2006/03/14 - PL. ÚS 30/04: EQUALITY

HEADNOTES

The Constitutional Court has interpreted this constitutional principle in a number of its judgments. In them, it agreed with the understanding of the equality principle as it had already been expressed by the Constitutional Court of the CSFR (Collection of Decisions of the Constitutional Court of the CSFR, judgment no. 11, 1992), which stated that "it is up to the state, in the interests of securing its functions, to decide that it will provide fewer advantages to one group than to another. However, even here it may not act completely arbitrarily … If the law provides a benefit to one group, and at the same time thereby imposes disproportionate obligations on another, this may be done only on the basis of the public values." The Constitutional Court thereby rejected an absolute concept of the principle of equality; it also stated that the equality of citizens can not be understood as an abstract category, but as relative equality, as understood by all modern constitutions. It thereby shifted the principle of equality into the area of constitutionally acceptable factors for differentiating subjects and rights. It sees the first factor to be the elimination of arbitrariness; the second factor follows from the legal opinion stated in the judgment file no. Pl. US 4/95 (Collection of Decisions of the Constitutional Court of the CR, volume 3, p. 209), which states: "inequality in social relationships, if it is to affect fundamental human rights, must reach a level of intensity which undermines, at least in a certain regard, the very essence of equality. This generally happens if the violation of equality is connected to violation of another fundamental right, for example, 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." Thus, the second factor in evaluating the unconstitutionality of a legal regulation which allegedly creates inequality is that it affects some other fundamental right or freedom (Note: the Constitutional Court has summarized these conclusions, with reference to specific judgments, in, for example, the matter file no. Pl. US 33/96, Collection of Decisions of the Constitutional Court of the CR, volume 8, pp. 170-171).

The difference in the penalties affecting the parties to the lease relationship – which basically consists of the landlord's obligation to pay default interest and the tenant's obligation to pay late charges, or the ensuing ability to set different levels of default interest and late charges by an implementing regulation – does not establish unconstitutionality. A certain difference in the amounts of these penalties, or a certain difference in how they are calculated, is rationally justifiable in the reviewed matter, not only under the principle of equality, but also in terms of the principle of proportionality. At the present time the legal framework for the landlord-tenant relationship in general is skewed in favor of the tenant (a protected lease, de facto regulation of rent, etc.). The existence of a differentiated approach to the subjects of a lease relationship by setting different legal means which stabilize the legal relationship as such is therefore possible. While the landlord performs his primary obligation (delivering the apartment for use), the tenant does not perform his (use of the apartment in exchange for rent); therefore, the late charges for late payment of rent can not be without anything further compared to a penalty against the landlord connected with, for example, returning overpayment of rent, i.e. default interest, because this obligation of the landlord is of a secondary nature and is not a

fundamental element of the lease relationship. Therefore, the Constitutional Court believes that establishing the contested special provision of § 697 in the Civil Code was not arbitrary conduct by the legislature, and that the cited statutory framework which potentially permits giving, through a subsequent sub-statutory regulation, one category of parties to a legal relationship an advantage compared to the other category, does not lead to violation of the constitutional principle of equality, or to violation of the principle of proportionality.

Therefore, these conclusions are not inconsistent with judgment file no. Pl. US 15/02 (Collection of Decisions of the Constitutional Court, volume 29, judgment no. 11). In it the Constitutional Court stated, among other things, that a certain legal framework, which gives an advantage to one group or category of persons compared to others, can not in and of itself, without anything further, be described as violation of the principle of equality. The legislature has a certain amount of discretion to establish such preferential treatment. In doing so it must take care that the preferential approach is based on objective and reasonable grounds (a legitimate aim of the legislature) and that there be a proportional relationship between that aim and the means used to achieve it (legal advantages).

CZECH REPUBLIC

CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Vladimír Kůrka, Jiří Nykodým, Pavel Rychetský, Eliška Wagnerová a Michaele Židlická decided on a petition from the petitioner, the District Court in Cheb, seeking the annulment of § 697 of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, as follows:

The petition is denied.

REASONING

I.

The petitioner, in accordance with Art. 95 par. 2 of the Constitution of the Czech Republic, petitioned the Constitutional Court to issue a judgment annulling § 697 of Act no. 40/1964 Coll., the Civil Code. It stated that proceedings are being conducted before it, as a general court, under file no. 15 C 127/2004, concerning a claim of the landlord, the town of Aš, against the tenant, J. Z., for payment of apartment rent, and a claim for payment of late charges; the amount to be paid is CZK 6,315 with late charges of 0.25% per day, with a minimum of CZK 25 for each month or part thereof, of the amount of CZK 6,315, from 16 December 2003 until payment is made. In the course of preparations for the proceedings, the petitioner concluded that the plaintiff's claim for payment of rent would be appropriately evaluated under § 696 par. 1 of the Civil Code, and the claim for payment of the late charges under 697 of the Civil Code. At the same time, however, it concluded that § 697 of the Civil Code, which is to be applied in deciding this matter, is inconsistent with the Charter of Fundamental Rights and Freedoms (the "Charter"), with the general legal principle of equal rights, as regards the statutorily established position of the parties to this obligation relationship.

Under § 697 of the Civil Code, if a tenant fails to pay the rent or pay for services relating to the use of an apartment within five days after they are due, he is required to pay the landlord late charges. The petitioner states that it evaluated whether the contested provision was consistent with the Charter in light of the decision of the Plenum of the

Constitutional Court, file no. Pl. US 15/02, which was published in the Collection of Laws as no. 40/2003. In it the Constitutional Court stated that legal differentiation in the approach to certain rights may not be an expression of arbitrariness, and that the principle of equality of rights is violated if various subjects in the same or comparable situation are treated in a different manner, without there being objective and reasonable grounds for the different approach applied. In the petitioner's opinion, the contested provision of § 697 of the Civil Code violates the principle of equal rights for parties in this particular obligation relationship because, in the event of lateness, it provides a different penalty for each party, which is fundamentally unequal and conflicts with Art. 1 of the Charter. Yet, the position of the landlord and tenant in the event of late payment is comparable, because both are parties to an obligation relationship, which is not fundamentally different from other obligation relationships. If the apartment tenant is late in paying rent or paying for services relating to the use of the apartment, the landlord is entitled to require late charges from him, under § 697 of the Civil Code, whereas if the landlord is late in returning overpayment of rent, or overpayment for services relating to the use of the apartment, the tenant is entitled to require only default interest from him, under § 517 par. 2 of the Civil Code. It can not be overlooked that the amounts of default interest and late charges are very different. Whereas, under government directive no. 142/1994 Coll., default interest is at present twice the discount rate of the Czech National Bank, or 2% per annum (and at its peak during the period from 27 May 1997 to 13 August 1998 it apparently reached 26% per annum), the amount of the late charges is set by the same regulation at 0.25% per day, i.e. more than 91% per annum.

The petitioner also stated that if the legislature perhaps wished to penalize non-payment of rent and services relating to the use of an apartment through a penalty with a greater effect than default interest, there was no rational reason for it, because non-payment of rent is sufficiently penalized as grounds to give notice terminating a lease under § 711 par. 1 let. d) of the Civil Code. In contrast, it is claimed that the result of this unequal position is an unjustifiable burden on tenants who (often for objective reasons) find themselves in financial difficulty and therefore are also late in paying rent, which only makes their social position more difficult.

In the petitioner's opinion it is not enough to simply not apply government directive no. 142/1994 Coll. in a general court's decision making under Art. 95 par. 1 of the Constitution of the Czech Republic, because in such a case it would also not be possible to acknowledge the landlord's right to late charges (i.e. not at all), because the amount of them would not be set, or the right to default interest, because a tenant's late payment of rent and services relating to the use of an apartment is subject to a special provision, § 697 of the Civil Code, which takes precedence in application over the general regulation of § 517 par. 2 of the Civil Code.

II.

The Constitutional Court, in accordance with § 69 of the Act on the Constitutional Court, sent the petition to open proceedings to the parties to the proceedings – the Chamber of Deputies and the Senate of the Parliament of the Czech Republic – and also requested a position statement from the Ministry of Justice of the Czech Republic.

The statement from the Chamber of Deputies of the Parliament of the CR states that equal status means, among other things, that the subjects must agree on their rights and obligations, provided, of course, that these obligations do not arise directly by law on the basis of an anticipated legal fact. An express provision of the Civil Code is also the basis for application of the penalty provision, which, in specific cases provides the creditor's right to require late charges from the debtor under § 697 of the Civil Code, if the tenant did not pay rent or services relating to the use of an apartment within five days after the due date. Therefore, in the opinion of the Chamber of Deputies, one can not agree with the petitioner's opinion that, in this case, an impermissible advantage is given to tenants, or that this is inconsistent with Art. 1 of the Charter.

In its extensive statement, the Senate of the Parliament of the CR stated that the term "late charges" was implemented in the Civil Code - and cum grano salis in the civil law as such – as of 1 April 1964, in connection with the passage of Act no. 40/1964 Coll., the Civil Code. This legal institution was, together with the more general default interest, seen as generalized compensation of damages, applied as a consequence of the debtor being late with payment of debt, but only in matters expressly defined in the Civil Code. The late charges came into consideration with payment for use of an apartment, or services relating to the use of an apartment, as well as with the obligation to return borrowed things, and finally, in connection with paying an invoiced price for a service to which the obligation applied. Apart from the last cited cases, which was cancelled upon the transformation to a market economy, in the Senate's opinion both the other types maintained their exceptional nature, in a transformed form, in the Civil Code until the present day. Thus, the obligation to pay late charges penalizes, ex lege – "apart from, as contested by the petition, the failure to pay rent or services relating to the use of an apartment within five days after payment is due (§ 697)," – only a lessee who is late in returning things in a business lease of personal property (§ 723 par. 1). Although the nature of social relationships in 1964 was diametrically opposed to the current situation, we can see the establishment of late charges as, above all, the effort of the legislature at the time to find a legally simple instrument which permitted penalizing selected relationships with a special penalty for delay, i.e. different from "default interest." The special nature manifested itself externally primarily in the amount of the penalty, which, in view of the importance of the protected right, was intended to deter the obligated party, with greater urgency, from illegal behavior (a higher threat of penalties), or to have a more palpable effect on his property if he violated his obligations (increased penalization). Thus, these were legal exceptions, including the case of late payment for use of an apartment (today, a lease) and services relating to it. Even the post-November 1989 legislature did not

question, in 1991, that violation of the duty to pay rent and services relating to the use of an apartment (rent in largo sensu) had to be penalized differently – more strictly – than other financial debts. Therefore it made us of the already established, consistently perceived legal instrument – the late charges, modified in the spirit of the new social-economic conditions.

The Senate added that in terms of constitutionally protected right the landlord (owner) – tenant relationship has internal conflicts. This is caused by the conflict of the public interest in protection of the right to housing with the interest in protection of the (landlord's) property right. This is also an asymmetrical relationship, in which the tenant was given an advantage, in the interests of the functionality or continuation of the lease relationship to an apartment, through traditional means, e.g. the [landlord's] ability to give notice terminating the lease only on the basis of an exclusive list of grounds. In the Senate's opinion we must realize that the tenant received this non-standard advantage only at the price of non-ordinary limitation of (the landlord's) property rights. Thus, based on these considerations, the existence of different treatment of the parties of a lease relationship by setting different legal means – balancing the powers on both sides and thus stabilizing the relationship as such – is possible or even desirable. The late charge can be included in the category of "so-called" stabilizers. Whereas the landlord fulfills his primary obligation (delivering the apartment for use), the tenant does not fulfill his (use of the apartment in exchange for rent). Thus, the late charges, as a penalty for late payment of rent, can not, according to the defined criteria, be compared to the penalty tied to returning an overpayment, i.e. default interest. The landlord's debt, resulting from not returning an overpayment must be considered a debt from "ordinary" unjustified holding (not returning) of money, which is, in a lease relationship – compared to the abovementioned primary obligation of the tenant – "a level lower."

Finally, the Senate stated that in comparable cases (a debt of rent in largo sensu, or "overpayment" of rent), under this model the actual higher financial penalty falls on the tenant; therefore, we can say that the relevant government directive transmits the statutory principle of stricter penalization of the party from whom increased responsibility for his conduct can be justifiably demanded, into the sub-statutory level in a constitutional manner. In other matters, i.e. as regards the questions of the amount of the late charge or methods of calculating it, and other economic aspects of the entire issue, the Senate states that it does not have competent authority to comment without thereby inappropriately violating the principle of separation of powers. It follows that the problem of evaluating constitutionality in the disputed matter shifts to the sub-statutory level. The Senate also pointed out that § 697 of the Civil Code provides not only an obligation to pay the penalty, but also extends the deadline for payment of rent and payments for services provided with use of an apartment by five days. Annulling this provision would thus counterproductively lead to dismantling an age-old principle, and in practical terms, worsen the tenant's position. The Senate considers establishing different institutions for cases of late payment of a monetary debt, i.e. in one case late charges, in the other case default interest to be objectively determined, acceptable, proportionate, rationally justifiable, and therefore not unequal at a constitutional level. Thus, this difference does not create a relevant unconstitutional moment due to which § 697 of the Civil Code should

be annulled. The Senate also added that “the general courts should, in response to petitions to annul statutes or individual provisions or statute, stick to se legal argumentation, which should be as persuasive as possible, especially where a lower court contests a provision which has been used on a long-term basis and frequently applied by higher (supreme) courts without the slightest doubts about its constitutionality.”

The Ministry of Justice, in its statement, signed by the deputy minister of justice, JUDr. R. P., basically agreed with the petitioner’s opinion. It said that § 697 of the Civil Code established an evident inequality between the rights of the tenant and the landlord, as regards the legal effects of late payment, in view of the marked difference between the amounts of late charges (tenant’s obligation) and default interest (landlord’s obligation). This inequality – affecting the tenant – can not be defended on the basis of an attempt to protect landlords from non-paying tenants, because that protection is available through other legal means (e.g the possibility of terminating a lease, as argued by the petitioner, the District Court in Cheb). In the opinion of the Ministry of Justice one likewise can not defend the opinion that the landlord especially needs protection in a lease relationship, to the detriment of the tenant’s rights.

The Constitutional Court – with the consent of all parties to the proceedings – waived oral hearings, because it considered that such hearings could not be expected to clarify the matter further.

III.

The Constitutional Court is required – under § 68 par. 2 of the Act on the Constitutional Court, no. 182/1993 Coll. – to first consider the question whether the statute, whose provision is claimed to be unconstitutional, was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. However, the contested Civil Code provision was passed and issued during the period of the previous constitutional regulation of the legislative process and division of legislative competence between the then-existing Czechoslovak federation and the republics (Act no. 509/1991 Coll. of 5 November 1991, which amends, supplements and adjusts the Civil Code, with effect as of 1 January 1992), so the Constitutional Court did not evaluated the fulfillment of the abovementioned requirements. In the case of legal regulations issued before the Constitution of the CR went into effect the Constitutional Court reviews – under settled case law – only their consistency with the existing constitutional order, and not the constitutionality of the process whereby they were created and the observance of norm-creating competence (see, e.g. judgment file no. Pl. US 10/99, Collection of Decisions of the Constitutional Court of the CR, volume 16, p. 119).

IV.

The Constitutional Court thus turned to evaluating the content of the contested statutory provision in terms of its consistency with the constitutional order of the Czech Republic [Art. 87 par. 1 let. a) of the Constitution of the Czech Republic), § 68 par. 2 of the Act on the Constitutional Court.

The provision of § 697 of the Civil Code, which the petitioner contests and proposes to be annulled, reads: "If the tenant fails to pay the rent or pay for for services relating to the use of the apartment within five days after they are due, he is required to pay the landlord late charges."

In resolving the present case, we can not overlook, first of all, that the cited statutory provision is closely related to § 517 par. 2 of the Civil Code – as one of the general provisions of the law of obligations (Part VIII. of the Civil Code) – which establishes the claim of a creditor (landlord versus tenant) to default interest if a debtor is late with payment of a monetary debt, as well as – especially – to the relevant implementing regulation to § 517 par. 2 of the Civil Code, which is government directive no. 142/1994 Coll., which sets the levels of default interest and the late charges under the Civil Code. In the directive, especially for implementing § 517 par. 2 of the Civil Code, the government directed, in § 1, that "the level of default interest is, per annum, twice the Czech National Bank discount rate in effect as of the first day that payment of the monetary debt is late" and in § 2, that "the level of the late charges is 0.25% of the owed amount per day, but at least CZK 25 for each month of delay, or part thereof." However, it must be noted here that in the interim government directive no.163 of 23 March 2005 was issued, which amends government directive no. 142/1994 Coll. The cited § 1 was amended as follows: "The level of default interest equals, per annum, the Czech National Bank repo rate, plus seven percentage points. In each half of the calendar year in which the debtor's lateness continues, the level of default interest depends on the level of the Czech National Bank repo rate and in effect on the first day of the relevant half year."

The provision of § 517 par. 2 of the Civil Code reads: "If the default concerns performance of a monetary obligation, (debt), the creditor shall have the right, in addition to performance of the obligation, to claim interest on the amount in default, unless the debtor is obliged by virtue of this Code to pay late charges; implementing regulations (legal provisions) shall stipulate the rate of interest on the amount in default and the computation of late charges). It is evident from the existing text, or from the petitioner's constitutional law arguments, that the petition basically contests the legal situation which resulted from the regulation established (at the time the petition was filed) by a sub-statutory regulation, issued on the basis of authorization contained in § 517 par. 2 of the Civil Code (…implementing regulations shall stipulate the rate of interest on the amount in default and the computation of late charges). Here we can only note that the government is authorized, under Art. 78 of the Constitution, to issue directives, for implementing a statute, and within its bounds. Thus, an express authorization to issue a directive is not

necessary for the norm-creating competence of the government – in contrast to the legal regulations of ministries, other administrative offices, and local government bodies, under Art. 79 par. 3 of the Constitution. However, this changes nothing about the fact that the Constitutional Court, being bound by the requested verdict in the petition, can evaluated the contested provision of § 697 of the Civil Code only in terms of the consistency or inconsistency with the constitutional order of the Czech Republic of that provision alone, and not the implementing regulation. (Note: For completeness we can add – as stated above, that the cited government directive no. 142/1994 Coll. was issued to implement § 517 par. 2 of the Civil Code, not expressly to implement the contested § 697 of the Civil Code, although, read comprehensively, it also implements the latter.) However, the possible unconstitutionality of a sub-statutory implementing regulation – even if authoritatively determined to exist – can not in and of itself serve as grounds for annulling a specific statutory provision (if we also set aside the situation which has arisen in the interim due to the abovementioned amendment of the sub-statutory regulation in question). The Constitutional Court can, under § 70 par. 3 of the Act on the Constitutional Court – even without a petition – state which implementing regulations cease to be in effect simultaneously with a statute which is annulled, but not – in essentially the reverse process – derive possible unconstitutionality of the contested statutory provision from an alleged inequality (in this case established by the different level of default interest and late charges), which is only established in the implementing regulation (the cited government directive) and on that basis annul the contested statutory regulation.

Thus, the Constitutional Court considers – in terms of the contested statutory provision, and taking into account the petitioner's objection – whether it is constitutionally acceptable, under the constitutional principle of equality applied by the petitioner, to set a legal regime which is to a certain degree different for the case of a tenant who is late with payment of rent or payment for services provided with use of an apartment, on the one hand, and the case of a landlord who is late with fulfillment of a monetary debt, on the other hand. The Constitutional Court has interpreted this constitutional principle in a number of its judgments. In them, it agreed with the understanding of the equality principle as it had already been expressed by the Constitutional Court of the CSFR (Collection of Decisions of the Constitutional Court of the CSFR, judgment no. 11, 1992), which stated that "it is up to the state, in the interests of securing its functions, to decide that it will provide fewer advantages to one group than to another. However, even here it may not act completely arbitrarily … If the law provides a benefit to one group, and at the same time thereby imposes disproportionate obligations on another, this may be done only on the basis of the public values." The Constitutional Court thereby rejected an absolute concept of the principle of equality; it also stated that the equality of citizens can not be understood as an abstract category, but as relative equality, as understood by all modern constitutions. It thereby shifted the principle of equality into the area of constitutionally acceptable factors for differentiating subjects and rights. It sees the first factor to be the elimination of arbitrariness; the second factor follows from the legal opinion stated in the judgment file no. Pl. US 4/95 (Collection of Decisions of the Constitutional Court of the CR, volume 3, p. 209), which states: "inequality in social relationships, if it is to affect fundamental human rights, must reach a level of intensity which undermines, at least in a certain regard, the very essence of equality. This generally happens if the violation of equality is connected to violation of another fundamental right, for example, 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." Thus, the second factor in evaluating the unconstitutionality of a legal regulation which allegedly creates inequality is that it affects some other fundamental right or freedom (Note: the Constitutional Court has summarized these conclusions, with reference to specific judgments, in, for example, the matter file no. Pl. US 33/96, Collection of Decisions of the Constitutional Court of the CR, volume 8, pp. 170-171).

Based on the foregoing general definition of requirements for the legislature's constitutional approach to the subjects of the obligation relationship being reviewed, the Constitutional Court concluded that it would be difficult to consider the contested § 697 of the Civil Code to be unconstitutional. The difference in the penalties affecting the parties to the lease relationship – which basically consists of the landlord's obligation to pay default interest and the tenant's obligation to pay late charges, or the ensuing ability to set different levels of default interest and late charges by an implementing regulation – does not establish unconstitutionality. Default interest and late charges, as appurtenances to a receivable, generally serve as instruments to increase the legal certainty of creditors.

If a debtor is in default, the content of the obligation changes, and the debtor is also required to pay default interest or late charges if the law so provides (§ 517 par. 2 of the Civil Code). A certain difference in the amounts of these penalties, or a certain difference in how they are calculated, is rationally justifiable in the reviewed matter, not only under the principle of equality, but also in terms of the principle of proportionality. At the present time the legal framework for the landlord-tenant relationship in general is skewed in favor of the tenant (a protected lease, de facto regulation of rent, etc.). Therefore, to a certain extent one can agree with the arguments in the statement from the Senate of the Parliament of the CR; the landlord-tenant relationship is a unique legal relationship, asymmetrical in a certain way, in which, in the interests of functionality of an apartment lease, the tenant was and is given an advantage through traditional means such as the [landlord's] ability to terminate the lease only for certain enumerated reasons. The existence of a differentiated approach to the subjects of a lease relationship by setting different legal means which stabilize the legal relationship as such is therefore possible. While the landlord performs his primary obligation (delivering the apartment for use), the tenant does not perform his (use of the apartment in exchange for rent); therefore, the late charges for late payment of rent can not be without anything further compared to a penalty against the landlord connected with, for example, returning overpayment of rent, i.e. default interest, because this obligation of the landlord is of a secondary nature and is not a fundamental element of the lease relationship. Therefore, the Constitutional Court believes that establishing the contested special provision of § 697 in the Civil Code was not arbitrary conduct by the legislature, and that the cited statutory framework which potentially permits giving, through a subsequent sub-statutory regulation, one category of parties to a legal relationship an advantage compared to the other category, does not lead to violation of the constitutional principle of equality, or to violation of the principle of proportionality (note: although the petitioner does not expressly cite it). The legislature must have a certain amount of discretion to set such preferential treatment. Therefore, it does not appear to the Constitutional Court that this approach, in this case permitting

giving the landlord a certain advantage, is not based on reasonable and objective grounds. If a certain disproportionality or inequality is established, this is – in view of the particular positions of the landlord and tenant – a constitutionally acceptable disproportionality or inequality, and a legal situation which is not discriminatory.

Therefore, these conclusions are not inconsistent with judgment file no. Pl. US 15/02 (Collection of Decisions of the Constitutional Court, volume 29, judgment no. 11), to which the petitioner also refers. In it the Constitutional Court stated, among other things, that a certain legal framework, which gives an advantage to one group or category of persons compared to others, can not in and of itself, without anything further, be described as violation of the principle of equality. The legislature has a certain amount of discretion to establish such preferential treatment. In doing so it must take care that the preferential approach is based on objective and reasonable grounds (a legitimate aim of the legislature) and that there be a proportional relationship between that aim and the means used to achieve it (legal advantages). It is then difficult to conclude that the contested statutory provision violates these principles. This is sufficiently evident from the forgoing arguments in this judgment.

In general, we can add that the possibly asymmetry, originating in the period of the totalitarian regime, and the residue from that period which continues in the present have no place – in principle – in a democratic law-based state. This, however, would require comprehensively evaluating the entire legal framework for the positions of landlord and tenant; of course, the Constitutional Court is not authorized to do so in these proceedings, in view of the content and scope of the petition. The primary responsibility in this regard lies in the area of legislation.
For all the foregoing reasons, the Constitutional Court concluded that § 697 of the Civil Code is not inconsistent with the principle of equality under Art. 1 of the Charter, which the petitioner cites, or with other principles arising from the constitutional order of the Czech Republic.

Therefore, the Constitutional Court, in accordance with § 70 par. 2 of the Act on the Constitutional Court, denied the petition.

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

Brno, 14 March 2006

Dissenting Opinion
of judge Jiří Nykodým

In my dissenting opinion to judgment file no. Pl. US 20/05, I expressed the opinion that the special regulation of apartment leases as a whole is inconsistent with the constitutional order. I maintain that opinion, and therefore can not agree with the reasoning of judgment Pl. US 30/04. If § 697 of Act no. 40/64 Coll., the Civil Code, is evaluated in isolation, there is nothing about it that can be found inconsistent with the constitutional order. It is a completely indifferent provision, which provides that if a tenant does not make timely payment of rent or services relating to the use of an apartment, he shall pay late charges and not default interest. It does not establish inequality, as the petitioner claims, because it says nothing to the effect that there must necessarily be a difference between the amount of default interest and late charges. The fact that such a difference exists results only from the implementing regulation which sets the rate of default interest and the level of late charges. Therefore, insofar as the petition for annulment was aimed against the cited statutory provision, it should have been denied as obviously unsubstantiated.

The fact that a provision was added to the Civil Code in 1964 which differentiated default interest and late charges was not at all motivated by the grounds set forth in the reasoning, but by protection of socialist ownership, because at that time practically all housing was owned by the state, or by socialist organizations, i.e. they were under socialist ownership. Justifying the constitutionality of the contested provision by pointing to the fact that it balances the difference between performance of the primary obligation of the landlord, who performs it by delivering an apartment to the tenant for use, and the primary obligation of the tenant, who is obligated to perform his primary obligation of paying rent, whereas the landlord's returning of overpayment is not a primary obligation, and therefore does not need to be penalized by an increased penalty in the form of late charges, is extremely unpersuasive. The contested provision does not address whether late charges are to be higher than default interest, so this provision permits it to be lower. The fact that late charges are at present higher than default interest is therefore not a result of the contested provision, but of the implementing regulation, which, however, is not contested by the petition. The arguments in the judgment's reasoning are thus quite unrelated to the subject matter of the proceedings, which is § 697 of the Civil Code, and not government directive 142/94 Coll., which regulates the rate of late charges and default interest.

Dissenting Opinion
of judge Eliška Wagnerová

I have a dissenting opinion on the reasoning in the majority decision, for the following reasons:

One the one hand, I maintain the opinion which I stated in my dissenting opinion to judgment file no. Pl. US 20/05. I also believe that in the case of legal regulation of apartment rent individual provisions can not be evaluated individually, but only in the context of the entire legal framework for that subject matter.

In the present matter, I believe that the late charges for late payment of rent or services relating to it should fundamentally be subject to agreement by the parties, which would reflect their free will. In other words, in this area the legislature does not, in my opinion, have discretion to pass a mandatory statutory regulation. Insofar as I did not vote to annul this provision, it is only because annulling would, in the present situation, worsen the already unbalanced position of apartment landlords.

Brno, 14 March 2006

Dissenting Opinion
of judges Vlasta Formánková and Stanislav Balík

It is too bad that one can not step into the same river twice, and that historical “ifs” do not apply.

Couldn’t the petitioner in the matter Pl. US 20/05, in the proceedings before it, also have applied § 697 of the Civil Code, which, upon “second measurement” could have led to different definition of the parties and secondary parties in the matter Pl. US 20/05 and in this matter?

Acta est fabula, and so we can only add that as to the rest we concur with the dissenting opinion of Jiří Nykodým.