2003/06/11 - PL. ÚS 11/02: JUDGES´SALARIES

HEADNOTES

If the Constitutional Court, a constitutional body, that is, a public authority, is not itself to act arbitrarily, it must feel itself to be bound by its own decisions, and its jurisprudence may depart therefrom only under certain circumstances. Since the Constitutional Court, rather it above all, is obliged to respect the bounds of the constitutional state, in which arbitrary conduct by public authorities is strictly forbidden, the Constitutional Court is also subject to the prohibition on arbitrary conduct. The above postulate can also be seen as an essential attribute of a democratic state governed by the rule of law. (Art. 1 para. 1 in conjunction with Art. 9 para. 2 of the Czech Constitution).

The first circumstance in which the Constitutional Court may depart from its own jurisprudence is a change of the social and economic relations in the country, a change in their structure, or a change in the society's cultural conceptions. A further circumstance is a change or shift in the legal environment formed by sub-constitutional legal norms which in their entirety influence the examination of constitutional principles and maxims without, of course, deviating from them but, above all, not restricting the principle of the democratic state governed by the rule of law (Art. 1 para. 1 of the Czech Constitution). A further circumstance allowing for changes in the Constitutional Court's jurisprudence is a change in, or an addition to, those legal norms and principles which form for the Constitutional Court its binding frame of reference, that is, those which are contained in the Czech Republic's constitutional order, assuming, of course, that it is not such a change as would conflict with the limits laid down by Art. 9 para. 2 of the Czech Constitution, that is, they are not changes in the essential attributes of a democratic state governed by the rule of law.

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. In other words, if it is acceptable for the principle of equality to apply in the sense mentioned above as regards an exceptional, economically justified reduction in salary for all, the equality of all above-mentioned groups as regards the final salary level cannot be accepted (not even as a target category). The striving toward such equality departs from the bounds of constitutionality; it is a political aim which finds no support in the constitutionally conceived principle of equality. In its material sense, this principle finds its bounds in the expression, "similar things should not be arbitrarily subject to different rules, but also unequal things should not be arbitrarily subject to the same rules". The principle of equality cannot be conceived of as the leveling of outcomes, for it must be interpreted as a guarantee of equal initial opportunity. The legislature evidently did not, however, respect the principle of equality as interpreted in this manner.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court Plenum decided 11 June 2003 on the petition proposing the annulment of the word "judges" from 1 of Act No. 416/2001 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 2001 and the Designation of the Level of the Additional Salary Payment for the First and Second Halves of 2002 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, Representatives of the Public Protector of Rights, and Members of the Bank Council of the Czech National Bank as follows:

The word "judges" in § 1 of Act No. 416/2001 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 2001 and the Designation of the Level of the Additional Salary Payment for the First and Second Halves of 2002 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, Representatives of the Public Protector of Rights, and Members of the Bank Council of the Czech National Bank, is annulled due on the day this judgment is published in the Collection of Laws.

REASONING

I.

On 8 April 2002, the Chairwoman of Panel 13 of the Brno Municipal Court, submitted, pursuant to Art. 95 para.2 of the Constitution, in the version in effect until 31 May 2002, and § 64 para. 4 of Act No. 182/1993 Coll., on the Constitutional Court, (as of 1 January 2003, this provision is contained in 64 para. 3 of this Act, hereinafter "Act on the Constitutional Court"), a petition proposing the annulment of the word, "judges", from § 1 of Act No. 416/2001 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 2001 and the Designation of the Level of the Additional Salary Payment for the First and Second Halves of 2002 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, Representatives of the Public Protector of Rights, and Members of the Bank Council of the Czech National Bank.

That submission was connected to a proceeding on a complaint submitted by a judge of the Brno Municipal Court against the Czech Republic – Brno Municipal Court for the payment of an additional salary payment for the second half of 2001 in the amount of 53 100 Kč and for reimbursement of costs of the proceeding before the Brno Municipal Court, file no. 13 C 27/2002.

As a consequence of the above-mentioned provision of Act No. 416/2001 Coll., the complainant was not paid the additional salary for the second half of 2001 in the amount to which he is entitled under § 4 para. 2 of Act No. 236/1995 Coll, on the Salary and further Requirements connected with the Holding of Office as a Representative of State Power or of Certain State Bodies, or a Judge, as amended. In that proceeding the Chairwoman came to the conclusion that the above-cited provision of Act No. 416/2001 Coll., which should be applied in the resolution of the matter, is in conflict with Art. 1 of the Constitution of the Czech Republic (currently Art. 1 para. 1 following the amendment introduced by Constitutional Act No. 395/2001 Coll., which entered into effect on 1 June 2002) and Art. 2 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter "the Charter"), as it represents a considerable encroachment upon judicial independence guaranteed by Art. 82 para. 1 of the Constitution of the Czech Republic.

She stated that the Constitutional Court had already come to the same conclusion in its judgment of 15 September 1999, published as No. 233/1999 Coll. (file no. Pl. ÚS 13/99, Collection of Judgments and Rulings of the Constitutional Court, Vol. 15, p. 191 and following), in which the Court annulled the word, "judges" from § 1 of Act No. 268/1998 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 1998 for Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, and announced the proposition of law that the deprivation of additional pay constitutes a threat to the principle of judicial independence.

Although in two subsequent judgments, announced on 3 July 2000 and published as No. 320/2000 Coll. and No. 321/2000 Coll. (file no. Pl. ÚS 18/99 and Pl. ÚS 16/2000, the Collection of Judgments and Rulings of the Constitutional Court, Vol. 19, at p. 3 and following, and at p. 23 and following), it refused, on the merits, the petition proposing the annulment of Act No. 287/1997 Coll., which supplements Act No. 236/1995 Coll., on the Salary and other Requirements connected with the Holding of Office by Representatives of State Power and of Certain State Bodies, and by Judges, as amended by Act No. 138/1996 Coll., and the word, "judges", in § 1 of Act No. 308/1999 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 1999 and the Second Half of 2000 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, still it announced the proposition of law that the removal of salary from judges is possible only in exceptional and isolated cases.

II.

At the Constitutional Court's request, the Chairman of the Assembly of Deputies of the Czech Parliament, Prof. Ing. Vaclav Klaus, CSc., and the Chairman of the Senate of the Czech Parliament, Doc. JUDr. Petr Pithart, gave their views on the petition pursuant to § 69 para. 1 of the Act on the Constitutional Court.

…

III.

The Constitutional Court proceeded in this case in accordance with § 68 of Act No. 182/1993 Coll. Since no grounds have been adduced for rejecting the petition on preliminary grounds or for discontinuing the proceeding, the Court verified whether Act No. 416/2001 Coll. had been adopted and issued within the bounds of the competence laid down in the Constitution and in the constitutionally prescribed manner. It ascertained that the contested statute was duly debated and adopted by the legislative body, signed by the competent constitutional officials, and promulgated in the Collection of Laws. Accordingly, there was nothing to prevent the adjudication of the contested statutory provisions in terms of their conformity with the constitutional order of the Czech Republic.

IV.

The Constitutional Court has already dealt with the given issue three times.

In its 15 September 1999 judgment, file No. Pl. ÚS 13/99, the Constitutional Court Plenum decided on the petition submitted by the Divisional Court for Prague 4 proposing the annulment of Act No. 268/1998 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 1998 for Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission:

"On the day this judgment is published in the Collection of Laws, the word, "judges" shall be annulled from the text, 'Representatives of state power and certain state bodies,1) judges,2) state attorneys,3) and members of the Presidium of the Commission for Securities4) shall not be entitled to a further pay5) for the second half of 1998' in § 1 of Act No. 268/1998 Coll, on the Withdrawal of the Additional Salary Payment for the Second Half of 1998 for Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission.

The remaining part of the petition proposing the annulment of Act No. 268/1998 Coll. is rejected on the merits." The judgment was published as No. 233/1999 Coll.

A qualified majority of the Plenum declared at the time that, although the contested statute did not have any retroactive effect, that is, that it did not violate the prohibition on retroactivity and did not deny to entitled persons already acquired rights, in relation to judges its adoption represented a violation of the constitutionally guaranteed principle of judicial independence, arising from the system of the separation of powers as a foundation of the democratic law-based state. In this regard, the Constitutional Court made reference to the Constitution of the United States of America. It was stated in the judgment that the principle of judicial independence contains within itself a whole range of aspects, certain of which are of a material character.

Among other things, the Constitutional Court also remarked that its decision affects only judges of ordinary court, that is of district, regional, and superior courts, the Supreme Court and the Supreme Administrative Court, but not of the Constitutional Court, as by Act No. 236/1995 Coll., they are classified as "representatives" and not as "judges", despite the fact that they exercise judicial power and that Art. 82 para. 1 of the Constitution, concerning the independence of judges, applies to them as well.

By it 3 July 2000 judgment, file no. Pl. ÚS 18/99, the Constitutional Court rejected on the merits the petition filed by the Brno Municipal Court, which pursuant to § 35 para. 2 of Act No. 182/1993 Coll., was joined by the Divisional Court for Prague 2 and the Pilsen-City District Court, proposing the annulment of Act No. 287/1997 Coll., which supplemented Act No. 236/1995 Coll., concerning Salary and further Requirements connected with the Holding of Office as a Representative of State Power or certain State Bodies or as a Judge, as amended by Act No. 138/1996 Coll. (during the course of the proceeding the petit was properly amended to read more specifically as a proposal to annul § 4a of Act No. 236/1995 Coll., as amended by Act No. 287/1997 Coll., and the Prague 2 Divisional Court's petition was formulated even more precisely, to request that the word, "judges", be deleted from the text, "Representatives and judges shall not be entitled to an additional salary payment for the second half of 1997").

The same petition was submitted as well by two judges of the District Court in Olomouc.

By its rulings of 24 August 2000, file no. Pl. ÚS 31/2000, and of 19 October 2000, file no. Pl. ÚS 30/2000, the Constitutional Court rejected both as inadmissible because barred as res judicata (§ 35 para. 1 of Act No. 182/1993 Coll.).

By its rulings of 25 April 2000 and 5 May 2000, file no. Pl. ÚS 13/2000 and file no. Pl. ÚS 18/2000, the Constitutional Court rejected as inadmissible because barred by litispendence (§ 35 para. 2 of the Act on the Constitutional Court) the petitions submitted by the Prague 2 Divisional Court and the Pilsen-City District Court.

The Constitutional Court stated in the reasoning of its 3 July 2000 judgment, file no. Pl. ÚS 18/99, published as No. 320/2000 Coll., that judicial independence represents one of the fundamental democratic values, and that without dispute material provision that judges receive assists in securing it.

In particular, it is essential that some other state body not impinge upon judicial pay, in whatever form, either arbitrarily or repeatedly.

In accord with the decisional practice of the European Court of Human Rights, the Constitutional Court focused on the issue whether the denial of the 14th salary payment to ordinary court judges was laid down in a statute, whether it was directed at a legitimate goal, and whether it was necessary in a democratic society.

The Constitutional Court affirmed that the statutory form of the impingement into recognized rights was met and the adopted statute does not have retroactive effect, and remarked that the legislative technique employed in this case, namely the amendment of the original statute, was more appropriate then a special and separate statute, as was the case in other matters, but that this distinction was not important in terms of constitutional law.

As concerns the issue of the legitimacy of the goal toward which the withdrawal from judges of an additional salary payment was directed, the Constitutional Court stated that it cannot disregard the difficult social and economic reality in which the Czech Republic finds itself.

Proceeding from the assumption that ordinary court judges do not live in isolation or in some sort of "legal and economic vacuum", it expressed the view that, one cannot take as unchanging dogma judges' right to material provision set in advance which cannot in any manner or under any circumstance be modified by legislation, even though the principle still applies, as was declared in the Constitutional Court's previous decision (No. 233/1999 Coll.), that the state is obliged to establish the prerequisites for the independence of courts and to stabilize their position as against the legislative and executive powers.

In the given matter, however, the legislative impingement affected the material provision of the entire public sector, not just of courts, and to judge that group dissimilarly, even though they are specially protected by the constitutional principle of independence, would constitute for them, in the given context, scarcely acceptable preferential treatment.

In its 3 July 2000 judgment, sp. zn. Pl. ÚS 16/2000, published as No. 321/2000 Coll., the Constitutional Court rejected on the merits the Hradec Králové District Court's petition (which was joined with that of a secondary party, the Pilsen-City District Court) proposing the annulment of the word, "judges", from § 1 of Act No. 308/1999 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 1999 and the Second Half of 2000 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, which reads "Representatives of state power and of certain state bodies, judges, state attorneys, and members of the Presidium of the Securities Commission shall not be entitled to an additional salary payment either for the second half of 1999 or the second half of 2000."

In addition, two judges of the Olomouc District Court and judges of the Ostrava District Court, of the Pilsen-City District Court, and of the Brno Municipal Court, submitted the same petition.

In its 5 May 2000 ruling, file no. Pl. ÚS 18/2000, the Constitutional Court dismissed the Pilsen-City District Court's petition as inadmissible because barred by res judicata (§ 35 para 2 of the Act on the Constitutional Court).

The four remaining petitions were also dismissed as inadmissible as barred by res judicata (§ 35 para 2 of the Act on the Constitutional Court) by Constitutional Court rulings, of 24 August 2000, file no. Pl. ÚS 31/2000, of 19 October 2000, file no. Pl. ÚS 30/2000, of 1 September 2000, file no. Pl. ÚS 32/2000, and of 26 October 2000, file no. Pl. ÚS 27/2000.

After consideration of the petition and when the Constitutional Court voted upon it, the conception that was applied in the judgment published as No. 321/2000 Sb, (according to which where a legislative approach generally affected the material provision of the public sector as a whole, to judge specially only one group of persons paid by the state, judges, even though the enjoy the higher degree of protection conferred by the constitutional principle of independence, would constitute scarcely acceptable preferential treatment) prevailed over that which was asserted in judgment No. 233/1999 Coll., (proceeding from the view that to deny judges further pay devalues one of the basic democratic values, namely judicial independence, and represents an encroachment upon the inherent right of judges, as a guarantee of their independence and of legal certainty, that their pay not be diminished).

On the other hand the Constitutional Court distanced itself from the view that judges' salary should be a factor that shifts according to the momentary conceptions of one governmental grouping or another.

It therefore looked upon the solution used in this case as an exceptional act which could be acceptable only on serious grounds and only in connection with a regulation of salaries in the entire sphere of state representatives and employees that is proportionate on the whole.

It was solely in this overall connection that the impact of the State's financial difficulties can be allowed to affect judges' salaries as well. It is precisely in such circumstances that to admit an exception would result in a violation of the constitutional principle of equality, on the basis of which the entire field of state employees and constitutional officials is subjected to this statutory scheme.

Judges' salaries are governed by Act No. 236/1995 Coll., according to § 3 para 2 of which the salary is determined as the product of a basis and a salary coefficient set depending on the level of responsibility and demanding nature of the duties performed.

Under § 3 para 3, the basic salary is understood as the entirety of the highest pay scale and the maximum amount of personal bonuses as laid down by special enactment for employees of the ministries.

The amount of salary is then directly derived from the amount of pay received by employees of state administrative bodies and this connectedness of salaries, if it is once adopted as the principle for the compensation of state employees, should be observed both in cases of the valorization of the pay scales (for example, the 17% increase from 1 January 1999 which resulted in a pay raise for all state officials and state employees, including judges) as well as when restricting the amount of certain material perquisites.

In making its decision the Constitutional Court showed respect for the Parliament, which, in adopting Act No. 308/1999 Coll., exercised its legislative powers and, departing from what the state's budget and its economic situation allows for, included also judges into its belt-tightening measures.

It took the view that to deny them a further salary payment cannot threaten the independence of judges, especially due to the fact that it constituted neither a surprising nor a deep intrusion into their material provision.

The independence of judges is also characterized by a whole host of constitutional guarantees, such as appointment to office for an unlimited period of time or the prohibition of transferring or recalling judges against their will.

To rank this merely partial change in judges' material provision above the other attributes of judicial independence could, on the other hand, diminish citizen's trust in independent justice.

At the same time as the additional salary payment was taken from judges, it was taken from officials in the executive and legislative branches as well, thus preserving the balance of the classical conception of the separation of powers.

Moreover, no rational grounds exist for exempting judges from this general intrusion by the state, especially when by Government Orders No. 248/1998 Coll., which modifies Government Order No. 253/1992 Coll., on the Pay Relations of Employees of State Administrative Bodies, of certain further Bodies and of Municipalities, as subsequently amended, and No. 126/2000 Coll., which modifies Government Order No. 253/1992 Coll., on the Pay Relations of Employees of State Administrative Bodies, of certain further Bodies and of Municipalities, as subsequently amended, decreases in the additional salary payments had already occurred for employees of state administrative bodies, of certain further bodies and of municipalities.

V.

1. After the Brno Municipal Court submitted the petition currently under consideration proposing the annulment of the word, "judges", in § 1 of Act No. 416/2001 Coll., in addition the Prague 1 Divisional Court, the Prague 2 Divisional Court, the Prague 5 Divisional Court, and the Prague-West District Court also submitted the same petition, thus they gained the status as secondary parties in this proceeding. Pursuant to § 43 para. 1, lit. e) and para. 2, lit. b) of the Act on the Constitutional Court (§ 35 para. 2 of the Act on the Constitutional Court), the Constitutional Court by its rulings (of 13 August 2002, 26 August 2002, 6 February 2003 a 27 May 2003, file nos. Pl. ÚS 13/02, Pl. ÚS 18/02, Pl. ÚS 3/03, and Pl. ÚS 11/03) rejected these four petitions as inadmissible, as the Constitutional Court already has the same matter before it.

In contrast to the Brno Municipal Court, which in its petition emphasized encroachment upon judicial independence, these other courts objected also to the infringement of the principles of the prohibition of retroactivity and the protection of acquired rights.

So far as concerns the asserted retroactivity of Act No. 416/2001 Coll., which came into effect on 28 November 2001, as was already stated in judgment No. 233/1999 Coll., concerning Act No. 268/1998 Coll., the statutory conditions for the right to a further paycheck to arise for the second half of 1998 follow from § 4 para 2 of Act No. 236/1995 Coll., as amended by Act No. 138/1996 Coll., namely either the actual performance of duties for a period of at least 90 calendar days in that half year and further the representative's continuance in office until 30 November 1998 or, for a judge, continuance in employment relations until 31 December 1998. Thus, entitled persons would only gain the right to a further salary payment upon the fulfillment of the last stated conditions, that is, at the earliest on 30 November 1998, in the case of representatives, and on 31 December 1998, in the case of judges, which in consequence means that the contested statute, which does not connect any legal effects with any sort of legally relevant facts occurring prior to its coming into effect, does not operate retrospectively, and since, as of 19 November 1998, the day it came into effect, nobody had acquired an individual right to a further salary payment, it could not have intruded upon any "acquired" rights. The same was true of Acts No. 287/1997 Coll., which came into effect on 28 November 1997, of No. 308/1999 Coll. (as far as concerns judges), which entered into force on 3 December 1999, as well as of Act No. 416/2001 Coll., which entered into force on 28 November 2001. From the perspective of the temporal effect of Acts No. 287/1997 Coll., No. 268/1998 Coll., and No. 308/1999 Coll., which withdraw from the enumerated persons, judges included, the further salary payment only for the second half of the years 1997 through 2000, § 4 para 2 lit. a) of Act No. 236/1995 Coll., as amended by Act No. 138/1996 Coll., was of importance, as it conditioned the acquisition of a claim to a further salary payment for the second half of the year, as was already stated, in the case of representatives, upon the performance of duties until 30 November and, in the case of judges, the continuance of employment relations until 31 December. In contrast, Act No. 416/2001 Coll., which withdraws from the indicated persons a further salary payment not only in the full amount for the second half of 2001, but also for both half years of 2002 (but only one half of the payment for each half year), lit. b) of this statutory provision plays a role, according to which the claim for an additional salary payment does not arise in the first half of the calendar year for representatives who finish their duties before 31 May, and for judges whose employment relations terminate prior to 30 June.

Act No. 416/2001 Coll. has no retroactive effect, so that it cannot be criticized as an intrusion into acquired rights. The Constitutional Court expressed its view on this issue, for example, in its judgment of 28 February 1996, file no. Pl. ÚS 9/95, published as No. 107/1996 Coll. and also reported in Vol. 5 of the Collection of Judgments and Rulings of the Constitutional Court, on p. 107 and following, in which it rejected on the merits a petition filed by a group of Deputies proposing the annulment of Act No. 34/1995 Coll., which supplemented Act No. 76/1959 Coll., concerning certain Service Conditions for Soldiers, as subsequently amended, and Act No. 33/1995 Coll., which amends and supplements Act of the Czech National Council No. 186/1992 Coll., concerning Services Relations of Members of the Czech Police, as subsequently amended, and Act No. 100/1970 Coll., concerning Services Relations of Members of the National Security Corps, as

subsequently amended. The petitioners asserted in their petitions that the contested acts repealed acquired rights, for they withdrew from a certain group of citizens their statutorily recognized claims to service contributions or claims to contributions for service. According to the Constitutional Court, one cannot invoke the protection of acquired rights in relation to the removal or diminution of those benefits, which mature only after the new legal rules were to come into effect. For even such rights to enjoy protection would mean that it would never be possible in the future to narrow them, regardless of, for example, the economic situation of the state, etc.

The Constitutional Court continues to adhere to its position and proceeds on the basis of it even in this matter, as the mentioned benefits are comparable in character to the further pay under Act No. 236/1995 Coll. (the "13th and 14th pay").

2. The Constitutional Court was further obliged to raise the issue as to whether the prerequisites exist for continued adherence to the proposition of law which it announced in its two most recent judgments concerning an analogous problem.

First and foremost, it must be stated that, if the Constitutional Court, a constitutional body, that is a public authority, is not itself to act arbitrarily, it must feel itself to be bound by its own decisions, and its jurisprudence may depart therefrom only under certain circumstances. Since the Constitutional Court, rather it above all, is obliged to respect the bounds of the constitutional state, in which arbitrary conduct by public authorities is strictly forbidden, the Constitutional Court is also subject to the prohibition on arbitrary conduct. The above postulate can also be seen as an essential attribute of a democratic state governed by the rule of law. (Art. 1 para. 1 in conjunction with Art. 9 para. 2 of the Czech Constitution).

The first circumstance in which the Constitutional Court may depart from its own jurisprudence is a change of the social and economic relations in the country, a change in their structure, or a change in the society's cultural conceptions. A further circumstance is a change or shift in the legal environment formed by sub-constitutional legal norms which in their entirety influence the examination of constitutional principles and maxims without, of course, deviating from them but, above all, not restricting the principle of the democratic state governed by the rule of law (Art. 1 para. 1 of the Czech Constitution). A further circumstance allowing for changes in the Constitutional Court's jurisprudence is a change in, or an addition to, those legal norms and principles which form for the Constitutional Court its binding frame of reference, that is, those which are contained in the Czech Republic's constitutional order, assuming, of course, that it is not such a change as would conflict with the limits laid down by Art. 9 para. 2 of the Czech Constitution, that is, they are not changes in the essential attributes of a democratic state governed by the rule of law.

3. The Constitutional Court has taken the view that the matter under consideration must be adjudged in the light of changes in the legal order which have occurred since the Court's announcement of its judgment in the matters Pl. ÚS 16/2000 and Pl. ÚS 18/99, that is, since July, 2000 until the present. Although the Constitutional Court was

considering a statute issued in 2001, in its adjudication, it is bound by the maxim that for a court, and for the Constitutional Court as well, what is decisive is the state of affairs at the time the decision (here the judgment) is announced.

Sec. 34 para. 4 of Act No. 236/1995 Coll. was amended, with effect from 1 January 2003, by Act No. 420/2002 Coll., which Shortens the Period during which State Officials and Officials of Certain State Bodies, Judges, and State Attorneys are Paid during Temporary Incapacity to Carry Out the Duties and which lays down certain Measures in Sickness Insurance (Care) and in Pension Insurance. The amendment provides that officials, the performance of whose duty is governed by separate legal enactments and by the Labor Code, and judges, who have been declared temporarily incapable of carrying out their duties, are entitled to pay for a period not to exceed 20 work days during the same incapacity to carry out their duties or, in the case of repeated temporary incapacity to carry out duties, occurring in a single calendar year during the same period. On the grounds and under the circumstances laid down in the first sentence, other officials are entitled to pay for a period not to exceed 30 calendar days.

Prior to the entry into effect of Act No. 420/2002 Coll., that is until 31 December 2002, § 34 para. 3 of Act No. 236/1995 Coll. provided that both state officials and judges are entitled to pay regardless of the period of time during which they are temporarily unable to carry out their duties and during which they would otherwise be entitled, pursuant to separate legal enactments, to sickness insurance payments for a 6 month period.

Act No. 425/2002 Coll., which lays down exceptional measures for 2003 in determining the level of pay and certain of expenses connected with the performance of their duties by state officials and officials of certain state bodies, judges and state attorneys, and which lays down the level of additional salary for these persons for the first and second halves of 2003, entered into effect on 1 October 2002. Section 1 of that Act provides that the level of base pay attained as of 31 December 2002 shall serve for determining the pay and reimbursement for expenses connected with the performance of duties in 2003 in relation to the enumerated officials and judges. As a consequence of the legal changes in the pay scale and additional personal payments implemented for employees of the ministries with effect following 31 December 2002, the base pay did not rise in mentioned year. Pursuant to § 2 of the Act, the additional pay to which the same persons are entitled in 2003 pursuant to special enactments is cut in half. Sec. 3 excludes the application, during the period 1 January 2003 to 31 December 2003, of § 3 para. 3 of Act No. 236/1995 Coll., on the Salary and other Requirements connected with the Holding of Office by Representatives of State Power, of Certain State Bodies, and by Judges, as amended by Act No. 309/2002 Coll.

At the same time, it is clear from the explanatory report on the bills for both of the above-mentioned acts that the proposers' aim consisted in "the maintenance of a comparable status for particular groups" of persons, that is state employees, state officials, and judges, whereas those proposing the statute considered the special status of judges, so far as the level of compensation is concerned, to be unjust and disproportionate.

4. In the Constitutional Court's view, the indicated changes in the statutory framework

relating to judges' pay relations has exceeded the constitutional limits for the acceptability of an "exceptional" act which results in depriving judges of further pay, in the way as defined in the Constitutional Court's judgment No. Pl. ÚS 16/2000, published as No. 321/2000 Coll., so that it was necessary to proceed on the basis of the argument of principle which the Constitutional Court elucidated in its judgment No. Pl. ÚS 13/99, published as No. 233/1999 Coll.

If in entirely exceptional circumstances the principle of equality may be accentuated in the area of restrictions in the compensation of state employees, constitutional officials, and judges in preference to the principle of the independence of judges as conceived in its entirety, the relation of these two principles does not apply generally, once and for all, and as a given in all circumstances. On the contrary, 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. In other words, if it is acceptable for the principle of equality to apply in the sense mentioned above as regards an exceptional, economically justified reduction in salary for all, the equality of all above-mentioned groups as regards the final salary level cannot be accepted (not even as a target category). The striving toward such equality departs from the bounds of constitutionality; it is a political aim which finds no support in the constitutionally conceived principle of equality. In its material sense, this principle finds its bounds in the expression, "similar things should not be arbitrarily subject to different rules, but also unequal things should not be arbitrarily subject to the same rules". The principle of equality cannot be conceived of as the leveling of outcomes, for it must be interpreted as a guarantee of equal initial opportunity. The legislature evidently did not, however, respect the principle of equality as interpreted in this manner.

The Constitutional Court adjudged the contested part of the statute from the just-mentioned perspective and has come to the conclusion that it is in conflict with Art. 1 para. 1, in conjunction with Art. 82 para. 1 of the Constitution, from which flows the state's duty to ensure judges material independence, as a guarantee of impartial and fair decision-making on the rights of persons. It inferred a conflict with these constitutional provisions in adjudging the contested part of the statute in the context of the above-stated new legal framework, which in its totality could represent a genuine threat to judicial independence, with all the negative consequences that entails for the protection of persons' private rights. The Constitutional Court has further come to the conclusion that the contested part of the statute is in conflict with Art. 1 para. 1 of the Charter, which provides for equality in rights, as it deduced that, in the given case, the legislature utilized the same employment relations to regulate different professional categories, with the goal of approaching toward a leveling of results, and the Constitutional Court viewed this goal as illegitimate.

VI.

In light of the above-mentioned grounds, the Constitutional Court has therefore decided, pursuant to § 70 para. 1 of the Act on the Constitutional Court, on the annulment, as of

the day this judgment is published in the Collection of Laws, of the word, "judges" in § 1 of Act No. 416/2001 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 2001 and the Designation of the Level of the Additional Salary Payment for the First and Second Halves of 2002 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, Representatives of the Public Protector of Rights, and Members of the Bank Council of the Czech National Bank, due to its conflict with Art. 1 para. 1, in conjunction with Art. 82 para. 1 of the Constitution and with Art. 1 para. 1 of the Charter.

Notice: Constitutional Court decisions may not be appealed.

Brno, 11 June 2003

Dissenting opinion

of Constitutional Court Justices P.V. and M.V.

We voted against the annulment of the word, „judges" from § 1 of Act No. 416/2001 Coll., for the following reasons:

1) We find no grounds which required the Constitutional Court to depart from the proposition of law it stated in its judgment published as No. 321/2000 Coll. in the same matter, that is, to judge specially only one group of persons paid by the state, judges, even though they enjoy the higher degree of protection afforded by the constitutional principle of independence, would constitute scarcely acceptable preferential treatment of one group. The failure to pay them an additional salary installment definitely cannot threaten the independence of judges. On the one hand, this is neither a surprising nor a deep intrusion into their material provision; first and foremost, however, the independence of the judicial status is sufficiently guaranteed by other institutes. On the contrary, to emphasize that the diminution of the financial compensation for the performance of their duties can have an influence on judges' independence, might give rise, on the part of the public, to justified doubts as to whether the judiciary is independent, as well as concerning the basis of judicial independence. Summarily stated, we do not consider that a restriction on compensation, applied equally to all persons paid from public funds, can in any way give grounds for concluding that the compensation of judges has perhaps become the subject of accidental or even intentional manipulation on the part of the executive or legislative branches.

2) We consider the reasons the Constitutional Court gave for departing from its prior case-law, such as they are stated in the judgment of 11 June 2003, to be unpersuasive. In particular, we consider as opportunistic the argument concerning the statutory revisions which occurred subsequently, that is only after the adoption of the provisions reviewed by the Constitutional Court in this case. While a subsequent modification of the material provision can hardly, when this Court engages in norm control, be considered as factual argumentation, in no way does that take away from the fact that even now the provision

for judges in case of illness are above-standard. In this part of the reasoning, argued primarily on the basis of the equality principle, the Court finds itself in a position where de facto it is demanding that judges be ranked as a privileged group, without providing persuasive reasons as to why such a privileged status passes muster.

3) In a whole host of its decisions, the Constitutional Court reproached the ordinary courts that they approached the application of law in a formalistic manner and that, when resolving concrete cases, they were not keeping an eye on the consideration that the resolution reached must also be acceptable from the perspective of generally acknowledged justice and decency (aequitas est mater exceptionis). Now it has itself decided at variance with this maxim.

4) Apart from the above-stated arguments of principle, we consider it necessary also to say that the judgment does not provide a clear response to the (by no means insignificant) question as to what the actual impact of this decision is, or will be. There is no disputing the fact that the Court invalidates a legal enactment which, at the time of judgment, had already accomplished its purpose and would not lay down for the future any further binding rules of conduct. If a judgment of annulment has in principle effects ex nunc, then (in contrast to the majority) we cannot deduce from § 71 para. 4 of Act No. 182/1993 Coll., on the Constitutional Court, that the subsequent duty of the state to pay out the „withheld“ salary installment is a self-evident effect of the annulling judgment.

Brno, 11 June 2003

Dissenting opinion

of Constitutional Court Justice M.H.

I disagree with the 11 June 2003 decision of the Constitutional Court Plenum that, on the day it is published in the Collection of Laws, the word, “judges”, in § 1 of Act No. 416/2001 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 2001 and the Designation of the Level of the Additional Salary Payment for the First and Second Halves of 2002 in relation to Representatives of State Power and of certain State Bodies, Judges, State Attorneys, and Members of the Presidium of the Securities Commission, Representatives of the Public Protector of Rights, and Members of the Bank Council of the Czech National Bank, shall be annulled.

Accordingly, pursuant to § 14 of Act No. 182/1993 Coll., I write a separate opinion in respect of it.

The Constitutional Court has now decided for the fourth time on the withdrawal from judges of additional salary payments.

I disagreed with the holding of the 15 September 1999 judgment, file no. Pl. ÚS 13/99, published as No. 233/1999 Coll., according to which the word, „judges“ in § 1 of Act No. 268/1998 Coll., on the Withdrawal of the Additional Salary Payment for the Second Half of 1998 for Representatives of State Power and of certain State Bodies, Judges, State

Attorneys, and Members of the Presidium of the Securities Commission, was annulled on the day of the judgment's publication in the Collection of Laws, and I expressed my reservations in a separate opinion in respect of it, which was appended to the judgment and published also on p. 196 and following of Vol. 15 of the Collection of Judgments and Rulings of the Constitutional Court. I refer to them in this case as well. By its 3 July 2000 judgment, file no. Pl.ÚS 18/99, published as No. 320/2000 Coll., the Court rejected on the merits a petition proposing the annulment of § 4a of Act No. 236/1995 Coll., concerning Salary and further Requirements connected with the Holding of Office as a Representative of State Power or certain State Bodies or as a Judge, as amended by Act No. 287/1997 Coll., pursuant to which an additional salary installment for the second half of 1997 was not due to representatives of state power and judges, and by it judgment of the same day, file no. Pl. ÚS 16/2000, published as No. 321/2000 Coll., the Court rejected on the merits a petition proposing the annulment of the word, „judges" in § 1 of Act No. 308/1999 Coll., pursuant to which representatives of state power and various state bodies, judges, state attorneys and members of the Securities Commission were not entitled to an additional salary installment either for the second half of 1999 or for the second half of 2000.

I agreed with both of these decisions, as they found that the legislature's intrusion into the sphere of judicial compensation was reasonable from the perspective of the state's economic situation, was proportionate, and was in conformity with the principle of equality.

I am convinced that, in this case as well, the Constitutional Court should have dismissed the petition on the merits, as it is no different from the preceding matters. The statutes on the withdrawal of further pay installments from public officials, including judges, which have been the subject of proceedings before the Constitutional Court, cover the period from 1997 until 2002 without interruption. Parliament was led to adopt them on the basis of the same reasons, the possibilities and situation of the state budget. In my view it did so within the bounds of the legislative powers which the Constitution endows it, without at the same time disturbing the balance between the legislative and the judicial branches. There is nothing to indicate either that the Parliament violated the principle of proportionality between the means employed and the aim sought or that reasonable and justified grounds were lacking for its adoption of the statute. A democratic legislature is empowered by the Constitution to make just such interventions. The sense for assessing and weighing values as a criteria for its decision-making, in other cases a „powerful weapon" of the Constitutional Court, has misfired this time.

The belt-tightening measures applied as well to judges, who do not make up an exclusive elite for whom societal and economic reality would not exist. On the contrary, in observing the principle of equality, they have both the legal and the moral duty to share together with others in the burdens of economic restrictions.

Whereas not even in its first judgment concerning this matter did the Constitutional Court accept the objection of retroactivity and the deprivation of acquired rights, focusing its reasoning instead exclusively on the threat to judicial independence, in this judgment it states as the grounds for its decision of annulment, in the first place, changes in the legal order resulting from Acts No. 420/2002 Coll. and No. 425/2002 Coll. and the worsening of the compensation scale for judges, which have occurred since June 2000, when the Court

issued its two judgments denying petitions on the merits; in the end, however, it reiterated the thesis that the withdrawal of additional salary installments represents a threat to the independence of judges.

I cannot concur with that view. The contested Act No. 416/2001 Coll., related to the period ending on 31 December 2002, after which it expired, whereas Acts No. 420/2002 Coll. and No. 425/2002 Coll. did not take effect until 1 January 2003. The assertion that statutes which begin to apply and form legal relations only as of 1 January 2003 can influence the situation which existed up until 31 December 2002 is not compatible with my legal thinking. I have always been against the privilege which accorded representatives of state power and judges claims to pay for a 6 month period during temporary incapacity to carry out their duties as, according to my convictions, there are not sufficient grounds, nor any that would be comprehensible and acceptable for society, for according some advantages over others.

I disagree with the assertion that the Constitutional Court is now faced with a different point of departure. I am convinced that no substantial change of circumstance has occurred, not even as the result of the temporary „freeze“ of basic salaries, and that the Constitutional Court has decided on the same matter as in the previous cases.

The withdrawal of an additional salary installment threatens neither the independence of judges in the true sense of the word nor their material independence; consequently, the conditions for their impartial and just decision-making were not threated either. In adopting Act No. 416/2001 Coll., by which it intruded upon the pay scale as well of judges, the Parliament violated no constitutional act, thus, pursuant to § 70 para. 2 of the Act on the Constitutional Court, the petition should have been rejected on the merits. I expressed this view when the vote was held.

Brno, 11 June 2003

Dissenting opinion

of Constitutional Court Justice V.G.

I was led to write a separate opinion for the following reasons, in particular:
1) Constitutional Court jurisprudence in this matter is not consistent. I am of the view that the grounds upon which the judgment published as No. 321/2000 Coll. rested, have not changed in principle.

2) It is certain that the adequate material provision which judges receive serves as well as a guarantee of their judicial independence. However, without any doubt, to take away a part of the „additional“ salary payment, cannot, in and of itself, threaten the independence of judges.

3) Even though the judicial profession is very distinctive, it cannot be made into an entirely privileged group. This state's current economic situation, particularly in the area of public finance, compels it to adopt many restrictions; in this respect, judges should also show solidarity with the other groups of employees which are affected by this restriction.

4) An arrangement in which the removal of an additional salary payment (or a part thereof) is effected nearly every year by means of a separate statute can certainly be criticized. This practice should be changed as it does not contribute to the strengthening of the legal (and material) certainty of those who are affected thereby.

Brno, 11 June 2003