

# 2002/08/13 - PL. ÚS 3/02: MINIMUM AMOUNT OF A FINE

## HEADNOTES

The statutorily provided minimum amount of a fine must be set so that it permits, at least to a certain degree, taking into account the property and personal situation of the offender, in this case so that imposing a fine, even if only in the minimum amount, will not have a liquidatory effect on the offender, or will not mean that business activity will lose its purpose for a considerable period (several years). If this principle is not observed, there is such interference in the property rights of an individual which, in view of its intensity, is a violation of Art. 11 para. 1 of the Charter of Fundamental Rights and Freedoms and Art. 1 of the Protocol to the Convention on the Protection of Fundamental Rights and Freedoms. It simultaneously causes violation of Art. 1 of the Charter, as it causes fundamental inequality of persons in the social sphere.

## CZECH REPUBLIC CONSTITUTIONAL COURT

### JUDGMENT

#### IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court decided in the matter of a petition from the Regional Court in Hradec Králové to annul part of § 106 para. 3 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by later regulations, as follows:

The words “from CZK 500,000” in § 106 para. 3 of Act no. 50/1976 Coll., on Zoning and the Building Code (the Building Act), as amended by Act no. 83/1998 Coll., are annulled as of the day this finding is promulgated in the Collection of Laws.

### REASONING

#### I.

On 22 January 2002 the Constitutional Court received a petition from a Panel of the Regional Court in Hradec Králové (30 Ca) of 14 January 2002 to annul § 106 para. 3 of Act no. 50/1976 Coll., on Zoning and the Construction Act (the Construction Act), as amended

by later regulations (the “Construction Act”), in the part “from CZK 500,000.” Under Art. 95 para. 2 of the Constitution of the Czech Republic (the “Constitution”) a general court shall do so if it concludes that a statute which is to be used in resolving a matter is inconsistent with a constitutional act. The petition, signed by the Chairman of the Panel, JUDr. K. K., states that by decision of the City Hall of Pardubice of 24 June 1999, file no. OSÚ P/147/99/Pd, and decision of the District Office of Pardubice of 16 July 2001, file no. RRR/3330/41/99/Pu, H. B. was given a fine of CZK 500,000 because, as a natural person conducting business under special regulations, she engaged in unlawful conduct specified in § 106 para. 3 let. c) of the Construction Act when, in conflict with the relevant final approval permit, she used two rooms in the basement of the family house no. 181 in Pavlova St. in Pardubice as the operating premises of a hair salon. She filed an administrative complaint with the Regional Court in Hradec Králové under part five, chapter two of the Civil Procedure Code.

The introduction to the petition emphasizes that Ms. H. B. used these premises only for purposes of her individual exercise of the trade of hairdressing, which is also documented by a statement from the hygiene inspector of 16 March 1999, file no. 1446-218/99-707, according to which these were “operating premises” with only one job. Although the rooms had been approved as a laundry, drying room, and cellar, their technical construction arrangement had been, since construction was completed, fully adequate for conducting the trade in question, because, as the H. B. stated in proceedings before the court, the water access pipe had been extended by about 1 meter; but no other construction changes had been made. Insofar as § 106 para. 3 let. c) of the Construction Act expressly charges the appropriate body to impose a fine from CZK 500,000 to CZK 1 million to a legal entity or natural person conducting business under special regulations who uses a building without a final approval permit, or inconsistently with it, or allows another party to do so, it is evident that the Building Office may not impose a fine lower than CZK 500,000, and thus take into account the extent of violation of the public interest in using a building in accordance with a final approval permit, which can vary widely. In the court’s opinion, in a number of cases where a change does not require any construction changes or special equipment, the extent to which the public interest is violated is minimal. Therefore, the court contests the setting of a fine level without regard to the type of unlawful conduct, its consequences, or the material benefits to the offender. It simultaneously points out the fact that the amount of the fine makes it impossible to take into account the offender’s economic level, or whether he is at all capable of paying such a fine. In this case, for example, Ms. H. B. would have to work for 14 years to pay the fine imposed. Thus, the fine is imposed on her in a liquidatory manner, where the administrative body could basically deprive her of all her property, including the building in which she does business.

The Regional Court further states that this administrative penalty is also not comparable to punishments imposed under the Criminal Code, under which one can, moreover, choose between several punishments. In view of the fact that natural persons are exposed to a risk of the kind of punishment which, by its nature and degree of gravity falls, in terms of the Convention on the Protection of Human Rights and Fundamental Freedoms (the “Convention”), into the “criminal area,” Art. 6 para. 1 of the Convention, under which everyone has the right to have his matter tried fairly, should be applied to this matter. This requirement was not met, with regard to the current legal framework, as the specific

individual circumstances of the matter were not taken into account. In view of these facts the Regional Court proposed annulling the provision cited in the heading.

## II.

The Constitutional Court found that the submitted petition meets all legal procedural requirements, and therefore nothing prevents it from reviewing and deciding the substance of the matter. Therefore, under § 69 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, (“Act no. 182/1993 Coll.”) it called upon the parties to the proceedings - the chamber of Deputies and the Senate of the Parliament of the Czech Republic, to submit position statements on the petition.

The Chamber of Deputies of the Parliament of the Czech Republic, through its Chairman, in its position statement of 14 February 2002 stated that § 106 para. 3 of the Construction Act was amended by Act no. 83/1998 Coll. The bill, which was submitted by the government of the CR, was discussed by the Chamber of Deputies in the second election period as Chamber of Deputies document no. 261. As the background report indicates concerning § 105 and § 106 of the Construction Act, the aim of the legal framework was to be a substantial increase in fines; this step had been supported in comment proceedings by some cities which have experience with “non-compliance in construction.” During discussion in the Chamber of Deputies the proposed framework was not changed. According to the Chamber of Deputies, when discussing the amendment it took as its starting point the premise that the act in question was consistent with the Constitution, the constitutional order, and international agreements. In conclusion, the Chamber of Deputies points out that the proposed judgment should read “from CZK 500,000,” so that the text of the Act would be correct legislatively and in formulation even after part if it was annulled.

The Senate of the Parliament of the Czech Republic gave its position statement regarding the petition from the Regional Court in Hradec Králové through its Chairman on 19 February 2002, and expressed doubts whether in this case the procedure described in the filing really violated Art. 6 para. 1 of the Convention. The unlawful conduct in this case must be considered an administrative infraction, which is penalized by a fine in the range specified and which is imposed in administrative proceedings led by the relevant administrative body. In this case it is evident that the administrative body took into account the individual circumstances of the case, as it imposed the lowest possible fine. The Construction Act considers the use of a building without the final approval permit or inconsistently with it to be serious violation of construction compliance and therefore classifies it in the group with the highest penalty rates. The Senate further points to the fact that if the Constitutional Court granted the petition, then deleting the lower limit of penalties in § 106 para. 3 of the Construction Act would violate the overall system and introduce obvious inequality with paragraph 2 of the same section, where the lower limit of fines for the factual elements specified would be maintained. Likewise, with offenses by citizens contained in § 105 of the Construction Act there is a system of differentiating the amount of fines by setting a lower limit for them. The Senate further states that the cited amendment of the Construction Act, the aim of which was to tighten compliance in the

construction and use of buildings, in the interests of this aim the room for administrative discretion was narrowed, although it was not entirely removed.

The Constitutional Court also requested a position statement from the Ministry for Regional Development. This state body, in a letter dated 28 February 2002, file no. 2502/2002-51, disagreed with the Regional Court's petition. For one thing, it believes that the Construction Office has the discretion, when setting the amount of a fine, to weigh the extent of violation of the public interest of the gravity of the violation of the Act, or related consequences. In its opinion, Art. 6 para. 1 of the Convention does not apply to this case at all, because in its opinion, one can not evaluate whether the specified lower limit for penalties is "just" or "unjust" in relation to unlawful conduct. This is because § 106 para. 3 of the Construction Act could be inconsistent with Art. 6 para. 1 of the Convention, if it prevented review of the justification of such "criminal accusation" by an independent court. However, review of the matter in full jurisdiction is not prevented by the contested provision, but by the currently valid legal framework of the administrative court system. For the foregoing reasons, the Constitutional Court should not grant the petition of the Regional Court in Hradec Králové.

The Constitutional Court, for purposes of information, asked the Ministry for data about the number and amounts of fines imposed under the Construction Act, divided according to individual factual elements. The Ministry for Regional Development stated that it does not monitor this data in the aggregate, and sent at least data from the City Hall of the capital city of Prague, as an appeals body for 26, or (as of 1 July 2002) for 22 city districts. These indicate that in 2001 a total of 67 offenses and 34 administrative infractions under the Construction Act were reviewed in appeals proceedings, 12 of which were violations of the contested provision. The Constitutional Court was also sent similar data about fines imposed in the city of Liberec, according to which in 2001 legal entities and natural persons conducting business under special regulations were given a fine with legal effect in 15 cases, none of which were imposed for an administrative infraction under the contested provision, and in 10 cases fines were given to natural persons for offenses.

The Constitutional Court, in order to determine the income levels of legal entities and natural persons-entrepreneurs during the period of one year, asked the Ministry of Finance for assistance. The Ministry stated in its document, that out of the total of 221,237 legal entities which filed tax returns, in 2000 the number of entities with total annual income (see § 20 para. 2 of Act no. 563/1991 Coll., on Accounting, in the version valid until 31 December 2001) up to CZK 50 thousand was 43,619 entities, up to 100 thousand a total of 50,090 entities, up to 500 thousand a total of 75,636 entities and up to 1 million a total of 91,539 entities; out of a total number of 964,723 natural persons-entrepreneurs in that same year the number with income up to CZK 50 thousand was 185,368 persons, up to CZK 100 thousand a total of 304,753 persons, up to CZK 250 thousand a total of 519,757 persons, up to CZK 500 thousand a total of 670,814 persons and up to CZK 1 million a total of 793,187 persons (the intervals begin at CZK 0).

### III.

The Constitutional Court first, in accordance with § 68 para. 2 of Act no. 182/1993 Coll., reviewed whether the statute whose provisions the petitioner claims to be unconstitutional was passed and issued within the bounds of Constitutionally specified jurisdiction and in a constitutionally prescribed manner. In that regard, the stenographic record of the 20th session of the Chamber of Deputies of the Parliament of the Czech Republic, held on 13 February 1998, and resolution no. 256 of 13 February 1998 indicate that the Chamber of Deputies approved the bill (Chamber of Deputies document no. 261) by a majority of 151 votes in favor and none against (out of a total number of 171 deputies present). From the stenographic record of the 2nd session of the Senate of the Parliament of the Czech Republic, held on 18 March 1998, the Constitutional Court further determined that the Senate also approved the bill, by resolution no. 23 of 18 March 1998, by a majority of 55 votes (out of a total number of 70 senators present), with 7 votes against. It is evident from the foregoing that the Act was passed and issued in a constitutionally prescribed manner and within the bounds of Constitutionally specified jurisdiction, and that quorums specified in Art. 39 para. 1 and 2 of the Constitution were observed.

After substantive discussion of the petition and weighing of all the circumstances the Constitutional Court decided that the contested provision of the Act must be annulled.

To begin with, the Constitutional Court needs to note that in this case what is contested is not, as it usually is, the behavioral rule itself, which is the obligation to use a building only in accordance with the final approval permit, but only the constitutionality of the means (penalties) which the legislature chose for ensuring such behavior on the part of the parties at whom the legal norm is aimed. Nevertheless, here too we will evaluate the constitutional conformity of the norm providing the legal obligation, although it is a secondary obligation. The Constitutional Court is fully aware of the weight of the arguments found in the position statements from the parties to the proceedings, in particular the Senate of the Parliament of the Czech Republic, and perhaps also in the position statement of the Ministry for Regional Development, in whose jurisdiction the issue falls; the principal point in them is that the given unlawful conduct, i.e. use of a building without the final approval permit or inconsistently with it, shows, in terms of the public interest, considerable social danger, in particular in view of the general failure to observe relevant construction regulations (construction non-compliance). In view of this the legal framework of administrative penalties, in this case fines, was to have been set up in a manner proportionate to the situation, not only by raising the upper limit of penalties, but also by setting the lower limit. By incorporating a minimal penalty amount into the statute, the legislature is basically pursuing a legitimate aim, because this permits distinguishing the gravity or danger of various types of unlawful conduct far more clearly than was possible by setting only an upper limit. A subsidiary consequence of this step is that this limits the room for administrative discretion by the relevant state bodies, which has positive consequences in, for example, the fact that it unifies to a certain extent the level of punishments imposed or limits the room for arbitrary or corrupt conduct by the administrative offices, which can be *prima facie* a certain means of protection from discrimination; only the other hand, however, it equalizes the gravity of various unlawful

conduct, to a greater or lesser degree, which leads to limiting the ability of the administrative body to take into account the specific circumstances of the case, the person of the offender and his economic level, as the Regional Court in Hradec Králové states in its petition.

First of all, the Constitutional Court is forced to fully agree with the opinion that Art. 6 para. 1 of the Convention can not apply to this case, due to the nature of the matter. The subject of regulation by the provision in question is the guarantee of fair, smooth and public proceedings. In this regard if one speaks of the right to a fair trial, or the content of that right, this means the equality of “weapons” of the parties to judicial proceedings, a right to personal participation and an oral hearing, and the right to have certain rules observed in the area of obtaining and evaluating evidence, etc. However, the issue here is not evaluating the constitutional conformity of procedural regulations, i.e. whether certain procedural rules meet the cited principles, but evaluating a substantive law regulation which is in no way related to procedure as such. In other words, the content of the given constitutionally guaranteed right can not be the right of the individual toward the legislative power to a “fair” regulation of a particular legal relationship, and thus also not a “fair” fine amount. Thus, a fair fine must be understood - in terms of this constitutionally guaranteed right - to mean a fine imposed in accordance with the law, in proceedings which observe the principles of a fair trial.

In view of the fact that the Constitutional Court is bound by the proposed judgment in the petition, but not by the legal classification contained in it, it further considered whether the contested provision violated dictates of constitutional law or international agreements other than those raised in the petition.

The preamble of the Constitution indicates the intent of the citizens of the Czech Republic to take as their starting point the principles of a state governed by the rule of law. Art. 1 of the Constitution expressly identifies the Czech Republic as a democratic state governed by the rule of law, founded on respect for the rights and freedoms of the human being and the citizen. Respect for the rights and freedoms of the individual is undoubtedly precisely one of those principles of a state governed by the rule of law that are intended by the Preamble of the Constitution, from which one can derive one of the basic rules of the functioning of state power, the principle of proportionality (commensurateness) and the ban on abuse of the law, as the Constitutional Court concluded in a number of findings. This principle arises from the premise that interference in fundamental rights or freedoms can occur, even though their constitutional framework does not expect, in the event that they are in mutual conflict or in conflict with another constitutionally guaranteed value which is not of the nature of a fundamental right or freedom (a public good ) (cf. Constitutional Court finding of 9 October 1996, file no. Pl. ÚS 15/96; published in The Constitutional Court of the Czech Republic, Collection of Decisions, C.H. Beck, vol. 6, no. 99). However, in these cases it is always necessary to evaluate the purpose (aim) of such interference in relation to the means used, and the measure for this evaluation is the cited principle of proportionality (in the wider sense), which can also be called a ban on excessive interference with rights and freedoms. This general principle contains three principles, or criteria, for evaluating the admissibility of interference. The first of these is the principle of capability of meeting the purpose (or suitability), under which the relevant measure must be capable of achieving the intended aim, which is the protection of

another fundamental right or public good. Next is the principle of necessity, under which it is permitted to use, out of several possible ones, only the means which most preserve the affected fundamental rights and freedoms. The third principle is the principle of proportionality (in the narrower sense) under which detriment in a fundamental right may not be disproportionate in relation to the intended aim, i.e. measures restricting fundamental human rights and freedoms may not, in the event of conflict between a fundamental right or freedom with the public interest, by their negative consequences exceed the positive elements represented by the public interest in these measures (cf. Constitutional Court finding of 13 May 1997, file no. Pl. ÚS 25/97; published in The Constitutional Court of the Czech Republic, Collection of Decisions, C.H. Beck, vol. 11, no. 53). This point takes as a starting point the weighing of empirical, systemic, contextual and value-based arguments (see Constitutional Court finding of 9 October 1996, file no. Pl. ÚS 15/96; published as cited above; under this finding an empirical argument can be understood to be the factual gravity of the event which is connected to the protection of a certain fundamental right; a systemic argument means weighing the purpose and classification of the affected fundamental right or freedom in the system of fundamental rights and freedoms. A contextual argument can be understood as other negative effects of limiting one fundamental right as a result of giving priority to another; a value-based argument means evaluating the positives of conflicting fundamental rights in view of the accepted hierarchy of values.).

In accordance with the abovementioned conclusions, the Constitutional Court reviewed, above all, whether the cited interference in the legal sphere of an individual can simultaneously be considered interference in constitutionally guaranteed rights and freedoms, and it concluded that a fine - under certain circumstances - can be, first of all, interference in a fundamental right under Art. 11 para. 1 of the Charter. Fines, as constitutionally admissible takings of property - in contrast to taxes and fees - are not expressly mentioned in Art. 11 of the Charter; of course, the situation is somewhat different in the case of protection of property rights under Art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Protocol"), under which states may pass laws that they consider necessary in order to regulate the use of property in accordance with the general interest and ensure the payment of taxes and other fees or fines. One can conclude from the foregoing that fines, just like taxes and fees, fall into the sphere of legal regulation of Art. 11 of the Charter, or Art. 1 of the Protocol and represent basically permissible interference with the property rights of an individual, which, of course, is true on the presumption that the principles of a state governed by the rule of law, as cited above (see also Art. 4 para. 4 of the Charter) are respected. We must add to this that a fine can be considered interference with a constitutional law dimension if it interferes with an individual's property relationships with considerable intensity. The Constitutional Court will consider this factor in connection with the application of the principle of proportionality (see below).

In this regard, the Constitutional Court would like to point to the fact that Art. 1 of the Protocol is discussed similarly in: Frowein, J., Peukert, W.: Europäische Menschenrechtskonvention, EMRK-Kommentar, 2nd edition, E. P. Engel Verlag, Kehl, 1996, p. 824 et seq.; according to these authors it is the right of every state to impose financial punishments, which, however, does not mean that the dictate of respecting property in the area of financial fines can no be applied here; on the contrary, one can review whether they were

imposed in conflict with the principle of the ban on abuse of rights, or proportionality. Concerning taxes, which, together with fines are one variation of cases (see above), the German constitutional Court, in a number of cases, expressly described these as violation of property rights (*Eigentumsverletzung*); see Isensee, J., Kirchhof, P.: *Handbuch des Staatsrecht*, Band VI, C.F.Müller, Heidelberg, 1989, p. 1072.

After determining that in this case there could be interference with constitutionally guaranteed rights and freedoms, the Constitutional Court reviewed whether the given interference can be considered interference in accordance with the principle of proportionality. As already stated, the purpose of the legal framework at issue was to limit violations of construction regulations. At first we must note that setting progressive levels of penalization, which increasing the minimum amount of fines can also be considered to do, can, to a certain extent, be an instrument which is capable of achieving this intended and also legitimate aim, as the risk of possible strict punishment reduces the “economic advantage” of unlawful conduct. For that reason, the Constitutional Court does not rule out the possibility that the cited interference could be capable of meeting its aim. Of course, as far as the next criterion goes, the principle of necessity, the Constitutional Court can not but state that this interference does not fully correspond to this principle. One must realize that the general failure to respect a particular legal framework on the part of individuals may be caused (apart from cases of completely non-functional regulation) by inadequate penalties, where the unlawful conduct is “worth it” even with the risk of penalties being imposed, and/or by insufficient activity by public authorities which have jurisdiction to supervise the observance of rights and imposition of penalties. In the first case, the need to increase punishments is evident (here, specifically, the levels of fines); in the second it is up to the state, specifically the executive power, to implement measures so that the relevant body will fulfill its functions. If the legislature concluded that the current level of fines is inadequate, it is fully within its jurisdiction to implement appropriate measures. On the other hand, one must distinguish between the upper and lower levels of fines. If the maximum level is insufficient, that can mean - regardless of how administrative bodies are working - that a right basically becomes unenforceable. In contrast, no minimum or a “low” minimum level of fine can not by itself in any way cause that situation, unless it is joined by ineffective exercise of state administration, both in prevention and penalization. Specifically concerning the issue of penalization, as part of improving the functioning of state administration, e.g. by increasing supervision activities, or passing internal instructions on imposing fines, it is possible to achieve at least the same results as can be achieved by raising the lower limit of a fine.

Thus, if such a measure is not necessary, and in view of the fact that it is not impossible for a fine to be interference in constitutionally guaranteed rights and freedoms, specifically in property rights, the Constitutional Court had to further consider whether there was really such interference in this specific case. Evaluation of this question is very closely related to the principle of proportionality, because, as the Constitutional Court indicated above, not every imposition of a fine is interference with fundamental rights and freedoms, only such as interferes with property rights with considerable intensity, and it is precisely the degree of detriment caused by this interference which is one of the factors for the cited principle of proportionality.



First, it is necessary to point out that the legislature's setting a lower limit for fines limits the administrative discretion of the relevant body, which, of course, can mean a barrier to taking into account not only the factual gravity of particular unlawful conduct, but also the economic situation of the responsible person or entity. This can result, in a particular case or group of cases, in a fine - even though imposed on the minimum level - appearing extremely "unfair." In view of the relativity of this concept, one must look at the matter from the viewpoint of constitutionally guaranteed rights and freedoms, and from that viewpoint it is essential to specify rules which the legislature must observe in setting the lower level of fines. The basic criterion that must be used, in the Constitutional Court's opinion, is the criterion of substance, under which not every taking of property on the basis of fines, or fees and taxes, creates interference in property rights, but only such taking as fundamentally changes the property relationships of the affected person or entity, i.e. so that it changes his entire property position by "ruining" the very basis of the property. Specifically, in the case of fines imposed on legal entities and natural persons conducting business under special regulations, one must start with the premise that interference in property as a result of which the property base for further business activity would be "destroyed" is ruled out. In other words, fines of a liquidatory nature are impermissible. It must be pointed out that a fine of a "liquidatory" amount represents basically the "toughest" case of interference in property relationships, which can also lead to violation of Art. 26 para. 1 of the Charter; we do not rule out applying the conclusion about the considerable intensity of interference in property rights also to such cases in which the fine so exceeds possible revenues that business activity basically becomes "pointless" (i.e. for a considerable period of time aimed only at paying the imposed fine). With natural persons as entrepreneurs - in view of the fact that their private property and property intended for conducting business are not separated (in terms of accounting) - in such cases there is a danger of serious effects not only on the offender's person, but also on other members of his household. In view of the fact that more than 19% of natural persons, and 19% of legal entities had a total annual income of up to CZK 50 thousand and virtually 70% of natural persons and more than 34% of legal entities had income of up to CZK 500 thousand, it is undoubted that a fine imposed in the amount of CZK 500 thousand can, not only in the case evaluated by the Regional Court in Hradec Králové, but in a whole series of cases, really have be of a liquidatory nature (around 19% of all companies have an annual income lower than 1/10 of the lowest level of fine). Therefore, we can state - in accordance with the abovementioned starting points - that the cited setting of the lower level of a fine is sufficiently intensive interference in an individual's property relationships that it is also interference with property rights.

As already stated above, the interference in question does not correspond to the principle (criterion) of necessity, and so a further test based on the principle of proportionality in the narrower sense is not necessary. Nevertheless, the Constitutional Court also considered this question, and concluded that this measure is disproportionate to the intended aim, which is protection of the public interest. One must begin with the fact that the detriment to a fundamental right which can be connected with this interference is considerable, as the interference threatens the very economic existence of a large number of entities or persons, and protection of property rights in the system of fundamental rights and freedoms is surely among the most important rights. Even though the Constitutional Court does not cast doubt on the existence of the cited negative effect (i.e. failure to observe construction regulations) in general, on the other hand, for one thing the data from the

Ministry for Regional Development do not testify to considerable violation of construction regulations, and for another the Constitutional Court does not believe that unlawful conduct, especially in cases such as were described by the Regional Court in Hradec Králové, would represent a sufficiently serious society-wide problem, in light of which such fundamental interference in fundamental rights and freedoms would be justified. In this situation, the Constitutional Court can not in principle agree with an approach which is basically founded only on progressive levels of penalization of individuals by the state. For example, as V. Kanpp states (in: *Teorie práva*, Praha, 1995, C.H.Beck, p. 36 a 37), “centuries old experience shows, in particular in criminal law, first that violation of law does not decrease proportionately with the increase of penalties, and further, that penalties (in particular strict penalties) lead to the creation of the cited deregulators, or anti-legal systems, which find ways to avoid the threatened penalty.”

The Constitutional Court can not but state that a fine may be compatible with Art. 11 of the Charter and Art. 1 of the Protocol if it permits - at least to a certain degree - taking into account the offender's property situation (cf. Peukert, above, p. 826). In addition, however, it is necessary to take into account the second dimension of the adjudicated situation. Imposing a fine in the range specified means that entities or persons whose economic situations are completely different will be penalized by basically the same level of fine, and thus the effects of the fine imposed will also be completely different; whereas for certain parties the maximum fine can be negligible in relation to their business, for others even the lowest possible fine can mean liquidation, as is demonstrated by the abovementioned data. Under Art. 1 of the Charter people are free and equal in dignity and in rights. In this case, although the contested provisions treats all persons equally, from a formal viewpoint, nevertheless it fundamentally prevents distinguishing their property situations. Certainly not every factual inequality establishes interference with fundamental rights and freedoms; as the Constitutional Court stated in its finding of 7 June 1995, file no. Pl. ÚS 4/95 (published in the Constitutional Court of the Czech Republic, Collection of Decisions, C.H. Beck, vol. 3, no. 29), “inequality in social relationships, if it is to affect fundamental human rights, must reach an intensity which, in a particular regard, casts doubt upon the very substance of equality. This usually happens if violation of equality is also connected to violation of another fundamental right, e.g. the right to own property under Art. 11 of the Charter, one of the political rights under Art. 17 et seq. of the Charter, and so on.” In view of the fact that here too there is basically a situation of social inequality, it must be considered whether there is interference of considerable intensity, because every setting of the lower limit of fines can represent a certain inequality, but not every one means inequality in a constitutional law sense. However, as far as intensity and proportionality of the interference in question are concerned, the Constitutional Court has already considered them, and the abovementioned conclusions apply here as well, even if the matter is evaluated from a different viewpoint.

In view of the cited reasons, the Constitutional Court believes that the contested provision is incompatible with the principles of a state governed by the rule of law under Art. 1 of the Constitution and is inconsistent with Art. 1 and Art. 11 para. 1 of the Charter and Art. 1 of the Protocol. Therefore, the Constitutional Court had no choice but to annul it under § 70 para. 1 of Act no. 182/1993 Coll. The Constitutional Court recognizes that annulling the provision in question may, as indicated by the Senate of the CR in its position statement, disrupt the systemic connections and create inequality with § 106 para. 2 of the

Construction Act, where the lower limit of fines remains, but the Constitutional Court is not authorized to annul the cited provision, as it is bound by the proposed judgment in the petition (with the exception of corrections of a technical nature, as happened in this case). However, this does not prevent the legislature from evaluating the cited provision in view of this finding and taking appropriate steps to amend it.

**Notice: Decisions of the Constitutional Court can not be appealed.**

Brno, 13 August 2002