2008/04/23 - PL. ÚS 2/08: STABILIZATION OF PUBLIC BUDGET - SICKNESS BENEFITS

HEADNOTES

The majority of amendments introduced by Act No. 261/2007 Sb., on the Stabilization of Public Budgets, relate to rights belonging to the category of social rights. Their conceptual characteristic is the fact that they are not of an unconditional character and that they can be claimed solely within the bounds of statutory law [Art. 41 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „the Charter“)]. This provision grants authority to the legislature to lay down specific conditions for the enjoyment of social rights. The statutory implementation may not be in conflict with constitutional principles; in other words, the relevant statutes may neither negate nor extinguish constitutionally guaranteed social rights. In implementing constitutional arrangements enshrined in the Charter, the legislature must abide by Art. 4 para. 4 of the Charter, which provides that, in employing the provisions concerning limitations upon the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved.

The specific character of social rights is that they are dependent chiefly on the economic situation of the state. The level at which they are provided reflects not only the state‘s economic and social development, but also the relation between the state and the citizen, founded on mutual responsibility and on the recognition of the principle of solidarity. The degree to which the principle of responsibility and solidarity are expressed in the legal order of a given state also determines the character of that state (for ex., as a social state). The degree to which the principle of solidarity is recognized depends on the level of the ethical appreciation of coexistence in society, on its cultural character, but also on the sense of the individual for justice and sense of unity with others and the sharing of their fate in a certain time and place. From the perspective of the individual, solidarity can be perceived either internally or externally. Internal solidarity reflects the emotional affinity of one’s relations to others, is spontaneous, and is exerted first and foremost in the family and in other partnership-type associations. Generally the state does not intervene into such relationships, or only to a very restricted degree (see family law relations regulated by the Act on the Family). External solidarity lacks this emotional affinity, thus the individual is more reluctant in consenting to its assertion. Examples of external solidarity are the solidarity of the wealthy with the poor, the capable with the less capable, the healthy with the sick. In this area, the state very actively asserts its function as the supreme power. It is through the principle of solidarity that redistribution occurs, that is the movement of transferred funds from one to the other - to the needy. Solidarity has its limits. It cannot take a form that is so skewed as to cause they who provide the funds for it to consider it incommensurate, disproportionate, even unjust and to withdraw their tacit consent for it. The state may, in the name of solidarity, only draw upon such a portion of the property of the capable so that, in so

doing, it neither destroys their active efforts nor oversteps the constitutional boundaries of the protection of property.

The benefits provided within the framework of social rights come from the state budget, and the responsibility for these benefits rests entirely on the state. If it is the state which is and will be bound by social benefits, then it also must have the possibility to set the specific conditions for such benefits. In this respect the state cannot afford the irresponsibility of becoming a debtor which is incapable of honoring its engagements. These circumstances may not, however, negate the very existence of the specific social rights or, in consequence, preclude their enjoyment.
The new rules in § 39 para. 2, lit. a) of Act No. 435/2004 Sb., on Employment, which „proposes linking the granting of unemployment benefits to the actual responsibility of the employee to retain his employment relations", this change does not introduce anything unconstitutional. It merely increases workers' responsibility for their own actions in their employment law relations since it „disadvantages" only those who „violated in an especially gross manner the duties arising from legal enactments relating to the work performed by them". This is a trend towards the increase in work discipline and towards getting people to take work seriously. In addition, each termination of work employment for the mentioned reason can be reviewed in court in the framework of a proceeding pursuant to § 72 of Act No. 262/2006 Sb., The Labor Code, thus discouraging prospective arbitrary action on the part of the employer. The trend leading toward increased responsibility for one's own actions can only be welcomed.

The repeal of the provision of sickness benefits during the first three days of work incapacity is in conflict with Art. 30 para. 1 of the Charter, specifically with the right to adequate material security during periods of work incapacity. Amendments to § 15 para. 1 and 3 and § 16 Act No. 54/1956 Sb., on the Health Insurance of Employees, as subsequently amended, withdraws from all employees in a state of work incapacity or quarantine the claim to sickness benefits during the first three days of incapacity or quarantine. This is a rather convenient even arbitrary means of proceeding on the part of the state, which, on account of an indeterminate number of people abusing sickness benefits, makes a blanket sanction against all categories of employees. The result is a state of affairs in which the predominant majority of employees remains without any funds during the first three days of work incapacity, meanwhile their obligation to pay insurance premiums remains unaffected. Naturally their obligation to pay the „regulatory fees" when they seek medical assistance remains unaffected as well. It is impermissible for the state solely to require the performance of an obligation on the part of employees (in the given case, the payment of insurance premiums) but at the same time to disregard the protection of their interests when they are affected by the mentioned event in the form of work incapacity. The rights of employees have thereby been violated to a degree reaching a constitutional dimension. The system of health insurance should not serve to cover the deficit in the state budget.

In this connection the Constitutional Court draws attention to the fact that the above-mentioned changes in the payment of sickness benefits, made in a whole

host of other statutes, enumerated in Parts 27 to 35 of Act No. 261/2007 Sb. (starting with the Labor Code), regulating the claims of the categories of employees listed there. None of the petitioners proposed they be annulled, however. According to the settled legal conclusion stated in Judgment No. Pl. ÚS 15/01 (Collection of Judgments and Rulings of the Constitutional Court, Volume 24, Judgment No. 164, published as No. 424/2001 Sb.), the Constitutional Court is bound by the relief requested (petit) in the petition and in essence cannot overstep its limits. Therefore, it has no option but to appeal to the legislature that it, bound by the Constitutional Court's legal opinion according to the above-indicated tenor, cure the mentioned inequality in the payment of sickness benefits. It is only due to this consideration that the Constitutional Court has postponed until 30 June 2008 the entry into effect of this Judgment.

As far as concerns the argument of „legitimate expectations", which is also contained in the petition of the 43 Deputies of the Assembly of Deputies, its assertion in the area of social rights is not entirely apposite. As has already been analyzed, these rights are dependent on the economic development and standard of living of the given state economy. In relation to a state which has fallen into economic troubles (consider recent developments in Russia, Argentina, or Mexico), every claim, even the most legitimate, becomes illusory and essentially everybody is harmed thereby. The issue of „once granted claims" also relates thereto, which in the case of social rights cannot be taken as static. This is demonstrated also by the contemporary history of the Czech Republic, where a left-oriented governments have had the tendency to proliferate a wide variety of social benefits, whereas the right-oriented governments have had the opposite tendency. However, they must always remain within the above-indicated bounds laid down in the Charter. In terms of the overall conformity of the contested Act with the constitutional scheme, the Constitutional Court observes that, despite a certain limitation in the area of social security, this limitation does not reach such an intensity as to be in conflict with the constitutional scheme contained in the Charter, much less as to entirely deny the enjoyment of the affected rights.
According to Art. 5 of the Constitution of the Czech Republic (hereinafter „Constitution") the political system of the Czech Republic is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles. Political decisions emerge from the will of the majority manifested in free voting. The decision-making of the majority shall take into consideration the interests of minorities (Art. 6 of the Constitution). The Constitutional Court thus concludes that, should the petitioners, in their capacity as representatives of the legislative power, be of the view that the statutory scheme which they contested is unsuitable or that it calls forth negative consequences, then they may strive to have it revised within the framework of political competition, not within the context of the judicial review of constitutionality, which must, by its very nature, be restricted solely to issues of a constitutional character. Were the Constitutional Court to grant the petition and itself decide in place of the legislature, it would violate, not only the above-cited provisions of the Constitution, but it would, above all, render the competition of political parties superfluous. First and foremost, it is their task, according to the mandate

gained from their electorate and on the basis of their political priorities, to put forward the most beneficial methods for the implementation of the social rights enshrined in Chapter Four of the Charter. Naturally that must always take into account the resources of the state budget, substantiated by the results of state management, for which they also bear political responsibility, and stay within the bounds laid down by the articles of the Charter of Fundamental Rights and Basic Freedoms.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 23 April 2008, the Constitutional Court, in its Plenum composed of Stanislav Balík, František Duchoň (Justice Rapporteur), Vlasta Formánková, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, on the petition: 1) of a group of 67 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic, represented by Deputy Mgr. Michal Hašek; 2) a group of 43 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic, represented by Deputy JUDr. Vojtěch Filip; and 3) a group of 19 Senators of the Senate of the Parliament of the Czech Republic, represented by JUDr. Kateřina Šimáčková, an attorney with her office at 612 00 Brno, Mojžíšova 17, proposing the annulment of Part Fifteen (amendment to the Act on State Social Assistance), Part Sixteen (amendment to the Act on Assistance in Material Need), Part Seventeen (amendment to the Act on Competencies of Bodies of the Czech Republic in Social Security), Part Eighteen (amendment to the Act on Social Services), Part Nineteen (amendment to the Act on Sickness Insurance of Employees), Part Twenty (amendment to the Act on Health Care in the Armed Services), Part Twenty-One (amendment to the Act on the Extension of Maternity Leave, on Benefits in Motherhood and on Child Allowances from Health Insurance), Part Twenty-Two (amendment to the Act on the Organization and Administration of Social Security), Part Twenty-Four (amendment to the Act on Old-Age Pension Insurance), Part Twenty-Five (amendment to the Act on Health Insurance), Part Twenty-Six (amendment to the Act which Amends Certain Acts in connection with the Adoption of the Act on Sickness Insurance), Part Twenty-Seven (amendment to the Labor Code), Part Twenty-Eight (amendment to the Act on Career Soldiers), Part Twenty-Nine (amendment to the Act on Service Relations of Members of the Security Corps), Part Thirty (amendment to the Act on Salaries and further Appurtenances connected with the Performance of Office by Representatives of State Power and Certain State Bodies, Judges, and Deputies of the European Parliament), Part Thirty-One (amendment to the Act on Salaries and further Appurtenances of State Attorneys), Part Thirty-Two (amendment to the Act on Municipalities), Part Thirty-Three (amendment to the Act on Regions), Part Thirty Four (amendment to the Act on the Capitol City of Prague), Part Thirty-Five (amendment to the Service Act), Part Thirty-Six (amendment to the Act on Employment), Part Thirty-Seven (Grants

for Increased Living Expenses), Part Thirty-Eight (amendment to Act No. 585/2006 Sb., which Amends Act No. 187/2006 Sb., on Sickness Insurance, Act No. 189/2006 Sb., which Amends Certain Acts in connection with the Adoption of the Act on Sickness Insurance, Act No. 262/2006 Sb., The Labor Code, Act No. 264/2006 Sb., which Amends Certain Acts in connection with the Adoption of the Labor Code, Act No. 589/1992 Sb., on Social Security Insurance and Contributions to the State Employment Policy, as subsequently amended, Act No. 117/1995 Sb., on State Social Assistance, as subsequently amended, Act No. 111/2006 Sb., on Assistance in Material Need, as amended by Act No. 165/2006 Sb., and Act No. 582/1991 Sb., on the Organization and Administration of Social Security, as subsequently amended), Part Thirty-Nine (amendment to the Act on University-Level Schools), and Part Forty-Four (amendments to the Act on Electronic Communications), and Act No. 261/2007 Sb., on the Stabilization of Public Budgets, alternatively the petition proposing the annulment of individual provisions listed here to Act No. 261/2007 Sb., on the Stabilization of Public Budgets, with the participation of: A) the Assembly of Deputies of the Parliament of the Czech Republic; B) the Senate of the Parliament of the Czech Republic; C) the group of 43 Deputies of the Parliament of the Czech Republic represented by Deputy Vojtěch Filip; and D) the group of 19 Senators of the Parliament of the Czech Republic represented by JUDr. Kateřina Šimáčková, an attorney, as secondary parties to the proceeding, decided as follows:

I. As of 30 June 2008, the first sentence of § 15 para. 1 of Act No. 54/1956 Sb., on the Health Insurance of Employees, as subsequently amended, which reads „if work incapacity lasts longer than 3 calendar days“, shall be annulled. The word „the fourth“ in the first sentence of § 15 para. 3 of the same Act shall be annulled. The second sentence of § 16 of the same Act, which reads, „Sickness benefits under the first sentence shall be provided from the fourth calendar day of quarantine.“, shall also be annulled.
II. The remaining parts of the petition are rejected on the merits.

REASONING

I.
The Subject of the Proceeding

1. By its petition, submitted to the Constitutional Court on 22 October 2007, a group of 67 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic, represented by Deputy Mgr. Michal Hašek, proposed, pursuant to Article 87 para. 1, lit. a) of the Constitution of the Czech Republic (hereinafter „Constitution“) and pursuant to § 64 para. 1, lit. b) of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended (hereinafter „Act on the Constitutional Court“), the annulment of Act No. 261/2007 Sb., on the Stabilization of Public Budgets (hereinafter „the Act“) in its entirety, alternatively the annulment of the particular provisions thereof designated in detail in the petition. Apart from that, by the same petition this group of 67 petitioners proposed the annulment of certain provisions, more specifically designated in the petition, of acts amending Act No. 261/2007 Sb.

2. By its 8 January 2008 ruling, No. Pl. ÚS 24/07-147, the Constitutional Court Plenum placed into separate proceedings the petitions proposing the annulment of those parts of Act No. 261/2007 Sb. which concern the substantively distinct problems of the financing of health care from public health insurance (Pl. ÚS 1/08), and the petitions proposing the annulment of parts concerning the substantively distinct problém of social security (Pl. ÚS 2/08).

3. The proceedings on the remaining portions of the petitions, which retained the file number Pl. ÚS 24/07, were completed on 31 January 2008 by the judgment of the Constitutional Court Plenum rejecting them on the merits (see below).

II.
Parties and Secondary Parties

4. The petitioner in this proceeding is a group of 67 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic, represented by Deputy Mgr. Michal Hašek. The Constitutional Court found that the submitted petition fulfilled all statutory procedural requirements. Pursuant to § 69 para. 1 of the Act on the Constitutional Court, 1. the Assembly of Deputies and 2. the Senate of the Parliament of the Czech Republic are also parties to this proceeding.

5. By its petition, delivered to the Constitutional Court on 19 November 2007, also a group of 43 Deputies, represented by Deputy JUDr. Vojtěch Filip, proposed the annulment of Act No. 261/2007 Sb., alternatively the annulment of specifically designated provisions thereof. By its ruling of 23 November 2007, No. Pl. ÚS 28/07, pursuant to § 43 para. 2, lit. b), in conjunction with § 43 para. 1, lit. e) of the Act on the Constitutional Court, the Constitutional Court rejected this petition on the grounds of the impediment of lis pendens. Pursuant to § 35 para. 2 of the Act on the Constitutional Court, the group of 43 Deputies thereby became secondary parties to this proceeding on the petition of the group of 67 Deputies.

6. In addition, in a further petition, delivered to the Constitutional Court on 7 December 2007,a group of 19 Senators of the Parliament of the Czech Republic, represented by JUDr. Kateřina Šimáčková, proposed the annulment of designated parts of Act No. 261/2007 Sb. By its 12 December 2007 ruling, No. Pl. ÚS 29/07, pursuant to § 43 para. 2, lit. b), in conjunction with § 43 para. 1, lit. e) of the Act on the Constitutional Court, the Constitutional Court rejected this petition on the grounds of the impediment of an already initiated proceeding. Pursuant to § 35 para. 2 of the Act on the Constitutional Court, this group of 19 Senators then became secondary parties to this proceeding. Secondary parties to a proceeding before the Constitutional Court have the same rights and duties as parties (§ 28 para. 2 of the Act on the Constitutional Court).

III.

7. As far as concerns the arguments made by the petitioners‘ and the secondary parties calling into doubt the constitutionally-prescribed manner of the adoption and issuance as a whole of Act No. 261/2007 Sb., it suffices to refer to the

conclusions in Judgment No. Pl. ÚS 24/07 of 31 January 2008 (published as No. 88/2008 Sb.).

III./a
Arguments of the Group of 67 Deputies of the Parliament of the Czech Republic

8. The group of 67 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic, represented by Deputy Mgr. Michal Hašek (hereinafter "the petitioners"), proposed the annulment of Act No. 261/2007 Sb. in its entirety, on the grounds, among others, which were dealt with in more detail in the already-mentioned Judgment No. Pl. ÚS 24/07. For the eventuality that this proposal would not be granted, the group of petitioners alternatively proposed the annulment of Parts Fifteen to Twenty-Two, Twenty-Four to Thirty-Nine, and Forty-Four of the Act, chiefly due to the fact that, in terms of content, teleologically and formally, these parts bear no relation to the tax amendments, or the reduction or repeal of certain taxes, nor with the increase or introduction of other taxes. The adoption of the referenced parts of the Act should have been effectuated by means of a separate statute. After all they concern changes in social benefits and social security procedural law. The extensive transformation of the entire social security system should have been effectuated in a separate statute or rather in several statutes. Social security law is a branch of law that is distinct from financial law, and their coupling in the same bill makes sense solely in relation to the rules on income tax and social security insurance (Part Twenty-Three) whose annulment has not been proposed. The inclusion of the mentioned parts into Act No. 261/2007 Sb. thus conflicts with Art. 1, Art. 2 para. 1, Art. 6, Art. 15 para. 1 and Art. 89 para. 2 of the Constitution of the Czech Republic.

9. Amendments to the labor law and in remuneration in the public sphere (Part Twenty-Seven to Thirty-Six) also bear very little relation to the tax amendments. They concern in particular the remuneration of career soldiers, members of the security corps, constitutional officials and representatives (of regions, municipalities, and the Capitol City of Prague). On the grounds of the foreseeability of law and of democratic legitimacy of the creation of law, these changes also required that the new rules be introduced in a separate statute.

10. Even less legitimate are the amendments to the Labor Code which concern the relations between two private persons, that is, the employer and the employee. In this respect, what is especially excessive is the addition to the content of the confirmation of employment, pursuant to § 313 of the Labor Code in Part Twenty-Seven, Art. XLI, point 7.

11. A number of the contested parts of this Act were introduced by means of a proposed amendment. They are Part Twenty-Two, points 1, 2, and 12, and Part Twenty-Four, Art. XXXVIII, point 1, 2, 3, and 5. For ex., it is considered proper to attempt to replace the rules for the calculation of the period of care of children for the purposes of pension insurance [in consequence of Constitutional Court Judgment No. Pl. ÚS 42/04, Collection of Judgments and Rulings of the Constitutional Court (hereinafter „Collection of Decisions"), Volume 41, Judgment No. 112], still it should not be done by „affixing" the new legal rules to a statute

which does not even relate to the issue of the calculation of periods for the purposes of pension insurance. The petitioners referred, in particular, to point 73 of the Constitutional Court‘s Judgment No. Pl. ÚS 77/06, published as No. 37/2007 Sb.).

III./b

Arguments of the Group of 19 Senators of the Parliament of the Czech Republic

12. This group of petitioners emphasized that, with their petition, they are not calling into question the contested Act‘s substantive conformity with the constitutional order, rather only the manner in which it was adopted, which they consider to be unconstitutional. In this connection, they referred in particular to Judgments No. Pl. ÚS 33/97 (Collection of Decisions, Volume 9, Judgment No. 163, published as No. 30/1998 Sb.), No. Pl. ÚS 5/02 (Collection of Decisions, Volume 28, Judgment No. 117, published as No. 476/2002 Sb.), and No. Pl. ÚS 77/06 (published as No. 37/2007 Sb.). They see the problem with this Act in the fact that it is a bundle of several amending acts in one statute, which resulted in its reduced transparency. During the second reading, Deputy and Prime Minister M. Topolánek submitted a very extensive proposed amendment, which introduced an objectionable „limpet“ into a number of parts of the referenced Act . The requested relief [petit] in the 19 Senators‘ petition proposing annulments does not contain any of these parts of the Act which is the subject of this proceeding.

III./c

Arguments of the Group of 43 Deputies of the Parliament of the Czech Republic

13. The petition of the group of 43 Deputies also contained (just as in the case of the petition of the group of 69 Deputies) a request that Act No. 261/2007 Sb. be annulled in its entirely due to a constitutional defect in the legislative process. The arguments of this group of petitions is, in the main, the same as the arguments of the group of 67 Deputies. They consider the Act as a set of fragmentary rules, representing in part the amendment of several dozen statutes, in part rules which would stand the test as separate statutes. They consider the change in the rules of almost all the social systems etc., as “limpets”

14. The relief requested in the petition [petit] of this group of petitioners includes a proposal to annul Part Sixteen of Act No. 261/2007 Sb., that is, the part amending Act No. 111/2006 Sb., on Assistance in Material Need. They do not agree with points 18 and 19, the purpose of which is to ensure that, in the case of persons collecting benefits of assistance in material need who are not actively earning for a period of more than 12 months, solely the amount of the existential minimum should be taken into account when setting the amount of the benefit, with the proviso that the increase in the subsistence amount would not apply to these people. Persons older than 55, partially disabled persons, and persons providing care to children under 12 should be exempted from this restricting rule. Point 24 then repealed the existing § 31 of Act No. 111/2006 Sb., narrowing the group of persons who benefit from a 600 Kč increase in the subsistence amount for

long-term persistence in a condition of material need.

15. According to the petitioners, this is a matter of the quality of the social safety net and the survival of handicapped jobseekers. Act No. 261/2007 Sb., ushers in basic systemic changes in this area a very short time after Act No. 111/2006 Sb. came into effect, which changes consisted in the fact that the employment offices and commissioned municipal offices lost the power to decide to increase by 600 Kč a month the subsistence amount given to long-term unemployed persons suffering from material need. Thus, the existing rule was replaced by an exhaustive designation of the persons who ex lege are not to receive the mentioned increase, and the Act thus makes the quality of life of affected subjects subject to the subjective decision-making of bureaucrats. The petitioners see a serious problem in the fact that the group of persons whose subsistence amount will be increased by 600 Kč is not complete because the Act leaves out, for ex., the group of job seekers over 50 years of age. Thus, in addition to disabled citizens, the automatic increase of 600 Kč in the subsistence amount should also have been given to long-term unemployed „over 50‘s“ who are in material need.

16. The petitioners consider the new rule contained in § 39 para. 2, lit. a) of the Act on Employment, which proposes the granting of benefits be tied to the employee‘s responsibility to retain his own employment relations, as a principle that is in conflict with the purpose of the social safety net and demolishes the solidarity among people.
It is an intrusion by the state into the relations between employer and employee. The Act changes the conditions for unemployment insurance; although preserving the insurance premium rate, the scope of insurance benefits is restricted only to cases of unemployment due to organizational reasons, to cases of the termination of employment relations by agreement, or ordinary notice of termination given by the employer. In the case of immediate termination of employment relations by the employer due to a violation in an especially gross manner of work obligations or due to the persistent violation of work discipline for a period of six months, the principle of insurance should not apply, and even an employee who had faithfully paid insurance premiums would not receive insurance benefits in the case of unemployment. The employer thus gets hold of a significant instrument which changes in a basic manner the power relations on the labor market, reduces the price of the work force, and one-sidedly accommodates employers.

17. The group of petitions also proposed the annulment of Part Nineteen, which amends Act No. 54/1956 Sb., on the Sickness Insurance of Employees. The subject of regulation is then the statute that was repealed by Act No. 187/2006 Sb., on Sickness Insurance, which will only come into effect, however, as of 1 January 2009. The mentioned Part Nineteen (point 3 and foll.) introduced the deferral of the provision of sickness benefits, which will not be provided for the first three calendar days of temporary work incapacity or ordered quarantine. The petitioners cannot agree with it because the system of sickness insurance is based on the principle of insurance premiums, which should serve as a protection should an insurable event occur, which in this case is illness. This system was better constructed even in the laws at the start of the last century. In § 6 para. 2 of Act. 689/1920 Sb., which Amends Certain Provisions of Acts on the Insurance of Workers in the Case of Illness, it was laid down that, if the illness lasts longer than three

days and if the ill person is not capable of earning, he is entitled to daily sickness benefits laid down in the Act from the day he became ill. Thus, the new statutory scheme results in a violation of the rights of insured persons, and the system of health insurance thus only supplements funds to cover the deficit in the state budget.

18. On point 10 of the same Part, revising the calculation of the daily basis of assessment for setting sickness benefits and support for the examination of a family member, on point 14, lowering the percentage rate for the setting of support for the examination of a family member from the existing 69 % to 60 %, that is, on the level of sickness benefits up to the 30th calendar day of work incapacity, on point 17, freezing the valorization of amounts for employing the reduction boundary in calculating the daily basis of assessment, from which the amount of monetary benefit of the sickness insurance is calculated, and on points 19 and 20, this group of petitioners stated that this legislative scheme will entail a lowering of the level of security for employees who, in consequence of a temporary work incapacity, are dependent on sickness benefits. At the same time, they weaken, in relation to sickness insurance, the principle of insurance premiums. The impact can be dramatically manifested in the worsening of the population's state of health through passing and concealed, including infectious, illnesses.

19. This group of petitioners proposed the annulment of Part Twenty-One, amending the Act on the Extension of Maternity Leave, on Benefits in Motherhood and on Child Allowances from Health Insurance, as subsequently amended, namely points 4 to 6, which cancel the provision to single women of monetary assistance for motherhood, and points 7 to 9, cancelling the claim by mothers who are jobseekers to monetary assistance. The consequential impact of all the mentioned statutory rules is that low-income groups of inhabitants will be placed in a situation where they will have limited access to public services and to medical treatment, which will affect in particular families with several small children when the wife is on maternity leave. The mentioned new statutory scheme thus withdraws assistance from persons to whom the state is obliged to provide appropriate material assistance, because they cannot manage on their own. It thereby negates the respect for human rights guaranteed in the Preamble to the Constitution. The Act also contradicted the principle protecting the legitimate expectation of claims which have already been acknowledged by a legal act and which are sufficiently individualized on the basis of legal rules. In this connection, the petitioners referred to Judgment No. Pl. ÚS 50/04 (Collection of Decisions, Volume 40, Judgment No. 50, published as No. 154/2006 Sb.) and Judgment No. IV. ÚS 167/05 (Collection of Decisions, Volume 37, Judgment No. 94). In any sort of amendment to the law, the legislature must take into consideration the existing legal situation and to carry out changes only sensitively and to the degree necessary for achieving the law‘s aim.

20. According to this group of petitioners, there was thus also a violation of Art. 14 of the Convention on for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 3, 5, and 8 (information of the Federal Ministry of Foreign Affairs No. 209/1992 Sb.) where it is explicitly provided that the enjoyment of the rights and freedoms set forth in this Convention shall be secured

without discrimination on any ground.

IV.
The Statements of the Parties to the Proceeding

21. Pursuant to § 42 para. 4 and § 69 of the Act on the Constitutional Court, the Constitutional Court sent the petition proposing the annulment of the contested provisions to the Assembly of Deputies and Senate of the Parliament of the Czech Republic.

IV./a
The Statement of the Assembly of Deputies of the Parliament of the Czech Republic

22. In its 30 November 2007 statement, signed by its Chairman, Ing. Miloslav Vlček, the Assembly of Deputies of the Parliament of the Czech Republic summarized the petitioners' objections and declared that it disagrees with them. The statement did not contain any specific position on the issues which form the subject of the proceeding in this matter and, as its conclusion, it declared that the Assembly of Deputies had acted in the conviction that the adopted Act is in conformity with the Constitution, the constitutional order, and the legal order.

IV./b
The Statement of the Senate of the Parliament of the Czech Republic

23. In its 28 November 2007 statement, the Senate of the Parliament of the Czech Republic, represented by its Chairman, MUDr. Přemysl Sobotka, described in particular the Senate's procedure for assessing Act No. 261/2007 Sb. The full Senate did not hold a „classic" debate, according to the Standing Orders of the Senate. In order for the Senate not deal with the bill, certain Senate officials and the chairpersons of the caucuses invoked, prior to the vote on the bill, their right to be given the floor „preferentially" (§ 69 of the Act on the Standing Orders of the Senate). With its 19 September 2007 Resolution No. 192, the majority adopted the proposal expressing the intention of the Senate not to deal with the bill; it did so in the conviction that the norm is in conformity with the Constitution and the Charter. Even though the Act „ . . . might at first glance call to mind a set of separate, fragmentary legal rules, only brought together into one comprehensive statute", nonetheless „ . . . It contains a supporting, unifying idea . . . the stabilization of public budgets". It is not a novelty in the Czech legislative process to proceed in an analogous fashion; the same approach was taken, for ex., in establishing the regions (Act No. 132/2000 Sb., on the Amendment and Repeal of Certain Acts Relating to the Act on Regions, the Act on Municipalities, the Act on District Offices, and the Act on the Capitol City of Prague, as subsequently amended) or when discontinuing the operation of district offices (Act No. 320/2002 Sb., on the Amendment and Repeal of Certain Acts in Connection with the Discontinuance of the Operation of District Offices, as subsequently amended). Through the prism of the unifying idea, the Senate accepted the bill, along with its comprehensive set of proposed amendments (of Deputies Topolánek, Tluchoř and

Rovan) adopted by the Assembly of Deputies. In conclusion, the Senate stated that it is up to the Constitutional Court to adjudge the constitutionality of the adopted Act and to decide with final effect.

V.
The Petitioners‘ Reply to the Statements

24. On 18 December 2007, the petitioners - the group of 67 Deputies - send a disapproving reply to the statements of the Chairperson of the Assembly of Deputies and the Chairperson of the Senate. In essence it was an assertion that the chambers of the Parliament, and not their chairpersons, are the parties to the proceeding before the Constitutional Court. The chairpersons merely represent their chambers externally and are not authorized independently to form their will. They can only transmit or express externally the will of those bodies formed in accordance with the rules laid down by the Constitution and the law. If the chairpersons of the chambers of Parliament fail to submit a draft statement, of a party to the proceeding, for approval by their respective chambers, then they may, by virtue of their office, only inform the Constitutional Court of the factual and non-contentious circumstances of the debates on the bill.

VI.
Description of the Legislative Proceedings for the Adoption of Act No. 261/2007 Sb.

25. The Constitutional Court has ascertained the following from the statements of both chambers of the Parliament of the Czech Republic, from appendices attached thereto, and from documents accessible by electronic means in the digital libraries on the web sites of the Assembly of Deputies and the Senate of the Parliament of the Czech Republic, at www.psp.cz and www.senat.cz: on 24 May 2007 the Government of the Czech Republic submitted to the Assembly of Deputies a governmental bill (Print No. 222/0). On 25 May 2007 the bill was distributed to the Deputies. On 24 May 2007, the Organizational Committee of the Assembly of Deputies recommended the consideration of the bill. It designated Mgr. Bohuslav Sobotka as the bill’s rapporteur and proposed that the bill be assigned for hearing in three committees: 1. the Committee on Health Care, 2. the Committee on Social Policy, and 3. the Committee on the Budget. The first reading took place on the 6th and 7th of June 2007 at the Assembly’s 15th Session. The bill was assigned for hearing by the above-mentioned committees (Resolution No. 335). The Assembly’s Committee on Health Care considered the bill on 20 June 2007, but did not adopt any resolutions. The Committee on Social Policy considered the bill on 2 July 2007 and in its resolution recommended that the bill be defeated. The Committee on the Budget considered the bill on 8 August 2007 and in its resolution recommended that the bill be defeated.

26. In its second reading in the Assembly, on the 14th and 15th of August at the 18th Session, the bill was the subject of general and detailed debate. Submitted proposed amendments were prepared as Print No. 222/3, which was distributed on 16 August 2007. The third reading in the Assembly took place on 21 August 2007 at the 18th Session. The bill was adopted: of the 200 Deputies present, 101 Deputies

voted in favor of the bill and 99 voted against it. On 31 August 2007 the Assembly of Deputies transmitted the bill to the Senate as Print No. 106/0. The Senate placed the bill on the agenda for its 8th Session and debated it on 19 September 2007. In its resolution No. 192, the Senate expressed its intention not to consider the bill. The Act was delivered to the President of the Republic on 25 September 2007, the President signed it on 5 October 2007, and the Act was promulgated on 16 October 2007 in the Collection of Law, Part 85, as number 261/2007 Sb.

VII.
The Public Hearing before the Constitutional Court

27. At the oral hearing of the Constitutional Court Plenum, held on 23 April 2008, the petitioners‘ representatives in essence merely repeated the arguments which they already put forth in their petitions proposing the annulment of the contested legal enactments. Others parties to the proceeding briefly referred to the statements which they had furnished the Constitutional Court. With reference to Article 26 of the Constitution of the Czech Republic, the Constitutional Court Plenum rejected JUDr. V. Filip‘s proposal to supplement evidence taking by including witness testimony of Deputy Ludvík Hovorka concerning the circumstances surrounding undue influence exerted on Deputies during the debate on the mentioned Act in the Assembly of Deputies.

VIII.
Constitutional Conformity of the Competence and of the Legislative Process

28. According to § 68 para. 2 of Act No. 182/1993 Sb., within the framework of a norm control proceeding, the Constitutional Court reviews a statute‘s conformity with the constitutional order in respect of three basic issues. The first is the competence of the body which issued the contested statute, the second is the procedure by which the statute issued, and the third is the statute‘s actual content, that is, its substantive conformity with the constitutional order. The logical sequence of the review is determined thereby. In adjudging the constitutionality of the contested Act, the Constitutional Court has accepted the petitioner‘s procedural objection to the effect that the chairpersons of chambers of the Parliament are not authorized independently to fashion the chamber‘s will on behalf of their respective chamber. In the chambers‘ statements, submitted in their capacity as parties to a proceeding, the chairpersons are entitled, on behalf of their respective chamber, solely to inform the Constitutional Court of the factual and non-contentious circumstances of the debate on the bill. The assessment of a contested statute and disagreements with the petition no longer form a part of the chamber‘s statement, rather are merely the personal opinion of its chairperson.

29. The subject of review in the matter under consideration is the constitutionality of the above-designated parts of the Act on the Stabilization of Public Budgets, No. 261/2007 Sb. Judgment No. Pl. ÚS 24/07 of 31 January 2008 (see above) resolved the issues of the competence of the Parliament of the Czech Republic, which adopted this Act, and the constitutionality of the procedure for adopting Act No.

261/2007 Sb.
30. The petition proposing the annulment of particular parts of Act No. 261/2007 Sb., which is the subject of this proceeding, rests in the first place on the objections falling under the asserted violation of the constitutionality in the adoption of the Act at issue in its entirety. At this juncture, one can only refer to the conclusions in Judgment No. Pl. ÚS 24/07. That is, they apply as well to the procedural errors which the petitioner and the secondary parties have spotted in relation to the individual parts of the mentioned Act on the Stabilization of Public Budgets, because of the absence of a close relation linking the proposed amendments to the subject of the bill and the overstepping of the statutory framework for the submission of technical legislative proposals during the third reading in the course of its adoption.

IX.
On the Objection that the Act is Inconsistent

31. As was stated in Judgment No. Pl. ÚS 24/07, in terms of legislative technique, Act No. 261/2007 Sb., on the Stabilization of Public Budgets, is a mixed statute. On the one hand, it contains amendments to specifically designated acts (Parts 1 to 36, 38 to 44, and 48 to 50), further original statutory arrangements (Parts 37, 45, 46, and 47), and finally repealing provisions (Part 51) and the provision on entry into effect (Part. 52). In other words, it is an act which is in part a „collective amending act“ and in part a set of new statutory rules. Thus, as follows from the already cited Judgment No. Pl. ÚS 24/07, the rules on the social system introduced by Act No. 261/2007 Sb., on the Stabilization of Public Budgets, are bound in substance to the field of public budgets. Thus, it is not a case of extreme systemic arbitrariness on the part of the Parliament of the Czech Republic, which would, in relation to that part of the Act, give rise to grounds for derogation due to a violation of the principles of the substantive law-based state and parliamentary democracy.

X.
On the Objection of the Absence of a Close Relation of the Proposed Amendments to the Act at Issue and the Exceeding of the Statutory Framework for Submitting Technical Legislative Proposals during a Bill‘s Third Reading

32. In relation to the following provisions of Act No. 261/2007 Sb., the petitioners object that, as regards the above-mentioned parts, the proposed amendments lack a close relation to the content of the bill itself. It can be considered that this issue was also resolved in Judgment No. Pl. ÚS 24/07 of 31 January 2008.

XI.
The Substantive Conformity of the Contested Statutory Provisions with the Constitutional Order

33. In its constant jurisprudence the Constitutional Court has asserted that the amendment of a legal enactment does not have separate normative existence,

rather it becomes a part of the amended legal enactment [Judgment No. Pl. ÚS 5/96 (Collection of Decisions, Volume 6, Judgment No. 98, published as No. 286/1996 Sb.), Ruling No. Pl. ÚS 25/2000 (Collection of Decisions, Volume 19, Ruling No. 27), Judgment No. Pl. ÚS 21/01 (Collection of Decisions, Volume 25, Judgment No. 14, published as No. 95/2002 Sb.), and Judgment No. Pl. ÚS 33/01 (Collection of Decisions, Volume 25, Judgment No. 28, published as No. 145/2002 Sb.)], and as such, its constitutionality is adjudged. If, in a norm control proceeding, the grounds for derogation are either the lack of norm-creation competence or the violation of the constitutionally-prescribed manner of adopting the legal enactment, then the constitutionality of the entire amending act is adjudged [see Judgments No. Pl. ÚS 5/02 (see above), and No. Pl. ÚS 7/03 (Collection of Decisions, Volume 34, Judgment No. 113, published as No. 512/2004 Sb.)].

34. The Constitutional Court has repeatedly emphasized that, in assessing the conflict of a statute, or individual provisions thereof, with the constitutional order, it is bound only by the requested relief [the petit], but not by the reasoning given therefore [Judgment No. Pl. ÚS 16/93 (Collection of Decisions, Volume 1, Judgment No. 25, published as No. 131/1994 Sb.) and others]. Should a petitioner object to an act‘s substantive conflict with the constitutional order, then, for the purposes of constitutional review, it does not suffice merely to designate the act (or individual provisions thereof) proposed for annulment, but it is also indispensable to state the reasons for objecting to its constitutionality. Should the petitioner in a norm control proceeding fail to meet the burden of proving the asserted unconstitutionality, then there is no option other than to consider such a petition as inconsistent with § 34 para. 1 of the Act on the Constitutional Court, thus not eligible for consideration on the merits (see Judgment No. Pl. ÚS 7/03 - see above). The consequences of this conclusion affects those parts of the requested relief [petit], in which the group of 67 Deputies seek the annulment of Parts Fifteen to Twenty-Two, Twenty-Four to Thirty-Nine and Part Forty-Four of the Act. Apart from the procedural objections in relation to these parts of the Act, the petitioners (that is, the group of 67 Deputies) did not raise any substantive criticisms.

35. It was solely the group of 43 Deputies of the Parliament of the Czech Republic (a secondary party in this matter) which both proposed the annulment of certain parts of the Act and put forward a number of arguments in that regard - see paragraph III./c above. That means that the Constitutional Court could consider on the merits only those parts of the Act which this specific group of petitioners proposed be annulled.

36. In the interests of having an overview of the entire matter, it can be observed that the subject of the proceeding, as defined by the petition of the group of 67 Deputies proposing the annulment of the above-designated parts of Act No. 261/2007 Sb., relates to the fields listed below, which can be divided into four groups:

A. Changes in the conditions for claims to certain social security benefits and in the amounts thereof

B. Attendant changes in the definition of, and additions to, certain terms and categories

C. Changes in the jurisdiction of the competent bodies and changes in the

proceedings on social security and health insurance benefits
D. Attendant technical amendments and rules

Changes in certain social security benefits, in the manner they are determined, and in the conditions for claiming these benefits.
Act No. 261/2007 Sb. brought about changes in the following areas:

37. In the area of state social support benefits (amendments to Act No. 117/1995 Sb., on State Social Support, Art. XXIII of Act No. 261/2007 Sb. – Part Fifteen) there was a change in the criteria for determining certain types of income, from which are determined the „decisive income“ for the granting of benefits which are provided depending on the level of income; further, the contribution to school aids was cancelled, and the bonus for children, the social supplement, parental contributions, contributions for taking children into foster care, and childbirth and funeral grants were all reduced, and a change was made in the conditions for claiming them and the manner of setting them (points 1 - 12, 14 - 19).

38. As regards benefits of assistance in material need (amendments to Act No. 111/2006 Sb., on Assistance in Material Need, Art. XXV of Act No. 261/2007 Sb. – Part Sixteen) the subsistence amount was newly prescribed for persons who are not employed, or otherwise for a period of longer than 12 months actively earning a living in the amount of the existential minimum, by providing that such persons were not entitled to the increased subsistence amount pursuant to §§ 25 – 30 of Act No. 111/2006 Sb. Persons who have reached the age of at least 55 are excluded from these provisions, as are persons with health problems under § 67 para. 2, lit. b) of the Act on Employment, or parents personally providing care for a child up to 12 years old (points 18 and 19). Act No. 261/2007 Sb. repealed § 31 of the Act on Assistance in Material Need, which provides for the possibility to increase the subsistence amount for persons remaining long-term in a condition of material need. It was a sum of 600 Kč for persons who, according to a statement of the Labor Office, required increased attention in procuring work, following a solid year on the list of job seekers and a concurrently-running year collecting housing benefits (point 24). The new rules even lay down the conditions for claiming a housing bonus and a new specification of justified housing costs (points 25 and 30).

39. In the area of the provision of social services (amendments to Act No. 108/2006 Sb., on Social Services, Art. XXVIII of Act No. 261/2007 Sb. – Part Eighteen), the Act repealed Chapter III, which provided for the increase, by governmental regulation, in the benefit for care provided to persons dependent on the assistance of another natural person for the purpose of securing necessary assistance (point 1). The new rules provided for changeds in certain conditions for the payment of that benefit (point 4), changes in certain types of social services provided without charge, changes in the amount of the charges for accommodation and food in certain social services facilities (points 24, 27, 29 and 32) and repealed Chapter X, which regulated the assessment of unjustified burdens on the system in cases where citizens of a Member State of the European Union request, under the prescribed conditions, the provision of contributions on the basis of the Act on Social Services (point 20).

40. As regards the provision of monetary assistance in maternity (amendment to Act No. 88/1968 Sb., on the Extension of Maternity Leave, on Maternity Benefits, and on Allowances for Children from the Sickness Insurance, No. XXXIII of Act No. 261/2007 Sb. – Part Twenty-One), the Act annulled the provision of monetary assistance in maternity even after the exhaustion of the statutorily-prescribed period in the case of single mothers (point 4). Further, it repealed the provision of monetary assistance in maternity for citizens who are not on the list of job seekers (point 7).

41. In the field of the health insurance of employees (Act No. 54/1956 Sb., on the Health Insurance of Employees, Art. XXIX of Act No. 261/2007 Sb. – Part Nineteen), there were changes chiefly in the provision of sickness benefits which, according to the new rules, employees are entitled to in the case that their work incapacity persists longer than three days. Sickness benefits are provided only as of the fourth calendar day of work incapacity, in contrast to the preceding legal arrangements, which allowed for the provision of sickness benefits from the first calendar day of work incapacity. The same rules affect also quarantines ordered in accordance with a separate legal enactment (points 3 - 6). Act No. 261/2007 Sb. newly sets the amount of the sickness benefit such that, in contrast to the previous rules on the amount of sickness benefits, which amounted to 69 % of the daily basis of assessment, (with the exception of the first three days of work incapacity or quarantine, when it amounted to 25 % of the daily basis of assessment), it provided for a differentiated amount of sickness benefit, graduated in accordance with the amount of time the work incapacity or quarantine lasts. The amount of sickness benefits for a calendar day is then newly set at 60 % of the daily basis of assessment up until the 30th calendar day of work incapacity or quarantine, 66 % thereof from the 31st until the 60th calendar day and 72 % thereof from the 61st calendar day of work incapacity or quarantine (point 7).

42. A further change concerns the rules on the amounts in the calculation of the daily basis of assessment for setting the sickness benefit and the grant for when a member of the family is receiving treatment (point 10). A change was also made in the provision of sickness benefits to the beneficiaries of an old-age or a full disability pension, which, in accordance with the new legal arrangements, is provided for a period of 81 calendar days (in place of the original 84 calendar days - point 12). This sickness benefit is provided to beneficiaries of the old-age or full disability pension until at the latest the day they terminate employment (point 13). Act No. 261/2007 Sb. lowered the amount of the grant for treatment of a member of the family to 60 % of the daily basis of assessment for each calendar day (in place of the original 69 % - point 14) and there is no entitlement to this grant from the „protective“ period following the termination of employment (point 18). The new statutory scheme shortened the general protective period from 42 to 7 days from the termination of employment (point 19).

43. The changes in sickness care in other legal enactments, carried out by Act No. 261/2007 Sb., are analogously bound up to the new legal arrangement for sickness insurance of employees. They are amendments to Act No. 32/1957 Sb., on the Care of Illness in the Armed Forces (Art. XXXI – Part Twenty) – that is, the abbreviation of the protective period, the abbreviation of the period in which sickness benefits are provided to members of the security corps who are beneficiaries of old-age or

full disability pensions, the rules concerning the amount of sickness benefits; further to Act No. 88/1968 Sb., on the Extension of Maternity Leave, on Maternity Benefits, and on Allowances for Children from the Sickness Insurance (Art. XXXIII – Part Twenty-One) – the setting of the daily basis of assessment for the equalization allowance in pregnancy and maternity in accordance with the Act on Sickness Insurance; and in Act No. 155/1995 Sb., on Pension Insurance (Art. XXXVIII – Part Twenty-Four) – the new rules for collecting sickness insurance (care) benefits during a period of temporary work incapacity or quarantine (point 8).

44. Further, it is chiefly about the amendment to Act No. 187/2006 Sb., on Health Insurance (Art. XXXIX – Part Twenty-Five), which was subject to the same changes in the amount of sickness benefit and the abbreviation of the protective period as were made in Act No. 54/1956 Sb. (point 3 and point 9). Act No. 261/2007 Sb. provided for a change in the amount of the decisive income for the purposes of sickness insurance from the original 1500 Kč to 2000 Kč (point 1), a change in the calculation of aggregate basis of assessment for the insurance premium (point 4), a change in the daily basis of assessment for the calculation of sickness benefits and treatment benefits and monetary assistance during maternity and an equalization allowance in pregnancy (point 5) and a change in the amount of treatment benefit, from the 65 % basis of assessment to 60 % (point 13).

45. In connection with the changes in the system of sickness insurance, changes were also made in Act No. 262/2006 Sb., The Labor Code (Art. XLI – Part Twenty-Seven) relating to the rules for substitute salaries and other pay for employees temporarily incapable of working or employees who were ordered into quarantine, such that they are not entitled to this substitute for the first three days of temporary work incapacity or quarantine (point 3). Prior to the onset of loss caused by work injury or illness, employees are entitled to compensation for losses in earnings during the period of work incapacity, even in the first three calendar days of a period of work incapacity (point 8). The substitution of salaries or pay was newly set in the amount of 60 % of average earnings, whereas, for the purposes of the substitution of salary or pay, the same rules apply for the ascertained average earnings as apply for the daily basis of assessment for the calculation of premiums from sickness insurance, in the sense that the applicable reduction threshold laid down for the purposes of sickness insurance is multiplied by the coefficient 0.175 (point 4).

46. Act No. 261/2007 then effects certain related changes in salaries or other compensation in Act No. 221/1999 Sb., on Career Soldiers (Art. XLII – Part Twenty-Eight), in Act No. 361/2003 Sb., on the Service Relations of Members of the Security Corps (Art. XLIV – Part Twenty-Nine), in Act No. 236/1995 Sb., on Salaries and further Appurtenances connected with the Performance of Office by Representatives of State Power and Certain State Bodies, Judges, and Deputies of the European Parliament (Art. XLVI – Part Thirty), in Act No. 201/1997 Sb., on Salaries and further Appurtenances of State Attorneys (Art. XLIX – Part Thirty-One), in Act No. 128/2000 Sb., on Municipalities (Municipal Order) (Art. LII – Part Thirty-Two), in Act No. 129/2000 Sb., on Regions (Regional Order) (Art. LIV – Part Thirty-Three), in Act No. 131/2000 Sb., on the Capitol City of Prague (Art. LVI – Part Thirty Four), and in Act No. 218/2002 Sb., on the Service of State Employees in Administrative Offices and on the Remuneration of these Employees and other

Employees in Administrative Office (the Service Act), (Art. LVIII – Part Thirty-Five). The relevant acts were supplemented by extraordinary measures, according to which, in determining the salaries and reimbursement of certain expenditures for representatives of state power, certain state bodies and judges, and in determining the salaries of state attorneys, one proceeds from the base salary in the amount attained on 31 December 2007 (in the years 2008 - 2010) (Art. XLVIII – Part Thirty and Art. LI – Part Thirty-One).

47. On the basis of Act No. 261/2007 Sb., there was an amendment to Act No. 435/2004 Sb., on Employment (Art. LIX – Part Thirty-Six). According to the new legal arrangement, jobseekers are not entitled to claim an unemployment benefit a) if, in the six months prior to being placed on the list of jobseekers, their employment relations were terminated by the employer due to a violation, in an especially gross manner, of obligations resulting from legal enactments relating to the work they performed (point 3). Further the contribution to the employment benefit for persons with health problems was restricted, and a maximum amount thereof was set (point 6).

48. Act No. 261/2007 Sb. provided for changes in the bases of assessment for the payment of insurance premiums and in the setting of the minimal bases of assessment for the payment of insurance premiums (amendment to Act No. 589/1992 Sb., on Insurance Premiums for Social Security and Contributions to the State Unemployment Policy, No. XXXVI of Act No. 261/2007 Sb. – Part Twenty-Three).

49. The new statutory scheme further repealed the contributions to increased costs of living provided in accordance with Regulation No. 182/1991 Sb., which Implements the Act on Social Security and the Czech National Council Act on the of Competence of Bodies of the Czech Republic in Social Security, as subsequently amended, (Art. LXI – Part Thirty-Seven).

50. The Act even revised stipendia under Act No. 111/1998 Sb., on University-Level Schools and on Amendments and Supplements to Further Acts (the Act on University Level Schools). The amendment relates to the determination of the manner of calculating stipendia granted to students with the right to a child benefit in the case of an onerous social situation (Art. LXIII – Part Thirty-Nine).
51. On the basis of amendments to Act No. 127/2005 Sb., on Electronic Communication and on the Amendment of Certain Related Acts (Act on Electronic Communication), the Act limited the obligation of entrepreneurs providing publicly-accessible telephone services to make possible the selection of prices or price plans which diverge from the price plans under normal commercial conditions, for persons afflicted with illness, in contrast to the previous rules, which also related to persons with low income and special social needs (Art. LXX – Part Forty-Four).

XII.
Constitutional Assessment of the Amendments Placed into Group A

52. The majority of amendments introduced by Act No. 261/2007 Sb., relate to rights belonging to the category of social rights. Their conceptual characteristic is the fact that they are not of an unconditional character and that they can be claimed solely within the bounds of statutory law [Art. 41 para. 1 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „the Charter“)]. This provision grants authority to the legislature to lay down specific conditions for the enjoyment of social rights. The statutory implementation may not be in conflict with constitutional principles; in other words, the relevant statutes may neither negate nor extinguish constitutionally guaranteed social rights. In implementing constitutional arrangements enshrined in the Charter, the legislature must abide by Art. 4 para. 4 of the Charter, which provides that, in employing the provisions concerning limitations upon the fundamental rights and basic freedoms, the essence and significance of these rights and freedoms must be preserved. It can be asserted of social rights that the aggregate restriction of them results exactly from the circumstance that, in contrast, for ex., to fundamental rights and freedoms, they are not directly claimable on the basis of the Charter. Their restrictability consists precisely in the necessity of their statutory implementation, which is, of course, at the same time a condition of the specific enjoyment of particular rights.

53. These facts relate to the specific character of social rights, which are dependent chiefly on the economic situation of the state. The level at which they are provided reflects not only the state‘s economic and social development, but also the relation between the state and the citizen, founded on mutual responsibility and on the recognition of the principle of solidarity. The degree to which the principle of responsibility and solidarity are expressed in the legal order of a given state also determines the character of that state (for ex., as a social state). The degree to which the principle of solidarity is recognized depends on the level of the ethical appreciation of coexistence in society, on its cultural character, but also on the sense of the individual for justice and sense of unity with others and the sharing of their fate in a certain time and place. From the perspective of the individual, solidarity can be perceived either internally or externally. Internal solidarity reflects the emotional affinity of one’s relations to others, is spontaneous, and is exerted first and foremost in the family and in other partnership-type associations. Generally the state does not intervene into such relationships, or only to a very restricted degree (see family law relations regulated by the Act on the Family). External solidarity lacks this emotional affinity, thus the individual is more reluctant in consenting to its assertion. Examples of external solidarity are the solidarity of the wealthy with the poor, the capable with the less capable, the healthy with the sick. In this area, the state very actively asserts its function as the supreme power. It is through the principle of solidarity that redistribution occurs, that is the movement of transferred funds from one to the other - to the needy. Solidarity has its limits. It cannot take a form that is so skewed as to cause they who provide the funds for it to consider it incommensurate, disproportionate, even unjust and to withdraw their tacit consent for it. The state may, in the name of solidarity, only draw upon such a portion of the property of the capable so that, in so doing, it neither destroys their active efforts nor oversteps the constitutional boundaries of the protection of property.

54. To make these social rights a reality requires of the state not only that it recognizes them, but also concrete action on its part which makes the enjoyment

of these rights possible. The benefits provided within the framework of social rights come from the state budget, and the responsibility for these benefits rests entirely on the state. If it is the state which is and will be bound by social benefits, then it also must have the possibility to set the specific conditions for such benefits. In this respect the state cannot afford the irresponsibility of becoming a debtor which is incapable of honoring its engagements. These circumstances may not, however, negate the very existence of the specific social rights or, in consequence, preclude their enjoyment. Within the confines of these limit's the legislature enjoys a relatively broad margin of appreciation in laying down rules for the implementation of individual social rights, including the possibility to modify them.

55. The Explanatory Report to the Charter of Fundamental Rights and Basic Freedoms (submitted at the 11th Joint Session of the Assembly of the People and the Assembly of the Nations of 8 January 1991) also sounds in the same spirit. As is stated therein: „While the rights and freedoms laid down in the preceding chapters are of an absolute character and, as such, are protected by the Constitution, the rights in this Chapter are mainly relative, moreover in the sense that their evolution is dependent - and this applies chiefly for the economic and social rights - on the state of the national economy, above all on its material attainments. Therefore, while the conception of these rights maintains the basic principles of their enforceability by means of judicial protection, still, in the case of social rights, on the whole the requirements upon which the ordinary law should be based are not given in the constitutional act. The actual content of norms of a lower level could not fail to be subject to changes based on the evolution of economics and the living standard, so that it was not appropriate to bind the ordinary legislature by constitutional constrictions."

56. In no case does the above-described specific character of social rights signify that the legislature would not be bound by them. Their enshrinement in the Charter denotes that the statutory regulation of these social rights must maintain a certain minimal standard. In no case may it result in the actual denial of one or the other of the social rights, because it is also necessary to uphold the principles laid down in the Charter. The degree to which they are observed must be assessed in each individual case of the statutory implementation of those rights. It is precisely from this perspective that the new statutory scheme ushered in by the contested Act must be assessed, that is, in terms of the intensity with which it may prospectively encroach upon the specific social rights guaranteed by constitutional order, and whether this intensity reaches unconstitutional dimensions.

57. The changes introduced by Act No. 261/2007 Sb., described in the above designated areas, relate chiefly to the rights laid down in Chapter Four of the Charter, entitled „Economic, Social and Cultural Rights". In the case of Article 26, of particular importance is paragraph 3, which provides: "Everybody has the right to acquire the means of her livelihood by work. The state shall provide an adequate level of material security to those citizens who are unable, through no fault of their own, to exercise this right; conditions shall be provided for by law." Article 29 of the Charter formulates the right of women, adolescents, and persons with health problems to increased protection of their health at work and the right of these two categories of persons to special protection in labor relations. Article 30 of the Charter governs the right of citizens to adequate material security in old

age and during periods of work incapacity, as well as the right of everyone who suffers from material need to such assistance as is necessary to ensure her a basic living standard.

58. The protection of parenthood and the family, into which a further group of amendments falls, is governed by Article 32 of the Charter. According to its paragraph 1, parenthood and the family are under the protection of the law and special protection is guaranteed to children and adolescents. According to paragraph 5, parents who are raising children have the right to assistance from the state. This Article, just as with the above-cited articles 26, 29 and 30 of the Charter refers to the implementation of these provisions by law.

59. In terms of the specific constitutional arrangements, it can thus be asserted that the Charter reserved to the legislature not only the implementation of the above-mentioned constitutional rights, and the setting of the conditions therefor, but at the same time also delimited the enjoyment of these rights in the very constitutional text by means of the terms „adequate level“, „necessary to ensure a basic living standard“, „adequate material security“ etc. In view of the fact that the Charter does not specify in greater detail the content of these terms, it is evident that the delimitation of them, just as with the laying down of further details, is left to legislative regulation.

60. The petition of the group of 43 Deputies of the Assembly of Deputies comes within the field governed by the above-cited articles of the Charter. In the Constitutional Court‘s view, the arguments contained in this petition are predominantly of a social, not of a constitutional, nature. There is no doubt that, in the field of social rights, the Charter binds the state to take positive action and to ensure the protection of these rights. The content of the state‘s obligation is to ensure the subjects of these rights a certain minimal social standard, and not a sufficient living standard in harmony with their requirements, as is often erroneously thought and demanded by these subjects.

61. As far as concerns the petition of the group of 43 Deputies proposing the annulment of the new rules in § 39 para. 2, lit. a) of Act No. 435/2004 Sb., on Employment, which „proposes linking the granting of unemployment benefits to the actual responsibility of the employee to retain his employment relations“ (see the arguments in point 16 above), in the Constitutional Court‘s opinion, this change does not, in itself, introduce anything unconstitutional. It merely increases workers‘ responsibility for their own actions in their employment law relations since it „disadvantages“ only those who „violated in an especially gross manner the duties arising from legal enactments relating to the work performed by them“. This is a trend towards the increase in work discipline and towards getting people to take work seriously. In addition, each termination of work employment for the mentioned reason can be reviewed in court in the framework of a proceeding pursuant to § 72 of Act No. 262/2006 Sb. (The Labor Code), thus discouraging prospective arbitrary action on the part of the employer. The trend leading toward increased responsibility for one‘s own actions can only be welcomed.

62. The petition of the group of 43 Deputies contains a request to annul Part Nineteen (point 3 and foll.), introducing basic substantive changes in the provision

of sickness benefits, which will no longer be provided during the first three calendar days of temporary work incapacity or imposed quarantine. The petition uses the argument that the system of health insurance is founded on the principle of insurance premiums, which should serve to protect in the event of an insurable event, which in this case is illness. This system was better constructed even in the laws at the start of the last century. In § 6 para. 2 of Act. 689/1920 Sb., which Amends Certain Provisions of Acts on the Insurance of Workers in the Case of Illness, it was laid down that „if the illness lasts longer than three days and if the ill person is not capable of earning, he is entitled to daily sickness benefits laid down in the Act from the day he became ill“. Thus, according to this group of petitioners, the rights of insured persons have been violated, and the system of health insurance thus only supplements funds to cover the deficit in the state budget.

63. In the Constitutional Court‘s view, the petition is well-founded in respect to this part because the repeal of the provision of sickness benefits during the first three days of work incapacity is in conflict with Art. 30 para. 1 of the Charter, specifically with the right to adequate material security during periods of work incapacity. Amendments to § 15 para. 1 and 3 and § 16 Act No. 54/1956 Sb., on the Health Insurance of Employees, as subsequently amended, withdraws from all employees in a state of work incapacity or quarantine the claim to sickness benefits during the first three days of incapacity or quarantine. This is a rather convenient even arbitrary means of proceeding on the part of the state, which, on account of an indeterminate number of people abusing sickness benefits, makes a blanket sanction against all categories of employees. The result is a state of affairs in which the predominant majority of employees remains without any funds during the first three days of work incapacity, meanwhile their obligation to pay insurance premiums remains unaffected. Naturally their obligation to pay the „regulatory fees“ when they seek medical assistance remains unaffected as well. It is impermissible for the state solely to require the performance of an obligation on the part of employees (in the given case, the payment of insurance premiums) but at the same time to disregard the protection of their interests when they are affected by the mentioned event in the form of work incapacity. The rights of employees have thereby been violated to a degree reaching a constitutional dimension. The system of health insurance should not serve to cover the deficit in the state budget.

64. Since most ordinary ailments are short-term, the outcome might be that, when employees are ill, they will take vacation (for recovery), which naturally is in sharp conflict with the purpose of vacation. Another solution is usually „passing the illness by“ without visiting a doctor and obtaining time off. The door is thereby opened, both for the spread of certain illnesses among co-workers, and for possibly greater harm to the employees health in the future, as well as the emergence of health complications in consequence of not treating the original ailment. This can result in a not insignificant increase in the cost of treatment in the case of complications, which can then even exceed the level of sickness benefits which could have been or were paid in the first three days of illness.

65. Illness is the equivalent of an insurable event, and its existence must be demonstrated in the appropriate manner (examination by a doctor). Instead of

resolving it in the form of introducing rigorous supervision of doctors and insurees, the state places on the shoulders of the majority of honest employees the consequences of its lack of will or incapacity to bring about such supervision. The same applies for imposed quarantines, which, for the employee, constitute an objective circumstance compelled by administrative decision, in the majority of cases due to a disaster. A decision on a quarantine is thus a preventive measure on the basis of legal enactments on hygiene, when the requisite conditions are met.

66. On the basis of the above-stated arguments, the Constitutional Court has granted the petition of the 43 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic and decided to annul the words, „if work incapacity lasts longer than 3 calendar days“, in the first sentence of § 15 para. 1 of Act No. 54/1956 Sb., on the Health Insurance of Employees. It has further annulled the word, „the fourth“ in the first sentence of § 15 para. 3 of the same Act. Finally it has also annulled the second sentence of § 16 of the same Act, which reads, „Sickness benefits under the first sentence shall be provided from the fourth calendar day of quarantine“. These legal provisions are in conflict specifically with Art. 30 para. 1 of the Charter.

67. In this connection the Constitutional Court draws attention to the fact that the above-mentioned changes in the payment of sickness benefits, made in a whole host of other statutes, enumerated in Parts 27 to 35 of Act No. 261/2007 Sb. (starting with the Labor Code), regulating the claims of the categories of employees listed there. None of the petitioners proposed they be annulled, however. According to the settled legal conclusion stated in Judgment No. Pl. ÚS 15/01 (Collection of Decisions, Volume 24, Judgment No. 164, published as No. 424/2001 Sb.), the Constitutional Court is bound by the relief requested (petit) in the petition and in essence cannot overstep its limits. Therefore, it has no option but to appeal to the legislature that it, bound by the Constitutional Court‘s legal opinion according to the above-indicated tenor, cure the mentioned inequality in the payment of sickness benefits. It is only due to this consideration that the Constitutional Court has postponed until 30 June 2008 the entry into effect of this Judgment.

68. As far as concerns the argument of „legitimate expectations“, which is also contained in the petition of the 43 Deputies of the Assembly of Deputies, its assertion in the area of social rights is not entirely apposite. As has already been analyzed, these rights are dependent on the economic development and standard of living of the given state economy. In relation to a state which has fallen into economic troubles (consider recent developments in Russia, Argentina, or Mexico), every claim, even the most legitimate, becomes illusory and essentially everybody is harmed thereby. The issue of „once granted claims“ also relates thereto, which in the case of social rights cannot be taken as static. This is demonstrated also by the contemporary history of the Czech Republic, where a left-oriented governments have had the tendency to proliferate a wide variety of social benefits, whereas the right-oriented governments have had the opposite tendency. However, they must always remain within the above-indicated bounds laid down in the Charter. In terms of the overall conformity of the contested Act with the constitutional scheme, the Constitutional Court observes that, despite a certain limitation in the area of social security, this limitation does not reach such an

intensity as to be in conflict with the constitutional scheme contained in the Charter, much less as to entirely deny the enjoyment of the affected rights.

XIII.
Constitutional Assessment of the Amendments Placed into Group B

69. Into the further group of amendments introduced by Act No. 261/2007 Sb. can also be classed the amendments to terms and categories and their specification relating to the amendments listed under point A. These changes respond to the new legislative scheme, reflecting the changes introduced in the provision of benefits, particularizing the calculation of benefits, and supplementing or regulating certain new categories of entitled persons. They are changes which are logically linked to the changes in content mentioned in group A above, thus the same conclusion apply to them as applied for group A.

XIV.
Constitutional Assessment of the Amendments Placed into Group C

70. Act No. 261/2007 Sb. further introduces certain jurisdictional and organizational changes attendant on changes in the system of social security and health insurance and changes in the proceedings on benefit claims. It concerns above all new rules and additions to the operation or scope of activities of certain new bodies or facilities in the area of social security (for ex., changes in the competencies of district social security administration on the basis of Act No. 582/1991 Sb., supplementing Certain Offices among the Bodies of Assistance in Material Need or Addition to Facilities of After-Care within the framework of social services proceedings) the supplementation and regulation of certain powers of competent bodies, the resolution of venue issues, added requirements for expert competence to engage in a profession, and the supplementation of the group of workers performing expert activities and of volunteers in the area of social services.

71. Act No. 261/2007 Sb. also introduced certain changes in the proceedings on benefits, for ex., changes in the requirements for applications for certain benefits and in the conditions for the issuance of written decision, changes in time periods and in the possibility to initiate appeal proceedings on benefits, new rules on the obligation to report, on representation and on the supervision of the statutory use of relevant benefits, including financial auditing of subsidies utilized from the state budget for ensuring the provision of social services, and on the problems of overpayment. The essence of these changes consists again in the links to the rules described in group A and relates chiefly to the field of social security procedural rights. These rules result from changes in the content of individual statutes and are not in conflict with the constitutionally-guaranteed principles governing the conditions for issuing decisions by public authorities.

XV.

Constitutional Assessment of the Amendments placed into Group D

72. The last group of changes instituted by Act No. 261/2007 Sb., were the attendant technical amendments and rules in the acts, such as the new designation of statutory provisions, attendant changes in the comment mechanism and new transitional provisions attendant on the changes in the system of social benefits and health insurance. According to the petitioners‘ assertion, they constitute arbitrary action on the part of the legislature in the treatment and definition of statutory terms which, on grounds of their uncertainty and lack of clarity, give rise to a conflict with the principles of the substantive law-based state.

73. According to the Constitutional Court‘s conclusion, these are changes which, by their nature, are of a technical character, and they contain nothing which would place them on the constitutional level. After all, it is not the Constitutional Court‘s task to evaluate technical amendments and rules which are introduced by ordinary legislation. According to the Constitutional Court‘s constant jurisprudence, „the uncertainty of certain provisions of legal enactment must be considered as in conflict with the requirements of legal certainty, thus even of the law-based state (Art. 1 para. 1 of the Constitution), only in the case that the intensity of the uncertainty excludes the possibility of their normative content being established with the aid of customary interpretive approaches.“ [Judgments No. Pl. ÚS 4/95 (Collection of Decisions, Volume 3, Judgment No. 29, published as No. 168/1995 Sb.), No. Pl. ÚS 9/95 (Collection of Decisions, Volume 5, Judgment No. 16, published as No. 107/1996 Sb.), No. Pl. ÚS 2/97 (Collection of Decisions, Volume 8, Judgment No. 91, published as No. 186/1997 Sb.), No. Pl. ÚS 23/02 (Collection of Decisions, Volume 33, Judgment No. 89, published as No. 476/2004 Sb.), No. Pl. ÚS 40/02 (Collection of Decisions, Volume 30, Judgment No. 88, published as No. 199/2003 Sb.), No. Pl. ÚS 44/02 (Collection of Decisions, Volume 30, Judgment No. 98, published as No. 210/2003 Sb.), No. Pl. ÚS 10/06 (published as No. 163/2007 Sb.), No. Pl. ÚS 25/06 (published as No. 487/2006 Sb.)]. Such a situation did not arise in this matter.

XVI.
Conclusion

74. By way of conclusion, it should be noted that the legal scheme introduced into the mentioned areas by Act No. 261/2007 Sb., on the Stabilization of Public Budgets, is far from perfect. The dissatisfied reaction of the public, upon which the petitioners in essence draw, is a natural reaction of subjects for whom „something is taken away, changed, or made less transparent“. The foundational idea, by which the mentioned Act is justified, is the recovery of public budgets. That good idea was implemented only in part, in a manner which did not gain the broad support of the public. The parts of the mentioned Act which form the subject of this proceeding introduce a relatively extensive and blanket restriction of a wide variety of social benefits. Unfortunately, it did not bring to this area, which is sensitive for the majority of the populace, either a simplification of the system, its greater transparency, a simplification of the rules for granting benefits, or rigorous measures against the abuse of these benefits.

75. Moreover, the state began with savings from below, that is through limiting of social benefits of a relatively wide group of subjects. It did not begin by creating an efficient and effective supervisory mechanism which could achieve savings by either preventing or prosecuting the abuse of these benefits. For ex., in the area of benefits provided during illness, it has not done away with the abuse, for which there exists in Czech the expression, "work through the illness", an expression which probably does not exist in other languages. Naturally, the evaluation of whether somebody is sick should not be in the hands of someone for whom such a finding is profitable. Neither in the facilities providing health care nor in the practice of health insurance companies has an effective supervisory mechanism been developed which would make it possible gradually to eliminate these abuses.

76. The state did not begin by itself making savings, by an analysis of whether the current „administration of public affairs" is suitable, effective, and economically sound, whether it does not result in the squandering of public funds. If the state had first begun with itself, at least in part, to a certain extent it would have persuaded a substantial portion of the populace of the necessity and suitability of the changes, even in the area of social benefits, which is naturally bound up with the resources of the state budget, as pointed out above.

77. Thus the state selected once again the easiest route, but unfortunately only for itself, as a result of which it made the idea of reform somewhat less credible. Nonetheless, one can welcome even this effort at reform, and the legal scheme which the contested Act introduced must be adjudged from this perspective. It is not the Constitutional Court's task to adjudge the correctness, practicality or sufficient social nature of the mentioned reform steps, but only whether or not the legal scheme is unconstitutional.

78. Apart from certain dissatisfaction with the statutory scheme ushered in by Act No. 261/2007 Sb., and leaving aside reservations on the manner in which the Act was adopted, the petitions (apart from the above-cited petition of the group of 43 Deputies of the Assembly of Deputies of the Parliament of the Czech Republic) did not contain any further relevant constitutional arguments. There would only be scope for the Constitutional Court to derogate provisions in the case that it was ascertained and proven that the new legal arrangements lower the enjoyment of the constitutionally guaranteed standard of social benefits up to a point where their enjoyment is practically rendered impossible or they are even totally withdrawn. The petition of 67 Deputies did not present such arguments and it was not ascertained in the course of the proceeding before the Constitutional Court that the existing legal arrangements would represent such a retreat from the state's mentioned obligations, which it took upon itself in particular in Arts. 26 para. 3, 29, 30 and 32 of the Charter, which set of provisions relates to this case. While the drop in various social benefits is unpleasant for a number of subjects, still it has not fallen below a level allowing for a modest existence for the affected subjects. To assess the issue of suitability and social justice of a statutory scheme in this area is solely within the competence of the legislature, into which the Constitutional Court may not intrude, with the exception of cases where unconstitutionality is ascertained. These are in essence political questions, into which category primarily falls also the entire field of so-called social rights.

79. According to Art. 5 of the Constitution the political system of the Czech Republic is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles. Political decisions emerge from the will of the majority manifested in free voting. The decision-making of the majority shall take into consideration the interests of minorities (Art. 6 of the Constitution). The Constitutional Court thus concludes that, should the petitioners, in their capacity as representatives of the legislative power, be of the view that the statutory scheme which they contested is unsuitable or that it calls forth negative consequences, then they may strive to have it revised within the framework of political competition, not within the context of the judicial review of constitutionality, which must, by its very nature, be restricted solely to issues of a constitutional character. Were the Constitutional Court to grant the petition and itself decide in place of the legislature, it would violate, not only the above-cited provisions of the Constitution, but it would, above all, render the competition of political parties superfluous. First and foremost, it is their task, according to the mandate gained from their electorate and on the basis of their political priorities, to put forward the most beneficial methods for the implementation of the social rights enshrined in Chapter Four of the Charter. Naturally that must always take into account the resources of the state budget, substantiated by the results of state management, for which they also bear political responsibility, and stay within the bounds laid down by the articles of the Charter of Fundamental Rights and Basic Freedoms.

80. For all of the given reasons, the Constitutional Court has, pursuant to § 70 para. 1 of Act No. 182/1993 Sb., on the Constitutional Court, granted only the proposed annulment of a part of Act. No. 54/1956 Sb., on the Health Insurance of Employees, specifically the first sentence of § 15 para. 1, which reads, „if work incapacity lasts longer than 3 calendar days“, it further annulled the word, „the fourth“ in the first sentence of § 15 para. 3 of the same Act, and finally it also annulled the second sentence of § 16 of the same Act, which reads, „Sickness benefits under the first sentence shall be provided from the fourth calendar day of quarantine.“ On the grounds stated in point 67 above, they will be annulled with effect from 30 June 2008.

81. Pursuant to § 70 para. 2 of the Act on the Constitutional Court, the remaining parts of the petition have been rejected on the merits.

Pursuant to § 14 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, Justices Jan Musil, Pavel Rychetský and Eliška Wagnerová have filed dissenting opinions to the decision of the Plenum.

1. Dissenting Opinion of Justice Jan Musil

I do not concur either with the second statement of judgment in Judgment No. Pl. ÚS 2/08, dismissing part of the petition on the merits, or with the reasoning relating to this second statement of judgment. Pursuant to § 14 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, I have filed a

separate opinion dissenting from the judgment:

1. I believe that 261/2007 Sb., on the Stabilization of Public Budgets, should have been annulled in its entirety, as it was not adopted in the constitutionally prescribed manner. As follows from this logic, those parts of this Act placed in separate proceedings as No. Pl. ÚS 2/08 (the „social“ part) should have been annulled as well.

2. I have set forth in detail the grounds which lead me to take this position in my dissenting opinion, which I signed together with Justice Pavel Rychetský to the judgment issued in matter No. Pl. ÚS 24/07, to which I refer in full. Those part of the Act adjudicated in the present proceeding also suffered from all of the defects laid out in that dissenting opinion.

3. I will merely briefly state once again, that the manner in which Act No. 261/2007 Sb., on the Stabilization of Public Budgets, was debated and adopted so grossly offends against the elementary and essential requirements that a statute must meet as to result in a violation of the principle of the law-based state itself, as enshrined in the Preamble and in Article 1 para. 1 of the Constitution. It also resulted in a violation of the principle of the separation of powers and their democratic character (the Preamble, Article 1 para. 1, and Article 2 para. 3 of the Constitution) and in a violation of the principle that, in making political decisions, the minority be protected (Article 6 of the Constitution).

2. Dissenting Opinion of Justice Pavel Rychetský

This dissenting opinion, which I file pursuant to § 14 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, is directed solely against the Judgment‘s statement of judgment II, which rejected on the merits the remainder of the part of the petition proposing the annulment of Act No. 261/2007 Sb., on the Stabilization of Public Budgets, which was placed into a separate proceeding as No. Pl. ÚS 2/08 (the „social“ part of the „collective act“). The Constitutional Court‘s standard approach in abstract norm control proceedings is the test of the constitutionality of the contested norm, the first step of which is usually to scrutinize the constitutionality of the procedure by which the norm was adopted. Only in the case that the contested norm passes muster in this first review step, will the Constitutional Court adjudge the content of the norm on the merits in terms of its conformity with the constitutional order, with the assistance of the test of proportionality, suitability, the inviolability of fundamental human rights and freedoms, etc. In the given case, the contested Act, in my view, failed the very first step of the standard test and should have been annulled. I have already specified the detailed grounds for my dissenting opinion in my joint dissenting opinion, with Justice Jan Musil, to Judgment No. Pl. ÚS 24/2007; therefore, I refer to it in its entirety. Otherwise I voted in favor of the statement of judgment I of this Judgment, No. Pl. ÚS 2/08, precisely on the grounds that the procedure by which the Act was adopted was unconstitutional.

3. Dissenting Opinion of Justice Eliška Wagnerová

My dissenting opinion is directed against the Judgment's statement of judgment II and is motivated by the same grounds as those of the dissenting opinion which I filed to the judgment adopted in the matter Pl. ÚS 24/07, therefore, I refer to its content in full.

Seeing as in the dissenting opinion, to which I refer, I found to be unconstitutional the procedure for adopting Act 261/2007 Sb. in its entirety, that is, even those parts with which today's Judgment is concerned, I should refrain from further review, as I would thereby be engaged in review of a legal enactment which has already been found to be unconstitutional, which would be an irrational manner of proceeding. If I nonetheless (generally) express views as to whether the contested parts of the Act (including the provisions which were annulled by the statement of judgment I) are in conformity with the constitutional order, then I do so as obiter dictum, the content of which could serve as an inspiration for the adjudication of future analogous cases. (Besides, even in relation to Judgment Pl. ÚS 24/07, if I had had to concern myself also with the substantive adjudication of its constitutionality, I would have put forward the same substantive arguments.)

The basic idea behind my approach to the adjudication of the matter is the Christian-oriented, conservative thought proceeding from the principle of subsidiarity, according to which a dignified individual should have the right to have his basic needs and those of his family ensured through an income which she attains through her own power, and this right takes basic precedence over assistance from the state provided in the form of various social benefits. The untaxed lower boundary of such income must be a figure equal to the minimum subsistence amount. That which the state is obliged to provide the individual from the state budget to ensure her dignified existence cannot have been previously taken from her income as a tax assessment or a hidden tax assessment.

Of course, the Constitutional Court did not, in its preceding judgment, prevent the taxation of „super-gross" earnings without the possibility to deduct, from the tax basis, insurance premiums, by means of which the insured person, through his own power, secures a dignified human existence.

The constitutional construction which I am putting forward, corresponds to the connection of the following fundamental rights: above all the right to human dignity (Art. 10 para. 1 of the Charter), which is a substantive facet of the autonomous (independent) individual [Art. 2 para. 3 of the Charter – see, for ex., the judgment in the matter I. ÚS 167/04 (Collection of Decisions, volume 33, Judgment No. 70)], one of which is that everyone must, without more, be accepted as an equal precisely in human dignity with all other members of human society [Art. 1 of the Charter, the schematic interpretation of which proceeds from the standard conception shared in Euro-Atlantic civilization, see for ex., Barak, Aharon, The Judge in a Democracy, Princeton University Press, 2006, p. 85 and foll., or Mahlmann, Matthias, The Antimony of Freedom and Equality, in Abuse - The Dark Side of Fundamental Rights (eds. A. Sajó), Eleven International Publishing, 2006, p. 217 and foll.], and the right to family and private life (Art. 10 para. 2 of the Charter), alternatively the right of parents to care for and raise their children (Art.

32 para. 4 of the Charter).

In the setting of tax and hidden tax it is necessary to respect amounts, shifting in time, corresponding to the minimum subsistence amount, which should be measured according to actual needs that correspond to reality. Apart from material expenses (for ex., the costs of sustenance, clothing, the household, accommodation, heating, etc.), it is necessary as well to calculate into the sum representing the minimum subsistence amount the costs incurred for insurance premiums, from sickness insurance to health, pension, old age, and social security insurance, as it is by means of insurance that the individual provides for an income which should enable him to lead a dignified life even in the event that an insured loss occurs. (Similar considerations underpin, for ex., the 13 February 2008 decision of the German Federal Constitutional Court, 2 BvL 1/06.)

The acceptance of the taxation of super-gross income has led also to the majority's approach in assessing today's matter – that the adjudicated legislative scheme must be assessed only in terms of social rights, which are not of a nature prior to the state. My approach differs only to the extent that the „classic" fundamental rights must also be employed as referential norms in the process of assessment, naturally construed with consideration given to their social dimension. From my above-indicated perspective I cannot view as an issue of social rights those benefits which the state provides in consequence of the payment of insurance by the insuree himself, in contrast to benefits which are in fact provided solely from the state's resources obtained from general taxation and which are provided solely on the basis of specific persons' needs. If we leave to one side the basic sickness insurance (which, for good reasons, is governed by the principle of solidarity, so that equivalence can be excluded on grounds of the equality of people in dignity), it is evident that already in the case of health insurance, in setting the amount of benefits, they should be the equivalent of that which the insuree paid in to the system.

The 24 May 2000 decisions of the German Federal Constitutional Court, 1 BvL 1/98, 4/98, 15/99, for ex., attest to how stringently is assessed in European states the equivalence of a benefit from the title to insurance benefits. The court declared unconstitutional those provisions of the Social Code which allowed for the one-time paid out earnings of Urlaubsgeld [contribution to holidays] or Weihnachtsgeld [Christmas benefit] to serve as the basis for the computation of contributions to social security insurance without them also being taken into account as the basis for the computation of benefits such as unemployment support (Arbeitslosengeld) or sickness benefits (Krankengeld). This failure to take into account the increased amounts paid out as insurance premiums conflicted with the directive of equality before the law, which is contained in Art. 3 para. 1 of the Basic Law; thus the contested provisions were declared to be incompatible with the Basic Law. Although our Charter does not explicitly guarantee the right to equality before the law, still that right is guaranteed by Art. 26 of the International Covenant of Civil and Political Rights, which, as a component of the constitutional order, also constitutes a referential criterion for the Constitutional Court [Pl. ÚS 36/01 (Collection of Decisions, Volume 26, Judgment No. 80, published as No. 403/2002 Sb.)].

However, as more likely follows from the answer, given at the oral hearing by the Deputy Chairperson of the Assembly of Deputies of the Parliament of the Czech Republic, that he considers sickness insurance premiums and social security insurance as some sort of „charges“, evidently hidden tax, and that his view, as is evident from publicly-available sources of information, should be legislatively strengthened. For the reasons given above, it is plain enough that this is an unacceptable tendency, as the overthrow of the principle of premium insurance and its substitution by rations provided by the care-taker state, would entirely eliminate the responsibility of the individual for himself, and human dignity would also be lost thereby. The state's „management“ of funds collected from health and social security insurance in the manner which the petitioners‘ representative described during the oral hearing, which consists in reallocating these funds from being employed for the purpose for which they were levied upon individuals-insurees in favor of their eventual application, to the tune of several billion, for various other purposes, is not only irresponsible and undesirable, which the majority opinion correctly notes, but it is also, in my opinion, in sharp clash with the cardinal structural and substantive attribute of our constitutional order, namely with the prohibition of arbitrariness (Art. 2 para. 2 of the Charter). I find arbitrariness in that fact that the state deals as it sees fit with money that is „extraneous“, in terms of its purpose, that is with money levied from individuals for the purpose of covering their possible future insurance claims. When analogous conduct occurs within civil society, such dealings are sanctioned by the state as embezzlement.