2002/02/12 - PL. ÚS 21/01: BUDGET CASE

HEADNOTES

The Constitutional Court refers to the legal proposition it has already declared, to the effect that the provisions of a statute which amend some other statutes become a part of the amended statutes (ruling of 15 August 2000, file no. Pl. US 25/2000, The Collection of Judgments and Rulings of the Constitutional Court, Vol. 19, p. 271 and following; similarly, see judgment of 13 March 2001, file no. Pl. US 51/2000, id., Vol. 21, p. 369, promulgated under No. 128/2001 Coll.) and no longer constitute an separate part of the Czech Republic legal order.

It is the Constitutional Court's task in the given case to adjudge the issue whether the Senate was, or was not, empowered to hold debate upon and approve also the amendments to acts other than an act on the State budget, although accomplished by a single vote. A positive response must be given to the question as framed in this manner; in the opposite case, it could after all result in the situation that by attaching the amendment to an act on the State budget to an amendment (or even the adoption of) further acts, the Senate would be excluded from the legislative process with respect to these further acts. Such an interpretation clearly would not be in keeping with the sense either of Art. 42 para. 2 of the Constitution or of the essence of bicameralism, as enshrined in the Czech Republic's constitutional order, and therefore it is necessary to consider it as an interpretation in conflict with the constitution.

In the given case, however, what occurred is that several statutes were simultaneously amended by a single statute, and among these amended statutes was an Act on the State Budget. It should be added that the practice by which several diverse statutes are simultaneously amended by the adoption of a single act is a relatively common one in legislative practice. The Constitutional Court states in relation thereto that, on a general level, this practice is in principle constitutionally conforming, but only in the case that the amended statutes bear mutual substantive connection to each other. On the other hand, the situation where several statutes bearing no direct substantive connection to each other are amended by a single act, must be designated as an undesirable phenomena, and one not corresponding to the purpose and principles of the legislative process. Such a situation comes about, for example, due to the speeding up of the legislative process, in part in the form of submitted proposed amendments.

Such a manner of proceeding, thus, does not correspond to the basic principles of a law-based State, among which belong the principle that laws should be foreseeable and comprehensible, and the principle that it should be internally consistent. If then the substantive content regulated in several statutes is affected by a single statute (in the formal sense), and these affected statutes do not, either by content or systemic considerations, have any connection with each other, then a quite murky legal situation immediately emerges which does not respect the principles of foreseeability, comprehensibility or internal consistency.

Since the Constitution in relation to an Act on the State Budget does not enable the Senate to intervene into the legislative process and this act, on the proposal of the government, can be debated and adopted only by the Chamber of Deputies, it is evident that the sole possible constitutionally conforming means of proceeding is that in which such an act is debated and adopted entirely separately. For this reason also § 101 para. 3 of the Standing Orders of the Chamber of Deputies (Act No. 90/1995 Coll., on the Standing Orders of the Chamber of Deputies) explicitly provides that "Provisions amending, supplementing, or repealing provisions of other acts may not form a part of an Act on the State Budget." (Note bene: Of course, Act No. 10/1993 Coll. was adopted before the cited act, No. 90/1995 Coll. came into effect). In the Constitutional Court's view, it can be deduced from the wording of this statute that neither can provisions amending, supplementing, or repealing provisions of an Act on the State Budget form a part of an "ordinary" statute. The situation where, together with an Act on the State Budget, other acts are also proposed, or when an Act on the State Budget as well as further acts are amended by means of a single act, is thus a situation which, as was already stated, is not in conformity either with the Constitution or with the law (see cited Act No. 90/1995 Coll.).

Thus, the Constitutional Court acts, in norm control proceedings, in its capacity as a "negative legislature", authorized in the case that it grants the petition solely to derogate the contested legal enactment. For this reason, the annulment of a contested enactment can also result exclusively in its "exclusion" from the Czech Republic's legal order, but never in the actual creation of new regulation in the form of the "revival" of an already repealed enactment. It is the Constitutional Court's conviction that the opposite view could give rise to a significant degree of legal uncertainty and to the Constitutional Court exceeding the bounds of its defined competencies. It can therefore be concluded that the "revival" of an earlier repealed or amended legal enactment in consequence of a Constitutional Court judgment in the considered sense, could come about only in the case that constitutional provisions were directly to make it possible (see, for example, Art. 40 para. 6 of the Austrian Constitution).

Since it is exclusively the Chamber of Deputies which can hold debate upon and approve an Act on the State Budget, such an act is adopted as soon as it is approved by the Chamber of Deputies, that is, entirely independent of any possible further debate and approval in the Senate. If together with an Act on the State Budget (or the amendment thereof) another ("ordinary") statute (statutes), or the amendments thereto, be debated and approved - which would, however, be in conflict with the Act on the Standing Orders of the Chamber of Deputies - such a situation must be interpreted such that the Senate may hold debate upon and approve solely "ordinary" statutes and amendments thereto, and its decision has therefore legal significance only in the case of those statutes, not however in the case of acts on the state budget.

If then Art. 42 para. 2 of the Constitution speaks of "an act on the State budget", this term must be conceived not in a formal, rather in a substantive, sense. In other words, not every statute designated as a budgetary act (or not every part thereof) need directly concern the issue of the State budget, and conversely it is possible to

imagine the situation where the content of an act on the State budget will be regulated by a statute which is not designated as such.

In summary it can be said that when judging whether, in a specific case, a bill can be considered an "act on the State budget" under Art. 42 para. 2 of the Constitution, it does not suffice to limit oneself to consideration of the formal designation of such a bill (statute). Such an approach would, in consequence, lead to the situation where the Senate could, in the case of certain important statutes, be excluded from the legislative process simply by designating that bill an "act on the State budget", even if in fact that statute were to regulate substance having no direct connection with the State budget. On the other hand, the Constitutional Court considers it necessary to emphasize that the substantive conception of the term, "act on State budget", should not in practice lead to too broad an interpretation, since it is evident that practically every bill is related, either directly or indirectly, to the State budget, alone due to the fact that the carrying out of that bill generally has impact on the State budget (either in terms of revenues or expenditures). The term, "act on the State budget", must be interpreted in conformity with the normative regulation of the State's budget rules contained in Czech National Council Act No. 576/1990 Coll., on the Rules for Managing Budgetary Funds of the Czech Republic and Municipalities in the Czech Republic (the Republic's Budgetary Rules), which were in force at the time when the cited Act No. 10/1993 Coll. and Act No. 217/2000 Coll. were issued. Pursuant to § 3 of Act No. 576/1990 Coll. („The Content of the Republic's State Budget") „The Republic's State budget stall include expected revenues, as well as expenditures in ensuring the tasks and covering the needs of the Czech Republic in the given budgetary year. It shall also contain financial relations to the budgets of municipalities, of district offices and to the budgets of the Republic's State funds." In other words, the term, „act on State budget", in its substantive sense, must be interpreted in such a manner that it concerns such a statute as directly regulates planned revenues and expenditures, the budget items of the public sector of the Czech Republic connected with carrying out State functions always for the following time period (that is, the budgetary year). It is only a statute conceived in this way that must be classified under Art. 42 para. 2 of the Constitution, therefore it is only such a bill which the Senate is not empowered to debate or adopt.

The Constitutional Court considers it desirable – beyond the confines of the case under consideration – to emphasize that the substantive conception of the term, act on the State budget, in Art. 42 of the Constitution has further dimensions. By creating a special constitutional category of acts on the State budget, the Constituent Chamber emphasized the special place and significance these statutes have for the Czech legal order, similarly as it did in the case of the electoral act or the "relations" act under Art. 40 of the Constitution. By removing bills on the State budget from the regime for the adoption of "ordinary" bills, it expressed its intention that the legislature considered the substance of the State budget comprehensively and separate from matters which are not directly connected with the State budget. In other words, the subject to be regulated contained in bills on the State budget can be exclusively rules substantively related to problems of the State budget, not to other rules. From the perspective of the Constitution, it is impermissible to tack on to a bill on the State

budget a provisions which in substance bears no direct connection to the substance of the State budget.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided in the matter of the petition of a group of 24 Senators proposing the annulment of "Act No. 217/2000 Coll., a part thereof, or the amendments to acts No. 1/1992 Coll. and No. 143/1992 Coll. effected by it", as follows:

The petition is rejected on the merits.

REASONING

I.

A. The submitted petition contests, in the first place, Act No. 217/2000 Coll., which amends Act No. 1/1992 Coll., on Wages, Compensation for Work Standby and on the Average Earnings, as amended by subsequent enactments, Act. No. 143/1992 Coll., on Pay and Compensation for Work Standby in Budgetary and certain additional Organizations and Organs, as amended by subsequent enactments, Act No. 10/1993 Coll., on the State Budget of the Czech Republic for the Year 1993, on the Amendment and Supplement of certain acts of the Czech National Council and certain further enactments, as amended by subsequent enactments, and Act No. 132/2000 Coll., on the Amendment to and Repeal of certain Acts related to the Act on Regions, Act on Municipalities, the Act on District Offices, and the Act on the Capitol City of Prague. The petition was submitted on the grounds that this Act (or at least a part thereof) was allegedly not adopted by the formally correct process prescribed by the Constitution of the Czech Republic (hereinafter "Constitution").

The petitioners referred, first of all, to § 68 of Act No. 182/1993 Coll., on the Constitutional Court, according to which the constitutional review of a contested statute can be separated into the scrutiny (I.) of its substantive conformity with constitutional acts and international treaties under Art. 10 of the Constitution and (II.) the constitutionality of its adoption as a statute. The petitioners emphasize that they does not wish to call into doubt the substantive conformity of the contested act with super-statutory enactments, rather they merely consider the manner in which it was approved to be unconstitutional.

The petitioners find the adoption of the act under consideration to have been unconstitutional in the sense that the Senate was deprived of the possibility, duly and in conformity with the Constitution, to hold debate upon and adopt resolutions concerning the bill. According to Art. 42 para. 2 of the Constitution, only the Chamber of Deputies may hold debate upon and adopt resolutions concerning bills on the State budget. In such cases, therefore, the Senate may not take part in the legislative process. The same rule allegedly applies as well to amendments to acts on the State budget (argument a maiori ad minus).

In the given case, the Senate received, as a part of the contested act, a bill to amend a part of an act on the State budget. In such a situation, it had in principle three options as to how it could proceed:

- Not to deal with the bill at all within the period of 30 days. While this clearly would have represented the least controversial means of proceeding (and for that reason, the Senate elected this option in the case of Act No. 362/1999 Coll., on the State Bond Program for the Defrayment of the Deficit in the State Budget for the Year 1998 and on an Amendment to Act No. 530/1990 Coll., on Bonds, as subsequently amended, and on Act No. 22/1999 Coll., on the State Budget of the Czech Republic for the Year 1999), nonetheless allegedly it could lead to the formation of some sort of future constitutional custom (precedent) where the sponsor of a bill, or the Chamber of Deputies itself, out of fear that a certain bill would supposedly not be approved in the Senate, would attach to this bill a bill amending the formal and an inessential part of an act on the State budget, and by this means, the Senate would be "excluded from the game" in the context of the legislative process.

- Adopt a resolution to the effect that the Senate will not deal with the bill under consideration. It must be said in that regard that, according to § 102 para. 1 of Act No. 107/1999 Coll., on the Standing Orders of the Senate, the Senate is to proceed to a vote on this issue only "following the conclusion of detailed debate" in the competent committee. The concept, "detailed debate in committee" could be considered as "holding debate upon" under Art. 42 para. 2 of the Constitution which, in the case of acts on the State budget, accords this right solely to the Chamber of Deputies. The petitioners thus believe that, even if the Senate were to adopt a resolution to the effect that it would not deal with the submitted bill at all, it would still have - in relation to an amendment to an act on the State budget - committed unconstitutional error, as it would have adopted a resolution on such an act, or even have held debate upon it, even though Art. 42 para. 2 of the Constitution provides that solely the Chamber of Deputies shall adopt resolutions and hold debate upon bills on the State budget. In this case, there would also be a genuine threat of "excluding the Senate from the game" in the context of the legislative process, as was stated in the preceding point.

- Adopt the position on the matter to the effect that, this was a single statute solely in the formal, but not in the actual, sense so that debate on particular parts of the submitted act can be separated in the sense that the Senate would hold debate on the entire bill with the exception of those parts concerning the act on the State budget. In the petitioners' view, this option is merely a theoretical one since, in the case when several acts are amended simultaneously by a single statute, it is stricto sensu a single statute and

neither the Constitution nor the Standing Orders of the Senate (compare § 98 and following) provide for the possibility of the suggested "separation" of a submitted bill.

Considering its need to give its views, in particular, on the Act on Wages, in the end the Senate held debate on the Act and returned it to the Chamber of Deputies with adopted proposed amendments.

The petitioners consider that the situation which arose when the contested act was debated is not isolated and see in this very fact the seriousness and genuine constitutional law intensity of the situation. After all, the Chamber of Deputies has already once, in the case of Act No. 362/1999 Coll., on the State Bond Program for the Defrayment of the Deficit in the State Budget for the Year 1998 and on an Amendment to Act No. 530/1990 Coll., on Bonds, as subsequently amended, and on Act No. 22/1999 Coll., on the State Budget of the Czech Republic for the Year 1999, given its assent to an act which, apart from the act on the State bond program and an amendment to the act on bonds, also consisted of an amendment to an act on the State budget. In the case of the Act on the State Bond Program for the Defrayment of the Deficit in the State Budget for the Year 1998, the Senate gave preference to the solution of not dealing with the bill at all, although it was evident from the debate that the Senators feared they were consciously violating the Constitution and also did not wish to give grounds for contesting the act - with whose content almost everybody was in agreement - before the Constitutional Court. In view of the situation that had arisen, the Senate therefore adopted a "mere" resolution (No. 217 of the 12th meeting on 8 December 1999), in which it declared that it had been "disabled from debating the bill", and protested against the Chamber's manner of proceeding. The evident purpose of this resolution was to forestall any recurrence of a similar situation.

The petitioners consider that the legislative procedure, whereby an act on the State budget also contains the amendment of further acts (or the amendment to some other act also contains an amendment to an act on the State budget), could be designated as constitutionally conforming only in the case that the term, "statute", were conceived in the formal sense as a legal enactment debated and promulgated together with a common text and under a single number in the Collection of Laws, rather than in a purely material sense, as a legal norm regulating a certain field of legal problems with the proviso that several statutes, each individually regulating certain substantive issues, can be debated together and designated as a single statute under a single number in the Collection of Laws. In such a case, it would be possible to come to the conclusion that, in fact, the Senate in some manner held debate upon and adopted resolutions concerning several parts of the contested act, but not concerning the amendment to the act on the State budget. The term, "statute", under Arts. 41 to 48 of the Constitution should not represent a single act published under a single number in the Collection of Laws and debated together, rather a statute in the sense of a legal norm regulating a certain field of relations such that several statutes can be published under a single number. The petitioners nonetheless consider this manner of interpretation as merely theoretical and one evidently not corresponding to the existing constitutional and statutory rules for the legislative process, in the context of which it is entirely commonplace that several statutes are amended by a single legislative act, nonetheless from the formal perspective - thus, from the standpoint of the legislative process as well - it is a single act, where there is not

a separate vote on individual amendments to separate acts, rather only on the act in its entirety.

The petitioners therefore assert that, in the formal sense, the contested act is one statute as a whole, even if it effected the simultaneous amendment of several statutes, and since one part thereof was an amendment to an act on the State budget, upon which the Senate is not at all competent to decide, as a whole this act was adopted in an unconstitutional manner, which thus constitutes grounds for its annulment (even without any substantive review of the act).

Nonetheless, the petitioners do not exclude such an interpretation as would proceed from the view that it was only the act on the State budget, and not the other acts (or the partial amendment thereto), which was amended in an unconstitutional manner, so that there would be grounds for annulment only in the case of the amendment to the act on the State budget, and not in the case of the amendments to other acts.

The petitioners assert that bills have repeatedly been submitted which, in a single text, amend an act which is subject to consideration in the Senate and an act on the State budget, which can be debated exclusively by the Chamber of Deputies. The present practice was viewed by the Senate as inappropriate, however, the Chamber of Deputies has continued to hold debate upon acts (proposed by the government) in the above-described manner. In such a situation it is therefore necessary to make an authoritative judgment - from the perspective of the constitutionality of the legislative process, as to whether the described practice of adopting acts is correct, and further to declare the constitutionally approved manner by which the Senate should proceed in the above-described type of case.

Since the petitioners are aware of the fact that the Constitutional Court is not endowed with jurisdiction to give an authoritative interpretation of the Constitution, they consider it necessary for the Court to give its views on this issue in the context of an abstract norm control proceeding, over which it has jurisdiction pursuant to Art. 87 para. 1, let. a) and b) of the Constitution.

B) The petitioners consider the adoption of the contested act to have been unconstitutional in the following respects:

* Its conflict with Art. 42 para. 2 of the Constitution. Only the Chamber of Deputies is authorized to debate upon and approve Bills on the State budget, however in the case of the contested Act, it was debated and approved by the Senate as well, which the Constitution does not permit.

* Its conflict with Art. 33 para. 2 of the Constitution. According to this provision, the Senate is not authorized to adopt legislative measures concerning the State budget. The petitioners deduce from the example of this article that, if the Constituent Chamber did not enable it to adopt legislative measures even in the case the Chamber of Deputies has been dissolved, all the less can it be considered that Senate can approve such bills in the case that the Chamber of Deputies is operating normally.

* Its conflict with Art. 1 and with Art. 15 para. 2 of the Constitution. According to Art. 1, the Czech Republic is a democratic State governed by the rule of law. Art. 15 para. 2 of the Constitution guarantees bicameralism. In a State governed by the rule of law, the principles of bicameralism correspond first and foremost to a clear distribution of the competencies between the two chambers of Parliament. The state of affairs where the upper chamber is not permitted by the express terms of the Constitution to take action or adopt resolutions concerning certain bills, is in evident conflict with the situation which occurred in connection with the debate on the contested Act, when the Senate was placed into the above-described position, either ignore the bill as a whole and, as a result, consciously give up its right to take part in the legislative process when approving "ordinary" statutes, or to take action on it and vote, thus risking that the act be adopted in an unconstitutional manner.

In consideration of these arguments, the group of Senators proposes that, in its judgment, the Constitutional Court annul as unconstitutional:

1) In its entirety Act No. 217/2000 Coll., which amends Act No. 1/1992 Coll., on Wages, Compensation for Work Standby and on the Average Earnings, as amended by subsequent enactments, Act. No. 143/1992 Coll., on Pay and Compensation for Work Standby in Budgetary and certain additional Organizations and Organs, as amended by subsequent enactments, Act No. 10/1993 Coll., on the State Budget of the Czech Republic for the Year 1993, on the Amendment and Supplement of certain acts of the Czech National Council and certain further enactments, as amended by subsequent enactments, and Act No. 132/2000 Coll., on the Amendment to and Repeal of certain Acts related to the Act on Regions, Act on Municipalities, the Act on District Offices, and the Act on the Capitol City of Prague.

Since, however, the petitioners are aware of the fact that, at the moment it enters into effect, each amendment to a statute becomes a part of the amended statute and, thus, ceases to exist legally, and since the Constitutional Court practice is rather divided on this issue (for example, resolution Pl. US 10/94, Collection of Judgments and Rulings of the Constitutional Court, vol. 3, p. 234, and judgment Pl. US 33/97, Collection of Judgments and Rulings of the Constitutional Court, vol. 9, p. 399 and following, No. 30/1998 Coll.), then in consideration of procedural certainty (in order to avert a decision under § 67 para. 2 of the Act on the Constitutional Court, that is, termination of the proceeding), they also proposed an "alternative petit", namely the annulment of the following provisions:

2) Provision of § 2, § 4 para. 4, § 4 para. 5, the part of § 4 para. 6 reading „or the Labor Code“, § 4a, § 5, § 6 para. 1 and para. 2, § 7, § 8 para. 1, § 8 para. 4, § 10, § 11 para. 1, § 11 para. 2, § 11 para. 3, the part of § 11 para. 6 reading „at his own expense and risk on one account of the employee at a bank, a branch of a foreign bank or at a savings bank or credit union, at the latest by the regular date for the payment of wages, unless some other date is agreed in writing with the employee“, § 11 para. 7, § 12, § 13 para. 3, the final sentence of § 14 para. 1, § 14 para. 2, the part of § 15 reading „20 % of the average hourly wage rate for standby at the workplace or 10 % of the average hourly wage rate for standby away from the workplace“, § 16, § 17 para. 7, § 17 para. 9, the first sentence of § 18 para. 1, § 18 para. 2, § 19, and § 22 of Act No. 1/1992 Coll., concerning wages, remuneration for standby and concerning the average earnings. Provision of § 1, the part of § 2 reading „employee“, § 3 para. 3 and 4, § 3 para. 5, § 3 para. 6, § 4, the part of § 5

para. 1 reading „in the organizational unit of the state which is an administrative office“, the part of § 5 para. 1 reading „the Office of the Public Protector of Rights, the Office for the Protection of Personal Data“, § 9, in the part of § 10 para. 2 „in the amount of 150 hours in a calendar year“, § 11 para. 3, § 14, § 15 para. 1 let. b), § 16, in the part of § 17 para. 5 „at his own expense and risk on one account of the employee at a bank, a branch of a foreign bank or at a savings bank or credit union, at the latest by the regular date for the payment of wages, unless some other date is agreed in writing with the employee“, § 17 para. 6 and 7, § 18, § 19 para. 1 and 2, the first sentence of § 20, § 20a, § 21, the second sentence of § 21a, § 22, § 22a, § 23 let. i), § 23 para. 2, § 25 and the Annex to Act No. 143/1992 Coll., on Pay and Compensation for Work Standby in Budgetary and certain additional Organizations and Organs, as amended by subsequent enactments.

3) Part III of Act No. 217/2000 Coll., which amends Act No. 10/1993 Coll., on the State Budget of the Czech Republic for the Year 1993, on amendments and supplements of certain Acts of the Czech National Council and certain other provisions, as amended.

II.

The parties to the proceeding have informed the Constitutional Court in writing that they assent to dispensing with an oral hearing. The Constitutional Court decided that no further clarification of the matter cannot be expected from such a hearing and therefore dispensed with it (§ 44 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court).

III.

In the sense of 68 para. 2 of Act No. 182/1993 Coll., the Constitutional Court concerned itself, first of all, with the manner in which the contested Act, No. 217/2000 Coll., was adopted and issued ....

IV.

The Constitutional Court has found that the submitted petition meets all statutory procedural requirements and prerequisites and that there is, therefore, no impediment to its consideration and decision on the merits. Therefore, the Constitutional Court requested, in the sense of § 69 of the Act on the Constitutional Court, that the parties to the proceeding - the Chamber of Deputies and the Senate of the Parliament of the Czech Republic - give their views on the petition ...

V.

First of all, the Constitutional Court considers it necessary in the matter at issue to define the manner and extent of constitutional law review. In that it proceeds from the following considerations:

1. First and foremost, the Constitutional Court declares that the petitioners did not explicitly call into doubt the substantive merits of the contested act, rather only the manner of its adoption, and since the Constitutional Court is reputedly not empowered to give authoritative interpretations of the Constitution, the question at issue must at least be submitted in the context of a norm control proceeding. In these circumstances, therefore, in this concrete and quite specific case the Constitutional Court did not find any reason to deal with the substantive essence of the cited act and turned its attention exclusively to the constitutionality of its adoption, albeit it applies on a general level that the Court is bound solely by the "petit" of a norm control petition, and not its reasoning. After all, in a norm control proceeding pursuant to Art. 87 para. 1 let. a) of the Constitution, the consideration of the constitutionality of a contested legal enactment pursuant to § 68 para. 2 of the Act on the Constitutional Court is divided into the adjudication of an statute's substantive conformity with constitutional acts and international treaties under Art. 10 of the Constitution and the ascertainment of whether the contested statute was adopted and issued within the confines of the constitutionally designated competencies and in the constitutionally prescribed manner.

2. The submitted petition ("petit") is formulated by means of alternatives, where – for reasons of procedural certainty – in the first alternative, the petitioners contested Act No. 217/2000 Coll. in its entirety, and also individual parts of the above-cited acts, amended by Act No. 217/2000 Coll. On this issue, the Constitutional Court refers to the legal proposition it has already declared, to the effect that the provisions of a statute which amend some other statutes become a part of the amended statutes (ruling of 15 August 2000, file no. Pl. US 25/2000, The Collection of Judgments and Rulings of the Constitutional Court, Vol. 19, p. 271 and following; similarly, see judgment of 13 March 2001, file no. Pl. US 51/2000, id., Vol. 21, p. 369, promulgated under No. 128/2001 Coll.) and no longer constitute an separate part of the Czech Republic legal order. The Constitutional Court was therefore obliged to reject on the merits as not well-founded that part of the petit in which the petitioners contested the amending Act No. 217/2000 Coll. in its entirety, since the provisions of this statute which amend other statutes have already ceased to be a part of Act No. 217/2000 Coll.; it is only the provisions of Art. V (empowering the Prime Minister to proclaim the full and current wording Act No. 1/1992 Coll. and Act No. 143/1992 Coll.) and Art. VI (governing the Act's entry into effect), which, as the content of the petition makes clear, are not proposed for annulment and which, in view of their nature, could not be annulled in any case.

Thus, the Constitutional Court further concerned itself exclusively with that part of the petition which is directed against the individual provisions which amend the above-cited statutes.

3. In view of the submitted petition, the Constitutional Court was obliged to adjudicate a further issue: whether it is justified to concern itself with all the amended provisions of Act No. 1/1992 Coll., Act. No. 143/1992 Coll., Act No. 10/1993 Coll. (Note bene: although Act No. 217/2000 Coll. also amended Act No. 132/2000 Coll., on the Amendment to and Repeal of certain Acts related to the Act on Regions, Act on Municipalities, the Act on District Offices, and the Act on the Capitol City of Prague, nonetheless, in this case, the amendment consisted merely in a derogation of Art. II, Part Two, so that the petitioners did not even explicitly propose the annulment of a certain part of that Act), or whether it

would be appropriate to devote attention solely to the amendment to Act No. 10/1993 Coll. In this connection, we must take as our point of departure Art. 42 para. 2 of the Constitution, according to which it is solely the Chamber of Deputies which shall, at a public meeting, hold debate upon and adopt resolutions concerning bills on the State budget and the final State accounting. In the present matter that means above all that, if the Senate held debate upon and approved the bill for Act No. 217/2000 Coll., and if a part thereof was the amendment to four statutes, of which three (Act No. 1/1992 Coll., Act. No. 143/1992 Coll., Act No. 132/2000 Coll.) cannot be considered as acts which in the formal, or at least in the substantive, sense directly concern an act on the State budget, then with respect to these three amendments to the cited acts it cannot justifiably be asserted that the Senate was not authorized to share in deciding on them. After all, such a position would be in clear conflict with the wording of Art. 42 para. 2 of the Constitution. The Constitutional Court thus reached the conclusion that, in the matter under consideration, it is justified to limit the scope of its enquiry to the proposal to annul the amended part of Act. No. 10/1993 Coll., and not the proposal to annul the amended provisions of Acts No. 1/1992 Coll. and No. 143/1992 Coll. While the petitioners were undoubtedly correct in their view that, from a formal perspective, Act No. 217/2000 Coll. represents a single statute (albeit one amending several other statutes) and which was decided upon by the Senate by a single vote, nonetheless, it is the Constitutional Court's task in the given case to adjudge the issue whether the Senate was, or was not, empowered to hold debate upon and approve also the amendments to acts other than an act on the State budget, although accomplished by a single vote. A positive response must be given to the question as framed in this manner; after all, in the opposite case, the situation could come about, which the petitioners fear as well, where by attaching the amendment to an act on the State budget to an amendment to (or even the adoption of) further acts, the Senate would be excluded from the legislative process with respect to these further acts. Such an interpretation clearly would not be in keeping with the sense either of Art. 42 para. 2 of the Constitution or of the essence of bicameralism, as enshrined in the Czech Republic's constitutional order, and therefore it is necessary to consider it as an interpretation in conflict with the Constitution.

The Constitutional Court was also obliged to reject on the merits as unfounded the second part of the alternative petit, as the Senate was empowered to hold debate upon and approve the amendments to acts contained therein.

The Constitutional Court therefore further concerned itself solely with that part of the petition directed against the amendment to Act No. 10/1993 Coll. which was effected by Act No. 217/2000 Coll.

VI.

The Constitutional Court found that, in deciding this matter, it must, first and foremost, concern itself with the interpretation of Article 42 para. 2 of the Constitution in relation to the case at hand. At the same time, it is evident that any meaningful interpretation of the given article would be possible only in the context of the overall constitutional framework of the legislative process as respects the competence of the Senate of the Czech Parliament.

1. According to the Constitution, statutes can – from the given perspective under review – be categorized into particular types: 1) those to which both the Chamber of Deputies and the Senate must give their assent, whether by a qualified or by a simple majority vote. Constitutional acts fall into this category, as do the statutes enumerated in Article 40 of the Constitution, electoral acts, acts concerning the principles of dealings and relations of both chambers, both between themselves and externally, or acts enacting the standing orders for the Senate. (2.) The second category of statutes is made up of the "ordinary statutes", that is, statutes for which the Senate's refusal to assent is "bridged" (overridden) by a further vote by the Chamber of Deputies. A simple majority of Deputies is sufficient to adopt a bill as modified by the proposed amendment approved by the Senate; an absolute majority of all Deputies is needed in order to adopt the original version of the bill (i.e., the version of the bill which was submitted to the Senate) (Art. 47 of the Constitution). In this case, then, the Senate possesses in relation to the Chamber of Deputies the right of suspensive veto. (3.) The third case is that of bills on the State budget (note bene: the same applies for a proposed final State accounting, which does not, however, take the form of a statute) on which only the Chamber of Deputies may hold debate and adopt resolutions (Art. 42 para. 2 of the Constitution).

2. The Constitutional Court is not competent to judge whether this constitutional arrangement is sound. According to Art. 88 para. 2 of the Constitution, the Constitutional Court Justices are bound by constitutional acts, so that the Constitutional Court is not authorized to scrutinize (much less annul) provisions contained in constitutional acts; its task is solely to interpret them in specified cases. Even though the Constitutional Court is, in the given case, compelled to assert that the conception by which the Senate is not authorized to share in the decision on State budget bills is quite uncommon when viewed in comparison to other democratic European states with a bicameral system, the Court has no option but to respect this arrangement and, in conformity with it, also to assess the existing practice. (From the comparative perspective, if the constitutions of all European Union states are compared, then the upper chamber of parliament is excluded from co-decision on State budget bills only in the case of Belgium and Austria, whereas in France, Ireland, Italy, the Federal Republic of Germany, the Netherlands, and Spain, the upper chamber shares in the adoption of acts of this type.)

3. As the State budget is the most important instrument of State policy and also a reflection of the responsibility the government bears for State administration, the existing constitutional arrangement in the Czech Republic for the adoption of acts on the State budget proceeds on the basis that it is exclusively the government which may submit bills therefor. Since the Czech Republic's constitutional system is founded on the conception, among others, that supervision of the government is solely within the domain of the Chamber of Deputies, and not the Senate, the Constituent Chamber selected a solution by which the Chamber of Deputies possesses exclusive authority to approve an act on the State budget (see also above). Thus, according to the existing constitutional arrangement, an act on the State budget is adopted the moment it is approved by the Chamber of Deputies, and the Senate is not competent to intervene into the matter in any manner whatsoever.

4. In the given case, however, what occurred is that several statutes were simultaneously amended by a single statute, and among these amended statutes was an act on the State budget. It should be added that the practice by which several diverse statutes are simultaneously amended by the adoption of a single statute is a relatively common one in legislative practice. The Constitutional Court states in relation thereto that, on a general level, this practice is in principle constitutionally conforming, but only in the case that the amended statutes bear mutual substantive connection to each other. On the other hand, the situation where several statutes bearing no direct substantive connection to each other are amended by a single act, must be designated as an undesirable phenomena, and one not corresponding to the purpose and principles of the legislative process. Such a situation comes about, for example, due to the speeding up of the legislative process, in part by means of submitted proposed amendments. (As the most blatant such example can clearly be given the adoption of Act No. 170/2001 Coll., on the State Bond Program for the Settlement of Obligations arising from Treaties among the Governments the Czech Republic, Slovak Republic, and the Federal Republic of Germany, on amendments to Act No. 407/2000 Coll., on the State Bond Program for the Partial Defrayment of the Damage suffered by Agricultural Subjects in the Drought of 2000, and on amendments to Act No. 424/1991 Coll., on Association in Political Parties and Political Movements, as amended, into which the amendments to Act No. 424/1991 Coll. were quite unsystematically included.) Such a manner of proceeding, thus, does not correspond to the basic principles of a law-based State, among which belong the principle that laws should be foreseeable and comprehensible, and the principle that they should be internally consistent. If then the substantive content regulated in several statutes is affected by a single statute (in the formal sense), and these affected statutes do not, either by content or systemic considerations, have any connection with each other, then a quite murky legal situation immediately emerges which does not respect the principles of foreseeability, comprehensibility or internal consistency.

5. Since in relation to acts on the State budget, the Constitution does not empower the Senate to intervene into the legislative process and such an act, on the proposal of the government, can be debated and adopted only by the Chamber of Deputies, it is evident that the sole possible constitutionally conforming means of proceeding is that in which such an act is debated and adopted entirely separately. For this reason also § 101 para. 3 of the Standing Orders of the Chamber of Deputies (Act No. 90/1995 Coll., on the Standing Orders of the Chamber of Deputies) explicitly provides that "Provisions amending, supplementing, or repealing provisions of other acts may not form a part of an act on the State budget." (Note bene: Of course, Act No. 10/1993 Coll. was adopted before the cited act, No. 90/1995 Coll. came into effect). In the Constitutional Court's view, it can be deduced from the wording of this statute that neither can provisions amending, supplementing, or repealing provisions of an act on the State budget form a part of an "ordinary" statute. The situation where, together with an act on the State budget, other acts are also proposed, or when an act on the State budget as well as further acts are amended by means of a single act, is thus a situation which, as was already stated, is not in conformity either with the Constitution or with the law (see cited Act No. 90/1995 Coll.).

6. For the sake of thoroughness, the Constitutional Court states that an act, as called for in Art. 40 of the Constitution, concerning the principles of dealings and relations of both

chambers, both between themselves and externally, make provision for the necessity of independently debating and deciding upon acts, for which the Constitution lays down a separate legislative procedure (including constitutional acts, see point V.1).

VII.

1. In the case under review, the Constitutional Court declares first and foremost that, although Act No. 10/1993 Coll. was amended by Act No. 217/2000 Coll., nonetheless these amendments consisted exclusively in the derogation of § 6 of Art. V para. 1, 3 and 4 of this Act and in the repeal of the designation of paragraph 2 and paragraph 1. In addition, Act No. 10/1993 Coll., is divided into two relatively separate parts, the first of which contains the heading (and in substance also regulates) "The State Budget of the Czech Republic for the Year 1993", whereas the second part, in which the § 6 under consideration is found, begins with the heading "The Regulation of Pay and other Perquisites of Constitutional Officials and other Employees of Central Bodies of State Administration and other Bodies". Further parts of Act No. 10/1993 Coll. concern other separate statutes which it amends.

2. In the first place, the Constitutional Court found that not even the petitioners themselves indicated any provisions in Act No. 10/1993 Coll. which they would wish annulled due to the unconstitutional procedure used to adopt them or on substantive grounds, even if - as follows from what was stated above - they resist the amendments introduced into this act. In fact, as a "technical matter" it would not even be possible in this specific case to annul certain parts of Act No. 10/1993 Coll., amended by Act No. 217/2000 Coll., since no provisions of this act were either supplemented or modified by Act No. 217/2000 Coll., rather they were merely repealed. Since, however, the Constitutional Court evaluates each petition in view of its content and not merely its form, it was obliged in this specific case to resolve the issue of what would be the consequences of granting the petition to annul Act No. 217/2000 Coll., to the extent it amended Act No. 10/1993 Coll. The Constitutional Court takes the legal view that by annulling a statutory provision contested as unconstitutional, the previous provision, which was either repealed or modified by the unconstitutional provisions, is not revived. Thus, the Constitutional Court acts, in norm control proceedings, in its capacity as a "negative legislature", authorized in the case that it grants the petition solely to derogate the contested legal enactment. For this reason, the annulment of a contested enactment can also result exclusively in its "exclusion" from the Czech Republic's legal order, but never in the actual creation of new regulation in the form of the "revival" of an already repealed enactment. It is the Constitutional Court's conviction that the opposite view could give rise to a significant degree of legal uncertainty and to the Constitutional Court exceeding the bounds of its defined competencies. It can therefore be concluded that the "revival" of an earlier repealed or amended legal enactment in consequence of a Constitutional Court judgment in the considered sense, could come about only in the case that constitutional provisions were directly to make it possible (see, for example, Art. 40 para. 6 of the Austrian Constitution).

3. The Constitutional Court therefore declares that, should (in the given situation) certain provisions of Act No. 10/1993 Coll. were approved by the Senate in a situation when the

Senate was not authorized to debate and decide upon the bill - logically it (the Constitutional Court) should decide upon the proposition of law that this amendment is not capable of resulting in any legal consequences. In other words, since pursuant to Art. 42 para. 2 of the Constitution, the Senate is not authorized to debate and approve acts on the State budget (argument a maiori ad minus nor to its amendment), any sort of dealing with the act must be understood as the intervention of a subject which is not authorized to do so at all. Since it is exclusively the Chamber of Deputies which can hold debate upon and approve an act on the State budget, such an act is adopted as soon as it is approved by the Chamber of Deputies, that is, entirely independent of any possible further debate and approval in the Senate. If together with an act on the State budget (or the amendment thereof) another ("ordinary") statute (statutes), or the amendments thereto, be debated and approved - which would, however, be in conflict with the Act on the Standing Orders of the Chamber of Deputies - such a situation must be interpreted such that the Senate may hold debate upon and approve solely "ordinary" statutes and amendments thereto, and its decision has therefore legal significance only in the case of those statutes, not however in the case of acts on the State budget.

4. Nonetheless, in the matter under consideration, it is a relevant fact that the amendments to Act No. 10/1993 Coll., concern only those parts which, by substance and systematic arrangement, bear no direct relation to the issue of the State budget. If then Art. 42 para. 2 of the Constitution speaks of “an act on the State budget”, this term must be conceived not in a formal, rather in a substantive, sense. In other words, not every statute designated as a budgetary act (or not every part thereof) need directly concern the issue of the State budget, and conversely it is possible to imagine the situation where the substance of an act on the State budget would be regulated by a statute which is not designated as such. In support of this view, a comparison can be made with the constitutions of certain other countries where the term, “act on State budget”, is also conceived in the substantive sense, as they clearly define what must be found in such an act. Art. 51 para. 3 of the Austrian Constitution can serve as an example, as it provides that “A Federal financial act must contain proposed revenues and expenditures of the Federation (federal budget), allocated items for the coming budget year, as well as other essential requirements for the State budget in the relevant budget year.” At the same time, Art. 134 para. 2 of the Spanish Constitution should be referred to, as it provides that “the General Budgets of the State shall be of an annual character and shall include the totality of expenditures and revenues of the public sector of the State, containing the amount of the fiscal benefits with affect the taxes of the State.”

5. In summary it can be said that when judging whether, in a specific case, a bill can be considered an “act on the State budget” under Art. 42 para. 2 of the Constitution, it does not suffice to limit oneself to consideration of the formal designation of such a bill (statute). Such an approach would, in consequence, lead to the situation where the Senate could, in the case of certain important statutes, be excluded from the legislative process simply by designating that bill an “act on the State budget”, even if in fact that statute were to regulate substance having no direct connection with the State budget. On the other hand, the Constitutional Court considers it necessary to emphasize that the substantive conception of the term, “act on State budget”, should not in practice lead to too broad an interpretation, since it is evident that practically every bill is related, either directly or indirectly, to the State budget, alone due to the fact that the carrying out of

that bill generally has impact on the State budget (either in terms of revenues or expenditures). The term, "act on the State budget", must be interpreted in conformity with the normative regulation of the State's budget rules contained in Czech National Council Act No. 576/1990 Coll., on the Rules for Managing Budgetary Funds of the Czech Republic and Municipalities in the Czech Republic (the Republic's Budgetary Rules), which were in force at the time when the cited Act No. 10/1993 Coll. and Act No. 217/2000 were issued. Pursuant to § 3 of Act No. 576/1990 Coll. („The Content of the Republic's State Budget") „The Republic's State budget stall include expected revenues, as well as expenditures in ensuring the tasks and covering the needs of the Czech Republic in the given budgetary year. It shall also contain financial relations to the budgets of municipalities, of district offices and to the budgets of the Republic's State funds." In other words, the term, „act on State budget", in its substantive sense, must be interpreted in such a manner that it concerns such a statute as directly regulates planned revenues and expenditures, the budget items of the public sector of the Czech Republic connected with carrying out State functions always for the following time period (that is, the budgetary year). It is only a statute conceived in this way that must be classified under Art. 42 para. 2 of the Constitution, therefore it is only such a bill which the Senate is not empowered to debate or adopt.

6. The Constitutional Court considers it desirable – beyond the confines of the case under consideration – to emphasize that the substantive conception of the term, act on the State budget, in Art. 42 of the Constitution has further dimensions. By creating a special constitutional category of acts on the State budget, the Constituent Chamber emphasized the special place and significance these statutes have for the Czech legal order, similarly as it did in the case of the electoral act or the "relations" act under Art. 40 of the Constitution. By removing bills on the State budget from the regime for the adoption of "ordinary" bills, it expressed its intention that the legislature consider the substance of the State budget comprehensively and separately from matters which are not directly connected with the State budget. In other words, the subject to be regulated contained in bills on the State budget can be exclusively rules substantively related to problems of the State budget, not to other rules. From the perspective of the Constitution, it is impermissible to tack on to a bill on the State budget a provisions which in substance bears no direct connection to the substance of the State budget. It is possible to document such an approach to the substantive conception of an act on the State budget by reference, for example, to Art. 22 para. 1 the Constitution of the Irish Republic provides: "A Money Bill means a Bill which contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, emission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; matters subordinate and incidental to these matters or any of them."

At this juncture, it is necessary to declare that the fundamental conclusion reached by the Constitutional Court cannot be applied to the case under consideration, as the procedure used in adopting Act No. 10/1993 Coll. was concluded before this Constitution became valid, so that it was conducted according to the then valid Czechoslovak legal rules.

7. The Constitutional Court has therefore reached the conclusion that the contested intervention into the Act on the State Budget No. 10/1993 Coll. (formally designated in that way), carried out by the amending Act No. 217/2000 Coll., clearly cannot be considered as an intervention into an act on the State budget in the substantive sense. As results from the text referred to above - and as the parties to the proceeding correctly stated in their pleadings on the petition - the substance of the special act, No. 10/1993 Coll., is divided into two relatively separate parts, and the issue of the Czech Republic State budget for 1993 is directly regulated only in the first part; part two (§ 6 Art. V), which was derogated in part by the contested Act No. 217/2000 Coll., concerns a differing issue (rules on the pay and perquisites of certain leading employees and other civil servants). Thus, the Senate did not err in this case by debating in its entirety the bill for Act No. 217/2000 Coll. and by approving it - in a version including proposed amendments. The contested act amended acts No. 1/1992 Coll., No. 143/1992 Coll., and No. 132/2000 Coll., which cannot be considered as acts on the State budget, neither formally nor in substance, and the amendments to Act No. 10/1993 Coll. concerned only that separate part not governing the substance of the State budget.

For all of the given reasons, the Constitutional Court rejected on the merits and in it entirety, the group of Senators petition as unfounded.

Notice: A decision of the Constitutional Court may not be appealed.

Brno, 12 February 2002