constitutional Court in the proceeding file no. PI. ÚS 16/11. That proceeding included – among other things – a petition for annulment of point 2 in Art. I part one of Act no. 425/2010 Coll., alternatively annulment of § 3 par. 3 of Act no. 236/1995 Coll., which the Constitutional Court rejected, with a detailed reasoning based on the fact that, at the time the Constitutional Court was deciding the matter, the petitioner did not meet the requirement of active standing under Art. 95 par. 2 of the Constitution in regard to these provisions. This situation was subsequently responded to in the proceeding conducted at the general court, where, in connection to the cited Constitutional Court judgment, the court separated a certain part of the matter for a separate proceeding, the plaintiff expanded the complaint, and the court permitted the amendment to the complaint. According to the petitioner, the present petition seeking annulment of the contested legal framework involves – in terms of the petitioner's active standing – a petition submitted after the legal framework in question is to be expressly applied to the plaintiff's case, and the petitioner concluded that the provision that is to be applied in the matter is inconsistent with the constitutional order of the Czech Republic.

The brief also states that all the essential comments on the changes to statutory regulation of salaries that were made on the basis of Act no. 425/2010 Coll., just as its discussion in Senate bodies and in the Senate session, was already stated in the senate's brief, sent on 15 April 2011 under ref. no. 3740/2011 in the matter reviewed by the Constitutional Court under file no. Pl. ÚS 16/11. Therefore, the chairman of the Senate refers in other matters to this brief from the Senate, which included an attached stenographer's report from the Senate session at which the draft Act adopted as no. 425/2010 Coll. was discussed and the Senate resolution on that draft Act. In the conclusion of the brief the chairman of the senate states that it is up to the Constitutional Court to review the constitutionality of the contested statutory provisions and issue a decision.

At the request of the Constitutional Court, a brief from the chairman or the Senate of the Parliament of the Czech Republic was delivered on 25 April 2012, regarding the supplement to the petition concerning annulment of § 3b par. 2 of Act no. 236/1995 Coll., on the Pay and Other Benefits Connected with the Office of State Authorities and Certain State Bodies and Judges and European Parliament Representatives, as amended by Act no. 425/2010 Coll. In it, the chairman of the senate refers to his original brief of 15 April 2011 regarding the original petition from the Municipal Court in Brno in the matter under file no. Pl. ÚS 16/11.

III.
Waiver of a Hearing

Under § 44 par. 2 of Act no. 182/1993 Coll., the Constitutional Court, with the consent of the parties, may waive a hearing, if it cannot be expected to further clarify the matter. In view of the fact that both the petitioner, in its filing delivered to the Constitutional Court on 16 April 2012, and the party to the proceeding, in the letter from the chairwoman of the Chamber of Deputies of the Parliament of the Czech Republic, delivered to the Constitutional Court on 25 April 2012, and from the chairman of the Senate of the Parliament of the Czech Republic, delivered to the Constitutional Court on the same day, stated their consent with waiving a hearing, and in view of the fact that the Constitutional Court believes that a hearing cannot be expected to further clarify the matter, a hearing in the matter was waived.

IV.
The text of Provisions of the Contested Legal Regulation

Point 2 Art. I of Act no. 425/2010 Coll. reads: "In § 3 par. 3 the words 'multiple of three' are replaced by the words 'multiple of 2.5'."

The provision of § 3 par. 3 of Act no. 236/1995 Coll. provides: "The base salary from 1 January do 31 December of the calendar year is a multiple of 2.5 times the average nominal monthly salary of individuals in the non-business sector reached according to the published data of the Czech Statistical Office for the next to last calendar year. The level of the base salary for each calendar year is announced by the Ministry of Labor and Social Affairs by a notification in the Collection of Laws."

Under § 3b par. 2 of Act no. 236/1995 Coll.: "From 1 January 2012 to 31 December 2014 the base salary for judges is CZK 56,849."

V.
The Requirement for the Petitioner's Active Standing

The petitioner seeking annulment of parts of Act no. 425/2010 Coll. (or parts of Act no. 236/1995 Coll.), insofar as they contain restrictions on the remuneration of judges (§ 3 par. 3, § 3b), together with the petitioner for a decision in the matter on a priority basis under § 39 of Act no. 182/1993 Coll., was submitted by the Municipal Court in Brno under § 64 par. 3 of Act no. 182/1993 Coll., as amended by later regulations.

As already stated in the narration, in the matter file no. 35 C 35/2011 the Municipal Court in Brno is ruling on a complaint in which a judge of the District Court Brno-venkov seeks against the Czech Republic – the District Court Brno – payment of the difference between the plaintiff's claim for salary under § 28 to 31 of the Salaries Act and the claim for reimbursement of expenses under § 32 par. 1 let. a) of the Act, according to the original complaint claim for January, and, per the expanded complaint, also for September 2011, and between the actually paid salary and reimbursement of expenses, reduced, with effect as of 1 January 2011 by Act no. 425/2010 Coll., which amends the Salaries Act. After the due date of the salary for September 2011, the plaintiff expanded the complaint to include additional salary and reimbursement of expenses for that month; he is claiming both additional salary and reimbursement of expenses for the period until the promulgation of Constitutional Court judgment of 2 August 2011, file no. Pl. ÚS 16/11, and the subsequent announcement of the notification from the Ministry of Labor and social Affairs of the level of the base salary for 2011, and for the period after announcement of the judgment and the notification. The petitioner allowed the amendment of the complaint by resolution of 24 October 2011, ref. no. 35 C 35/2011-125. After the due date of his salary for January 2012, the plaintiff expanded the complaint to include additional salary and reimbursement of expenses for that month, by the amount of the difference between the salary paid and

reimbursement of expenses determined according to the base salary set in § 3b par. 2 of the Salaries Act for 2012 to 2014 and the salary and reimbursement of expenses determined according to the base salary calculated as three times the average nominal monthly salary of individuals in the non-business sphere for the next to last calendar year. The Municipal Court in Brno permitted the amendment of the complaint by resolution of 14 February 2012, ref. no. 35 C 35/2011-168. The resolution entered into effect on 24 February 2012.

The procedural requirement of active standing of a general court under § 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, is that the relationship between the statute, or the individual statutory provision, that is proposed to be annulled and the subject matter of the core proceeding must be that the legislation establishes decision making grounds for the matter on the part of the general court. The petitioner bases its active standing on the statement that in reviewing the present matter it must apply § 3 par. 3 (for the part of the complaint claim concerning additional salary and reimbursement of expenses for September 2011) and § 3b par. 2 (for the part of the complaint claim concerning additional salary and reimbursement of expenses for January) of the Salaries Act, as amended by Act no. 425/2010 Coll.

As indicated by the description of the matter before the general court, we can state that, on the part of the petitioner, the requirements for active standing have been met for a proceeding on review of norms both in relation to § 3 par. 3, and § 3b par. 2 of the Salaries Act, as amended by Act no. 425/2010 Coll. In reviewing the part of the complaint claim concerning the additional salary and reimbursement of expenses for September 2011 after issuance of the derogatory Constitutional Court judgment file no. Pl. ÚS 16/11, it is necessary to apply § 3 par. 3 of the Salaries Act, as amended by Act no. 425/2010 Coll.; in evaluating the part of the complaint claim concerning the additional salary and reimbursement of expenses for January 2012 it is necessary to apply § 3b par. 2 of the Salaries Act, as amended by of Act no. 425/2010 Coll. These facts led the Constitutional Court to accept expansion of the proposed verdict, as contained in the supplement to the petition delivered to the Constitutional court on 26 March 2012.

As regards point I of the petition, the Constitutional Court states that in its settled case law it has repeatedly expressed the legal opinion that amendment of a legal regulation does not have independent normative existence, but becomes part of the amended legal regulation [judgments file no. Pl. ÚS 5/96 of 8 October 1996 (N 98/6 SbNU 203; 286/1996 Coll.), Pl. ÚS 33/01 of 12 March 2002 (N 28/25 SbNU 215; 145/2002 Coll.), Pl. ÚS 7/03 of 18 August 2004 (N 113/34 SbNU 165; 512/2004 Coll.), I. ÚS 504/10 of 21 March 2011, I. ÚS 1927/09 of 21 March 2011, resolution file no. Pl. ÚS 25/2000 of 15 August 2000 (U 27/19 SbNU 271), Pl. ÚS 3/10 of 20 April 2010, Pl. ÚS 33/08 of 11 February 2009 (not published in the Collection of Decisions of the Constitutional Court; available at http://nalus.usoud.cz), judgment file no. Pl. ÚS 16/11 (see above)]. The Constitutional Court permitted review of an amendment of a legal regulation in a situation where it is claimed to be unconstitutional for reasons of the non-existence of norm-creating competence or because of failure to observe the constitutionally prescribed manner of adopting and issuing it [cf., e.g., judgments file no. Pl. ÚS 33/97 of 17 December 1997 (N 163/9 SbNU 399; 30/1998 Coll.), Pl. ÚS 5/02 of 2 October 2002 (N 117/28 SbNU 25; 476/2002 Coll.), Pl. ÚS 7/03 of 18 August 2004 (N 113/34 SbNU 165; 512/2004 Coll.), Pl. ÚS 13/05 of 22 June 2005 (N 127/37 SbNU 593; 283/2005 Coll.) and Pl. ÚS 77/06 of 15 February 2007 (N 30/44 SbNU 349; 37/2007 Coll.)]. These legal conclusions apply in fully to the adjudicated matter. In connection with reviewing the requirements for the active standing of the petitioner to submit a petition seeking annulment of the provision in question, they are grounds for a conclusion that they have not been met. Based on the foregoing, the Constitutional Court denied the petition from the Municipal Court in Brno seeking the annulment of point 2 Art. I part one of Act no. 425/2010 Coll., which amends Act no. 236/1995 Coll., due to lack of justification under § 43 par. 2 let. a), b) of Act no. 182/1993 Coll., as amended by later regulations.

Moreover, regarding the petitioner's arguments that the repeated validity and entry into effect of the amended statutory provision is an effect of the annulment of that amendment by a judgment of the Constitutional Court we must refer to judgments file no. I. ÚS 1696/09 of 8 February 2011 and I. ÚS

504/10 of 21 March 2011, which summarize in detail the previous case law on this issue [contained, in particular, in judgments file no. Pl. ÚS 5/94 of 30 November 1994 (N 59/2 SbNU 155; 8/1995 Coll.), Pl. ÚS 21/01 of 12 February 2002 (N 14/25 SbNU 97; 95/2002 Coll.), Pl. ÚS 2/02 of 9 March 2004 (N 35/32 SbNU 331; 278/2004 Coll.), Pl. ÚS 6/02 of 27 November 2002 (N 146/28 SbNU 295; 4/2003 Coll.)]. At a general level, the Constitutional Court, in judgments file no. I. ÚS 1696/09 and I. ÚS 504/10, states the following: "The legal order of the Czech Republic does not contain an express regulation that would anticipate the renewed validity of a previously annulled statute, if the renewal of validity were tied to the expression of will of a state body other than the Parliament; generally, therefore, the starting point must be that a statute once annulled, without an expression of its repeated intent to renew the validity and effectiveness of the statute, cannot acquire these characteristics again. However, the Constitutional Court made a necessary exception to this principle, which, in this question too, respects the sovereignty of Parliament. As follows from decision file no. Pl. ÚS 2/02, the Constitutional Court gave Parliament time to consider again the issues governed by the statute that was subsequently annulled by the unconstitutional statute and to adopt an appropriate framework that would respect the fundamental rights and freedoms. In the cited decision, the Constitutional Court also anticipated the possibility that the legislature would not heed the call of the guardian of constitutionality, and, in view of the specific situation – the protection of a fundamental right arising from legitimate expectations – set forth the further legal consequences of its decision" From the point of view of the adjudicated matter, the Constitutional Court concludes that the general rule arising from judgment file no. I. ÚS 504/10 (as well as from previous case law) applies to it, and conditions have not been met in this case to adopt an exception from the stated rule. Insofar as the petitioner seeks an analogous conclusion as that reached by the Constitutional Court in judgment file no. Pl. ÚS 2/02, in which, after annulling the derogatory provision it declared that the situation established by the previously derogated provisions was reinstated, we must state that, in contrast to the matter file no. Pl. ÚS 2/02, in the adjudicated matter possible derogation of point 2 Art. I of part one of Act no. 425/2010 Coll., which amends Act no. 236/1995 Coll., would not be a derogation of a derogation.

VI.
The Constitutional Conformity of Competence and the Legislative Process

In a proceeding on review of norms, the Constitutional Court, in accordance with § 68 par. 2 of Act no. 182/1993 Coll., is required to review whether the contested statute, its individual provisions, or other legal regulation or its individual provisions, was adopted and issued within the bounds of constitutionally provided competence and in a constitutionally prescribed manner.

It was determined from Chamber of Deputies publications and stenographers' reports, as well as the briefs from the party to the proceeding, that the Chamber of Deputies approved the draft of the Act in question in the 3rd reading at its 9th session on 10 December 2010 by resolution no. 216; out of 167 deputies present, 147 voted in favor and 1 against.

The Senate approved the draft Act in the wording passed to it by the Chamber of Deputies in its 3rd session held on 16 December 2010 by resolution no. 67; out of 68 senators present, 46 voted in favor, 3 were against, and 19 abstained.

The Act was signed by the appropriate constitutional officials and was duly promulgated as no. 425/2010 Coll. in part 147 of the Collection of Laws, which was distributed on 30 December 2010, and under Art. III it went into effect on 1 January 2011.

The Constitutional Court notes that it already spoke authoritatively on the constitutionality of competence and the legislative process regarding Act no. 425/2010 Coll. in judgment file no. Pl. ÚS 16/11. Starting with the conclusions that it reached in that judgment, as well as with the recapitulation of the procedure of adoption of the Act, the Constitutional Court states that Act no. 425/2010 Coll., with the knowledge of the absence of discussion of the salary restrictions on judges, and thus a certain form of interference in one of the components of judicial independence – the principle of permanence

of material security of judges – with representatives of the independent judiciary, i.e. with the knowledge of violation of the rules of a democratic political culture, was not adopted at such an intensity of inconsistency with constitutional safeguards concerning competence and the legislative process as would establish grounds for derogation of it. Nonetheless, for the future, in cumulation with other circumstances inconsistent with the principles of the constitutional order, it does not rule out derogation in this regard.

VII.
Consistency of the Content of the Contested Statutory Provision with the Constitutional Order
(Constitutionality of Salary Restrictions on Judges)

In the past the Constitutional Court has repeatedly considered the issue of judges' salaries. It summarized its older case law in judgment file no. Pl. ÚS 55/05, to which it referred in its later judgments concerning the issue of judges' salaries, those begin judgments file no. Pl. ÚS 13/08, Pl. ÚS 12/10 and Pl. ÚS 16/11. As it is obvious that this case law is familiar to the parties to the proceeding, the Constitutional Court does not consider it necessary to summarize it again in detail.

The following fundamental, general theses regarding the constitutionality of salary restrictions on judges arise from the case law of the Constitutional Court, as well as from comparison with the case law of European constitutional courts (see, in particular, decisions of the Constitutional Court of the Polish republic file no. P 1/94 of 8 November 1994, K 13/94 of 14 March 1995, P 1/95 of 11 September 1995, P 8/00 of 4 October 2000, K 12/03 of 18 February 2004):

- evaluation of the constitutionality of salary restrictions on judges for a specific period of a specific year falls within the framework defined by the principle of judicial independence,
- the constitutional position of judges, on the one hand, and representatives of the legislative and executive branches, especially the state administration, on the other hand, differ in view of the principle of the separation of powers and the principle of judicial independence, from which follows the different scope of discretion for the legislature concerning salary restrictions on judges, compared to the scope of discretion for such restrictions in other areas of the public sector,
- interference in the material security of judges guaranteed by law may not be an expression of arbitrariness by the legislature, but must, based on the principle of proportionality, be justified by extraordinary circumstances, e.g. the state being in a difficult financial position; even if this condition is met, account must be taken of the different functions of judges and representatives of the legislative and executive branches, in particular the state administration; such interference may not give rise to concerns that it limits the dignity of judges [see recommendation of the Committee of Ministers of the Council of Europe Rec(94)12E of 13 October 1994], or that it is an expression of constitutionally impermissible pressure by the legislative branch and executive branch on the judicial branch.

Under the settled case law of the Constitutional Court, the principle of an independence judiciary is one of the essential requisites of a democratic state governed by the rule of law (Art. 9 par. 2 of the Constitution). The requirement of an independent judiciary comes from two sources: the neutrality of judges as a guarantee of a fair, impartial and objective court process, and from ensuring the rights and freedoms of individuals by a judge separated from the political power. The independence of judges is guaranteed by guarantees of a special legal status (these must include that judges cannot be demoted, recalled or transferred), by guarantees of organizational and official independence from bodies representing the legislative and especially the executive branch, as well as by separation of the judiciary from the legislative branch and the executive branch (in particular by applying the principle of incompatibility). From the viewpoint of content, judicial independence is ensured by judges being bound only by law, i.e. ruling out any elements of subordination in judicial decision making. The Constitutional Court comprehensively considered the fundamental components of the principle of judicial independence in judgment file no. Pl. ÚS 7/02 of 18 June 2002 (N 78/26 SbNU 273; 349/2002 Coll.).

Arbitrary interference by the legislature in the area of material security of judges, including salary restrictions, must, under the settled case law of the Constitutional Court, be classified in the framework that is protected by the principle of judges' independence for two reasons. The independence of judges is firstly conditioned on their moral integrity and professional level, but it is also tied to their appropriate material security. This component of the principle of judicial independence was also enshrined in the recommendation of the Committee of Ministers of the Council of Europe, Rec(94)12E of 13 October 1994 on the independence, efficiency and role of judges, according to which the "proper working conditions" of judges also include "ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities" (principle III, point 1b). A similar maxim is contained in Art. 6.1 of the European Charter on the statute for Judges, adopted by participants of a multilateral meeting organized by the Council of Europe on 8 to 10 July 1998, according to which professional judges are entitled to a salary, the level which is to be set so as to protect them from pressure aimed at influencing their decisions, and generally at influencing their conduct in determining the law, which could threaten their independence and impartiality. In this regard, the Constitutional Court again points to the fact (see judgment file no. Pl. ÚS 12/10) that "a professional group whose opportunity to earn income other than salaries is considerable restricted by law has been taking part, long-term in the reduction of state budget deficits". The second reason for subordinating the prohibition on arbitrary interference in the material security of judges (salary restrictions) in the framework of the principle of their independence is to rule out the possibility of pressure by the legislative or executive branches on the decision making of judges. In other words, to rule out arbitrary interference in the material security of judges as a possible form of "penalizing" judges by the legislature and the executive branch, and thereby also rule out forms of pressure on their decision making.

In judgment file no. Pl. ÚS 13/08 the Constitutional Court stated a thesis that represents a key viewpoint for evaluating the constitutionality of the contested provisions of the Salaries Act: "The Constitutional Court could scarcely approve, from the viewpoint of the principles of a democratic state governed by the rule of law, of a step by the legislature that (would) lead not to stopping the rate of growth of judges' salaries, but to even partly removing the already attained level of their material security. This is especially true if it were shown that this fundamentally impermissible restriction affects only or primarily the incomes of judges, and not at the same time the incomes of other civil 'servants'."

Positions on the issue of guaranteeing judicial independence developed in parallel on the level of European institutions. The Committee of Ministers of the Council of Europe, in recommendation CM/Rec(2010)12 of 17 November 2010 on Judges enshrined the requirement that the remuneration of judges must reflect their role and responsibility and be a sufficient barrier to stimuli aimed at influencing their decisions; a guarantee of achieving this aim is considered to be a situation in which – among other things – judges' pensions have a reasonable relationship to their previous salaries and in which there are special statutory provisions that prevent reducing judges' salaries (Art. 54).

The background report to the draft of the contested Act describes the mechanism originally set by the legislature for determining the base salary of state representatives as "unrealistic" and one that requires, for judges, in view of the principle of independence, an "evolutionary method of correction"; the aim of the statutory amendment is: "in connection with the necessary cost-saving measures in the public budgets to find a solution that would permit decreasing the salaries of representatives of all three branches of state power that are paid from the state budget, but would not conflict with the principles of proportionality for the regulation of salaries for judges, who enjoy higher constitutional protection." The entire complex of changes in the proportions of material security of judges compared to public administration employees is described in the background report as "decreasing unjustified differences in the levels of salaries and for achieving proportionality in the expenditure of funds for salaries from the same source, that is, from the state budget. In no regard can the proposed solution be seen as a limitation of the dignity of judges or as an expression of constitutionally impermissible pressure by the legislative branch and the executive branch on the judicial branch, because judges' salaries will be, even after implementation of the proposed measures, greatly above the standard and

the proposed measure also affects, in a much higher degree, representatives of the legislative and executive branches." Peripherally to the reasons for adopting § 3b par. 2 of the Salaries Act the background report states that it will "unlike [other state] representatives, the base salary for judges will return to approximately the level of 2007 to 2009."

In connection with the complex of changes introduced into Act no. 236/1995 Coll. by the amendment implemented by Act no. 425/2010 Coll., the subject matter of this proceeding on the review of norms is the evaluation of the constitutional conformity of reducing judges' salaries as regulated by § 3 par. 3 and § 3b par. 2 of the Salaries Act, by reducing the previous base salary.

In relation to § 3 par. 3 and § 3b par. 2 of the Salaries Act, the Constitutional Court first points out that the background report's reference to the assessment report by the European Commission of the Czech Republic from the year 2000, which stated that "judges' salaries are relatively high," whereas in other areas, e.g. the police and administrative structures, it pointed to the low salary level, can only be considered inappropriate, as the ratio between the base salary and average salary of judges and the base salary and average salary in public administration – according to data from the petitioner, which were not questioned by the party to the proceedings – as the Constitutional Court already stated in judgment file no. Pl. ÚS 16/11, was 3.7 in 1999 and only 2.34 in 2011. A judge with many years' experience receives only approximately 2/3 of the salary of the better paid higher state officials and does not even remotely achieve their average income. In 2003 the salary of such a judge was CZK 47,000, and the average pay of a department director in a central state administration body was CZK 50,187, in 2009 the difference increased to CZK 57,400 (a judge) and CZK 66,734 (department director).

In judgment file no. Pl. ÚS 11/02 of 11 June 2003 (N 87/30 SbNU 309; 198/2003 Coll.), the Constitutional Court, peripherally to the cited trend, stated that "pay relations of judges in the wider sense should be a stable non-reducible quantity, not a shifting factor with which the governmental grouping of the moment can engage in trade-offs, for example, because they consider judges' salaries to be too high in comparison with the salaries of state employees or of other professional groups." Abandoning any rational relationship between the level of judges' salaries and the level of salaries in public administration is reflected in the regulation of the Salaries Act in absurd consequences, including as regards the salaries of Constitutional Court judges, as a result of which the chairmen of the panels of the highest courts and members of the collegia of these courts have higher salaries than the judges of the Constitutional Court (in 2011 by 0.8%, and 4.9%, in 2012 to 2014 by 6.2%, and 10.4%).

Peripherally to § 3 par. 3 a § 3b par. 2 of the Salaries Act, it remains only for the Constitutional Court to repeat the statement it made in judgment file no. Pl. ÚS 12/10: "judges' salaries, unlike the salaries of other 'state servants,' have, for a long time, even with the following intended perspective, been subject only to restrictions. The measures concerning them then no longer seem exceptional and proportional, but appear to be a targeted process aimed at returning judges' salaries to lower levels, and thus removing the, from the point of view of the legislative and executive branches, "error" in setting the rules for calculating judges pay, previously committed in the mid-1990s. The consequences of such leveling necessarily lead to reducing the status of judges in the social middle class, degradation of its compensation in relation to other legal professions, and diminution of its necessary social prestige." Nothing in this is changed by the claim made by the presenter of the Act, that the framework contained in § 3b par. 2 of the Act on judge's salaries returns the base salary "approximately" to the level of 2007 to 2009. On the contrary, the restriction contained in reducing the coefficient for determining the base salary from a multiple of three to a multiple of 2.6 times the average nominal monthly salary of individuals in the non-business sector (§ 3 par. 3 of the Salaries Act, as amended by Act no. 425/2010 Coll.) is disproportionate interference, aimed only against judges; it does not meet the requirements that the Constitutional Court established in the cited case law for acceptable restrictions on judges' salaries.

Lowering judges' salaries is accompanied by paradoxically contrasting facts: on the one hand it is justified by the legislature by the need to make savings in public finances and to reduce the disproportionality in relation to salaries of public administration employees; on the other hand it is accompanied long-term by an increase in salaries in public administration (often tied with the provision of extraordinary bonuses or contractual salaries), or non-reduction of these salaries.

Thus, although the Constitutional Court, before the adoption of the Act in question, clearly formulated the maxim that the principle of equality in the area of restrictions in remuneration of state employees, constitutional officials and judges can be emphasized over the principle of a comprehensively understood judicial independence under quite exceptional circumstances, and thereby defined space for the constitutional conformity of a salary restriction on judges, nonetheless, the legislature was not guided by this maxim in the process of adopting Act no. 425/2010 Coll. Under these circumstances one cannot accept the thesis of necessary savings in public expenditures through restrictions on judges' salaries, and the reviewed statutory provision lacks any argument on the basis of "exceptional circumstances" that would justify giving priority to the principle of equality in restrictions on remuneration of state employees, constitutional officials and judges over the principle of a comprehensively understood judicial independence.

Other instances can also be considered as a form of adoption of income restrictions on judges within the meaning of the constitutional principle of equality, guarantee of independence and dignity of the status of judges, as well as the recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)12.

The provisions of § 157 to 163 of Act no. 361/2003 Coll., on the Service Relationship of Members of Security Forces, as amended by later regulations, (under § 1 par. 1 of that Act "security force" means the Police of the Czech Republic, the Fire Safety Corps of the Czech Republic, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic, The Security Information Service and the Office for International Relations and Information) and the provisions of § 131 to 137 of Act no. 221/1999 Coll., on Professional Soldiers, as amended by later regulations, establish the institution of a service-based contribution. The provisions of § 110 let. b) and § 112 to 121 of Act no. 218/2002 Coll., on the Service of State Employees in Administrative Offices and on the Remuneration of These Employees and Other Employees in Administrative Offices (the Civil Service Act), as amended by Act no. 445/2011 Coll., with effect as of 1 January 2015 (§ 254 of the Act), provides that state employees are entitled to social insurance, which includes a contribution toward pension based on years served.

Thus, judges of general courts and judges of the Constitutional Court (and similarly, state prosecutors) remain the only civil "servants" who do not receive such remuneration, as well as social recognition for performance of their office. This deficit of Act no. 6/2002 Coll., on Courts, Judges, Trainee Judges and state Administration of Courts, and Amending Certain Other Acts (the Act on Courts and Judges), as amended by later regulations, of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, as well as of Act no. 283/1993 Coll., on the State Prosecutor, as amended by later regulations, is non-accessory inequality; in relation to judges of general courts and judges of the Constitutional Court, from the viewpoint of the recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)12 it is also a restriction of one of the guarantees of judicial independence (that the pensions of judges are to have a reasonable relationship to their previous salaries). This domestic disproportion also has its counterpart in an international disproportion (e.g., in relation to the status of judges of constitutional courts in central European countries comparable to the Czech Republic, Poland and Slovakia – see § 16a of the Act of the National Council of the Slovak Republic no. 38/1993 Coll., on the Organization of the Constitutional Court of the Slovak Republic, on Proceedings before It, and on the Status of its Judges, or Artykul 6 Ustawy o Trybunale Konstytucyjnym z 1 August 1997, Dziennik Ustaw Nr 102, poz. 643, z 2000 r. Nr 48, poz. 552 i Nr 53, poz. 638, z 2001 r. Nr 98, poz. 1070, z 2005 r. Nr 169, poz. 1417 oraz z 2009 r. Nr 56, poz. 459).

Starting with these reasons, the salary restriction on judges contained in § 3 par. 3 and § 3b par. 2 of Act no. 236/1995 Coll., as amended by of Act no. 425/2010 Coll., must be considered inconsistent with Art. 1 par. 1 in connection with Art. 82 par. 1 of the Constitution; therefore the Plenum of the Constitutional Court decided on derogation of the subject statutory provision, as stated in the verdict of this judgment.

In view of the immediate review and decision in the present matter, the Constitutional Court considers a decision on the urgency of the matter under § 39 of Act no. 182/1993 Coll., as amended by later regulations, to be pointless.