2005/06/22 - PL. ÚS 13/05: ROLE OF THE SENATE

HEADNOTES

The act governing elections to representative bodies of municipalities or regions must be considered an election act under Art. 40 of the Constitution.

In the Constitution itself the position of the Senate is postulated on a not insignificant level; the Senate is not only a ceremonial House of Parliament. In fact, the position of the Senate, in the system of the highest bodies of state power, precisely in terms of the role of a restraint, preventing excesses which could endanger the very foundations of a democratic law-based state, is irreplaceable, naturally except for the possibility that the framers of the constitution could (newly) decided to inclined toward the previously considered but not accepted concept of unicameralism, where, however, the restraints, balances, and checks on individual state powers would have to be set completely differently than in the existing Constitution.

If the Senate is to fulfill its stabilizing role, there are no reasonable grounds why it should fulfill this role in the creation of election rules only in relation to parliamentary elections, and not in the creation of laws governing elections to those bodies which independently govern municipalities and regions. It is not only how the Houses of Parliament are elected that is important for a stable democracy, but also how citizens elect their representatives at the level of local government; one can not conclude, on a constitutional level, that – despite the different scope of authority of Parliament and local governments – that parliamentary elections are more important for maintaining and developing democracy than elections to local government representative bodies of municipalities and regions. Democracy, if it is to be a true government of a sovereign people, by the people and for the people, can not be, even indirectly, distributed from the Parliament down, but, on the contrary, must grow as the product of a civil society from the bottom up to the highest bodies of state power, naturally including the legislative and constitution-framing power. If it is desirable for the election rules for parliamentary elections not to be subject to constant changes and for them to be stabilized, as much as possible, including through a more difficult procedure for passing them, it is equally desirable for the rules for elections to representative bodies of regions and municipalities to be subject to such stabilization with the help of a stricter legislative regime. This requirement is the more distinct in that the election system for these elections is not constitutionally regulated.

The Senate is not entitled, under Art. 33 par. 2 of the Constitution, to pass statutory measures in the matter of election acts governing elections to both Houses of Parliament, to representative bodies of municipalities and regions, and to the European Parliament.

If the draft of a law contains parts which require different procedures for approval, the strictest of those procedures must be required for constitutional enactment of that law.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of justices složení Stanislav Balík, František Duchoň, Vojen Güttler, Pavel Holländer, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová a Michaela Židlická, decided on 22 June 2005 on a petition from a group of senators of the Parliament of the Czech Republic, represented by Prof. JUDr. A. G., CSc., attorney, seeking the annulment of Act no. 96/2005 Coll., which amends Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), as amended by later regulations, with the participation of 1) the Chamber of Deputies of the Parliament of the Czech Republic, 2) the Senate of the Parliament of the Czech Republic, as parties to the proceedings, and, as a secondary party, a group of senators of the Parliament of the Czech Republic, represented by Prof. JUDr. A. G., CSc., attorney, as follows:

Act no. 96/2005 Coll., which amends Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), as amended by later regulations, is annulled as of the day this judgment is promulgated.

REASONING

I.

On 14 March 2005 the Constitutional Court received a petition from a group of 53 senators (the "petitioner") to annul Act no. 96/2005 Coll., which amends Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), as amended by later regulations, with the claim that passing the law in conflict with the constitutionally prescribed procedure violated Art. 40 of the Constitution of the Czech Republic.

The petitioner states that the draft act was discussed in the Chamber of Deputies and approved in the third reading at its 38th session, held on 24 November 2004. On 6 December 2004 the draft act was passed on to the Senate, which rejected it on 28 January

2005. Nevertheless, the act was delivered to the President of the republic for signature on 28 January 2005, but he used his right under Art. 50 of the Constitution and on 10 February 2005 returned it to the Chamber of Deputies. The President considered disputable the interpretation of Art. 40 of the Constitution, specifically whether the term "election act" used in that provision also includes the act on elections to representative bodies of municipalities or regions, or whether it concerns only on the act on elections to the Parliament of the Czech Republic. The Chamber of Deputies maintained its position that the Senate did not discuss the draft act by the 30 day deadline provided by the Constitution, and that by the passing of the deadline the act should have passed under Art. 46 par. 3 of the Constitution, and on 22 February 2005 it approved the act again with 112 votes out of 120 deputies present. The act was published in the Collection of Laws on 28 February 2005 as no. 96/2005 Coll., and, with the exception of point 16 [§ 8 par. 2 let. b)], went into effect on 1 March 2005.

The petitioner points to Art. 40 of the Constitution, under which the approval of both Houses of Parliament is necessary to pass an election act, an act on the principles of dealings and contact of the two Houses with each other and externally, or an act on the rules of procedure of the senate. Thus, if these acts require the express consent of both Houses, the situation foreseen by Art. 46 par. 3 of the Constitution, under which a draft act is passed if the Senate does not discuss it by the specified deadline of thirty days, can not arise. According to the petitioner, two questions pose a problem of interpretation in this matter. One is the interpretation of the concept "election act" under Art. 40 of the Constitution, but there is also the question whether the contested act is an election act, because it primarily amends Act no. 238/1992 Coll. and only in point 43 does it add into Act no. 238/1992 Coll. Part Three, which concerns amendment of Act no. 491/2001 Coll., on Elections to Representative Bodies of Municipalities, and Part Four, which amends Act no. 130/2000 Coll., on Elections to Representative Bodies of Regions.

The petitioner believes that despite the unusual legislative technical method (instead of directly supplementing Act no. 491/2001 Coll. and Act no. 130/2000 Coll. it is Act no. 238/1992 Coll. which is supplemented with new section which are then amended by the cited acts) the contested act can be considered an election act based on its content, because every amendment of existing acts regulating elections, even to a small extent, can change the fundamental parameters of the election system. In this regard it points to Constitutional Court judgment file no. Pl. ÚS 21/01 published as no. 95/2002 Coll., applicable by analogy in the present matter, in which the Constitutional Court supported the material, that is content-based review and related categorization of statues.

The petitioner answers the question of whether the contested act is an election act under Art. 40 of the Constitution in the affirmative, and argues on the basis of linguistic, systematic, and teleological interpretation. He states that the very fact that the Constitution uses the expression election act in the singular can not be used to conclude that this should (must) mean a single act, and points to, e.g. Art. 11, Art. 52, Art. 63 par. 2, and Art. 105 of the Constitution, from which it is evident that there can be several acts which govern a particular issue, not just a single act. It follows from this that formulation

used in Art. 40 of the Constitution does not lead to the conclusion that this means only the Act on Elections to the Parliament of the Czech Republic; on the contrary, one can conclude that this means any act with election-related content. Thus, this is a general designation, whereas the two other instances involve determining the name of the act. In the petitioner's opinion, linguistic interpretation must be completed with systematic interpretation. This analytical method leads to the conclusion that if the legislature intended to limit the reach of the expression "election act" used in Art. 40 of the Constitution only to the Act on Elections to the Parliament of the Czech Republic, it would surely have made the content of that election act more precise, e.g. as it did in Art. 107 of the Constitution, where it used the expression "Act on Elections to the Senate." Applying teleological interpretation, the petitioner then also argues that Art. 40 of the Constitution sets a stricter regime for passing certain acts. The stricter legislative procedure is evident in the need for both chambers to approve the draft act. Whereas in the case of an act on the principles of contacts of both chambers between themselves and externally, and the Act on the Senate Rules of Procedure, that requirement is undoubtedly justified by the need for not only the Chamber of Deputies but also the Senate to approve an act which will affect its position and functioning, in the case of an election act the decisive reason is the fundamental importance of elections in order for a democratic society to function. The role of the Senate as legislative and democratic check in the legislative process can be implemented precisely by setting the parameters of the elections systems, not only to the legislature, but to all representative assemblies.

According to the petitioner, other arguments support rejecting a narrow interpretation of the term "election act." The first is the fact that the present individual election acts, although they are formally independent, are mutually linked and refer to each other regarding certain election institutions, e.g. election districts, permanent voter lists, the State Election Commission, etc.. Thus, it is evident that amending one of the other election acts can change, indirectly amend the Act on Elections to the Parliament of the Czech Republic, which is an argument for stricter legislative procedure as regards all acts containing electoral subject matter. The second argument is the possibility of regulating elections to all representative assemblies by one act, an "election codex," which the Ministry of the Interior has already prepared, which testifies to the fact that the central administrative office in election matters considers the issue so interconnected that it can be regulated in one statute. In conclusion the petitioner also pointed out the historical aspect, as the background report to the Constitution stated that "Art. 40 defines the circle of cases where the consent of both Houses is necessary, otherwise a statute will not be passed," from which one can conclude that the intention was to introduce such legislative procedure rules for a certain limited circle of laws, as will ensure the equal position of the Senate in relation to the Chamber of Deputies.

From a more general viewpoint, with reference to judgment Pl. ÚS 14/01, published as no. 285/2001 Coll., the petitioner believes that the steps taken by the Chamber of Deputies in passing the contested act was not correct, also because it did not follow the accepted practice, which could already be considered a constitutional custom. It pointed to the procedure in discussion the Act on Elections to the European Parliament, which the Chamber of Deputies passed to the Senate on 6 December 2002, the Senate discussed 9

January 2003 (i.e. after the thirty day deadline) and on 15 January 2003 returned to the Chamber of Deputies with amending proposals. The Chamber of Deputies voted on the act again, and passed it with the Senate amendments. If it had proceeded the same way as in the case of the contested act, it would have had to consider the Act on Elections to the European Parliament to have been passed when the thirty day deadline expired.

The petitioner joined to the petition to annul the contested act a petition for priority review, under § 39 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), on the grounds that tightening the rules for conflict of interest between offices has a direct effect on a number of person who must act according to the contested statute.

II.
II. a

The Senate of the Parliament of the Czech Republic, in its statement on the petition, on 14 April 2005, signed by its Chairman, Přemysl Sobotka, said that the contested amendment to the Act on Conflict of Interest was passed to the Senate on 6 December 2004. From the beginning of discussions the Senate had no doubts that the draft of the act containing amendments to election acts was to be discussed under the regime of "equal powers" in both Houses, and that it had to be approved by both Houses in order to pass. The correctness of this procedural regime was confirmed by the conduct of the proposers of the draft, deputies assigned by the Chamber of Deputies to provide justification for the amendment in the Senate bodies, who took part in meetings of Senate committees and the full Senate held after 5 January 2005, the date when the deadline for discussion of an ordinary statute by the Senate would have passed. The Senate began discussion of the draft amendment at its 3rd session on 28 January 2005, and after recommendations to reject the draft from the constitutional law committee, the committee for education, science, culture, human rights and petitions, the committee for territorial development, public administration and the environment and the mandate and immunity committee and after discussion and voting in the full Senate it passed resolution no. 55, which rejected the draft amendment to the Act on Conflict of Interest. During discussions in the full Senate, the Senate was informed that the Chairman of the Chamber of Deputies, with the support of the Chamber of Deputies organization committee, interpreted Art. 40 of the Constitution so that the Act on Elections to Representative Bodies of Municipalities and the Act on Elections to Representative Bodies of Regions are not election acts under that provision, and that the Chairman of the Chamber of Deputies was, on 8 January 2005, passing the act amending the Conflict of Interest Act, to the President for further proceedings under the Constitution. The Senate objected against this step, but did not pass any procedural motion. By letter of 1 February 2005, the Chairman of the Senate informed the president that the procedure followed by the Chamber of Deputies in this matter were fundamentally inconsistent with the legislative procedure followed in the Senate, and expressed justified doubts about the constitutionality of the procedure

followed by the Chairman of the Chamber of Deputies.

As regards the matter itself, the Senate pointed to the fact that its long-term settled approach is that it understands the term "election act" in Art. 40 of the Constitution in its literal interpretation, to include all statutes containing rules for constituting constitutionally defined representative assemblies which are created by election, and similar also the complements of national representative assemblies in the area of delegated authority under Art. 10a of the Constitution. The Senate's position is based on the argument that election acts are, besides the normative acts of the constitutional order, the most important source of constitutional law, and their primary purpose is to provide content to fill in the skeleton of the constitutional system. In the constitutional order of a number of European states, election acts are, because of their creative function, included among "organic" laws, which serve to implement important constitutional authorizations for the construction of the state and local organization of the country, and in these constitutional systems they are subject to a qualified process for passing them. The Senate pointed out that the background report says nothing regarding the term "election act" in Art. 40 of the Constitution; nevertheless, it is known that during discussion on the draft Constitution the nature of the acts subject to the regime of this provision changed, and there was a trend toward strengthening the position of the Senate. The government also does not assign art. 40 of the Constitution the function of "protecting one House from the other," which is documented by the Prime Minister's declaration when presenting the Act on Elections to the European Parliament in the Chamber of Deputies, the declaration of the Minister of Justice when the Chamber of Deputies voted on the President's veto of the amendment to the Act on Conflict of Interest, and the government draft of the amendment to the Constitution (Chamber of Deputies publication no. 349 from the fourth term of office, 2003) with the new wording of Art. 40 containing an exhaustive list of statues where it is necessary that both Houses of Parliament approve them in order for them to be passed; the list also includes the Act on Elections to Municipal and Regional Representative Bodies.

The Senate emphasized that its majority has consistently shared the opinion that interpretation of the term "election act" is dynamic. Besides elections to representative bodies, it newly classifies under this term the Act on Elections to the European Parliament, and in the event that direct elections of the president were instituted, it would also include the implementing statute on election of the head of state. It appears to be lawful that with the process of the Senate's activity the controlling and stabilizing function of the Senate, which was not accented and confirmed until its de facto beginning to function in 1996, is reflected in the interpretation of a number of terms an relationships governed by the Constitution. The Senate pointed to the relatively spare expert legal commentaries on Art. 40 of the Constitution, where, according to some, the term "election act" includes both elections to both Houses of the Parliament of the Czech Republic, and acts on elections to local government bodies (Pavlíček, V. - Hřebejk, J. Ústava a ústavní řád of the Czech Republic, Komentář [The Constitution and Constitutional Order of the Czech Republic, Commentary], part 1, Linde, Prague 1998), and according to others it is only a statutory regulation for elections to the Parliament of the Czech Republic, where this term is first used in the same (protective) sense in Art. 33 par. 2 of the Constitution (Hendrych,

D., Svoboda, C. a kol., Ústava of the Czech Republic, Komentář [the Constitution of the Czech Republic, Commentary], C.H. Beck, Prague 1997). The Senate also mentioned the content of the president's veto of the amendment to the Act on Conflict of Interest, addressed to the Chamber of Deputies.

In the conclusion of its statement, the Senate said that its long-term approaches to this matter are generally in agreement with the petitioner's arguments, with the exception of the consideration of an established constitutional custom. In the period of its existence, the Senate has discussed statutes or amendments of statutes [on elections] to representative bodies of municipalities, regions or the European Parliament several times, but it always either spontaneously reached its legislative decision on these laws within thirty days, or the law being discussed also contained amendments to the Act on Elections to the Parliament of the Czech Republic, or another convergence of circumstances due to which application of procedures under Art. 40 of the Constitution was evident, or was undisputed according to the position of the Chamber of Deputies. It is only the Senate decision on the amendment to the Act on Conflict of Interest, with attached amendments of Acts on Elections to Representative Bodies of Municipalities and Regions, which it made after more than 30 days (53 days) from receiving it, and also without its decision also being about the Act on Elections to of the Parliament of the Czech Republic, which is a matter of precedent in this regard.

The Senate concluded that it discussed the amendment to the Act on Conflict of Interest and voted on it with a majority belief that it was doing so within the bounds of constitutionally provided jurisdiction and in a constitutionally provided manner, and that its decision to reject this act meant that it had not been passed. Therefore, it leaves it up to the Constitutional Court to evaluate the constitutionality of the contested act and made a decision in the matter.

II. b

The Chamber of Deputies of the Parliament of the Czech Republic, in its statement on the petition of 18 April 2005, signed by its Chairman, Lubomír Zaorálek, briefly recapitulated the legislative process which began upon receipt of the draft amendment, which was presented by a group of deputies on 18 December 2003.

To justify its procedures, the Chamber of Deputies pointed to the background report to the draft of the Constitution (publication 152, seventh term of office of the Czech National Council), according to which Art. 40 of the Constitution is meant to "ensure that both Houses will be able to function alongside each other without endangering the legislative process. The dealings of both Houses in their mutual relationships must be functional. The Houses may not act completely independently and without being interconnected." According to the Chamber of Deputies, the strengthening of the position of the Senate, or setting Senate on the level of the Chamber of Deputies under this article lies in ensuring its

position vis-à-vis the Chamber of Deputies, and not in making the Senate the guardian of all election processes in the Czech Republic, even if they do not directly affect it and in no way endanger its position in the bicameral structure. As regards elections to the Senate or the Chamber of Deputies, the strengthening of the Senate and simultaneous limitation of the Chamber of Deputies is meant to achieve a situation where the Chamber of Deputies can not unilaterally regulation the conditions of elections to and the creation of the Senate or the Chamber of Deputies, even against its will. Other norms cited in Art. 40 of the Constitution also correspond to this approach, i.e. the Act on the Senate Rules of Procedure and the "contacts" act. These are norms where the dominance of the Chamber of Deputies could weaken the position of the Senate in the relationship between the tow Houses, or, in an extreme cases, lead to making the Senate superfluous. However, this connection, as well as possible influence on the position of the Senate in relation to the Chamber of Deputies, do not exist in the case of elections to regional and municipal representative bodies; these laws do not affect the position of the Senate, and do not put either House at a disadvantage vis-à-vis the other. The Chamber of Deputies pointed out that the law in question does not concern election content itself, it does not change the course of elections, the rules for determining election results, or the opportunity to participate in elections. According to the Chamber of Deputies, the petitioner has completely omitted the context in which the term "election act" was used in Art. 40 of the Constitution. According to the Chamber of Deputies, this context can be found in the interconnectedness of Art. 40 with Art. 33 par. 2 of the Constitution, under which an election act is understood to also mean the Act on Elections to the Houses of Parliament of the Czech Republic, and not laws concerning elections to other bodies, including the representative bodies of regions and municipalities (the purpose of these provisions is to prevent the Senate, at a time when the Chamber of Deputies has been dissolved, from changing the manner in which it is created, and not to prevent the Senate from passing statutory provisions concerning elections to the representative bodies of regions and municipalities).

The Chamber of Deputies also argued on the basis of the systematic division of the Constitution, where Art. 40 is included in Chapter Two of the Constitution, which regulates the legislative power, and is directly related to Art. 18 of the Constitution, which regulates the principles of the right to vote for members of both Houses the Parliament of the Czech Republic and principles of the election system, and also with Art. 20 of the Constitution, under which a statute shall set other conditions for the exercise of the right to vote. According to the Chamber of Deputies, one can conclude that in Art. 40 of the Constitution, the legislature had in mind an election act governing only elections to the Parliament of the Czech Republic, not elections to the representative bodies of regions and municipalities, which are regulation in Chapter Seven, Art. 102 of the Constitution. Unlike the petitioner, the Chamber of Deputies holds the opinion that any detailing in words of the term "election act" Art. 40 of the Constitution would be superfluous. However, in Art. 107 of the Constitution such detailing was necessary (the "Act on Elections to the Senate"), so that it would be undisputed that this concerned only an election act under Art. 40 of the Constitution, because this relationship would not be evident without closer definition either on the basis of the heading of Chapter Eight of the Constitution, or from the related provisions in that chapter. The Chamber of Deputies rejected the opinion that if the legislature had intended to apply Art. 40 of the

Constitution only to the Act on Elections to of the Parliament of the Czech Republic, it would undoubtedly have used a reference to Art. 20 of the Constitution. However, the Chamber of Deputies believes that internal references can be used only in the event that the internal connections are not fully clear, and it is not possible to infer them from the internal system of a statute and the interconnectedness of its individual provisions. As regards the use of the term "election act" in the singular, the Chamber of Deputies argued completely contrary to the petitioner, completely rejected its argument derived from literal linguistic interpretation, and emphasized that every provision of the Constitution must be evaluated independently and in context with other provisions. In this case, an inadmissibly generalizing approach can not be accepted.

The Chamber of Deputies also objected to the petitioner's criticism that it had previously acted differently in analogous cases. It said that the Act on Elections to the European Parliament (Act no. 62/2003 Coll.) was subject to the approval regime under Art. 40 of the Constitution because § 71 in part two contained a direct amendment of Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic. As regards the case which the president used as an argument claiming its previous different approach the Chamber of Deputies clarified that this concerned the Act on Elections to Representative Bodies of Municipalities (II term of the Chamber of Deputies, publication 383), which the Senate rejected on 11 June 1998, within the thirty day deadline. In the President's opinion, the Chamber of Deputies then recognized the opinion that the Act required the consent of the Senate, because it did not vote on the rejected act again at its last session before the end of the term on 18 June 1998. The Chamber of Deputies does not consider this opinion to correspond to the relevant legal framework under Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies. The Act could have been submitted to the Chamber of Deputies for a repeat vote after a ten-day period (§97 par. 3 of the Act), which would have been on 22 June 1998 at the earliest. Elections to the Chamber of Deputies were held on 19 and 20 June 1998, and in accordance with § 121 par. 1 of the Act it was not possible to discuss proposals in the new term of the Chamber of Deputies, which had not been discussed and decided in the previous term. Thus, this case does not involve the Chamber of Deputies acting differently from previous cases, but it is the first case where a difference of opinion arises between the Chamber of Deputies and the Senate on how to handle the matter. The Chamber of Deputies pointed out that it made the maximum effort to evaluate the matter and verify it in all the contexts which could be taken into consideration, including determining whether an analogous case had already occurred in the past and had been addressed in some way. However, it was the Senate which unilaterally and without any consultation whatsoever with the Chamber of Deputies announced, in a letter from its Chairman of 6 January 2005, that this was a proposed act under Art. 40 of the Constitution because it contained amendments to election acts, and for that reason the Senate did not discuss it within the thirty day deadline.

In the closing of its statement the Chamber of Deputies expressed the belief that the procedure followed in passing the contested act was consistent with the Constitution, the constitutional order, and the legal order of the Czech Republic. It left it up to the Constitutional Court to evaluate and decide the matter, but posed the question whether the petitioner should not have, in view of legal certainty and minimizing interference,

sought annulment only of those parts of the act which concerned the Acts on Elections to Representative Bodies of Municipalities and Regions, as other parts of the Act on Conflicts of Interest are unquestionably not subject to the regime of Art. 40 of the Constitution, and their annulment should be sought in a separate petition.

The Chamber of Deputies attached to its statement a letter from its Chairman of 2 February 2005, addressed to the President, in which the Chairman of the Chamber of Deputies responded to the president's doubts about the correctness of the procedure followed by the Chamber of Deputies in approving and promulgation the law which amends the Act on Conflict of Interest. The Chairman of the Chamber of Deputies expressed the belief that Art. 40 of the Constitution did not apply to this case, because, with reference to the background report to the Constitution, the purpose of this article is to ensure that both Houses can function side by side without endangering the legislative process. Thus, the point is the proper function of the tow Houses within the bicameral system, with the dominance of the Chamber of Deputies, where the strengthening of the Senate's position consists of ensuring its position in relation to the Chamber of Deputies, not of giving it the role of a guard of all election process in the country. According to the Chairman of the Chamber of Deputies this position also corresponds to other norms provided in Art. 40 of the Constitution, where, during their preparation, the dominance of the Chamber of Deputies could weaken the position of the Senate in their relationship. However, the Acts on Elections to Municipal and Regional Representative Bodies are not of such a nature; their potential influence on the position of the Senate in relation to the Chamber of Deputies is not evident. The amendment of the Act on Conflict of Interest does not affect the subject matter of elections, so the Senate's legal opinion is purely of a formal nature. In the closing of his letter, the Chairman of the Chamber of Deputies took the position that the Senate's opinion in this matter was not correct. If the Senate did not act on the draft act within the 30 day deadline, it was necessary to proceed according to Art. 46 par. 3 of the Constitution, under which the act is considered to have been passed by the Senate.

II.c

The Constitutional Court informed the President, Václav Klaus, about the petition from the group of senators to annul Act no. 96/2005 Coll., and left it to his discretion whether to make a statement on the petition. The president, by letter of 31 March 2005, informed the Constitutional Court that the contested act contained an amendment to Act no. 491/2001 Coll., on Elections to Representative Bodies of Municipalities, as well as an amendment to Act no. 130/2000 Coll., on Elections to Representative Bodies of Regions, which are election acts, and therefore it was necessary that they be approved under Art. 40 of the Constitution by the Chamber of Deputies and the Senate. However, the contested act was approved only by the Chamber of Deputies, and the Senate expressly rejected it, and therefore he did not consider it to have been validly passed. The President maintained his position as it was communicated to the Chamber of Deputies, the text of which he attached for purposes of proceedings before the Constitutional Court.

By letter of 10 February 2005, addressed to the Chairman of the Chamber of Deputies, the President returned to the Chamber of Deputies the Act which amends Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), with the justification that the Act contains a direct amendment to the Act on Elections to Municipal Representative Bodies and a direct amendment to the Act on Elections to Regional representative Bodies, and that an election act must be passed by both Houses under Art. 40 of the Constitution. In this case the Act was rejected by the Senate. The President said that the statements from the Chairman of the Chamber of Deputies and the Chairman of the Senate indicated that the Chamber of Deputies considers only the Act on Elections to of the Parliament of the Czech Republic to be an election act, whereas the Senate considers every act on elections, from municipal elections to elections to the European Parliament, to be an election act. Thus, the Chamber of Deputies is of the opinion that the act was passed by the expiry of the deadline for Senate discussion, i.e. on 6 January 2005; the Senate insists that the act was not passed. In the interest of avoiding disputes as to whether the act was or was not validly passed, the president decided to return the amendment of the Act on Conflict of Interest and make it possible for the Chamber of Deputies to vote on the act again. The dispute between the two Houses lies in the interpretation of the words "election act" in Art. 40 of the Constitution. According to the president, both approaches could be defended. The Chamber of Deputies approach is a strict interpretation; the Senate approach comes from the logical interpretation that Articles 40 and 33 of the Constitution are in fact here not only to protect the position of one House of Parliament vis-à-vis the other, but so that the cooperation of both Houses will always be necessary for the amendment of any election rights in the Czech Republic. The President pointed out that the Chamber of Deputies has not always maintained the strict interpretation in the past, and on 18 June 1998 it did not vote on the amendment to the Act on Municipal Elections, which the Senate rejected on 11 June 1998 within the thirty day deadline. The President also considered it significant that representatives of the Chamber of Deputies took part in discussion of the amendment of the Act on Conflict of Interest in Senate bodies even after January 2005, i.e. after the act was to have already been passed. Thus, he considers the present interpretation by the Chamber of Deputies to be completely new, and taken precisely in relation to this amendment. This fact was for him also a reason for returning the act.

III.
III. a

On 29 March 2005 the Constitutional Court received a petition from a group of 53 senators (this is a different petitioner; thirteen senators in that group are different from those in this matter) to annul § 1 par. 1, the words "and members of representative bodies of regions, and representative bodies of municipalities with expanded jurisdiction and the districts of the city of Prague, which exercise municipal jurisdiction with expanded jurisdiction ("representative body of region or town")," § 2 par. 1 let. b), § 2 par. 6 and 7, § 4, the words "or regional or town," § 5 par. 1, first sentence, the words "and member of

a representative body of a region or town," § 5 par. 1, last sentence, the words "and member of a representative body of a region or town," § 5 par. 3, the words "and a member of a representative body of a region or town to the inspection committee of the same representative body of a region or town," § 6 par. 1, the words "with the exception of an unreleased member of a representative body of a region or municipality," § 6 par. 3, the words "or a region or town," § 6 par. 4 let. c), § 7 par. 2 let. c), § 8 par. 1, the words "the inspection committee of the representative body of a region or town," § 11 par. 1, the words "or three members of the representative body of a region or town," § 11 par. 2, fifth sentence, § 11 par. 2, fourth sentence, the words "or members of representative bodies of regions or towns," § 11 par. 6, the words "the president or mayor," § 11 par. 8, first sentence, the words "the president or mayor," and the words "or the representative body of the region or town, and the last sentence, the words "of the president or mayor," and the words "or deputy president or deputy mayor," § 11 par. 10 and provisions of part three and part four of Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), as amended by Act no. 287/1995 Coll., Act no. 228/1997 Coll., Act no. 15/2002 Coll. and Act no. 96/2005 Coll., i.e. provisions which were inserted into the Act by Act no. 96/2005 Coll. The petition contained arguments on the merits, claiming that the contested provisions were inconsistent with art. 1 of the Constitution of the CR, Art. 1, Art. 3, Art. 10 par. 2 and 3, Art. 21 par. 4 and Art. 26 of the Charter of Fundamental Rights and Freedoms (the "Charter").

The Constitutional Court determined that as of the day proceedings were opened in this matter, under file no. Pl. ÚS 19/05, i.e. as of 29 March 2005, the Constitutional Court had already addressed a petition to annul these provisions, in the matter under file no. Pl. ÚS 13/05. Under § 35 par. 2 of the Act on the Constitutional Court a petition is inadmissible if the Constitutional Court is already addressing the same matter, but if it was filed by an authorized petitioner, that petitioner has a right to take part in proceedings on the previously filed petition as a secondary party. Therefore, the Constitutional Court, by resolution of 14 April 2005, file no. Pl. ÚS 19/05-13, denied the petitioner's petition [§ 35 par. 2 in conjunction with § 43 par. 1 let. e) and § 43 par. 2 let. b) of the Act on the Constitutional Court], and stated that this group of senators of the Parliament of the Czech Republic, was entitled to the position of a secondary party in the matter file no. Pl. ÚS 13/05.

III. b

By a filing of 21 April 2005, the secondary party took advantage of the fact that it had the same rights an obligations in the proceedings conducted under file no. Pl. ÚS 13/05 as the parties (§ 32 of the Act on the Constitutional Court), and, in the event that the Constitutional Court did not grant the petition to annul Act no. 96/2005 Coll., it proposed annulment of provisions of Act no. 238/1992 Coll. In the scope stated in its petition under file no. Pl. ÚS 19/05. It pointed to the fact that the amendment of the Act on Conflict of Interest imposed on members of representative bodies of local government units

considerable obligations, which had to be fulfilled in a short period, whereby it basically changed the conditions for exercise of a public office for them in the course of a term of office. The consequences of this fact, together with the circumstances under which Act no. 96/2005 Coll. was passed, violate the principle of legitimate expectation and the principle of confidence in the law, which are regulative expressions of the value of legal certainty arising from the concept of a law based state under Art. 1 of the Constitution.

The secondary party then justified its substantive objections to the provisions proposed to be annulled on the basis that they violate the principle of equality and the prohibition of discrimination (Art. 1 and Art. 3 of the Charter), because, in contrast to the existing situation, the amendment of the Act on Conflict of Interest expanded the obligations imposed by law [the obligation to submit an affidavit on personal assets, on activities, on income and gifts and on real estate, and an obligation to refrain from conduct under § 2 par. 1 let. b)] on members of representative bodies in regions, in the capital city of Prague, municipalities with expanded jurisdiction, and city districts of Prague which exercise the jurisdiction of a municipality with expanded jurisdiction. According to the secondary party, this definition of person jurisdiction is unconstitutional, as it establishes unjustified inequality between members of representative bodies of regions and municipalities with expanded jurisdiction (including the capital city of Prague and city districts of Prague with expanded jurisdiction) on the one hand, and on the other hand other municipalities, for which there is no legitimate and rational reason. This inequality in providing a certain number of advantages to some at the expense of others also establishes inequality between members of representative bodies in local government units in relation to Art. 10 par. 2 and 3 of the Charter (the right to protection of privacy), because the law imposes on one group of members of representative bodies an obligation to make public information about their assets (§ 3, § 4, § 6, and § 7) and certain activities (§ 5), which obligation also extends to the person's husband or wife. The law forbids members of representative bodies from acting in certain commercial matters vis-à-vis the local government unit in whose representative body they are members. This partial removal of the right to conduct business and other economic activity, or the right to obtain the means for one's life needs through work, is inconsistent with Art. 26 par. 1 and 3 of the Charter. The secondary party believes that the increased level of citizen review over the conduct of their elected representatives is basically positive, but it considers changing the rules in the course of a term of office to be decisive and its results unacceptable. If the obligations imposed by law applied to the members of all representative bodies from the first elections held after the day the law went into effect, the secondary party's objections would lose their basis. The secondary party also claims that passing the amendment to the Act on Conflict of Interest also violated Art. 21 par. 4 of the Charter, which guarantees citizens the right to access to elected (and other public) office under equal conditions, which, in their opinion, includes not only the right to access to the offices as such, but also the right to hold them. With reference to the case law of the Constitutional Court and the European Court of Human Rights on the need to set reasonable and objective grounds justifying the different positions of persons affected by a legal norm, the secondary party repeatedly pointed to the lack of such grounds in this matter.

As regards the provisions of § 2 par. 6 and 7 of the Act on Conflict of Interest, distinguishing between released and unreleased members of representative bodies of regions or municipalities with expanded jurisdiction (including the capital city of Prague and its city districts) in terms of the right to payment of compensation for performance of the office of a member of a directing, supervisory or inspection body of a legal entity which is founded by that region or town, or in which the region or town has majority ownership or majority voting rights, the secondary part states that this provision creates an impermissible inequality between the individual members of the representative bodies. The provisions of § 2 par. 6 of the Act takes away from released members of representative bodies the right to compensation for an office they perform, that is, the right to obtain means for their life needs through work (Art. 26 par. 3 of the Charter), which is discriminatory in relation to unreleased members of representative bodies. This also violates the right to hold a public office under equal conditions (Art. 21 par. 4 of the Charter).

The secondary party's objections to parts three and four of the Act on Conflict of Interest are considerably similar to the objections set forth above. These parts of the Act supplement the Act on Elections to Representative Bodies of Municipalities and the Act on Elections to Representative Bodies of Municipalities by setting additional cases where the position of a member of a representative body is incompatible with certain activities. According to the secondary party, this action by the legislature is inconsistent with the principle of legitimate expectation and confidence in the law. The supplemented provisions of both election acts will lead to the termination of the mandates of members of representative bodies of municipalities and regions, which will also violate the right of those members to hold the public office to which they were duly elected in accordance with the law. The effectiveness of these provisions should be postponed until the elections to representative bodies in the local government units, when each candidate could weigh whether he intends to run for office under such conditions for holding elected office.

III. c

The Senate of the Parliament of the Czech Republic, in its statement of 16 May2005 concerning the petition of the secondary party, signed by its Chairman Přemysl Sobotka, recapitulated the chronology of the discussion of the draft of Act no. 96/2005 Coll. and the results of the vote in which the Senate rejected the draft amendment to the Act on Conflict of Interest. In the general context of the existing regulation of conflicts of interest and is expected expansion into local government, the majority of the Senate was skeptical about its effectiveness, because the variety of relationships in conducting municipal government appeared to most senators as something which simply subordinating to the regulation of parliamentary context of conflicts of interest can hardly handle in such a way as to have a successful outcome. The Senate pointed out that the proposed amendment shifts regulation of conflicts of interest from political responsibility to a typo of administrative criminal liability, without deadline with the substance of the existing long-term problem, which is that representatives, deputies and senators function in the bodies

of legal entities which do business.

The Senate's specific criticisms were directed at a number of legislative legal problems, such as violation of the equality of representatives in their position (the so-called released and unreleased representatives), division of representatives in terms of the right to compensation for performing offices in the body of a legal entity in which they represent the municipality, or expanding the circle of offices which are incompatible with the office of a representative. The system of penalties for the offence was viewed negatively, and there was sharp criticism of the fact that expending the circle of incompatible activities went into effect in the middle of the terms of office of representative bodies, so that a number of representatives were in practice forced to resign before their mandate expired, which, in a certain sense, alters election results.

In the closing of its statement, the Senate agreed with the secondary party's petition, and stated that it is up to the constitutional Court to evaluate the constitutionality of the contested provisions of the Act on Conflict of Interest and made a decision in the matter.

III. d

The Chamber of Deputies of the Parliament of the Czech Republic, in its statement of 17 May2005 on the petition of the secondary party, signed by its Chairman Lubomír Zaorálek, summarized the objections presented in three groups.

The first concerns those provisions of the Act on Conflict of Interest which, briefly, expand the personal jurisdiction of the Act on Conflict of Interest, to members of representative bodies of certain local government units. According to the Chamber of Deputies, there was criticism of the speed with which the amendment to the Act on Conflict of Interest was passed without a transitional period caused by the increasing public pressure on preventing the possibility of corrupt behavior in public reaction, which, however, does not mean that it has retroactive effect. Likewise, distinguish various subjects of public administration does not create discrimination and violation of the principle of equality. Public administration can not be based on the absolute equality of all affected subjects. Municipalities differ from each other, in particular in their different material base, budget, and scope of jurisdiction and powers, whether within the exercise of state government or local government. In determining the subjects of public government, to which it extended the personal jurisdiction of the Act on Conflict of Interest, the legislature was guided by the consideration that with the widening scope of jurisdiction of public administration bodies the opportunity for corrupt behavior can also grow, and vice versa. The Chamber of Deputies rejected the proposition that the affected provisions of the Act on Conflict of Interest conflict with the constitutional principle of the right to protection of privacy, citing the Act on Protection of Personal Information.

As regards the second area of objections criticizing the differing regulation of the position of a released or unreleased member of a representative body of a local government unit, the Chamber of Deputies stated that in the case of a released member of a representative body there may be a higher probability of corrupt behavior that with a released member. The legislature tried to prevent such conduct by passing the statutory regulation.

The third area of objections is aimed at the amendment of the Acts on Elections to Representative Bodies of Municipalities and Regions, which provided that certain offices are incompatible with the office of a member of a representative body. As regards the argument on the basis of changing conditions during the period of a mandate, the Chamber of Deputies stated that it is not aware of this being a violation of the constitutional order of the Czech Republic.

In its closing position, the Chamber of Deputies repeated its belief that the legislature acted in accordance with the Constitution, the constitutional order, and the legal order.

III. e

The statements submitted regarding the secondary party's petition by the Chamber of Deputies and the Senate were communicated to both Houses of Parliament for any responses. The chairman of the Chamber of Deputies, by letter of 21 June 2005, added that in his opinion the petition is incorrectly aimed only at Act no. 96/2005 Coll., and not, correctly, against individual and already effective provisions of the Act on Conflict of Interest itself. The Senate did not submit a response.

III. f

As documentation for its decision, the Constitutional Court also obtained a number of stenographic records, resolutions, and chamber of deputies publications, freely available in the Joint Czech-Slovak digital parliamentary library at www.psp.cz.

IV.

The Constitutional Court ordered oral proceedings for discussing the matter. In them, the petitioner and the secondary party referred to their petitions and the arguments contained in them; they rejected the opinion of the chairman of the Chamber of Deputies stated in his response of 21 June 2005 as incorrect and inconsistent with the existing Constitutional

Court case law.

The Senate, as a party to the proceedings, represented in oral proceedings by its Chairman, Přemysl Sobotka, also referred to the statements it submitted regarding both petitions.

The Chamber of Deputies, by letter of 21 June 2005, signed by its Chairman, Lubomír Zaorálek, informed the Constitutional Court that it can not send a representative to the Constitutional Court proceedings due to the session of the Chamber of Deputies being in progress, and asked to be excused, which the Constitutional Court accepted.

V.

The Constitutional Court, under § 68 par. 2 of the Act on the Constitutional Court, first reviewed whether Act no. 96/2005 Coll., which amends Act no. 238/1992 Coll., on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act), as amended by later regulations, was passed within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

Based on the statements of both Houses of Parliament, attachments and documents available electronically (stenographic protocol from a meeting of the Senate on 28 January 2005, record of the 44th voting of the 3rd meeting of the Senate on 28 January 2005, Senate resolution no. 55 from the 3rd meeting on 28 January 2005, stenographic protocols from relevant meetings of the Chamber of Deputies and records of the 122nd voting of the 38th meeting of the Chamber of Deputies on 24 November 2004 and the 442nd voting of the 41st meeting of the Chamber of Deputies on 22 February 2005), the Constitutional Court determined that the draft of the contested Act was submitted to the Chamber of Deputies by a group of deputies (Chamber of Deputies publication no. 550/0). After the draft act was submitted to the government of the CR, it went through three readings in the Chamber of Deputies (the first reading on 31 March 2004 at the 30th meeting of the fourth term of office, the second reading on 12 October 2004 at the 36th meeting and the third reading on 24 November 2004 at the 38th meeting), which agreed with it on 24 November 2004, when, out of 169 deputies present, 113 voted in favor of the draft, 36 were against, and 20 abstained.

On 6 December 2004 the draft act was passed to the Senate (Senate publication 465/0), which rejected it on 28 January 2005 at its 3rd meeting of the 5th term of office, by the votes of 52 senators out of 72 present; 14 were against and 6 abstained.

The Act was delivered to the President, who used his right under the Constitutional in Art. 50 par. 1 and returned the act to the Chamber of Deputies, stating his reservations, on 10

February 2005. At the 41st meeting on 22 February 2005 out of 120 deputies present (with a quorum being 101), 112 voted to override the veto, and 2 were against. The act was promulgated as no. 96/2005 Coll. in part 29, distributed on 28 February 2005. The act went into effect on 1 March 2005, with the exception of point 16. [§ 8 par. 2 let. b)], which is to go into effect on 1 January 2006.

VI.

The contested Act amended provisions of the Act on Conflict of Interest (no. 238/1992 Coll. as amended by later regulations) and provisions of the Act on Elections to Representative Bodies of Municipalities (no. 491/2001 Coll. as amended by later regulations) and the Act on Elections to Representative Bodies of Regions (no. 130/2000 Coll. as amended by later regulations). Whereas with "ordinary" laws rejection by the Senate can not be overridden by a new vote in the Chamber of Deputies, this is not possible with an election act. Therefore, it is evident in the present matter that the fundamental issue for the Constitutional Court to decide is the interpretation of the term "election act" in Art. 40 of the Constitution. While the petitioner, the Senate, and the President, consider an election act under that article of the Constitution to mean every act which regulates the rules of elections to all representative bodies, the Chamber of Deputies believes that such an act must be understood to mean only an act on parliamentary elections. In terms of jurisprudence, various opinions have been published, including contrary ones (cf., e.g., Pavlíček, V., Hřebejk, J.: Ústava a ústavní řád České republiky, svazek I: Ústava České republiky [The Constitutiona and Constitutional Order of the Czech Republic, vol. I: The Constitution of the Czech Republic], Linde Praha, 1994, Hendrych, D., Svoboda, C. and a collective of authors: Ústava České republiky, Komentář [The Constitution of the Czech Republic, Commentary], Praha, C. H. Beck, 1997, Kysela, J.: K výkladu pojmu volební zákon v legislativní praxi Senátu, [On the Interpretation of the Term Election Act in the Senate's Legislative Practice], Parlamentní zpravodaj [Parliamentary Gazette], year 2001, no. 2, Filip J.: Postup při schvalování "volebního zákona" podle čl. 40 ÚstavyČR [The Procedure of Approving an "Election Act" under art. 40 of the Constitution of the CR], Časopis pro právní vědu a praxi [Journal of Legal Knowledge and Practice], year 2005, no. 1).

The legislative process concerning the contested act indicates that if the legal opinion of the Chamber of Deputies were accepted, nothing about the constitutional procedure proceedings the passage of the contested act could be criticized; on the contrary, accepting the petitioner's opinion would necessary lead to the conclusion that the contested act was not passed in a constitutional manner (because the Senate rejected the draft), so that, if, despite that, after the president's veto was overridden by the Chamber of Deputies, it was promulgated, then the Constitutional Court must act to annul it. In addressing the issue thus posed, the Constitutional Court deliberated as follows.

The separation of powers in legislative activity between the Chamber of Deputies and the Senate is governed by the Constitution in Art. 39 par. 4, Art. 40, Art. 42 par. 1 and Art. 45

to 48. In them, the framers of the constitution established a total of three different law-creating procedures for various types of laws.

1) The framers of the constitution placed the passing of laws on the state budget (Art. 42 par. 1 of the Constitution) under the exclusive jurisdiction of the Chamber of Deputies. The purpose of this constitutional rule is evident. The state budget, passed in a statute (only in a formal, not material, sense) is the fundamental instrument and framework for implementation of government policy. In view of the fact that the government is, in terms of its creation and existed, tied to the majority will of only the Chamber of Deputies, the entry of the Senate into the process of approving the act on the state budget would be a dysfunctional element for the function of not only the government, but also the state, especially, not only in the hypothetical situation of the two Houses of Parliament having a completely different political composition. The purpose of the Senate is not to directly influence either the creation or the activity of the government; its mission lies in other influences (the background report to the draft Constitution states this in the brief sentence, "the Senate has a review and stabilizing function.").

2) Most laws are subject to the legislative procedure described in Art. 45 to 48 of the Constitution. In this procedure, the Senate may, but need not, enter the legislative process, it is also bound by a deadline by which it must vote on a draft statue, and finally, it's position, vis-à-vis that of the Chamber of Deputies, is considerably weaker. The Chamber of Deputies need not accept the Senate's opinion, and may pass a draft act (by a simple majority of all deputies) in the version which was passed to the Senate. The reason for weakening the Senate can be found, as in the previous case, in the need to ensure that political decisions arising from the will of the majority, expressed by a free vote (see Art. 6 of the Constitution) can be passed. In other words, so that the opinion of the House which is not directly related to the government can not block the legislative process, when it is a minority position compared to the will of the Chamber of Deputies.

3) The framers of the Constitution separated other sub-groups from statues which are also discussed by the Senate in Art. 39 par. 4 and Art. 40 of the Constitution. The strictest form of the legislative process, prescribed here, is marked primarily by the requirement of consent from both Houses of Parliament, which have equal standing in terms of influence on the final text of the statute. In this type of legislative (and constitution-forming) procedure, the Senate must discuss a draft statute, but is not bound by a deadline, which the Constitution does not expressly say, but which has now been stabilized in traditional parliamentary practice, i.e. by the existing constitutional custom, which, from a constitutional viewpoint, there are no grounds to object against. The conclusion that the Senate is not bound by a deadline for discussing a draft statute in this procedure is based on a constitutional interpretation under which Art. 39 par. 4 and Art. 40 of the Constitution are a special regulation.

The framers of the constitution separated the statutes subject to the more rigid approval process according to legal force (the consent of the Chamber of Deputies and of the Senate is necessary for all constitutional acts) and – with ordinary laws – according to the subject matter they govern.

Article 40 of the Constitution set a stricter process in a definitive list for these statutes:
- an election act,
- an act on the fundamentals of conduct and contact of the two Houses between themselves and externally,
- an act on the rules of procedure of the Senate.

While the purpose of the legislative procedure described in 1) and 2) is quite easy to discern, the reasons for the obligatory consent of both Houses of Parliament with all constitutional acts and enumerated ordinary laws are considerably more difficult to interpret, because there are various reasons and it is difficult to compare them with each other.

As regards constitutional acts, in this connection it is enough to refer to the generally accepted opinion that it is desirable for constitutional procedure to be subject to a stricter regime than ordinary legislative activity, in view of the need to change the fundamental laws of the state only infrequently if possible, and only upon achieving greater consensus than usual.

Revealing the reasons which led the framers of the constitution to assign the enumerated ordinary laws to the stricter legislative procedure comes from the following deliberations.

It is easiest to answer the question why the act on the Senate rules of procedure was included in the enumeration of laws in Art. 40 of the Constitution. We accept without reservation the opinion that this is out of a certain "legislative politeness," as it would not be right for the rules which govern the internal relationships of one of the Houses of Parliament be forced onto that House against the will of its majority by the other House. De constitutione lata it is then superfluous to analyze the fact that this legislative politeness remained only partial, because there are also laws other than the rules of procedure which can also considerably affect the internal relationships of the Senate and the relationships of senators.

The reason why the act on principles of dealings and contacts between the two Houses and externally is also subject to the stricter regime of Art. 40 of the Constitution is similar as with the Act on the Rules of Procedure of the Senate, but it is not the only reason. From a constitutional viewpoint, the contents of this "contact" law (not yet enacted) can be formulated not only relatively concisely, and so as to limit it to the regulation of intra-parliamentary contacts, but also in a wider manner; it could regulate not only the internal activities of Parliament, but also the handling of fundamental issues related to obligations arising from the Czech Republic's membership in an international organization or institution provided in Art. 10a par. 1 of the Constitution; the Constitution presumes the possibility that the "contacts" act will entrust the exercise of the jurisdiction of the chambers to state positions on pending decisions of that international organization to a bi-cameral body (see Art. 10b of the Constitution). Thus, while the exclusive reason for including the Act on the Rules of Procedure of the Senate into Article 40 of the

Constitution is the need felt by the framers of the constitution not to regulate the rules of procedure of the Senate by a decision forced upon it by the Chamber of Deputies, with the act on principles of dealings and contact between the two Houses and externally this reason – as with constitutional acts – may also be joined by the need to subject it to a stricter approval process due to its importance for the Czech Republic's obligations vis-à-vis an international organization (institution) to which certain powers of bodies of the Czech Republic were transferred.

The Election Act cited first in Art. 40 of the Constitution has not been exhaustively named here for the same reason why the Act on the Rules of Procedure of the Senate appears in the last place here, unless it was concluded that Art. 40 of the Constitution lists exclusively those laws which concern the activities (and creation) of the Senate. Of course, then it would be necessary to consider an election act under that art. of the Constitution to be only the Act on Elections to the Senate, and not the act governing elections to the Chamber of Deputies. However, such a conclusion would conflict both with what has been said in relation to the contacts act, and with the stable constitutional custom, under which both Houses of Parliament consider the Act on Elections to the Parliament to indisputably be an election act under Art. 40 of the Constitution. Moreover, the Constitution uses the term "the Act on Elections to the Senate," (Art. 107 par. 1), so if the framers of the constitution meant "election act" under Art. 40 of the Constitution to be precisely and only an act governing senate elections, it would have no reasonable grounds to choose different terms for the same thing in different articles of the Constitution.

The term "election act" under Art. 40 of the Constitution can be interpreted in completely different ways – from a strictly narrow interpretation to a widely expansive one. However, for the reasons explained above, the most narrow interpretation must be rejected. In seeking an answer to the question of what is the purpose of classifying an "election act" under the stricter discussion regime and which election acts are subject to the discussion procedure provided by Art. 40 of the Constitution, the Constitutional Court concluded that an answer can not be reached through linguistic or systematic interpretation.

A purely linguistic (fundamental in terms of interpretational principles, but nevertheless the roughest) interpretation of Art. 40 of the Constitution permits interpreting that provision in a way which leads to absurd conclusions (e.g. that in this provision the framers of the constitution prescribed an obligation to create a single election codex – of course, again without answering the question which elections such a codex is supposed to regulate) or to conclusions which include in the term "election act" any law (or part thereof) which regulates election procedure, regardless of whether that procedure creates assemblies which are part of the legislative branch and local government or where by the Czech republic's representatives in the European Parliament are election (or the president would be elected – as the Senate points in its statement de constitutione et de lege ferenda), but also bodies of legislative and local government assemblies, so that then such acts would quite inconsistently also include the Act on the Rules of Procedure of the Chamber of Deputies, the Act on Regions and the Act on Municipalities; mere linguistic interpretation might even lead to the conclusion that this also includes laws governing elections to other

bodies of public power and to bodies of professional self-governing associations or bodies of private legal entities. Also in favor of giving less weight to linguistic interpretation is the fact that none of the laws governing elections to the Houses of the National Assembly in the First Republic, or the Federal Assembly or Czech National Council after 1990, used the legislative abbreviation "election act," so in terms of linguistic usage one can not claim that the legal context automatically connected that expression with elections to the Houses of Parliament. Moreover, the use of the singular rather than the plural everywhere where it is possible is a completely usual legislative technique, and in legal theory there is no dispute about the fact that a concept described in the singular – here an election act – does not rule out the possibility of several laws forming the framework thus described.

A systematic interpretation in this matter also does not provide a reasonable solution. As is evident from the petition, the petitioner argues on the basis of such interpretation – among other things – in favor of its conclusions, whereas the Chamber of Deputies, in its statement, also presents a systematic interpretation – different from the petitioner's – to support its legal opinion, which, is completely opposition to the opinion of the petitioner (and of the Senate and the president). However, if two contrary systematic interpretation of a legal norm are possible, it follows that a mere systematic interpretation can not be sufficient for a constitutional interpretation.

In the Constitutional Court's opinion, to evaluate this part of Art. 40 of the Constitution it is necessary to start with a wider view, one reflecting the value allocated by the framers of the constitution to the Senate within the entire system governing the exercise of the state power, as well as the relevance of laws governing elections for the purpose of ensuring the foundations of the Czech Republic, which proclaims itself in the constitution to be a democratic law-based state.

As was already stated above, the background report to the draft of the Constitution describes the Senate as a parliamentary chamber with an inspecting and stabilizing function. During the creation of the Constitution these Senate functions were considerably strengthened in contrast to the government draft of the Constitution; in relation to the president, the power to file a complaint for treason was shifted from the Chamber of Deputies to the Senate, and in relation to the Constitutional Court, from the original outline, anticipating the naming of six Constitutional Court judges by the President (without the countersignature of that decision by the Prime Minister) and six Constitutional Court judges by the Senate, the power to appoint was shifted exclusively to the president, but conditioned on the consent of the Senate with the appointment of all Constitutional Court judges. Thus, in the Constitution itself the position of the Senate is postulated on a not insignificant level; the Senate is not only a ceremonial House of Parliament. In fact, the position of the Senate, in the system of the highest bodies of state power, precisely in terms of the role of a restraint, preventing excesses which could endanger the very foundations of a democratic law-based state, is irreplaceable, naturally except for the possibility that the framers of the constitution could (newly) decided to inclined toward the previously considered but not accepted concept of unicameralism, where, however, the restraints, balances, and checks on individual state powers would have to be set

completely differently than in the existing Constitution.

The Constitutional Court has in the past stated the opinion that "in a situation where there is a dispute between entities applying the Constitution concerning the interpretation of a particular provision, that dispute must be resolved to the benefit of the possibility of applying the constitutional powers which that provision concerns, that is, in terms of the meaning and purpose of the affected constitutional institution" (see judgment Pl. ÚS 33/97 published as no. 30/1998 Coll.). In the present matter too there is no reason to diverge from that conclusion. Thus, the Constitutional Court had to reject the attempt by the Chamber of Deputies unilaterally to reduce the role of the Senate, which is obligated, together with other constitutional institutions, to guard the foundations of statehood (not limited merely to the senate powers in the constitution-framing and legislative areas).

The Constitutional Court relies not only on the described subjective interpretation of the intent of the framers of the constitution in relation to the position of the Senate, in its not merely norm creating activity, but also on the deliberations presented below.

For a constitutional interpretation of the words "election act" contained in Art. 40 of the Constitution, one can not overlook the context enshrined in the fundamental provisions of the Constitution, in chapter seven of the Constitution and in Art. 21 of the Charter.

The government of territorial local government units is constitutionally guaranteed by one of the fundamental provisions of the Constitution (Art. 8). The right of citizens to self-government, in other words to the independent management of municipalities and regions through representative bodies whose members are elected by a secret ballot on the basis of a general, equal, and direct right to vote, is constitutionally secured and defined in Chapter Seven of the Constitution, which, at a constitutional level, describes in more detail the right of citizens to participate, through electing representatives, in the administration of public matters (Art. 21 par. 1 of the Charter) or to participate in this administration as members of representative bodies, because they have a right to seek elected office in them under equal conditions (Art. 21 par. 4 of the Charter).

Free elections are a condition sine qua non of a democratic state. In the administration of public matters, this condition can not be limited only to creation of the legislative power, that is to the election of deputies and senators, but it must also be applied to the election of members of representative bodies which govern public matters at the level of local government. If the Senate is to fulfill its stabilizing role, there are no reasonable grounds why it should fulfill this role in the creation of election rules only in relation to parliamentary elections, and not in the creation of laws governing elections to those bodies which independently govern municipalities and regions. It is not only how the Houses of Parliament are elected that is important for a stable democracy, but also how citizens elect their representatives at the level of local government; one can not conclude, on a constitutional level, that – despite the different scope of authority of Parliament and local governments – that parliamentary elections are more important for maintaining and

developing democracy than elections to local government representative bodies of municipalities and regions. Democracy, if it is to be a true government of a sovereign people, by the people and for the people, can not be, even indirectly, distributed from the Parliament down, but, on the contrary, must grow as the product of a civil society from the bottom up to the highest bodies of state power, naturally including the legislative and constitution-framing power. If it is desirable for the election rules for parliamentary elections not to be subject to constant changes and for them to be stabilized, as much as possible, including through a more difficult procedure for passing them, it is equally desirable for the rules for elections to representative bodies of regions and municipalities to be subject to such stabilization with the help of a stricter legislative regime. This requirement is the more distinct, if one considers that, unlike elections to the Senate and the Chamber of Deputies, for which the election system is constitutionally prescribed, elections of members of representative bodies are subject by law only to the constitutional regulation contained in Article 102 par. 1 of the Constitution; the election system for these elections is not constitutionally regulated.

It would be quite inappropriate for the development of democracy, in which the Constitutional Court considers local government to be an irreplaceable component (see judgment file no. Pl. ÚS 1/96 published in the Collection of Decisions of the Constitutional Court, vol. 6 no. 120), to permit changing the election procedure on the basis of which the representative bodies of local government units are created, including, for example, the fundamental system components, always based on a majority, thus guaranteeing a majority in the Chamber of Deputies, true, a majority of the governing party (parties), but one which may also be only a minimal majority, and moreover need not be a majority which exists in both Houses of Parliament. If the opinion of the Chamber of Deputies were accepted, under which even in the case of discussing laws regulating elections to representative bodies of regions and municipalities the position of the Senate would be fully subordinate to a majority perhaps of only 101 deputies (under Art. 47 par. 1 second sentence of the Constitution), nothing would prevent the Chamber of Deputies, against the will of the stabilizing House of the Parliament, to set quite different election rules for all local and regional elections, per the current belief of even a slight governing majority, according to which new election rules would suit that majority. However, there is no reason why the representative bodies of municipalities and regions should be elected according to rules which suit the governing majority.

If the two Houses of Parliament are equal partners in constitution-creating activity, one can conclude from the foregoing reasons, by interpretation e ratione legis, that it is useful, appropriate and necessary to set stricter election procedures under which people choose their representatives in territorial entities, than for laws which are not a basis for creating bodies representing the will of the citizens of a municipality or region. The manner of electing members of representative bodies of regions and municipalities stands among the foundations of a democratic state.

The foregoing also indicates (as was already said), that not all laws governing the subject matter of elections can be considered election acts under Art. 40 of the Constitution. In

particular, these do not include the rules – even if set by statute – which create various other bodies of public power or bodies of professional self-governing associations, even if the legislature (not the framers of the constitution, who enshrined the right of local government units to govern themselves directly in the Constitution), transferred to them the exercise of state administration, and even less so laws regulating the election of bodies of the Houses of Parliament and representative bodies or other bodies of private legal entities. This also follows from the fact that elections to the representative bodies of local government units of the Chamber of Deputies and of the Senate are generally regulated by the Constitution itself, as a primary and essential prerequisite for the exercise of state power by the people (see Art. 2 par. 1 of the Constitution).

On the basis of all the foregoing reasons, the Constitutional Court concluded that the act governing elections to the representative bodies of municipalities or regions must be considered an election act under Art. 40 of the Constitution, so that, in order for that act to be passed, it had to be approved by the Chamber of Deputies and by the Senate, and in discussing the act the Senate was not bound by a deadline of 30 days under Art. 46 par. 1 of the Constitution. From that conclusion it then followed that the steps taken by the Chamber of Deputies before promulgation of the contested act were inconsistent with the constitutionally prescribed procedure, without the defect-free fulfillment of which a law can not be passed. Therefore, the Constitutional Court granted the petitioner's petition, and annulled the contested act under § 70 par. 1 of the Act on the Constitutional Court.

As obiter dictum, the Constitutional Court agrees with the arguments of the petitioner and the Senate, under which the Act on Elections to the European Parliament is also an election act under Art. 40 of the Constitution, primarily because on the basis of that act the people elect representatives to a body which participates in the creation of European law and thereby also the legal order of the Czech Republic.

It also follows from the foregoing that the Senate is not entitled, under Art. 33 par. 2 of the Constitution, to pass statutory measures in the matter of election acts governing elections to both Houses of Parliament, to representative bodies of municipalities and regions, and to the European Parliament.

All the provisions of Act no. 96/2005 Coll. were annulled, not only parts three and four, which, in a complicated way, through the Act on Conflict of Interest, amended certain provisions of the Act on Elections to Representative Bodies of Municipalities and the Act on Elections to Representative Bodies of Regions. It is not possible for different constitutional procedural requirements for duly passing a law apply to different parts of the same law. In other words, a law must be subject to a uniform regime for discussion, which can not be simultaneously both defect-free, and unconstitutional; if the draft of a law contains parts which require different procedures for approval, the strictest of those procedures must be required for constitutional enactment of that law.

Upon annulment of Act no. 96/2005 Coll. due to the defective procedure by the Chamber of Deputies in passing it, grounds ceased to exist for review of the constitutionality of those provisions of the Act on Conflict of Interest, which the secondary party sought to have annulled due to substantive unconstitutionality in the proposed judgment written in eventum, to be used in the event that the original petition was not granted.

Although the reasons already stated were quite sufficient for the Constitutional Court's decision to grant the petition, the Constitutional Court considers it useful to respond to the petitioner's deductions, basing its request to annul the Act on the constitutional custom which it claims to exist. In this regard the petitioner pointed to the legislative process which preceded the passing of the Act on Elections to the European Parliament. Here the Constitutional Court states that the petitioner's arguments are imprecise; we can point to the statements from the Chamber of Deputies and the Senate, as well as to the discussion which preceded voting in the Chamber of Deputies on the draft of the act returned by the Senate, which indicate that the problem now being addressed did not arise at the time, because the discussed draft Act on Elections to the European Parliament also included direct amendment of the Act on Elections to of the Parliament of the Czech Republic, so after the theoretical presentations by the speakers, the dispute was closed by the fact that, in view of that direct amendment, the Senate chose the non-defective procedure. In the Constitutional Court's opinion, it would be more appropriate in this regard to point to the discussion of Chamber of Deputies publication 1160 of the third term of office (1998 to 2002) of the Chamber of Deputies. This publication contained a government draft of the Act to Amend and Annul Certain Acts in Connection with the Termination of Activity of District Offices, and in the course of discussing it, the Chamber of Deputies, at the proposal of its constitutional law committee, deleted from the government draft parts fifty three, sixty one and sixty seven, i.e. the direct amendments of the Act on Elections to of the Parliament of the Czech Republic, the Act Elections to Representative Bodies of Regions and the Act on Elections to Representative Bodies of Municipalities, which was explained in the 47th meeting of the Chamber of Deputies on the grounds that election acts are subject to a different constitutional regime for discussion. The contents of these parts were included in Chamber of Deputies publication no. 1022 (the Senate draft of the Act which amends Act no. 247/95 Coll., on Elections to of the Parliament of the Czech Republic), which was discussed separately by both Houses of Parliament, and subsequently, including the added amendments to the Act on Elections to Representative Bodies of Regions and the Act on Elections to Representative Bodies of Municipalities, was signed by the President and published as no. 230/2002 Coll. Thus, although the petitioner's arguments in that regard are not correct, neither is the claim of the Chamber of Deputies, which said in its statement that this case "can not … involve a completely new interpretation by the Chamber of Deputies …."

As regards the petitioner's proposal for priority discussion of the matter, the Constitutional Court did not consider it necessary to say in a separate resolution, issued under § 39 of the Act on the Constitutional Court, that the matter which the petition concerns is urgent. However, even without such a formal resolution, the Constitutional Court gave the matter priority, and ordered oral proceedings (which the Chamber of Deputies declined to waive in its statement on the petition) for 11 May2005, that is, at a time when the deadline by

which the Chamber of Deputies and the Senate had a right to respond to the secondary party's petition had not yet expired. The Constitutional Court found grounds to handle the petition as quickly as possible primarily in the need to not prolong the state of uncertainty as to whether, as a result of differing interpretations of one of the constitutional concepts Art. 40 of the Constitution did or did not result in defective legislative procedure, on the basis of which a generally binding normative act was passed. It also applied the petitioner's arguments point out the direct effects of the act on a number of persons.

Under § 58 par. 1 of the Act on the Constitutional Court, judgments in which the Constitutional Court decided on a petition to annul an act or other legal regulation or individual provisions thereof under Art. 87 par. 1 let. a) and b) of the Constitution are executable as of the day they are promulgated in the Collection of Laws, unless the Constitutional Court decides otherwise. In this case, the Constitutional Court decided that the judgment goes into effect the day it is announced, because it took into account the reasons which led to its being given priority. In conclusion, we can also add that it would be inconsistent with the principles of a democratic law based state if in the period from the announcement to the publication of a judgment, § 55 of the Act on Elections to Representative Bodies of Municipalities, or § 48 of the Act on Elections to Representative Bodies of Regions, on the termination of the mandate of a member of a representative body of a municipality or region could be applied (including by the executive state power – the director of a regional office or the minister of the interior).

Notice: Decisions of the Constitutional Court cannot be appealed.

Brno, 22 June 2005