

# 2004/05/06 - III. ÚS 258/03: INTERPRETATION OF CONTRACTS

## HEADNOTES

1) The acceptance of the ordinary court's conclusions on the content of the legal transaction (the contract) is a legal judgment, representing an authoritative interpretation of the legally relevant manifestation of private intent, and not a factual finding, rather a finding made on the basis of legal knowledge (see the agreeing ruling no. III. ÚS 280/03). In this connection, in the realm of fact belongs only findings of fact (but not the ascertainment of duties), in other words, the ascertainment of the existence of a legal transaction itself, the identification of its subject, the genuineness of the document (if it is made in written form), and the establishment of the wording of the text, etc.

The fulfillment of conditions for the subsumption under a legal norm is not made up solely of the factual findings, rather may be made up also of the determination of duties. Expressed in other words, an adjudication of the requisites of a contract represent the subordination of the individualized and concretized duties (rights) under the general and abstract (norms). The interpretation of contracts (legal transactions) is guided by interpretive rules which are analogous to those which govern the interpretation of generally binding legal enactments.

2) The meaning of § 15 para. 1, lit. c) of the Bankruptcy Act is, by the introduction of the institute of contesting and ineffectiveness of a legal transaction, to prevent the transfer of a debtor's property to third person to the detriment of the creditor in cases of doubt as to the debtor's good faith. However, the transfer free of charge of units in flats pursuant to §§ 23 para. 2, 24 para. 1 of the Bankruptcy Act does not constitute such a case. The transfer free of charge in the given case is not a manifestation of the free will of the debtor, rather occurs *ex lege*.

The Constitutional Court has, in a number of its judgments or positions (see position no. Pl. ÚS-st-1/96 and judgment no. Pl. ÚS 33/97), expressed its view on the tension between a literal and a teleological interpretation. It formulated a starting thesis in this regard in its judgment no. Pl. ÚS 33/97, in which it declared that it is untenable for the application of law to emerge solely from a linguistic interpretation; such linguistic interpretation represents merely an initial approximation to the application of the legal norm, it is the point of departure for the elucidation and clarification of its meaning and purpose (which purpose is served by a host of other approaches, such as a logical or systematic interpretation, an interpretation *e ratione legis*, etc.). Then in its judgment no. Pl. ÚS 21/96, in the context of assessing a similar matter, it stated: "A court is not absolutely bound to the literal wording of a statutory provision, rather it may and must diverge therefrom in cases where such is required by serious grounds of the statute's aim, the history of its adoption, systematic connection/context or certain of the principles which have their basis in a constitutionally conforming legal order which is a meaningful whole. At the same time, it is necessary to eschew arbitrariness, judicial decision-making must be based upon rational arguments."

Consequently, in the matter under consideration, the application of § 15 para. 1, lit. c) of the Bankruptcy Act is in conflict with its purpose and aim and as such must be rejected.

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

**IN THE NAME OF THE CZECH REPUBLIC**

On 6 May 2004 the Constitutional Court, sitting in a panel, in the matter of the constitutional complaint of J.F., represented by JUDr. E. J., attorney, with the participation of Ing. T. K., the administrator of the bankruptcy estate of the bankrupt, B. d. K. s. Ř., represented by JUDr. M. V., attorney, against the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, rejecting on the merits the extraordinary appeal, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15 concerning the exclusion of certain property from the inventory of bankruptcy assets of the bankrupt's estate, and the 3 November 2003 ruling of the Municipal Court in Prague, file no. 99 K 21/98-969, denying consent to the non-auction sale of precisely designated property from the bankruptcy estate, which complaint was submitted with a motion to have the constitutional complaint heard out of order due to urgency and to suspend the enforcement of the designated court decisions, as well as in the matter of the petition, pursuant to § 74 of Act No. 182/1993 Coll., proposing the annulment of § 15 para. 1 of Act No. 328/1991 Coll., on Bankruptcy, as subsequently amended, decided as follows:

1. The 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15, and the 3 November 2003 ruling of the Municipal Court in Prague, file no. 99 K 21/98-969, are quashed.
2. In its remaining parts, the complaint is denied on preliminary grounds.

## REASONING

### I.

#### The Definition of the Matter according to the Constitutional Complaint

In its petition submitted on 19 May 2003 for delivery to the Constitutional Court and then supplemented by submissions made on 4 June 2003, 29 December 2003, and 6 February 2004, the complainant sought the quashing of the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, rejecting on the merits the extraordinary appeal, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15 concerning the exclusion of certain property from the inventory of bankruptcy assets of the bankrupt's estate, and the 3 November 2003 ruling of the Municipal Court in Prague, file no. 99 K 21/98-969, denying consent to the non-auction sale of precisely designated property from the bankruptcy estate, and proposes that the constitutional complaint heard out of order due to urgency and the suspension of the enforcement of the designated court decisions, and pursuant to § 74 of Act No. 182/1993 Coll., submitted a petition proposing the annulment of § 15 para. 1 of Act No. 328/1991 Coll., on Bankruptcy, as subsequently amended.

In consequence of the designated ordinary court decisions, he considers that his fundamental rights and basic freedoms have been affected, namely those arising from Art. 2 paras. 2, 3, Art. 3 para. 1, Art. 4 paras. 1, 3, 4, Art. 11 paras. 1, 4, Art. 12 para. 1, Art. 36 para. 3, and Art. 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter "Charter"), as well as from Art. 1, Art. 2 para. 3, and Art. 15 para. 1 of the Constitution.

### II.

#### Recapitulation of the Matter in the Proceedings before the Ordinary Courts

From the file of the Municipal Court in Prague, 4 Cm 164/2000, which it requested, from the content of the contested decisions, as well as from the reasoning of the constitutional complaint, the Constitutional Court ascertained the following:

By its 5 December 2000 judgment, file no. 4 Cm 164/2000-15, the Regional Commercial Court in Prague rejected on the merits the complainant's action seeking the exclusion, from the inventory of bankruptcy assets from the bankruptcy estate of the bankrupt, B. d. K. s. Ř., of precisely designated shares in a flat and shares in common areas of the building and the subjacent land. The trial court reasoned its decision by the legal conclusion that, in accordance with the 30 April 1998 contract concluded between the complainant and the

bankrupt on the transfer of title to the flat they performed a legal transaction that was ineffective in the sense of § 15 para. 1, lit. c) of the Bankruptcy Act, as it effected, free of charge, the transfer to another person of the property of a debtor and, in consequence, the conditions for the exclusion of an item of property from the inventory of a bankrupt's estate were not fulfilled in the case under consideration.

On the complainant's appeal the High Court in Prague, in its 12 April 2001 judgment, file no. 13 Cmo 50/2001-37, affirmed the judgment of the first instance court. It stated that in the transfer, pursuant to § 23 odst. 2 a § 24 odst. 1 a 2 of the Act on Ownership of Flats, of title to a flat, garage, or atelier, a mutual settlement of funds designated for the financing of repairs on and maintenance of the building, or the house and unit, forms a component of a contract, as well as any negative balance of the basic fund of the residential management of the cooperative, as follows from § 24 para. 7 of the second mentioned act. According to its legal view, this settlement cannot be confused with the duties of the acquirer to pay a proportional amount of arrears of the outstanding investment credit granted for the construction and appurtenant to the transferred unit or on the outstanding portion of the preferential credit for extensive alterations and construction modifications on the transferred flat, or on the outstanding portion of commercial credits appurtenant to the flat, since the duty to pay these arrears is imposed upon the acquirer in another provision of the Act on Flats, namely § 24 para. 5. According to the appellate court findings, the contract at issue did not contain the mandatory attributes, as prescribed in § 24 paras. 5, 7 of the Act on the Ownership of Flats, thus it reached the conclusion on its invalidity pursuant to § 39 of the Civil Code. In such circumstances, it no longer considered it relevant to assess the contract's ineffectiveness pursuant to § 15 para. 1, lit. c) of the Bankruptcy Act. And it stated, in reaction to the complainant's objection to the registration of title to the residential unit in question into the register of property by decision of the cadastral office (hence, a public document under § 134 of the Civil Procedure Code), that this did not result in a decision on the contract's invalidity, that the cadastral office assesses the legal transaction at issue only from the perspectives exhaustively enumerated in § 5 of Act No. 265/1992 Coll., as subsequently amended. According to the High Court the decision on the authorization to register does not prevent the assessment of the contract in a civil court proceeding, whether that be in accordance with § 39 of the Civil Code or § 15 para. 1, lit. c) of the Bankruptcy Act.

In its 25 March 2003 judgment, case no. 29 Odo 560/2001-64, the Supreme Court rejected on the merits the complainant's extraordinary appeal. Basing its decision on the factual findings made by the appellate court, among which were included the determination of the content of the contract in question, it concurred on all points with the appellate court's findings of law.

In its 3 November 2003 ruling, file no. 99 K 21/98-969, the Municipal Court in Prague denied its consent to the non-auction sale of precisely designated property from the bankruptcy estate.

### III.

#### Recapitulation of the Points and the Petit of the Constitutional Complaint

On the level of ordinary law and in accord with the arguments already asserted in the prior proceeding, in her constitutional complaint the complainant objects, in particular, to the formalistic manner of interpreting the text of the contract on the transfer of the title to a flat from a cooperative to the complainant. In the complainant's view, the conclusion that the contract at issue is invalid, due to the failure to observe the conditions flowing from § 24 para. 7 of the Act on the Ownership of Flats, does not pass muster, since the fund for repairs and maintenance was not burdened by any debts and, thus, she was not, in this connection, a debtor in relation to the cooperative. She also views the appellate court's decision to be surprising, since the trial court assessed the matter under consideration according to § 15 para. 1 of the Bankruptcy Act, while the appellate court did so in accordance with § 39 of the Civil Code in conjunction with § 24 para. 7 of the Act on the Ownership of Flats. In her view, due to this approach, she was deprived of the opportunity to advance factual and legal arguments. Further, the complainant considers the High Court's conclusion (to the effect that the contract at issue does not contain a clause under § 24 para. 7 of the Act on the Ownership of Flats) to be in conflict with the admitted evidence, specifically the fact that this clause is contained in Art. VI para. 2 of the contract. Then, as a matter of constitutional law, she objects that § 15 para. 1 of the Bankruptcy Act is in conflict with the constitutional protection of the right of property. In addition, the complainant refers to the restitutive nature of the transfer of title to flats from a cooperative to the members thereof and the necessity arising therefrom of proceeding in accordance with § 68 of the Bankruptcy Act, as well as the unjustified preference accorded the bankrupt's creditors in relation to the complainant and other members of the cooperative. She finds the alleged preference to consist in the infringement of §§ 23 and 24 of the Act on the Ownership of Flats, regulating the right to the transfer, free of charge, of a residential unit of a house owned by a residential cooperative which, the complainant is convinced, is in no way affected by the declaration of the cooperative's bankruptcy.

For the given reasons, the complainant proposes that, in its judgment, the Constitutional Court quash the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15, in consequence of the designated ordinary court decisions, fundamental rights and basic freedoms have been affected, arising from Art. 2 paras. 2, 3, Art. 3 para. 1, Art. 4 paras. 1, 3, 4, Art. 11 paras. 1, 4, Art. 12 para. 1, Art. 36 para. 3, and Art. 38 para. 2 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter "Charter"), as well as from Art. 1, Art. 2 para. 3, and Art. 15 para. 1 of the Constitution.

The complainant reasons her motion to have the constitutional complaint heard out of order due to urgency, as well as to suspend the enforcement of the designated court decisions, by the possibility of irreparable changes to the property in consequence of the manner in which the administrator of the bankruptcy estate proceeds; the petition to quash the 3 November 2003 ruling of the Municipal Court in Prague, file no. 99 K 21/98-969, denying consent to the non-auction sale of precisely designated property from the

bankruptcy estate, she reasons, in particular, by its alleged conflict with § 23 para. 1 of the Act on the Ownership of Flats and, in consequence thereof, its conflict with Art. 1, Art. 2 para. 3, and Art. 95 para. 1 of the Constitution, and Art. 2 paras. 2, 3, Art. 11 para. 1, and Art. 36 of the Charter.

#### IV.

##### Recapitulation of the Main Parts of the Views Expressed by the Parties

On the basis of the Constitutional Court's request, pursuant to §§ 42 para. 4 and 76 para. 1 of Act No. 182/1993 Coll., as subsequently amended, on 10 February 2004, one of the opposing parties to the proceeding, the Supreme Court, submitted its statement of views on the constitutional complaint under consideration. In its statement that court refers to the ground for an extraordinary appeal, which gives grounds for the review of the decisions of both the appellate and trial courts, and by which a legal issue of basic significance was resolved (according to § 239 para. 1 of the Civil Procedure Code, in the version valid until 31 December 2000). It states that the judgment in the extraordinary appeal affirmed the appellate court's legal view, according to which in the given case, the complainant's action to exempt property from execution of judgment was dismissed due to the unconditional invalidity of the contract on the transfer of title to a flat from the cooperative to the complainant (§ 39 of the Civil Code) in consequence of the absence of agreement by the contracting parties under § 24 para. 7 of the Act on the Ownership of Flats. The party to the proceeding does not spot any formalistic approach, either in such application of the statutory provision in question or in the interpretation of the terms of the contract at issue. It is convinced that it consistently followed the constitutional order (iparticularly the separation of powers principle, according to which the judicial power is not permitted, when applying law, to replace the legislative power), then even the literal wording, as well as the sense and meaning of relevant ordinary law. As regards the restitutionary nature of Act No. 42/1992 Coll., on the Regulation of Property Relations and the Settlement of Property Claims in Cooperatives, the Supreme Court then refers to the fact that only certain provisions of the cited act are of a restitutorial nature, but not the rules on the transformation of individual types of cooperatives into a form corresponding to the rules contained in the Commercial Code. For the given reasons, § 68 of the Bankruptcy Act does not apply to the given matter. In reaction to the complainant's assertion that an agreement corresponding to § 24 para. 7 of the Act on the Ownership of Flats is contained in Art. VI. para. 2 of the contract at issue, the party to the proceeding calls attention to the framework of the review in an extraordinary appeal, which permits it to review the factual findings [§ 241 para. 3, lit. c) of the Civil Procedure Code, in the version valid until 31 December 2000]. Further, the Supreme Court does not share the complainant's view that the appellate court made a "surprising" decision. According to it, the complainant's view on the assessment of the validity of the contract at issue (that it was not the object of review before the first instance court) is enough to show that she is incorrect. The first instance court reviewed the contract's validity, and it came to the conclusion that it is valid but ineffective; if even the appellate court examined this conclusion on the basis of a review of the same document (§ 213 of the Civil Procedure Code, in the version valid until 31 December 2000), then according to the party to the

proceeding it did not exceed the bounds of its review authority. If the contract's validity had been subject of review by the first instance court (albeit with a positive conclusion), then, in the Supreme Court's view, the complainant could not have been "surprised" by the fact that the instrument was subject to review (albeit toward the opposite conclusion) in the appellate proceeding.

Finally, in its statement of views, the party to the proceeding recalls that the conclusion, according to which the collective's creditors cannot satisfy their justified claims to the collective's property only due to the fact that the provisions of the Act on the Ownership of Flats confers a special right to this property (the right to the transfer, free of charge) on the members of the cooperative, that this property is not subject to enforcement, and thus not to bankruptcy either, or that these rights endure even in an enforcement or bankruptcy proceeding, would be in conflict, not only with the principles of the cooperative's property liability for its own obligations (§ 222 para. 1, second sentence of the Commercial Code), rather even in blatant conflict with the protection of the rights of others (which, in contrast to the members of the cooperative, do not have any influence on any irresponsible behavior by the cooperative as regards the selection of obligations which it is not capable of covering). In the Supreme Court's view, the complainant's legal opinion would, in this connection, lead to the conclusion that the Act on the Ownership of Flats operates retroactively, for ex., in relation to creditors, who prior to its entry into effect secured their claims as against the cooperative, for ex., by liens on the buildings of the cooperative which contain cooperative flats.

In relation to the petition proposing the annulment of § 15 para. 1 of the Bankruptcy Act, the party to the proceeding objects, in particular, to the fact that it was not applied in the mentioned matter. As regards its content, the party states that the provision quite obviously is not in conflict with the constitutional order.

In conclusion, it asserts in the statement of views that the decision contested in the constitutional complaint was selected to be in the Collection of Judicial Decisions and Positions of the Supreme Court, as the Civil Law Collegium and the Commercial Collegium of the Supreme Court approved, at their 8 October 2003 meeting, the publication of that decision and determined that it would be published in issue No. 1 of the 2004 Annual under no. 8, with the headnotes, according to which:

I. A contract on the transfer of title to a residential unit owned by a cooperative, a component of which is not the mutual settlement of the funds designated for the financing of the repair and upkeep of the building, or of the house and units and further the funds realized from the income of residential, accruing to the transferred unit (§ 24 para. 7 of Act No. 72/1994 Coll., as subsequently amended), je neplatná (§ 39 of the Civil Code).

II. A house owned by a cooperative, which includes cooperative flats, shall not be excluded from the execution of the decision merely due to the fact that a member of the cooperative has asserted his right, pursuant to Act No. 72/1994 Coll., as subsequently amended, to the transfer free of charge of a residential unit in this house.

III. Until the conclusion of the bankruptcy proceeding, members of the cooperative who have asserted the right, pursuant to Act No. 72/1994 Coll., as subsequently amended, to the transfer free of charge of title to a residential unit owned by the cooperative, shall have solely the statutory right of first refusal of this residential unit.

IV. Claims arising from Act No. 72/1994 Coll., as subsequently amended, are not

restitution claims in the sense of § 68 of Act No. 328/1991 Sb, as subsequently amended.”

In view of what is stated above, the party to the proceeding proposes that the constitutional complaint under consideration should be rejected on the merits as unfounded.

## V.

### Evidentiary Proceeding

Pursuant to § 48 para. 1 of Act No. 182/1993 Coll., as subsequently amended, the Constitutional Court shall admit all evidence necessary to establish the facts of the case. In addition, it shall decide which of the proffered evidence it is necessary to admit and may also admit evidence other than that which has been proposed.

This statutory provision must be interpreted in light of Art. 83 of the Constitution, according to which the Constitutional Court is the judicial body responsible for the protection of constitutionality, as well as from the perspective of current case law, in which is accentuated that the Constitutional Court and ordinary courts have differing functions. The Constitutional Court adjudges decisions of ordinary courts contested by means of a constitutional complaint solely from the perspective of whether fundamental rights and basic freedoms guaranteed by the constitutional order have been affected, and not by reviewing the merits of the matter from the perspective of ordinary law. From this can be deduced, in the area of evidence taking, the maxim that evidence is taken in relation to facts verifying the complainant’s assertion that he has been affected in his fundamental rights and basic freedoms, but not evidence in relation to the merits of the case, that is evidence concerning matters on the plane of ordinary law, leading to a decision on the merits of the case. This differentiation is one of the features distinguishing the constitutional judiciary from the ordinary judiciary.

From the perspective of the indicated guarantees, the Constitutional Court took evidence in the matter under consideration with the aim of verifying the assertions contained in the constitutional complaint from the file of the Municipal Court in Prague, file no. 4 Cm 164/2000:

- on no. l. 36 is filed the record of the hearing before the appellate court, held on 12 April 2001, according to which were “read into evidence Art. V and Art. VI of the contract on the transfer of title to flat no. 1472/10”, concluded on 30 April 1998 between B. d. K. s. Ř and the complainant.

- the appendices to the file contain the contract on the transfer of title to flat no. 1472/10”, concluded on 30 April 1998 between B. d. K. s. Ř and the complainant, Art. VI of which reads as follows:

“VI.

Financial Settlement



1) On the basis of a request, the receiver shall pay the grantor, at his own expense, the amount of the unpaid long-term investment credit, which as of 30. 6. 1998 for the transferred flat amounted to 39,800 Kč.

2) The receiver agrees that the remainder of fund designated for the financing of maintenance and repairs of the common area and facilities of the home appurtenant to the transferred flat, including further increase in those funds from rental payments less any amount drawn upon from the day the contract on trusteeship is signed pursuant to paragraph 3 of this Article, is held by the grantor until the time the transfer of title to the flat and then transferred to the account of the administrator of the house.

3) The grantor is obliged:

a) To use the amount of unpaid long-term investment credit mentioned in paragraph 1 of this article for an exceptional one-off repayment of credits to the bank together with the regular installment payments of the credit as of 30 June 1998 and designate the bank, the shares of which the exceptional payment concerns.

b) Make an accounting of the advance on rental payments already made and the advance on performances connected with the use of a flat after the conclusion of the credit period (that is, calendar year) until 30 June of the year following the signature of the contract.”

## VI.

### Ratio Decidendi

#### VI./a

### The Scope of Constitutional Review

The assessment of whether an encroachment by a public authority upon fundamental rights and basic freedoms is unconstitutional consists of several components (file nos. III. ÚS 102/94, III. ÚS 114/94, III. ÚS 84/94, III. ÚS 142/98, III. ÚS 224/98). The first is the adjudication of the constitutionality of the legal provisions that have been applied in the case (which follows from § 68 para. 2 of Act No. 182/1993 Coll., as subsequently amended). Further components are the evaluation of whether constitutional procedural rights have been observed, and finally the adjudication of whether the substantive legal provision was interpreted and applied in a constitutionally conforming manner.

## Assessment of the Matter on the Ordinary Law Plane

From the perspective of ordinary law relevant for constitutional review, for the case under consideration the statutory provisions that apply to the case under consideration are §§ 1, 6, 7, 15 para. 1, 19, 20, 32 para. 1, and 68 of the Bankruptcy Act, §§ 23 and 24 of the Act on the Ownership of Flats, § 1 of Act No. 42/1992 Coll., on the Regulation of Property Relations and the Settlement of Property Claims in Cooperatives, § 222 para. 1 of the Commercial Code, §§ 39 and 41 of the Civil Code, § 5 of Act No. 265/1992 Coll., as subsequently amended, and § 241 para. 3, lit. c) of the Civil Procedure Code, in the version valid until 31 December 2000.

In the matter under consideration, the Constitutional Court did not find any grounds, in the sense of § 68 para. 2 of Act No. 182/1993 Coll., as subsequently amended, for assessing the constitutionality of the applied substantive and procedural law.

The aim and purpose of the action to exempt property from execution of judgment under § 19 of the Bankruptcy Act is the authoritative finding of whether some property which was included in the bankruptcy estate was properly so included, whether some third person can claim in relation thereto a stronger right than that of the bankrupt, that is a right which rules out the inclusion of this property into the bankrupt's estate and its subsequent liquidation in the bankruptcy.

The complainant cites three grounds which give rise to such a right. The first ground is the exclusion of an item from the bankruptcy estate in the case a restitution claim was asserted in relation to it (§ 68 of the Bankruptcy Act), and a claim asserted pursuant to §§ 23 and 24 of the Act on the Ownership of Flats is considered such a right. The second ground is the right to the transfer, free of charge, of shares of a flat in a building, the title of which is held by a cooperative (§§ 23 and 24 of the Act on the Ownership of Flats) which, in the complainant's conviction, is in no way affected even by the cooperative's declaration of bankruptcy. Finally, the third ground is the asserted content of the contract on the transfer of title to a flat from the hands of the cooperative to the complainant, where the conclusion of the High Court, according to which the contract at issue does not contain a clause under § 24 para. 7 of the Act on the Ownership of Flats, is considered to be in conflict with the admitted evidence, specifically with the fact that this clause is contained in Art. VI para. 2 of the contract.

The aim and purpose of the restitution acts (in particular Act No. 119/1990 Coll., on Judicial Rehabilitation, as subsequently amended, Act No. 403/1990 Coll., on the Mitigation of the Consequences of Certain Property Injustices, as subsequently amended, Act No. 87/1991 Coll., on Extrajudicial Rehabilitation, as subsequently amended, Act No. 229/1991 Coll., on the Regulation of Ownership Relations to the Soil and other Agricultural Property, as subsequently amended) is to mitigate the consequences of certain injustices, which occurred in consequence of the communist totalitarian regime, violating fundamental rights and basic freedoms in the period from 1948 until 1989.

According to its § 1, Act No. 42/1992 Coll., on the Regulation of Property Relations and the Settlement of Property Claims in Cooperatives, is a transformational act, while only in one context does it contain a restitution dimension as well, namely in connection with the surrender of property of the Communist Party of Czechoslovakia and the Socialist Union of Youth, acquired by cooperatives as of 1 January 1990. The rules contained in §§ 23 and 24 of the Act on the Ownership of Flats are then tied into the the indicated transformational purpose of Act. No. 42/1992 Coll. Otherwise, the Constitutional Court has already, in its judgment in the matter no. IV. ÚS 460/98, given its views on the transformational, and not the restitutorial, character for the given case of the relevant ordinary law. For the given reason one must reach the conclusion that the assertion of a claim under §§ 23 and 24 of the Act on the Ownership of Flats does not establish the conditions for the fulfillment of the manner of proceeding under § 68 of the Bankruptcy Act, that is, the exclusion of units in flats from the bankruptcy estate of a bankrupt which is a cooperative of flats.

The aim and purpose of the Bankruptcy Act (§ 1) is the disposition of the assets of debtors who are insolvent, while a debtor is insolvent if he has several creditors and is not capable, over an extended period, to cover his obligations, even in the case that he is a natural person, if he is an entrepreneur, and a legal person is overburdened with debt. The property which is subject to the bankruptcy proceeding is above all that property (bankruptcy estate) which belongs to the debtor on the day bankruptcy is declared, and also the property of other persons, especially those who acquired it on the basis of an ineffective legal transaction by the debtor (§ 6 of the Bankruptcy Act). Further, according to § 222 para. 1 of the Commercial Code, cooperatives answer for the violation of their obligations with all their assets. It follows therefrom that units in flats which are owned by a cooperative, however much the members of the cooperative hold a claim, under §§ 23 and 24 of the Act on the Ownership of Flats.

According to §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats, members of the cooperative, possess a claim to the transfer, free of charge, of the title to share in flats from the cooperative to them. For the given reasons the complainant inferred that, from the nature of the matter, this property cannot be included into the bankruptcy estate of a bankrupt cooperative, since, under the given circumstance, it cannot be liquidated (§ 27 of the Bankruptcy Act).

The conflict of norms of ordinary law outlined in this way, the resolution of which is then viewed differently on the one hand by the complainant and on the other hand by a party to the proceeding, is, however, a merely apparent conflict.

According to the mandatory provisions of §§ 1, 6 of the Bankruptcy Act, and § 222 para. 1 of the Commercial Code, all units in flats held by a cooperative on the day bankruptcy is declared become a part of the bankruptcy estate.

According to §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats, upon the fulfillment of certain conditions precisely laid down in the law, members of the cooperative who is a renter of the flat acquires the right to the transfer, free of charge, the flat from the ownership of the cooperative.

Under the conditions contained in § 20 of the Bankruptcy Act, bankruptcy creditors are authorized to assert claims, while § 7 of the cited act defines as a “bankruptcy creditor” each person who asserts a claim in relation to a bankrupt. At the same time, even an item of property can be the object of a claim, that is, even a flat (see, for example, § 167 para. 2 of the Civil Code), while the Bankruptcy Act also envisages the possibility of satisfying a bankruptcy creditor’s claim in relation to the item by which the claim is secured (§ 28 odst. 1).

In the case of a cooperative of flats which is a bankrupt, if she duly asserts her claim even a member of the cooperative can be a bankruptcy creditor, who is entitled to a claim flowing from the provisions of §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats.

Should the proceeds from the liquidation of the bankruptcy estate not suffice to cover the settlement of all asserted claims, then according to § 32 para. 1 of the Bankruptcy Act, “other claims”, among which can be included as well claims arising from §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats, shall be satisfied proportionally. This means that a member of the cooperative who is a bankruptcy creditor shall, following the appraisal of the shares in flats and the transfer of title to them, pay the difference between the proportional settlement of his claims and the price of the shares in flats (§ 27 para. 5 of the Bankruptcy Act).

The complainant further considers to be in conflict with the admitted evidence, specifically with the fact that this clause is contained in Art. VI para. 2 of the contract, the High Court conclusion that the contract under consideration does not contain a clause under § 24 para. 7 of the Act on the Ownership of Flats.

According to § 24 para. 7 of the Act on the Ownership of Flats, a mutual settlement of funds designated for the financing of repairs on and maintenance of the building, or the house and unit, forms a component of a contract on the transfer of the title to a unit from the cooperative, as does further the funds formed from the gains from residential management that are appurtenant to the transferred unit, and by the mutual settlement is meant both the repayment of remainder not drawn upon, as well as of arrears on the part of the acquirer.

According to the legal view of the appellate court, the settlement pursuant to § 24 para. 7 of the Act on the Ownership of Apartment cannot be confused with the duties of the acquirer to pay a proportional amount of arrears of the outstanding investment credit granted for the construction and appurtenant to the transferred unit or on the outstanding portion of the preferential credit for extensive alterations and construction modifications on the transferred flat, since the duty to pay these arrears is imposed upon the acquirer in another provision of the Act on Flats, namely § 24 para. 5. Proceeding from the interpretation outlined in this way of the provisions of § 24 paras. 5, 7 of the Act on the Ownership of Flats, the appellate court in the matter under consideration reached the conclusion that the contract at issue did not contain the attributes called for in § 24 para. 7 of the indicated act and, since an obligatory attribute was concerned, the court considered that, due to its absence, this contract was unconditionally invalid (§ 39 of the Civil Code). In this connection it further stated that in the proceeding on the authorization to

register the cadastral office assesses the legal transaction at issue only from the perspectives exhaustively enumerated in § 5 of Act No. 265/1992 Coll., as subsequently amended, while the decision on the authorization to invest does not hinder a court in a civil court proceeding from adjudging a contract's invalidity in the sense of § 39 of the Civil Code or of other statutory provisions, or rather its ineffectiveness as against bankruptcy creditors in the sense of § 15 para. 1, lit. c) of the Bankruptcy Act.

Proceeding from evidence admitted by the Constitutional Court at the oral hearing, the establishment of the wording of Art. VI of the contract on the transfer of flat no. 1472/10, concluded on 30 April 1998 between B. d. K. s. Ř. and the complainant, and from the legal assessment of its terms, the Constitutional Court declares that the contract at issue corresponds to the requirements that follow from the wording of § 24 para. 5, 7 of the Act on the Ownership of Flats. The provisions of Art. VI para. 2, and para. 3, lit. b) contain both a clause on the mutual accounting of funds designated for the financing of repairs and maintenance of the building and the residential units, further the funds formed from the gain from the management of the flats (from the perspective of the terms of Art. VI para. 2 of the contract at issue, the settlement of remainder of the rental payments), and also the manner in which such accounting will be carried out.

In this context and beyond the confines of the established factual and legal findings, the Constitutional Court agrees with the legal views of the High Court, to the effect that the obligatory nature of the clause under § 24 para. 7 of the Act on the Ownership of Flats, its absence or invalidity results without more in the unconditional invalidity of the entire contract on the transfer, free of charge, of the shares in flats under §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats.

The regulation of contractual types also falls within the competence of a democratic legislature in the area of the statutory regulation of private law. The transfer, free of charge, of title to shares in a flat from a cooperative to a member of the cooperative who is the lessee of the flat (§§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats) must also, if conditions precisely prescribed by law are met, be considered as just such a contractual type. As has already been stated, according to § 24 para. 7 of the Act on the Ownership of Flats, a component of a contract on the transfer of title to a unit from the cooperative is the mutual settlement of funds designated for the financing of repairs on and maintenance of the building, or the house and unit, as does further the funds formed from the gains from residential management that are appurtenant to the transferred unit.

Under § 39 of the Civil Code, a legal transaction shall be invalid if, by its content or aim, it is in conflict with the law or circumvents it, and under § 41 of the Civil Code, if the grounds of invalidity relate merely to a part of the legal transaction, then only that part is invalid, unless it follows from the nature or content of the legal transaction, or from the circumstances under which the transaction came into being, that this part cannot be severed from the remainder of the content.

If the High Court came to the conclusion that the contract at issue lacks a clause in the under § 24 para. 7 of the Act on the Ownership of Flats, or alternatively that its terms mix the obligation laid down in the statutory provision with the obligation arising from other statutory provisions (§ 24 para. 5 of the Act on the Ownership of Flats), which it would be

possible to adjudge rather in the sense of legally relevant indefiniteness (§ 37 para. 1 of the Civil Code), then it neglected to concern itself with the issue whether this clause is an essential or accidental requisite of the contractual type under §§ 23 para. 2 and 24 para. 1 of the Act on the Ownership of Flats, whether then the conditions are met for proceeding as laid down under §41 or of § 39 of the Civil Code.

If then the Supreme Court, when making an evaluation of the issue of basic legal significance, submitted to it for its adjudication by the complainant, concluded that the determination as to whether the contract at issue on the transfer of title to a flat (with respect to its Art. VI) contains a clause under § 24 para. 7 of the Act on the Ownership of Flats, or that such is not the case, is a factual finding, and thus grounds for an extraordinary appeal under § 241 para. 3, lit. c), in the version valid until, 31 December 2000, the Constitutional Court has not divulged its view in this regard. The acceptance of the ordinary court's conclusions on the content of the legal transaction (the contract) is a legal judgment, representing an authoritative interpretation of the legally relevant manifestation of private intent, and not a factual finding, rather a finding made on the basis of legal knowledge (see the agreeing ruling no. III. ÚS 280/03). In this connection, in the realm of fact belongs only findings of fact (but not the ascertainment of duties), in other words, the ascertainment of the existence of a legal transaction itself, the identification of its subject, the genuineness of the document (if it is made in written form), and the establishment of the wording of the text, etc.

The fulfillment of conditions for the subsumption under a legal norm is not made up solely of the factual findings, rather may be made up also of the determination of duties. Expressed in other words, an adjudication of the requisites of a contract represent the subordination of the individualized and concretized duties (rights) under the general and abstract (norms). The interpretation of contracts (legal transactions) is guided by interpretive rules which are analogous to those which govern the interpretation of generally binding legal enactments.

The wording of Art. VI of the contract at issue, concluded between the complainant and B. d. K. s. Ř, contains separate provisions for the remittance of unpaid credits and for the accounting of funds designated for the financing of repairs and maintenance of the house and units of flats, thus, it does not mix the duties flowing from § 24 para. 5 and from § 24 para. 7 of the Act on the Ownership of Flats. The wording of Art. VI para. 3, lit. b) of the cited contract then specially prescribes the manner of accounting of the funds under paragraph 2 of the cited provision of the contract.

Due to the fact that the appellate court, when interpreting the contract at issue, did not accept these facts and proceeded in conflict with the rules of linguistic, systematic, and teleological interpretation, it violated § 39 of the Civil Code, in conjunction with § 24 para. 7 of the Act on the Ownership of Flats.

By choosing a restrictive interpretation of the term, "incorrect legal assessment of the matter", in the extraordinary appeal the Supreme Court restricted the relevant grounds for the extraordinary appeal, and that in conflict not only with the meaning and purpose of § 241 para. 3, lit. c) of the Civil Procedure Code, in the version valid until 31 December 2000, but also with the meaning of the concepts of legal assessment and factual finding, which diverge in legal dogmatics.

Apart from substantive law objections, the complainant also reproaches the appellate court decision in that it affected her in her fundamental rights arising from Art. 38 para. 2 of the Charter (the restriction of the right to put forth legal and factual arguments in the matter), consisting in the adoption of a “surprising” decision.

The Constitutional Court does not agree with the legitimacy of this criticism. In this connection it concurs with the position taken by the party to the proceeding, according to which the issue of the validity of a contract on the transfer of shares in a flat, concluded between the complainant and B. d. K. s. Ř, was the subject both of the trial and review proceedings, which follows also from the evidence of the file of the Municipal Court in Prague, no. 4 Cm 164/2000, according to which the wording of Art. VI of the cited contract was established at the hearing before the High Court in Prague. In its approach, therefore, the High Court entirely accepted the safeguards which, on the issue of surprising decisions, flow from Constitutional Court jurisprudence (see judgment no. III. ÚS 139/98, III. ÚS 257/98, I. ÚS 336/99), in particular due to the fact that it did not ascertain the entire wording of the contract under consideration, rather only the wording of selected provisions, indicated to the parties to the proceeding the legal issue which it considers reasonable to deal with, without thereby violating the right of the parties flowing from the maxim of the equality of arms under Art. 37 para. 3 of the Charter. It thus anticipated the obligation resulting from § 118a para. 2 of the Civil Procedure Code, without this provision, in the sense of Art. XI of Part Twelve of Chapter I, point 15 of Act No. 30/2000 Coll., having any impact on this appellate proceeding.

If the Constitutional Court came to a conclusion on the validity, on the plane of ordinary law, of the contract under consideration, it then considers it indispensable also to analyze the arguments of the trial court, according to which in the decided matter, the application of § 15 para. 1, lit. c) of the Bankruptcy Act is reasonable. According to the cited statutory provision, if bankruptcy was declared, legal transactions of the debtor, by which items of property, rights, and other property values from his assets are transferred free of charge to a third person, are ineffective as against the creditors, if they were effected in the six months preceding the submission of the petition seeking a declaration of bankruptcy, or following the submission of this petition until the declaration of bankruptcy.

The meaning of the cited statutory provision is, by the introduction of the institute of contesting and ineffectiveness of a legal transaction, to prevent the transfer of a debtor’s property to third person to the detriment of the creditor in cases of doubt as to the debtor’s good faith. However, the transfer free of charge of units in flats pursuant to §§ 23 para. 2, 24 para. 1 of the Bankruptcy Act does not constitute such a case. The transfer free of charge in the given case is not a manifestation of the free will of the debtor, rather occurs *ex lege*.

The Constitutional Court has, in a number of its judgments or positions (see position no. Pl. ÚS-st-1/96 and judgment no. Pl. ÚS 33/97), expressed its view on the tension between a literal and a teleological interpretation. It formulated a starting thesis in this regard in its judgment no. Pl. ÚS 33/97, in which it declared that it is untenable for the application of law to emerge solely from a linguistic interpretation; such linguistic interpretation represents merely an initial approximation to the application of the legal norm, it is the

point of departure for the elucidation and clarification of its meaning and purpose (which purpose is served by a host of other approaches, such as a logical or systematic interpretation, an interpretation *e razione legis*, etc.). Then in its judgment no. Pl. ÚS 21/96, in the context of assessing a similar matter, it stated: “A court is not absolutely bound to the literal wording of a statutory provision, rather it may and must diverge therefrom in cases where such is required by serious grounds of the statute’s aim, the history of its adoption, systematic context or certain of the principles which have their basis in a constitutionally conforming legal order which is a meaningful whole. At the same time, it is necessary to eschew arbitrariness, judicial decision-making must be based upon rational arguments.”

Consequently, in the matter under consideration, the application of § 15 para. 1, lit. c) of the Bankruptcy Act is in conflict with its purpose and aim and as such must be rejected.

#### VI./c

#### Adjudication of the Constitutionality of the Interpretation and Application of the Ordinary Law Relevant in the Matter

It is necessary, as a matter of constitutional law, to lay down the conditions under which, when fulfilled, the incorrect application of ordinary law by ordinary courts would result in the infringement of a fundamental right or basic freedom.

The first group of cases in which, in proceedings on constitutional complaints, the Constitutional Court intervenes into ordinary court decision-making is represented by those cases in which it assesses the issue whether, from the perspective of the principle of proportionality, the ordinary law norm applied in the matter, and which pursues a certain constitutionally protected aim, legitimately takes priority over another ordinary law norm which pursues the attainment of another constitutionally protected aim (for example, case no. III. ÚS 256/01 and others).

Another group are those cases which involve, not a conflict between two, or more, ordinary law norms that might be applied in the matter, rather the resolution of the question of acceptance of certain of several interpretive alternatives, of the same, definite, ordinary law norm (for example, case nos. II. ÚS 22/94, III. ÚS 114/94 and others).

Finally, the third group of cases are those cases, in proceedings on constitutional complaints, of the arbitrary application of ordinary law norms by an ordinary court, which lacks any meaningful substantiation or any interconnection with any sort of constitutionally protected aim. Illustrations are the Constitutional Court decisions in which it asserted that the ordinary court’s legal conclusion is „in extreme incongruity with the factual and legal determinations that were made, or that the reasoning of the court decision does not follow from it by any possible interpretation“ (see, in particular, III. ÚS 84/94, III. ÚS 166/95, I. ÚS 401/98, II. ÚS 252/99, I. ÚS 129/2000, I. ÚS 549/2000, III. ÚS 74/02 and III. ÚS 694/02).



Proceedings on constitutional complaints, then, can be subdivided into cases of the conflict of norms of ordinary law, the conflict of interpretive alternatives, and finally cases of the arbitrary application of ordinary law.

In the matter under consideration (compare also judgment no. III. ÚS 686/02) the Constitutional Court came to the conclusion that the interpretation of § 39 of the Civil Code, § 24 para. 7 of the Act on Ownership of Flats, § 241 odst. 3, lit. c) of the Civil Procedure Code, in the version valid until 31 December 2000, and § 15 para. 1, lit. c) of the Bankruptcy Act, contained in decisions of appellate, extraordinary appellate, and first instance courts, come into extreme incongruity with the content of the customary interpretive methods, as well as with the standard legal dogma demarcated by the content of legal concepts, and as a result the decision under consideration cannot be classified in the sense of the arbitrary application of ordinary law, and thus as a violation of the fundamental right to due process under Art. 36 para. 1 of the Charter and a violation of the fundamental right to the protection of property under Art. 11 para. 1 of the Charter.

For the given reasons, that is, in consideration of the violation of Art. 11 para. 1 and Art. 36 para. 1 of the Charter, the Constitutional Court has quashed the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15 [§ 82 para. 1, para. 3 lit. a) of Act No. 182/1993 Coll., as subsequently amended].

#### VI./d

#### Ancillary Issues

After quashing the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, the 12 April 2001 judgment of the High Court in Prague, file no. 13 Cmo 50/2001-37, and the 5 December 2000 judgment of the Regional Commercial Court in Prague, file no. 4 Cm 164/2000-15, the 3 November 2003 ruling of the Municipal Court in Prague, file no. 99 K 21/98-969, denying consent to the non-auction sale of precisely designated property from the bankruptcy estate, ceases to have any legal foundation, as the cassational grounds undermining the ordinary courts decisions in the proceeding also give grounds for the quashing of the cited Municipal Court ruling.

The complainant gave as her reasons for the motion to have the constitutional complaint heard out of order due to urgency (§ 39 of Act No. 182/1993 Coll., as subsequently amended), as well as to suspend the enforcement of the contested court decisions (§ 79 para. 2 of Act No. 182/1993 Coll.), the possibility of irreparable changes to the property in consequence of the manner in which the administrator of the bankruptcy estate proceeds. In the given case, however, the Constitutional Court found no reasons for proceeding in accordance with § 39 and § 79 para. 2 of Act No. 182/1993 Coll., as subsequently amended. For the given reasons, the Constitutional Court has, as a rule, applied the cited provisions only in the case where the enforcement of the contested decision would have irreparable personal consequence, excluding even the restitutorial or

compensatory function of legal liability. For the reasons laid down, the Constitutional Court has, pursuant to § 43 para. 2, lit. a) of Act No. 182/1993 Coll., as subsequently amended, denied as manifestly unfounded the complainant's motion to have the constitutional complaint heard out of order due to urgency (§ 39 of Act No. 182/1993 Coll., as subsequently amended), as well as to suspend the enforcement of the contested court decisions (§ 79 para. 2 of Act No. 182/1993 Coll.). The Constitutional Court concludes that a restrictive interpretation of the cited statutory provisions is necessary in part due to the maxim of the equality of parties to proceedings conducted before the Constitutional Court (pursuant to Art. 37 para. 3 of the Charter), and in part due to the special nature of the institute of proceedings on a constitutional complaint, as an extensive interpretation of the procedure under § 79 para. 2 of Act No. 182/1993 Coll. would make of it, de facto, an ordinary remedial procedure.

Pursuant to § 74 of Act No. 182/1993 Coll., the complainant has submitted a petition proposing the annulment of § 15 para. 1 of Act No. 328/1991 Coll., on Bankruptcy, as subsequently amended, to which she objects for alleged conflict with the constitutionally protected substance of the right of property. Since § 15 para. 1 of the Bankruptcy Act is not applied either in the reasoning of the final decision of 12 April 2001 of the High Court in Prague, file no. 13 Cmo 50/2001-37, or in that of the 25 March 2003 judgment of the Supreme Court, case no. 29 Odo 560/2001-64, rejecting on the merits the extraordinary appeal, the complainant's petition does not fulfill the conditions of § 74 and § 64 para. 1, lit. e) of Act No. 182/1993 Coll., as subsequently amended, for which reason the petition must be classified as a petition submitted by a manifestly unauthorized person, which gives grounds for the denial of the petition on preliminary grounds pursuant to § 43 para. 2, lit. b) in conjunction with § 43 para. 1, lit. c) of Act No. 182/1993 Coll., as subsequently amended.

**Notice: This judgment may not be appealed.**

Brno, 6 May 2004