2009/03/17 - PL. ÚS 24/08: PUBLIC INTEREST - AIRPORT RUZYNĚ

HEADNOTES

The declaration by law of a public interest in a specifically designated matter is incompatible with the principles of the law-based state, in particular with the principle of the separation of powers, and also restricts the right to court review; it is thus in conflict with Art. 1, Art. 2 paras. 1 and 3, and Arts. 81 and 90 of the Constitution of the Czech Republic, as well as with Art. 36 and Art. 37 para. 3 of the Charter of Fundamental Rights and Freedoms.

The provisions of a statute laying down (for a specific construction project) an unjustifiably divergent procedural regime violates the principle of equality in rights, as well as Art. 11 para. 1, second sentence of the Charter of Fundamental Rights and Freedoms, which provides that the property rights of each owner shall have the same content and enjoy the same protection.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 17 March 2009, the Constitutional Court, in its Plenum composed of the Court's Chief Justice, Pavel Rychetský, and Justices Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Miloslav Výborný, Eliška Wagnerová and Michaela Židlická, on the petitions of a group of Senators of the Parliament of the Czech Republic, proposing the annulment of Act No. 544/2005 Sb., on the Construction of the Runway for Take-Off and Landing 06R – 24L of the Prague- Ruzyně Airport, with the participation of the Assembly of Deputies and the Senate of the Parliament of the Czech Republic as parties to the proceeding, decided as follows:

Act No. 544/2005 Sb., on the Construction of the Runway for Take-Off and Landing 06R – 24L of the Prague- Ruzyně Airport, is annulled on the day this Judgment is published in the Collection of Laws.

REASONING

I.

1. On 24 June 2008 the Constitutional Court received delivery of the petition of 17 Senators of the Parliament of the Czech Republic, to which a further Senator,

namely Karel Schwarzenberg, subsequently added his name (hereinafter „the petitioners“), proposing the annulment of Act No. 544/2005 Sb., on the Construction of the Runway for Take-Off and Landing 06R – 24L of the Prague-Ruzyně Airport (hereinafter „the contested Act“), due to its conflict with Art. 1, Art. 2 paras. 1 and 3, and Arts. 81 and 90 of the Constitution of the Czech Republic (hereinafter „the Constitution“) and due to its conflict with Art. 11 and Art. 36 of the Charter of Fundamental Rights and Freedoms (hereinafter „the Charter“).

2. The petitioners first of all make the argument that the contested Act is in conflict with the principle of the separation of powers and the rules of the democratic, law-based state under Art. 2 para. 3 of the Constitution. In the petitioners‘ view the principle of the separation of powers is the basic foundation stone of the democratic, law-based state. It follows from the Constitution (Art. 2 para. 3) that individual powers should not encroach upon each others‘ competences. According to Art. 15 of the Constitution, the legislative power falls to the Parliament, and activity meeting the demands of this Article cannot be understood to be anything other than the formation of legal enactments, statutes. A statute should be such an act of public power which generally regulates the class of relations to which it applies. The Constitutional Court has already dealt with, for ex., in its Judgment No. Pl. ÚS 55/2000 of 18 April 2001 (N 62/22 SbNU 55; 241/2001 Sb.)*, the issue that one of the fundamental characteristics of a legal norm is its generality. The Act on the Construction of the Runway for Take-Off and Landing 06R – 24L of the Prague- Ruzyně Airport exhausted its effects in an instant (the completion of the specific construction job). For the legal regulation of this matter, the legislature selected such an approach which entirely violates the accepted principles for the creation of law. In its essence, then, the approach of the Parliament of the Czech Republic undermines the principles of the democratic, law-based state. Such an approach would perhaps be justifiable in a period of historical turning points in the societal development, not however under the conditions of a stable free society. The impermissibility of such a solution is particularly exposed through a reductio ad absurdum conception of other similar legal enactments. The general nature of a legal norm is defined in the theory of law creation as generality as in relation to the subject of the legal norm as well as to the addressees of the legal norm. Generality in terms of the subject of the legal rule is understood to mean that the legal norm defines the relevant factual elements generally. A legal enactment may not be used to resolve specific individual cases, rather it lays down rules for repeated processes or occurrences. The subject of the contested Act is defined in § 1 in relation to a singular issue, not generally; all questions resolved therein affect only a specific runway for landing. That legal act thereby losses the characteristics of a statute and conceptually gains the attributes of an individual legal act, typically of a decision. Of course, such a decision can be issued solely by the executive, not by the legislature, which follows from, among other things, the constitutional principle that state authority may be asserted only in cases, within the bounds, and in the manner provided for by law. This prohibition directly defined on the constitutional plane, in addition, projects into concrete administrative – expropriation – proceedings. Expropriation may be done solely on the basis of law, in this cases for the objectives set down in § 170 of Act No. 183/2006 Sb., on Territorial Planning and the Construction Procedure Code (the Construction Act), and under the conditions contained in Act No. 184/2006 Sb., on the Deprivation or Restriction of Property Rights in Plots of Land or in

Structures (The Act on Expropriation). It is provided in § 3 para. 1 of the last cited act that expropriation is permissible only if the public interest in attaining the objective of expropriation outweighs the maintenance of the existing rights of the expropriated person. Pursuant to § 4 para. 2 of Act No. 184/2006 Sb., the public interest in an expropriation must be demonstrated in an expropriation proceeding. In the case of the approach under the contested Act, however, the administrative body has no leeway for its administrative discretion. By its construction of § 1, in conjunction with § 2 para. 5 of the contest Act, the legislature has already de facto expropriated the land parcels found within the area needed for the construction of the runway for take-off and landing. Sec. 2 para. 5 of the contested Act then provides that, in expropriation proceedings, the public interest in the expropriation of land, structures and rights pertaining thereto for the construction of a runway for takeoff and landing shall be demonstrated by reference to this Act. However, the weighing of the public interests is one of the essential components of an expropriation proceeding and is the exclusive authority of the expropriation office, an executive body. By introducing this legal construction, the Parliament of the Czech Republic has arrogated to itself the exercise of the authority of an expropriation office and thus has, in essence, placed itself in the role of a superior executive body, which it is not and, according to the Constitution, cannot be.

3. The petitioners further argue that the contested Act is in conflict with the right to judicial review (Art. 36 of the Charter), with Arts. 81 and 90 of the Constitution and also in conflict with Art. 11 of the Charter. Sec. 2 para. 4 of the contested Act forbids the administrative office to suspend a proceeding on grounds of resolving a civil law objection or resolving other preliminary issues. Usually if such an objection materializes, the construction or the expropriation office suspends the proceeding and call upon the parties to bring an action. Although the contested Act does not directly forbid court review of civil law objections, still it de facto renders unfeasible either court review or its minimal effectiveness. Before a court reaches a conclusion and issues a judgment, the runway for take-off and landing will already be at least in construction and the property rights of effected real property owners will have been irrevocably trampled upon. The specific decision on expropriation is contestable on the basis of law (§ 28 para. 3 of Act No. 184/2006 Sb.), by bringing an action with suspensive effect. Nonetheless, not even this solution would necessarily guarantee sufficient judicial protection of property since, precisely because of the unclarified property relations, the injured party would not necessarily have standing to bring an action. A further problem which arises in the case of court review of decisions issued on the basis of the contested Act, is the issue of the extent of such review. In view of the fact that the legislature made a determination, beyond the scope of its competence, that the runway for take-off and landing is a public interest, an administrative court will not deal with the issue of whether the administrative body strayed from the bounds placed upon the exercise of administrative discretion, thus whether it correctly evaluated the prevalence of the public interest over the interests of specific owners. The decision’s harmony with the law is thus established merely by the administrative organ making reference to the contested Act, without the need to assess the matter in the given specific case.

II.

4. In its 3 March 2009 statement of views, the Assembly of Deputies of the Parliament of the Czech Republic merely described the procedure for the adoption of the contested Act, adding that it had been adopted following a duly performed legislative process, signed by the appropriate constitutional officials and promulgated in the Collection of Laws.

5. In its 26 February 2009 statement of views, the Senate of the Parliament of the Czech Republic declared that its guarantor committee, its Committee on National Economy, Agriculture and Transport, as well as its Committee on Legal and Constitutional Affairs, recommended that the bill be rejected. Both committees accentuated the view that, by introducing a special procedure in relation to owners of the plots of land affected by the construction designated in the Act, the legal enactment under adjudication is not entirely in conformity with Art. 11 para. 1 of the Charter. The property rights of these subjects thus take on a different content and protection than the property rights of other subjects. The rights of parties to proceedings will be dramatically modified in comparison with the rights of parties to proceedings concerning "ordinary" transport construction, which will be conducted in accordance with general enactments. One can deduce therefrom a weakening of the principle of equality of citizens before the law in accordance with Art. 1 of the Charter. The committees also found a violation of the constitutional separation of powers between the legislative power and the executive, as they are delimited in Chapters Two and Three of the Constitution. The Act provides that the given construction is being carried out in the public interest, although, in accordance with general enactments, such prospective conclusion should be the outcome of an individualized assessment of all interest in the territory on the part of the competent administrative bodies. Procedures long-established in the legal order are thereby eliminated; also excluded is the opportunity for review of administrative discretion by an independent court in the administrative judiciary, whereby is restricted the right to judicial protection guaranteed in Art. 36 of the Charter. The Senate leaves to the Constitutional Court‘s discretion the consideration of the contested Act‘s possible conflict with Art. 1 para. 1, Art. 2 paras. 1 and 3, and Arts. 81 and 90 of the Constitution, as well as with Art. 11 and Art. 36 of the Charter.

III.

6. In view of the fact that the parties to the proceeding agreed to dispense with an oral hearing and the Constitutional Court is of the view that further clarification of the matter cannot be expected from a hearing, the requirements have been met for the Constitutional Court to make a decision in the given matter without holding an oral hearing (§ 44 para. 2 of Act No. 182/1993 Sb., on the Constitutional Court).

IV.

7. In harmony with § 68 para. 2 of the Act on the Constitutional Court, the Constitutional Court assessed whether the Act, whose provisions are assessed in terms of their constitutionality, was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally-prescribed manner

8. The Constitutional Court has ascertained, from Assembly documents and stenographic records, as well as the statements of parties, that on 26 October 2005 at its 48th Session the Assembly of Deputies approved, with the requisite majority of votes of Deputies, the Assembly Bill on the contested Act from Assembly Document No. 160. The bill then advanced to the Senate, which did not adopt any resolution concerning it. Thereafter the contested Act was signed and duly promulgated in the Collection of Laws, in Part 186 as No. 544/2005 Sb.; it entered into effect on 30 December 2005. The contested Act was thus adopted in the constitutionally-prescribed manner and within the confines of the powers set down in the Constitution while observing the rules laid down in Art. 39 paras. 1 and 2 of the Constitution.

9. The Constitutional Court affirms that the petition meets all the requirements laid down by the Act on the Constitutional Court and nothing prevents its consideration by the Constitutional Court Plenum.

V.

10. The contested statute, in its currently valid wording, contains the following text:

»544/2005 Sb.
ACT
of 2 December 2005
on the Construction of the Runway for Take-Off and Landing 06R – 24L of the Prague- Ruzyně Airport,
Parliament has enacted this Act of the Czech Republic:
§ 1
Public Interest
The runway for take-off and landing 06R – 24L of the Prague- Ruzyně Airport, corresponding in its placement with the currently valid territorial plan of the Capitol City of Prague and the currently valid territorial plan of the City of Hostivice, and further all construction which will in the field of technical infrastructure ensure its operation (hereinafter „runway for take-off and landing“), constitute a public interest.1)

§ 2
(1) In matters of administrative proceedings relating to the construction of the runway for take-off and landing, the time-limit for the proceeding as laid down in separate legal enactments2) shall be cut in half. If the time-limit in question is of an odd number of days, it shall terminate at the end of the day following the day upon which the mid-point of the time-limit falls.
(2) In all administrative proceedings, as well as in the course of other activities relating to the construction of the runway for take-off and landing, the competent

administrative bodies shall not require opinions from those affected offices which submitted their opinions in previous phases of the preparation for the construction of the runway for take-off and landing.
(3) Administrative proceedings concerning the construction of the runway for take-off and landing cannot be suspended:
a) on the grounds laid down in § 137 paras. 1 and 2 of the Construction Act;
b) on the grounds laid down in § 64 para. 1, lit. c) of the Administrative Procedure Code; or
c) pursuant to § 64 paras. 2 and 3 of the Administrative Procedure Code.
(4) Should the adjudication of a civil law or other objection pursuant to a separate legal enactment3) or the adjudication of a preliminary issue pursuant to the Administrative Procedure Code, about which the competent court has not made a final decision, otherwise constitute grounds for suspending the administrative proceeding, then the competent administrative office shall prepare an opinion of its own on the issue, without consideration of the possibility to submit a motion to institute a proceeding before a court or other body, and shall decide on the objection without delay. An appeal filed against such decision shall not have suspensive effect.
(5) In a proceeding on the expropriation of parcels of land, structures and rights pertaining thereto necessitated by the construction of the runway for takeoff and landing, it shall be considered that no agreement has been reached in accordance with a separate legal enactment4) if an agreement has not been reached within 30 days of the delivery of an offer with a proposal for compensation at a price that is customary in the location and time. In expropriation proceedings, the public interest in the expropriation of land, structures and rights pertaining thereto for the construction of the runway for takeoff and landing shall be demonstrated by reference to this Act.

§ 3
Transitional and Final Provisions
(1) §§ 1 and 2 apply analogously to the manner of issuing opinions and statements of view on the construction of the runway for take-off and landing which are not subject to an administrative proceeding.
(2) Administrative proceedings instituted prior to the day this Act enters into force shall be completed in accordance with the current legal rules.
(3) Unless this Act provides otherwise, a special act5), the Construction Act, and the Administrative Procedure Code shall apply to proceedings in matters concerning the construction of the runway for take-off and landing.

§ 4
Entry into Effect
This Act shall enter into effect on the day of its promulgation.

Zaorálek [signature]
Klaus [signature]
Paroubek [signature]

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1) Art. 11 para. 4 of the Charter of Fundamental Rights and Freedoms.
§ 108 para. 2, lit. a) and f) of Act No. 50/1976 Sb., on Territorial Planning and the

Construction Procedure Code (the Construction Act), as subsequently amended.
2) For example, Act No. 500/2004 Sb., the Administrative Procedure Code, and Act No. 50/1976 Sb., as subsequently amended.
3) § 137 of Act No. 50/1976 Sb., as subsequently amended.
4) § 110 para. 1 of Act No. 50/1976 Sb.
5) Act No. 49/1997 Sb., on Civilian Aviation and on Amendments and Additions to Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended.«.

VI.

11. In order to be systematic, the Constitutional Court first of all assessed the constitutional conformity of § 1 of the contested Act.

The Constitutional Court has already previously dealt with an analogous problem, specifically in its case no. Pl. ÚS 24/04 [judgment of 28 June 2005 (N 130/37 SbNU 641; 327/2005 Sb.)], in which was contested § 3a of Act No. 114/1995 Sb., on Domestic Navigation, as subsequently amended, which provided: „It is in the public interest to develop and modernize the waterway delimited by the watercourse of the Elbe from the riverain km 129.1 (Pardubice) to the borders with the Federal Republic of Germany and by the watercourse of the Vltava from the riverain km 91.5 (Třebenice), including the navigable canal Vraňany – Hořín after the confluence with the watercourse of the Elbe, including the watercourse of the Berounka after the harbor of Radotín.“ In the cited judgment, the Constitutional Court annulled this provision while asserting, among other things, the following: »The demonstration of a public interest is indispensable in the case of expropriation or mandatory limitation on property rights under Art. 11 para. 4 of the Charter and the provision related thereto of § 108 of Act No. 50/1976 Sb., on Territorial Planning and the Construction Procedure Code (the Construction Act), as subsequently amended. In view of the original wording of the contested provision it is further appropriate to cite § 43 of Act No. 114/1992 Sb., on the Protection of Nature and the Countryside, as subsequently amended: „By its decision in each individual case, the Government allows for exceptions from the prohibition in specially-protected terrain, pursuant to §§ 16, 26, 29, and 34, and § 35 para. 2, § 36 para. 2, and §§ 45h and 45i, in cases where the public interest decidedly outweighs the interest in the protection of nature.“ The contested provisions of § 3a of the Act on Domestic Navigation thus exclude the administrative body from ascertaining, in an administrative proceeding, the public interest in the development and modernization of the watercourse in question, as that has already been determined ex lege. The Constitutional Court considers unconstitutional such a solution whereby the declaration of a public interest in a specifically designated matter is made by statute . . . The public interest in a specific matter is ascertained in the course of an administrative proceeding on the basis of a weighing of the most diverse particular interests, after consideration of all conflicts and observations. It must then distinctly appear from the reasoning of the decision, the central point of which is the question of whether a public interest exists, why the public interest outweighed a host of private, particular interests. One cannot ascertain, from the contested provisions of the act, the grounds upon which the legislature accorded the status of a public interest to the development

and modernization of a specifically-defined watercourse, whether it investigated possible competing interests, or how it dealt with those it found. It is otherwise evident that it could not even ascertain these circumstances, as the legislative process is not endowed with means allowing for the assessment of individual cases in all of their complexity and consequences . . . The contested provision resulted not only in an encroachment by the legislative power upon the executive power, but it also restricted the right to court review. Perspective administrative decisions (for ex., on expropriation) made in connection with the planning and modernization of the watercourse in question, would be reviewable by a court within the framework of the administrative judiciary, but the issue of whether there is a public interest would be excluded from such review, as that has already been laid down in a statute, by which ordinary courts are bound pursuant to Art. 95 para. 1 of the Constitution. Were the contested provision not to exist, then ordinary courts would be able to review whether administrative bodies, in applying the indeterminate legal concept of „public interest“ to a specific situation, did not exceed the bounds of the statutorily-prescribed limits of administrative discretion (cf. § 78 para. 1 of the Code of Administrative Justice); however, the contested legal rule de facto eliminates that possibility . . . Although the contested provision does not entirely exclude court review, the restrictions thereupon are to such a degree consequential that the conclusions expressed in the cited judgment fully apply as well to the case under adjudication. In view of the above-stated arguments, the Constitutional Court is of the view that the contested provisions of § 3a of the Act on Domestic Navigation are incompatible with the principles of the law-based state, in particular with the principle of the separation of powers, and is in conflict with Art. 1, Art. 2 paras. 1 and 3, Art. 81 and Art. 90 of the Constitution, as well as with Art. 36 of the Charter. Accordingly, in view of the indicated constitutional standards, the petition proposing the annulment of § 3a of the Act on Domestic Navigation appears well-founded.«.

12. In view thereof, the cited arguments and conclusions apply analogously in relation to § 1 of the contested Act, and since the Constitutional Court find no grounds to depart therefrom, in the interests of brevity it suffices to refer to the cited judgment and express the conclusion that § 1 of the contested Act is incompatible with the principles of the law-based state, especially with the principle of the separation of powers, and is in conflict with Art. 1, Art. 2 paras. 1 and 3, and Arts. 81 and 90 of the Constitution, as well as with the right to judicial review in accordance with Art. 36 of the Charter. It thus found that the petition proposing its annulment is well-founded.

13. The Constitutional Court observes in this respect that, when Parliament was considering the contested Act, its attention was drawn to the Act‘s unconstitutionality. Judgment No. Pl. ÚS 24/04 (see above) was already known at the time the Act was adopted; in the first reading of the bill on the contested Act, Deputy Jiří Pospíšil alerted the Deputies about it and, in the second reading, reproduced the content of the cited judgment, concluding that § 1 of the contested Act, among others, was unconstitutional. Deputy Eva Dundáčková made similar contributions to the debate. Otherwise, the Government had already, in its negative opinion on the bill for the contested Act, made reference to the unconstitutionality of § 1, among others. However, in the course of the debate none of the Deputies in essence even attempted in a relevant manner (that is, on

the constitutional plane) to deal with the arguments that led the Constitutional Court to adopt the conclusions it did in the cited judgment. Thus, for ex., one cannot deduce that in this case there would be „merely“ a diverse constitutional law view that can be defensibly argued as grounds for non-adherence to the cited Constitutional Court judgment.

Despite all that has been indicated, the Senate did not then adopt a resolution on the contested Act, although its Committee on National Economy, Agriculture and Transport adopted a resolution which recommended that the Senate reject the proposed contested Act.

The President of the Republic did not make use of his right to return the adopted Act to the Assembly of Deputies, as is provided for in Art. 50 para. 1 of the Constitution, and signed the contested Act.

14. The Constitutional Court calls upon the legislative power pro futuro more rigorously to take into consideration the constitutional conformity of legislative bills it is considering, especially in situations where there is existing Constitutional Court jurisprudence which has even been brought to its attention in the course of the legislative process.

VII.

15. The line of argument cited in the preceding point and the conclusion on § 1 of the contested Act apply analogously to § 2 para. 5 in fine, according to which the following holds true: in expropriation proceedings, the public interest in the expropriation of land, structures and rights pertaining thereto for the construction of a runway for takeoff and landing shall be demonstrated by reference to this Act. Accordingly the Constitutional Court annulled as unconstitutional this provision of the contested statute as well.

VIII.

16. As far as the remaining provisions are concerned, the necessity to annul them as well follows from their accessory nature in relation to the annulled provision in § 1 of the contested Act, which alone sufficiently specifies the construction to which the contested Act should apply, as their very normative existence would lose any rational sense, and would not be applicable in practice. Their consequent unconstitutionality also leads to their annulment.

17. The common denominator of these provisions is that the preceding arguments on the merits and the conclusions (that is, as regards the statutory definition of a specific legal public interest) do not apply to them, for a statutory declaration of public interest in a specifically designated matter is not contained in them. They are „merely“ rules laying out certain procedural rules diverging from the general procedural rules laid down in the administrative law enactments.

18. The petitioners make the argument that the given provisions of the contested

Act, diverging from the general rules, govern a singular case, which also deviates from one of the fundamental substantive characteristics of the concept of a statute, which is its general nature. In the petitioners' view, this should, in and of itself, entail such a statute's unconstitutionality.

19. Should the Constitutional Court accept the petitioners' line of argument, that would mean that it would be unconstitutional to make any legal rule for a singular case. However, the Constitutional Court has already in its jurisprudence [cf. Judgment No. Pl. ÚS 12/02 of 19 February 2003 (N 20/29 SbNU 167; 83/2003 Sb.)] formulated the prerequisites for exceptions which, if fulfilled, would allow for deliberation on the constitutionality of a statute governing a singular (that is, specific) case; thus, through fulfilling the prerequisites that the statute relating to a singular case not represent a violation of the principle of equality. The aspect which must be tested first is the criterion of the constitutionality of the state of affairs established by non-accessory inequality: „the principle of equality does not, however, place any sort of actual restriction on statutes relating to a singular case, precisely because they enable us to deal with something singular and exceptional, corresponding to its special nature. The question is whether the given case actually is of such a special nature, that a general disposition would appear arbitrary and prescription for a singular case appears appropriate. To the degree that a statute relating to a singular case is the expression of ratio – not of mere voluntas – then it is incorporated into the organized structure of the law-based state." (H. Schneider, Legislation [Gesetzgebung], 2nd edition, Heidelberg 1991, p. 31). If the adoption of a statute relating to a singular case is not an expression of voluntas (arbitrariness), there must be rational arguments in favor of it. Yet, it is not part of the Constitutional Court's authority to adjudicate the degree of this rationality. The second aspect is represented by the criterion of assessing the constitutionality of the state of affairs established by accessory inequality; such inequality is impermissible if it would result in a constitutional right or freedom being affected.

20. From the perspective of the designated constitutional maxims, the petition to annul as well § 2 paras. 1, 2, 3, 4 and 5 appears well-founded.

With these provisions the legislature has established unjustified inequality, taking into consideration only non-accessory inequality, as it lacks an objective explicitly stated by the legislature, or even one implicitly contained in the normative rule, which it would be possible to consider as an expression of ratio. Thus, it does not provide any rational arguments in support of the conclusion as to exactly why a divergent legal regime, that is, divergent procedural norms (in comparison with the general legal rules), should be laid down for proceedings on the construction (governed by the contested Act) in view of its specific character. If the legislature had in mind, as the reason for the divergent treatment of the singular case reviewed here, the public interest in speeding up the completion of the construction at issue by abbreviating the administrative proceeding, all the same that argument could be advanced in relation to other construction projects, including „standard" transport construction projects, thus even of the same type (airports), or other construction projects in the public infrastructure, where one would proceed in accordance with the general regulations. Even in such cases it would be possible, within the framework of specific proceedings, to find a public interest in their completion, in consequence of which an interest in the speeding

up of the completion might be declared. In addition, the above-stated conclusion applies, that concerning the unconstitutionality of declaring a public interest in the construction governed by the contested Act; it must be ascertained in a constitutionally conformable manner – only in the context of an administrative proceeding, the logical consequence of which is that neither is it possible to accept even a public interest in the speeding up of the realization of this public interest (cf. the Explanatory Report: „That means that not only the construction is in the public interest, but the speeding up of its completion is also in the public interest.“).

The cited provisions of the contested Act do not pass muster even when employing the criterion of accessory inequality, as they create an inequality which results in a fundamental right or freedom being affected, specifically Art. 11 para. 1, second sentence, of the Charter, according to which the property rights of each owner shall have the same content and enjoy the same protection. As an effect of the abbreviation of the deadline in the administrative proceeding, by excluding certain standard procedural institutes (for ex., the suspension of the proceeding) and by modifying the general manner of proceeding in expropriation proceedings, the property rights of the subjects affected by the construction gained different protection than those enjoyed by other subjects whose property rights are not affected by the construction.

IX.

21. The Constitutional Court concludes that the contested Act is in conflict with Art. 1, Art. 11 para. 1, the second sentence, Art. 36 and Art. 37 para. 3 of the Charter, as well as with Art. 1, Art. 2 paras. 1 and 3, and Arts. 81 and 90 of the Constitution. The Constitutional Court has found the petition to be well-founded, and has therefore annulled the contested Act.