2009/04/07 - PL. ÚS 35/08: CONDITION OF IRREPROACHABILITY IN TRADE LICENCING ACT

HEADNOTES

1. If a statute may, pursuant to Art. 26 para. 2 of the Charter of Fundamental Rights and Freedoms (hereinafter "Charter"), lay down conditions and restrictions upon the performance of certain professions or activities, within that framework also lay down restrictions upon the fundamental right to engage in commercial activity under Art. 26 para. 1, in conjunction with Art. 41 para. 1, of the Charter, it must also, in the sense of Art. 4 para. 4 of the Charter, preserve the essence and significance of the given fundamental right. The Constitutional Court announced this thesis as early as its Judgment No. Pl. ÚS 24/99 of 23 May 2000 (N 73/18 SbNU 135; 167/2000 Sb.), in which it declared the following: „However much the fundamental right in Art. 26 para. 1 of the Charter can, in the sense of Art. 41 para. 1 of the Charter, be claimed only within the confines of the laws implementing those provisions, the legislature, or norm creator, is also subject to the boundary laid down in Art. 4 para. 4 of the Charter, which provides that, in employing the provisions concerning limitations upon the fundamental rights and freedoms, their essence and significance must be preserved."

The objective and intention of the condition of irreproachability, restricting the fundamental right to engage in commercial activity, is the protection of the fundamental rights and freedoms of third parties, which can be affected by commercial activity carried out in conflict with the law and good morals. However, this condition must also meet the criterion which flows from the principle of proportionality for the assessment of normative measures that safeguard one, and restrict another, fundamental right or freedom.

By a comparison of two of the normative measures employed in the legal order which define irreproachability vis-à-vis the commission of intentional criminal offenses, the Constitutional Court considers that the rule contested in the petition in part oversteps, in its consequences, the bounds of the objective pursued (that is, by also encompassing cases in which the rational connection between the objective and the normative measure is lacking), and in part, due to its intensity and extent, it restricts the fundamental right with which it comes into conflict to a degree which gives rise to an injury in relation to the third criterion of the test of proportionality, namely weighing the proportionality of the relation.

2. If a given proceeding results in a finding that the given statutory provision is in conflict with the constitutional order, then the rejection on the merits of the petition proposing the annulment of that provision must be interpreted as being a rejection of a petition proposing its inapplicability (§ 70 para. 2 of Act No. 182/1993 Sb., on the Constitutional Court, per analogiam) – if at the decisive time the relevant law had already been repealed by the legislature, the Constitutional Court cannot then annul it as well. If the conclusion is reached that the statutory provision at issue is in conflict with the constitutional order [while meeting the standards which follow for the horizontal effect of fundamental rights and freedoms from judgments No. Pl. ÚS 33/2000, of 10 January 2001 (N 5/21 SbNU 29; 78/2001 Sb.)No. Pl. ÚS 42/03 of 28 March 2006

(N 72/40 SbNU 703; 280/2006 Sb.) and No. Pl. ÚS 38/06 of 6 February 2007 (N 23/44 SbNU 279; 84/2007 Sb.), in other words for the protection of the fundamental rights of third parties), an academic statement of judgment concerning its conflict with the constitutional order is a necessary consequence thereof. The implication of such a statement of judgment is that the statutory provision at issue becomes inapplicable (if it is not merely the statutory provision, that is the legislative measure, but also its objective which is in conflict with the constitutional order); alternatively, the Court might define the conditions under which the objective intended by the legislature can be attained by proceeding in a constitutionally-conforming manner, that is by means of the direct applicability of the constitutional order (§ 70 para. 1 of Act No. 182/1993 Sb., as subsequently amended, per analogiam).
In cases in which, at the decisive time, the relevant statutory provision has already been repealed by the legislature, the purpose of a concrete norm control proceeding can be attained by a statement of judgment declaring the provision's conflict with the constitutional order, and then by the delimitation, in the reasoning of the judgment, of the framework (conditions) for the direct application of the constitutional order (§ 70 para. 1 of Act No. 182/1993 Sb., as subsequently amended, per analogiam). In the matter under adjudication, with regard to Art. 26 paras. 1 and 2, in conjunction with Art. 4 para. 1, of the Charter, the objective pursued by the legislature in § 6 para. 2, lit. a) of Act No. 455/1991 Sb., as amended by Act No. 167/2004 Sb., can be attained, in the proceeding before the ordinary court from which the concrete norm control proceeding arose, by restricting, for the purposes of the Trade Licensing Act, the condition of irreproachability such that it is not met only in the case of those intentional criminal offenses, whether committed separately or concurrently with other criminal offenses, for which was imposed a non-suspended sentence of imprisonment lasting at least one year and whose constituent elements pertain to the object of the entrepreneurial activity, alternatively to entrepreneurial aktivity in general.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On 7 April 2009, the Constitutional Court, in its Plenum composed of Justices Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Jiří Mucha, Jan Musil, Jiří Nykodým, Pavel Rychetský, Eliška Wagnerová and Michaela Židlická, in the matter of the petition of the Regional Court in Plzeň, proposing the annulment of § 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended, without an oral hearing and without the parties being present, decided as follows:

Sec. 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The

Trade Licensing Act), as amended by Act No. 167/2004 Sb., was in conflict with Art. 26 paras. 1 and 2 and Art. 4 para. 4 of the Charter of Fundamental Rights and Freedoms.

REASONING

I.
Description of the Matter and Summary of the Petition

On 21 November 2008, the Constitutional Court received delivery of the petition of the Regional Court in Plzeň proposing the annulment of § 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended.

The petitioner did so in accordance with § 64 para. 3 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, after it had, in connection with its decision-making, came to the conclusion, in conformity with Art. 95 para. 2 of the Constitution of the Czech Republic (hereinafter „the Constitution“) and § 109 para. 1, lit. c) of the Civil Procedure Code, that § 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended, which should be applied in the resolution of matter No. 30 Ca 98/2008, is in conflict with Art. 26 para. 1, in conjunction with Art. 4 para. 4, of the Charter of Fundamental Rights and Freedoms (hereinafter „the Charter“).

In the matter referred to, No. 30 Ca 98/2008, the Regional Court in Plzeň is deciding a suit against the decision of an administrative body concerning the cancellation of a trade license pursuant to § 58 para. 1, lit. a), in conjunction with § 6 para. 1, lit. c) and para. 2, lit. a), of the Trade Licensing Act. According to the administrative body’s findings, the plaintiff in the proceeding before the Regional Court had been convicted in the 22 October 1998 judgment of the Landgericht in Stuttgart, the Federal Republic of Germany, No. 4 KLs 230 Js 8137/98, of the criminal offense of the unauthorized import of a substantial amount of narcotic substances and of the unauthorized trade in substantial amounts of narcotic substances pursuant to § 1 para. 1, § 3 para. 1, No. 1, § 29a para. 1, No. 2, § 30 para. 1, No. 4 of the Act on Drugs, and pursuant to § 25 para. 2 and § 53 of the Criminal Code, of the Federal Republic of Germany, and sentenced to an aggregate punishment of imprisonment of seven years, in other words was convicted of an act which embodies the elements of a criminal offense according to the legal order of the Czech Republic as well, namely of the criminal offense of the unauthorized manufacture and possession of narcotic and psychotropic substances and poisons under § 187 of the Criminal Code. In the proceeding before the court, the defendant administrative body pointed out that it was impermissible to exercise administrative discretion when applying the provisions of § 6 para. 1, lit. c) and para. 2, lit. a) of the Trade Licensing Act, which excludes it in cases of the conviction for intentional conduct and the imposition of a non-suspended sentence of imprisonment of at least one year. By contrast the plaintiff argued there was a violation of Art. 3, in conjunction with Art. 26 para. 1, of the Charter and, as the Constitutional Court has designated it as disproportionate for entrepreneurship in the field of agriculture [Judgment No. Pl. ÚS 38/04 of 20 June 2006 (N 125/41

SbNU 551; 409/2006 Sb.)], called into doubt the acceptability of such a condition of irreproachability for the performance of all trades.

Concurring with the plaintiff's constitutional arguments, the ordinary court in the given matter suspended the proceeding and referred to the Constitutional Court a petition proposing the annulment of the statutory provisions at issue. As grounds for its petition, it asserted conflict between the statutory definition of „irreproachability" in § 6 para. 2, lit. a) of the Trade Licensing Act and Art. 4 para. 4, in conjunction with Art. 26 para. 1, of the Charter.

In the reasoning of its petition, the court referred to the original wording of § 6 para. 2 of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), which provides „for the purposes of this Act, nobody shall be considered irreproachable who has been finally convicted: a) of a criminal offense, the constituent elements of which relate to the object of entrepreneurship; or b) of a criminal offense committed intentionally if, in view of the nature of the trade and the person of the entrepreneur, there is concern he would commit the same or similar offense while carrying on his trade.". It is convinced that this statutory language was in conformity with the Charter, since „it preserves their essence and significance" (Art. 4 para. 4, in conjunction with Art. 26 para. 1, of the Charter) – a restriction on the right to engage in commercial activity was rigorously tied to activity which related to criminal activity, what is more, it emanates from society's substantiated interest that, at least for a certain period, a convicted person be denied the possibility to engage in activity in the field in which she violated the interests protected in the Criminal Code. Despite the mentioned assertion, the Regional Court pointed out that an administrative body's ability to cancel a trade authorization, in situations where the ordinary court deciding on guilt and punishment for certain conduct does not impose the punishment of prohibiting certain activity, may give rise to a conflict (specifically with reference to possible conflict with Art. 40 para. 1 of the Charter).

The petitioner further refers to the fundamental amendment to the Trade Licensing Act, effected by Act No. 356/1999 Sb. with effect from 1 March 2000, which contained also a newly formulated § 6 para. 2, lit. a), according to which nobody may be considered as irreproachable who has been finally convicted of a criminal offense committed intentionally and given a non-suspended sentence of imprisonment of at least one year; at the same time, in terms of substance, this rule is identical with the current rule, as the subsequent amendments (Act No. 167/2004 Sb., Act No. 130/2008 Sb.) resulted in a purely formal change in formulation. Regarding the purposes of this fundamental amendment, the Regional Court refers to the Explanatory Report on the Bill, eventually adopted as No. 356/1999 Sb., which provides that this objective is „to clarify the existing insufficient and ambiguous criteria, which tied the assessment of irreproachability to the connection between the constituent elements of the criminal offense and the object of the entrepreneurship or to the existence of concern that criminal activity would be repeated in carrying on the trade", and which further provides that such an approach is followed „in view of the currently customary rules for irreproachability in the Czech legal order"; whereas, „according to the existing legal rule, irreproachability is assessed according to the connection of the constituent elements of the criminal offense and the specific object of

entrepreneurship, alternatively according to concern of repeated criminal activity in carrying on the trade, which does not allow for restrictions on entrepreneurship by persons who have committed criminal activities relating to entrepreneurship only generally“. Finally, the preceding rule was criticized in the Explanatory Report for „allowing, within the framework of administrative discretion, an overly subjective evaluation.“

In relation to the grounds of the contested statutory rule formulated in this way, the Regional Court objects that the previous legal definition was not in any sense insufficient or ambiguous, and also refers to the fact that, as far as concerns the criminal offense‘s connection with a specific activity, an analogous rule is contained, for ex., in the Criminal Code in relation to the imposition of the punishment of prohibition of an activity. It rejected the line of argument in the Explanatory Report on the Bill for the existing wording of the contested statutory provision and asserts that precisely the opposite was the case – that the previous rule allows for the specific features of a concrete and singular case to be taken into account. It also draws attention to the possibility that administrative offices be methodically directed when applying § 6 of the Trade Licensing Act. The petitioner therefore considers the selected legislative measure to be disproportionate in relation to the attainment of the objective pursued. It urges that the contested statutory rule does not take into account the person of the specific convicted individual, the type of entrepreneurial activity, the objective of the punishment, its effect on the convicted individual after release from prison, and the necessity of his integration into ordinary civic life. In addition, it also highlights the possible conflict between the statutory provision at issue and Art. 40 of the Charter.

For all the reasons thus set forth, the Regional Court in Plzeň proposes that, due to its conflict with Art. 4 para. 4 and Art. 26 para. 1 of the Charter, § 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended, be annulled on the day this Judgment of the Constitutional Court appears in the Collection of Laws.

II.
Summary of the Main Parts of the Statements of Parties to the Proceeding

In accordance with § 42 para. 4 and § 69 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, the Constitutional Court sent the petition at issue to the Assembly of Deputies. In the statement of the Assembly of Deputies of the Parliament of the Czech Republic, delivered to the Constitutional Court on 5 January 2009, its Chairman, Ing. Miloslav Vlček, limited himself merely to a summary of data and of the procedural phases of the adoption of Act No. 455/1991 Sb., as well as of Act No. 356/1999 Sb. However much one certainly can welcome in general a laconic manner of expression, where the statement lacks any reference whatsoever to the intent of the legislature derivable from the accompanying documents on the adoption of the Act, a question arises as to the meaning and intent of the statement on the petition under adjudication made by this party to the proceeding.

In accordance with § 42 para. 4 and § 69 of Act No. 182/1993 Sb., as subsequently amended, the Constitutional Court sent the petition at issue also to the Senate of the Parliament of the Czech Republic. In the introduction to its statement, delivered to the Constitutional Court on 29 December 2008, its Chairman, MUDr. Přemysl Sobotka, summarized the legislative development of the rules in § 6 para. 2, lit. a) of the Trade Licensing Act, that is, starting with the adoption of Act No. 455/1991 Sb., through the adoption of Acts No. 356/1999 Sb. and No. 167/2004 Sb., up to the adoption of Act No. 130/2008 Sb.; it expressed therein doubts as to whether one could unambiguously deduce from the requested relief which version of the Trade Licensing Act is proposed to be annulled, since the wording proposed to be annulled, § 6 para. 2, lit. a) of the Trade Licensing Act, is designated „as subsequently amended".

As to other matters, the statement contains the averment that, as follows from the stenographic recording of the debate on Senate Document No. 356/1999 of the bill, which amends Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), the term, irreproachability, was referred to before the full Senate in the report given by the Minister of Industry and Trade, the initiator of this bill, which asserted that it concerns „a toughening up of the general conditions for carrying on a trade, restricting entrepreneurship by persons convicted of serious criminal offenses or having tax arrears." Further, the Common Rapporteur's Report, which was submitted by the Rapporteur from the Committee on National Economy, Agriculture and Transport, stated, among other things, that „the objective was, in particular, to newly define the conditions of entry into entrepreneurship for natural and legal persons and to expand the existing condition of no criminal record and no convictions of intentional criminal offenses, for which was imposed a non-suspended sentence of imprisonment of longer than one year, or of criminal offenses, the constituent elements of which are related to entrepreneurship". The Chairman of the Senate observed in this context that, neither when considering the bill in individual committees nor by the full Senate were any doubts heard as to whether the rules concerning the general conditions for carrying on a trade were in harmony with the relevant provisions of the Charter, and declared that identically with the committee resolutions, the full Senate, on 9 December 1999 at its 12th Session, adopted resolution (No. 232), by which it approved the bill in the same wording it had when transmitted by the Assembly of Deputies.

The Senate debated another bill amending Act No. 455/1991 Sb. (Senate Document No. 2004/292), although, according to the party to the proceeding, it appeared from the debate that had taken place, in individual committees and before the full Senate, that certain of the Senators considered the proposed rule relating to blameless character as conflicting with the Charter (the full Senate then, at its 14th Session on 25 March 2004, by its Resolution No. 364, approved the bill with the same wording it had when transmitted by the Assembly of Deputies). According to it, the same applied as well for the debate on the last bill amending Act No. 455/1991 Sb. (Document No. 211/2008); and the full Senate, by its Resolution No. 333 adopted at its 12th Session of 20 March 2008, approved the bill in the same wording it had when transmitted by the Assembly of Deputies.

III.
Dispensing with an Oral Hearing

Pursuant to § 44 para. 2 of Act No. 182/1993 Sb., the Constitutional Court may, with the consent of the parties, dispense with an oral hearing if further clarification of the matter cannot be expected from it. In view of the fact that both the petitioner, in its 18 November 2008 petition, and the parties to the proceeding, in the 1 April 2009 communication of the Chairman of the Assembly of Deputies of the Parliament of the Czech Republic and the 31 March 2008 communication of the Chairman of the Senate of the Parliament of the Czech Republic, expressed their consent to dispensing with an oral hearing, and inasmuch as the Constitutional Court is of the view that further clarification of the matter cannot be expected from such a hearing, an oral hearing was dispensed with in the matter under adjudication.

IV.
The Conditions of the Petitioner‘s Standing

The petition proposing the annulment of § 6 para. 2, lit. a) of the Trade Licensing Act was submitted by the Regional Court in Plzeň pursuant to § 64 para. 3 of Act No. 182/1993 Sb., as subsequently amended.

As has already been averted to above, in the matter before the Regional Court in Plzeň, No. 30 Ca 98/2008, the plaintiff, in his suit, is seeking the annulment of the 26 June 2008 decision, No. VVŽÚ/5727/08, of the defendant administrative body, namely the Regional Office of the Plzeň Region, the regional trade licensing office, which rejected on the merits his appeal against the 17 April 2008 decision of the Municipal Office in Domažlice, No. OŽ-6414/2007-11356/2008/See, on the cancellation of his trade authorization in accordance with § 58 para. 1, lit. a), with consideration given to § 6 para. 1, lit. c) and para. 2, lit. a), of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), and affirmed the first instance administrative decision.

After the Regional Court in Plzeň, in connection with its decision-making, reached the conclusion, in conformity with Art. 95 para. 2 of the Constitution, that § 6 para. 2, lit. a) of the Trade Licensing Act, which should be applied in resolving matter No. 30 Ca 98/2008, is in conflict with Art. 4 para. 4 and Art. 26 para. 1 of the Charter, by its resolution of 18 November 2008, No. 30 Ca 98/2008-19, it suspended the original proceeding under § 48 para. 1, lit. a) of the Civil Procedure Code, and submitted to the Constitutional Court the norm control petition under adjudication.

The purpose of concrete norm control pursuant to Art. 95 para. 2 of the Constitution is judicial review of the constitutionality of a statute, alternatively individual provisions thereof, which an ordinary court should apply in considering and deciding a certain specific matter. This purpose also delimits an ordinary court’s latitude to proceed in accordance with Art. 95 para. 2 of the Constitution, which is limited solely and exclusively to the substantive and procedural law

relevant to the matter under adjudication. Thus the procedural standing conditions for an ordinary court under § 64 para. 3 of Act No. 182/1993 Sb., on the Constitutional Court, as subsequently amended, is that the statute, or individual provision thereof, the annulment of which is proposed, bear such a relation to the original proceeding at issue, that it constitutes for the matter under adjudication the grounds for decision on the part of the ordinary court.

As follows from the description of the proceeding at issue before the ordinary court, it can be affirmed that the petitioner meets the conditions of standing for a norm control proceeding.

V.
The Relief Sought in the Petition, the Wording of the Contested Legal Enactment, and the Assessment of whether it is Well-Founded to Reject the Petition on Preliminary Grounds in accordance with § 66 para. 1 of Act No. 182/1993 Sb.

According to the relief sought in the petition, the Regional Court in Plzeň asked the Constitutional Court to annul, in its judgment, „§ 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act)“.

Sec. 6 para. 2, lit. a) of the Trade Licensing Act, valid and in effect until 30 June 2008 (that is, until the entry into effect of Act No. 130/2008 Sb.), in other words, Act No. 455/1991 Sb., as amended by Act No. 167/2004 Sb., read as follows: „For the purposes of this Act, a person cannot be considered irreproachable if he has been finally convicted and given a non-suspended sentence of imprisonment for a criminal act committed intentionally, whether separately or concurrently with another criminal offense, for which he was given a non-suspended sentence of imprisonment of at least one year“. Art. I, point 16 of Act No. 167/2004 Sb. provided the following: »§ 6 para. 2, litera a) shall read: „a) given a non-suspended sentence of imprisonment for a criminal act committed intentionally, whether separately or concurrently with another criminal offense, and was given a non-suspended sentence of imprisonment of at least one year,“«.

The wording of the statutory provision under adjudication, as amended by Act No. 130/2008 Sb. (Art. I, point 9) is then the following: „For the purpose of this Act, a person cannot be considered irreproachable if he has been finally convicted of an intentional criminal offense, whether committed separately or concurrently with another criminal offense, for which he was given a non-suspended sentence of imprisonment of at least one year, or“.

According to § 75 para. 1 of the Code of Administrative Justice, when reviewing a decision, the Court proceeds on the basis of the factual and legal situation which prevailed at the time the administrative body decided. It follows therefrom that, in the matter considered and decided by the ordinary court, the relevant legal provision is § 6 para. 1, lit. a) [a mistake, no?] of the Trade Licensing Act, in the wording valid and in effect until 30 June 2008.

In the meantime the relevant statutory provision was amended or repealed. In its Judgment No. Pl. ÚS 38/06 of 6 February 2007 (N 23/44 SbNU 279; 84/2007 Sb.),

the Constitutional Court gave its general views on the consequences of such a situation. In that case it made primary reference to Judgment No. Pl. ÚS 33/2000 of 10 January 2001 (N 5/21 SbNU 29; 78/2001 Sb.) and Judgment No. Pl. ÚS 42/03 of 28 March 2006 (N 72/40 SbNU 703; 280/2006 Sb.), which provided as follows: ". . . if an ordinary court judge comes to the conclusion that the statute which should be applied in the resolution of a matter (that is, not only one which is valid at that time, but also one no longer valid yet still applicable) is in conflict with a constitutional act, it is required to submit the matter to the Constitutional Court (Art. 95 para. 2 of the Constitution). The Constitutional Court considered that a refusal to provide assistance to the ordinary court by its decision on the constitutionality or unconstitutionality of the applicable statute would give rise to an irresolvable situation of an artificial legal vacuum; it characterized an ordinary court's decision on the unconstitutionality of the applied provisions as a procedural step in conflict with the Constitution, specifically in conflict with the principle of a concentrated constitutional judiciary (Art. 83 and Art. 95 paras. 1 and 2 of the Constitution). Since this approach opens the door to assessing prior legally-relevant conduct (or legally-relevant events) in accordance with subsequent, yet constitutionally-conforming, legal rules, and thus embodies the attributes of genuine retroactivity, the Constitutional Court fundamentally restricted this approach to situations susceptible to regulation by means of genuine retroactivity [see also Judgment No. Pl. ÚS 21/96 of 4 February 1997 (N 13/7 SbNU 87; 63/1997 Sb.)] and declared that it follows from the principle of the protection of citizens' trust in the law that the principle that retroactivity is impermissible does not apply to the retroactive application of legal norms which do not represent an encroachment upon legal certainty or acquired rights; the given thesis, in terms of the classification of fundamental rights and freedoms with regard to their possible addressees, applies to cases in which this addressee is a public authority. According to the Constitutional Court, in cases where it declares unconstitutional an already repealed act and assesses, in accordance with constitutionally-conforming legal rules with effect ex tunc, prior legally-relevant conduct on the part of public authorities, such genuine retroactivity does not give rise to a violation of the principle of the protection of citizens' trust in the law, or a possible encroachment upon legal certainty or acquired rights. In its Judgment No. Pl. ÚS 38/06, the Constitutional Court also drew attention to the fact that a differing situation arises in cases of the horizontal effect of fundamental rights and freedoms, in which it is necessary to apply, in relation to third parties, the principles of the protection of citizens' trust in the law, legal certainty, and acquired rights: an unrestricted application of the approach based on the interpretation of Art. 95 para. 2 of the Constitution contained in Judgment No. Pl. ÚS 33/2000, affirmed in Judgment No. Pl. ÚS 42/03 (see all above), would thus establish genuine retroactivity in relation to such third parties, and consequently be in conflict with the principle of the law-based state (Art. 1 para. 1 of the Constitution). The Constitutional Court has accepted, as the single possible exception to the prohibition of retroactive effect of legal norms in norm control proceedings with respect to the horizontal effect of fundamental rights and freedoms, the protection of values which fall within the framework of the substantive core of the Constitution under its Art. 9 para. 2; the conditions of their protection, even at the price of making an exception to the prohibition on genuine retroactivity, are contained in the famous „Radbruch formula".

From what has been stated, the prayer for relief in this case cannot be interpreted as other than a „petition proposing the annulment“ of § 6 para. 2, lit. a) of the Trade Licensing Act valid and in effect until 30 June 2008. The statutory provision under adjudication governs a legal relation in which the addressee of the asserted grounds of unconstitutionality (Art. 4 para. 4 and Art. 26 para. 1 of the Charter) is a public authority, and not a private law subject. Accordingly, in the decided matter the conditions are met for a concrete norm control proceeding under Art. 95 para. 2 of the Constitution in the sense of the proposition of law enunciated by the Constitutional Court in its judgments No. Pl. ÚS 33/2000, No. Pl. ÚS 42/03 and No. Pl. ÚS 38/06 (see all above), so that it finds no reason to reject the petition on preliminary grounds pursuant to § 66 para. 1 of Act No. 182/1993 Sb.

Finally, the question arises at this juncture as to the relevance that a legislative change has for norm control proceedings. In its Judgment No. Pl. ÚS 15/01 of 31 October 2001 (N 164/24 SbNU 201; 424/2001 Sb.), the Constitutional Court gave its view on this issue, on the consequences for proceeding pursuant to § 66 para. 1 and § 67 para. 1 of Act No. 182/1993 Sb., of a change in the statutory provision in a norm control proceeding, namely, that a change of the proposed statutory provision constitutes grounds for rejecting the petition on preliminary grounds, or for dismissing the norm control proceeding, solely when it is decisive for the assessment of the constitutionality of that provision. The Constitutional Court subsequently affirmed this proposition of law in a number of its further judgments [No. Pl. ÚS 38/04 (see above), Judgment No. Pl. ÚS 43/04 of 14 July 2005 (N 139/38 SbNU 59; 354/2005 Sb.), Judgment No. Pl. ÚS 5/05 of 4 April 2006 (N 77/41 SbNU 11; 303/2006 Sb.), and No. Pl. ÚS 38/06 (see above)]. However, this situation differs from the mentioned one, as there was not a mere amendment, rather the contested provision was repealed in its entirety and replaced with a new provision (or new legal enactment); and the situations differ even if they are formulated in an identical manner. Since the normative existence of a legal enactment (its validity) is constituted by the unity of the norm-creator’s intention and the manifestation thereof (the publication of the enactment), two legal enactments that are identical in content, but consecutive in time, do not have normative identity (the identity of their validity). On the basis of this proposition of law, the Constitutional Court has, in analogous cases, even applied § 67 para. 1 (alternatively § 66 para. 1) of Act No. 182/1993 Sb. [see, for ex., Resolution No. Pl. ÚS 39/04 (not published in the SbNU; accessible at http://nalus.usoud.cz)].

The matter under adjudication also concerns a dissimilar case. The amendment to the Trade Licensing Act effected by Act No. 130/2008 Sb. did not just amend a part of § 6 para. 2, lit. a) of the Trade Licensing Act, rather the previous wording was repealed in its entirety and replaced by new wording (and that would be so regardless of whether the new wording contained changes that are relevant in terms of the grounds for adjudicating the constitutionality of the entire provision). From this follows the conclusion that, in spite of an identical substance, due to the absence of unity of the norm-creator‘s intention and manner of expressing it, the requirements have been met in the decided matter for a concrete norm control proceeding pursuant to Art. 95 para. 2 of the Constitution in the sense of the proposition of law enunciated by the Constitutional Court in its judgments No. Pl. ÚS 33/2000, No. Pl. ÚS 42/03 and No. Pl. ÚS 38/06 (see all above), that is, the constitutional review of § 6 para. 2, lit. a) of the Trade Licensing Act, valid and in

effect until 30 June 2008.

VI.
The Constitutional Conformity of the Exercise of Competence and of the Legislative Process

In conformity with the provisions of § 68 para. 2 of Act No. 182/1993 Sb., as subsequently amended, in norm control proceedings the Constitutional Court is obliged to assess whether the contested statute, or individual provisions thereof, alternatively some other legal enactment, or individual provisions thereof, was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally-prescribed manner.

As was ascertained from the Assembly documents and stenographic records, as well as from the statements of parties to the proceeding, at its 27th Session on 24 February 2004, the Assembly of Deputies approved, in the 3rd reading by its Resolution No. 921, the bill for the act at issue, that is, Act No. 167/2004 Sb., which Amends Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as subsequently amended, and certain related statutes, and that of the 186 Deputies present, 130 voted in favor of its adoption and 2 were opposed.

On 25 March 2004, the full Senate, at the 14th Session of its fourth electoral term, considered the bill and, by its Resolution No. 367, approved the bill in the same wording it had when transmitted by the Assembly of Deputies. In vote no. 39, 40 of the 62 Senators present voted in favor, and 22 abstained.

The Act at issue was signed by the competent constitutional officials and duly promulgated as No. 167/2004 Sb. in Part 57 of the Collection of Laws, which was distributed on 16 April 2004, and, pursuant to its Art. X, entered into effect on the day that the Treaty of Accession of the Czech Republic to the European Union came into effect, that is, on 1 May 2004.

VII.
The Contested Statutory Provision‘s Substantive Conformity with the Constitutional Order

The substantive amendment, contested by the petitioner in its petition, which defines the term, irreproachability, vis-à-vis the commission of an intentional criminal offense, was introduced by means of a new formulation of § 6 para. 2, lit. a) of the Trade Licensing Act, as amended by Act No. 356/1999 Sb. The Explanatory Report to the Government Bill to Amend the Trade Licensing Act (Document 263, 1999, III Electoral Term), which bill was adopted by the Parliament of the Czech Republic and promulgated as No. 356/1999 Sb., regarding the new formulation of § 6 para. 2, lit. a) (which in contrast to the rule contained in Act No. 455/1991 Sb. did not place conditions upon the term, irreproachability, in connection with the commission of a criminal offense with the object of entrepreneurship) stated the following: „Irreproachability is being newly defined, namely, with regard to its currently customary regulation within the Czech legal order, in connection with a

final conviction for a criminal offense committed intentionally, while the consequences of a final conviction for a criminal offense are distinguished in the bill according to their degree of seriousness. A final conviction of an intentional criminal offence, if a non-suspended sentence of imprisonment of at least one year is imposed, always results in the loss of irreproachability. The same consequence will also result from a final conviction for a criminal offense, the constituent elements of which relate to entrepreneurship or to the object of entrepreneurship, while the bill distinguishes in more detail criminal offenses committed intentionally and negligently. Under the existing legal rules, irreproachability is assessed according to the connection of the constituent elements of the criminal offense and the specific object of the entrepreneurial activity, alternatively in accordance with the fear that criminal activity will be repeated in carrying on the trade, which does not allow for restrictions on the entrepreneurship of those persons who have engaged in criminal activity that relates to entrepreneurship generally. In assessing one's irreproachability, it will still be ascertained whether there are grounds for concern of repeated criminal activity when carrying on the trade, as this legal rule makes possible a too subjective evaluation within the bounds of administrative discretion."

At the 17th Session of the Assembly of Deputies of the Parliament of the Czech Republic, in the second reading, held on 13 October 1999, on the reasons for the new wording of § 6 para. 2 of the Trade Licensing Act, the Minister of Industry and Trade, Miroslav Grégr, stated: „It tightens up and makes more precise the requirement of irreproachability of entrepreneurs, so as to more effectively restrict access to entrepreneurship of persons convicted of serious criminal offenses. In the future, the requirement of irreproachability should include not only criminal offenses, the constituent elements of which relate to the subject of entrepreneurship, but every intentional criminal act for which has been imposed a non-suspended sentence of imprisonment of at least one year in length."

The wording of the statutory provision in question, contested by the petition of the Regional Court in Plzeň, which was adopted by Act No. 167/2004 Sb., thus emanates from an intention which does not implicate the grounds of the asserted unconstitutionality. In the Explanatory Report to the Government Bill to Amend the Trade Licensing Act (Document 200, 2003, IV. Electoral Term), adopted by the Parliament of the Czech Republic and published as No. 167/2004 Sb., in the given context the following is asserted: „In § 6 para. 2, litera a), the existing legal rule for the assessment of irreproachability is tightened up for cases where a natural person has been finally convicted of an intentional criminal offense committed concurrently with other criminal offenses."

If the reason for the contested statutory rule was to restrict entrepreneurial activity by those persons who commit criminal offenses generally related to entrepreneurial activity, as well as to make more rigorous the requirements for irreproachability, such a rule is considered by the petitioner as standing in conflict with the fundamental right to engage in commercial activity under Art. 26 para. 1, in conjunction with Art. 4 para. 4, of the Charter.

The Constitutional Court concerned itself, in its Judgment No. Pl. ÚS 38/04 (see above), with the issue of irreproachability in conjunction with the provisions of Art.

26 of the Charter. It announced in that Judgment that, however much Art. 26 para. 2 of the Charter presupposes the possibility to restrict, by statute, the performance of certain professions or activities, without specifying the objective of the restriction, legal norms issued on the basis thereof must, nonetheless, pass muster in terms of the test of proportionality. It follows from what has been said that first of all it is also necessary to assess the very nature of the objectives which the restrictions pursue and that the necessity of the means selected must also be reviewed in terms of whether they are the least restrictive of the fundamental right, that is, to the freedom of entrepreneurship. Then, in assessing the constitutionality of § 2e para. 1, lit. c) and para. 5 of Act No. 252/1997 Sb., on Agriculture, as subsequently amended, it came to the conclusion that the very condition of irreproachability did not pass muster in terms of the necessity of the selected means, as it is not the means least restrictive of the fundamental right of entrepreneurship and the desired state of affairs (the objective pursued) can be attained by some other means. For these reasons the Constitutional Court decided to annul § 2e para. 1, lit. c) of the Act on Agriculture, which defined the condition of irreproachability and also annulled, as incidental thereto, § 2e para. 5 of the Act on Agriculture, which defined the concept of irreproachability for the purposes of the Act on Agriculture.

If a statute may, pursuant to Art. 26 para. 2 of the Charter, lay down conditions and restrictions upon the performance of certain professions or activities, within that framework also lay down restrictions upon the fundamental right to engage in commercial activity under Art. 26 para. 1, in conjunction with Art. 41 para. 1, of the Charter, it must also, in the sense of Art. 4 para. 4 of the Charter, preserve the essence and significance of the given fundamental right. The Constitutional Court announced this thesis as early as its Judgment No. Pl. ÚS 24/99 of 23 May 2000 (N 73/18 SbNU 135; 167/2000 Sb.), in which it declared the following: „However much the fundamental right in Art. 26 para. 1 of the Charter can, in the sense of Art. 41 para. 1 of the Charter, be claimed only within the confines of the laws implementing those provisions, the legislature, or norm creator, is also subject to the boundary laid down in Art. 4 para. 4 of the Charter, which provides that, in employing the provisions concerning limitations upon the fundamental rights and freedoms, their essence and signifikance must be preserved.“

The objective and intention of the condition of irreproachability, restricting the fundamental right to engage in commercial activity, is the protection of the fundamental rights and freedoms of third parties, which can be affected by commercial activity carried out in conflict with the law and good morals. However, this condition must also meet the criterion which flows from the principle of proportionality for the assessment of normative measures that safeguard one, and restrict another, fundamental right or freedom.

According to the Constitutional Court’s constant jurisprudence [see Judgment No. Pl. ÚS 4/94 of 12 October 1994 (N 46/2 SbNU 57; 214/1994 Sb.), Judgment No. Pl. ÚS 15/96 of 9 October 1996 (N 99/6 SbNU 213; 280/1996 Sb.), Judgment No. Pl. ÚS 16/98 of 17 February 1999 (N 25/13 SbNU 177; 68/1999 Sb.), Judgment No. Pl. ÚS 41/02 of 28 January 2004 (N 10/32 SbNU 61; 98/2004 Sb.) and others], the principle of proportionality is based on a three-step methodology. The first is the evaluation of the ordinary law in terms of its suitability, which consists in assessing

the normative measure selected in terms of the possible fulfillment of the objective pursued. If the normative measure at issue is not capable of achieving the objective pursued, then it is a manifestation of arbitrariness on the part of the legislature, which is deemed to be in conflict with the principle of the law-based state. The second step in complying with the principle of proportionality is the assessment of the ordinary law in terms of its necessity, which analyzes the pluralism of possible normative measures in relation to the intended objective and their subsidiarity in terms of the restriction on the constitutionally-protected value – a fundamental right or public good. If the objective pursued by the legislature can be attained by alternative normative measures, then only that one is constitutionally-conforming which restricts the given constitutionally-protected value to the least extent possible. If the ordinary law under adjudication pursues, on the one hand, the protection of certain of the constitutionally-protected values, but, on the other hand, restricts another, then the third test of the principle of proportionality, which is that of gauging, represents a methodology for gauging the relative weight of those constitutional values which have come into conflict.

If the first part of the principle of proportionality is the scrutiny of the rational connection between the objective pursued by the legislature and the normative measure chosen by it, in order to assess the matter, the necessity arises of substantiating the thesis according to which the commission of any intentional criminal offense whatsoever, for which was imposed a non-suspended sentence of imprisonment of at least one year, categorically calls into question the credibility of a tradesman when engaging in entrepreneurship (for ex., someone engaged in the technical trades of smithing, butchery, carpentry, baking, etc. who commits the criminal offense of brawling).

In the Czech Republic's legal order, the concept of irreproachability as regard the commission of an intentional criminal act is generally defined in reference to the subject of the certified activity. This fact can be demonstrated by a number of statutory provisions:

- according to § 4a para. 1, lit. a) of Act No. 553/1991 Sb., on the General Police, as subsequently amended: „for the purposes of this Act, a person who has been finally convicted of an intentional criminal act or has, in the preceding 5 years, been finally convicted of a negligent criminal act, is not considered to have an irreproachable character, if the conduct involved in the commission of the criminal offense conflicts with the mission of a police officer under this Act";

- according to § 3 para. 3 of Act No. 95/2004 Sb., on the Conditions for the Acquisition and Recognition of Professional Qualifications and Specialist Qualifications Necessary for the Performance of the Medical Profession as a Physician, Dentist or Pharmacist: „for the purposes of this Act, a person is considered to have an irreproachable character if he has not been finally convicted and sentenced to imprisonment for an intentional criminal act committed in connection with the provision of medical care, or if he is looked upon as if he had not been so convicted";

- according to § 7, lit. a) of Act No. 312/2006 Sb., on Trustees in Bankruptcy, as amended by Act No. 41/2009 Sb.: „the condition of irreproachability under § 6

para. 1, lit. d) is not met by a natural person who has been finally convicted of an intentional criminal act committed in connection with the performance of his duties as a trustee in bankruptcy, or of any other intentional criminal act in contradiction of the imperative rules of the market economy“,

- according to § 6 para. 4, lit. a) of Act No. 245/2006 Sb., on Public Non-Profit Institutional Medical Facilities and on Amendments to Certain Acts: „for the purposes of this Act, a person who has been finally convicted of a criminal offense, the constituent elements of which are connected with the provision of health care, cannot be considered as irreproachable“;

- according to § 8 para. 3, lit. b) of Act No. 417/2004 Sb., on Patent Misdemeanors and on Amendments to the Act on Measures for the Protection of Industrial Property: „for the purposes of this Act, a person who has been finally convicted of a criminal offense, committed negligently, in connection with the provision of services as a patent agent, cannot be considered as irreproachable“;

- § 6 para. 2, lit. b) of Act No. 162/2003 Sb., on the Conditions for the Operation of a Zoological Garden and on Amendments to Certain Other Acts (the Act on Zoological Gardens): „the condition of irreproachability is not met by anyone who, in the three years preceding the submission of the application, had been finally convicted of a criminal offense, the constituent elements of which are connected with activities performed in a zoological garden (unless he is looked upon as if he had not been convicted), or by anyone who, in the given period, was found guilty of a misdemeanor or other administrative offenses pursuant to legal enactments on the protection of nature and the environment, veterinary regulations or enactments on the protection of animals from abuse“;

In applying the test of suitability within the framework of the test of proportionality, the Constitutional Court in part evaluates whether a rational relation exists between the normative measure and its objective, alternatively the degree to which it is presumed to be, or is actually, realized, and in part the intensity and extent of the restriction upon the fundamental right or freedom, or public good, with which it comes into conflict.

By a comparison of two of the normative measures employed in the legal order which define irreproachability vis-à-vis the commission of intentional criminal offenses, the Constitutional Court considers that the rule contested in the petition in part oversteps, in its consequences, the bounds of the objective pursued (that is, by also encompassing cases in which the rational connection between the objective and the normative measure is lacking), and in part, due to its intensity and extent, it restricts the fundamental right with which it comes into conflict to a degree which gives rise to an injury in relation to the third criterion of the test of proportionality, namely weighing the proportionality of the relation. Neither, in this connection, are valid even possible objections of the uncertainty or lack of clarity of the definition of the term, irreproachability vis-à-vis the commission of an intentional criminal offense relating to the subject of the activity to be certified. A decision on the cancellation of a trade authorization is reviewable by a court, as is the administrative law interpretation of the term, irreproachability vis-à-vis the commission of an intentional criminal offense relating to the subject of

the activity to be certified. Further, the existing court jurisprudence in no way signals the fact that ordinary courts would not be in a position to provide such an interpretation, resting on rational arguments. As an illustration of this conclusion, let's take the decision of the Regional Court in Ostrava, No. 22 Ca 137/2004, in which was asserted that „criminal offenses leading to the loss of irreproachability in the sense of § 6 para. 2, lit. b) of Act No. 455/1991 Sb., of the Trade Licensing Act, are not only those criminal offenses a characteristic constituent element of which is entrepreneurship (economic criminal offenses): what is indispensable for the application of the cited provision is the issue of whether the criminal offense bears some relation to the entrepreneurial activities of the specific person. Thus, an entrepreneur cannot be considered irreproachable if the conduct, for which he was finally convicted in a criminal proceeding, consisted in enforcing his claims."

For the given reasons, the Constitutional Court has come to the conclusion that § 6 para. 2, lit. a) of Act No. 455/1991 Sb., on Trade Entrepreneurship (The Trade Licensing Act), as amended by Act No. 167/2004 Sb., was in conflict with Art. 26 paras. 1 and 2, in conjunction with Art. 4 para. 1, of the Charter.

VIII.
The Formulation of a „Derogational" Statement of Judgment and its Legal Effects

Where, pursuant to Art. 95 para. 2 of the Constitution, the Constitutional Court has decided a concrete norm control proceeding in the sense of the proposition of law announced in its judgments nos. Pl. ÚS 33/2000, Pl. ÚS 42/03, and Pl. ÚS 38/06 (see above for all), upon making a finding of constitutional conformity, it has rejected on the merits the petition „proposing the annulment" of the statutory provision. In cases where it has concluded that the contested statutory provision is in conflict with the constitutional order, it has issued an academic statement of judgment:

- in its Judgment No. Pl. ÚS 48/06 of 9 December 2008 (54/2009 Sb.), it did so in the following way: »The third sentence of § 105 para. 1 of Act No. 235/2004 Sb., on Value-Added Tax, as worded prior to the amendment effected by Act No. 296/2007 Sb., specifically the text: „A declaration of bankruptcy does not suspend any tax proceedings and, following the declaration of bankruptcy, any assessed excessive deduction shall be returned to the taxpayer, provided it does not have tax arrears arising prior, or even subsequent, to the declaration of bankruptcy".«, was in conflict with Art. 11 para. 1 of the Charter of Fundamental Rights and Freedoms;

- then, in its Judgment No. Pl. ÚS 72/06 of 29 January 2008 (291/2008 Sb.), with the following statement of judgment: „The Constitutional Court . . . reached the conclusion that the third sentence of § 57 para. 5 of Act No. 337/1992 Sb., on the Administration of Taxes and Fees, as worded prior to the amendment effected by Act No. 230/2006 Sb., was in conflict with Art. 1, Art. 11 para. 1, Art. 36 paras. 1 and 2, and Art. 37 para. 3 of the Charter, Art. 6 para. 1 and Art. 13 of the Convention; it therefore granted, in respect of that provision, the Supreme Administrative Court's petition made pursuant to Art. 95 para. 2 of the Constitution. In consideration of Art. 89 para. 2 of the Constitution, the implications of the finding of unconstitutionality must be reflected in the

decisional practices of public authorities, meaning they must not apply the cited provision when resolving specific cases.“;

- in its Judgment No. Pl. ÚS 12/06 of 2 July 2008 (342/2008 Sb.), with the following academic statement of judgment: »The petition requesting a declaration that the first sentence of § 37a para. 1 of Act No. 588/1992 Sb., on Value-Added Tax, as subsequently amended, is unconstitutional (in particular the following text: „If, in consequence of the assessment of an excessive deduction, an overpayment subject to return shall come into being, it shall be returned to the taxpayer without an application within 30 days of the excessive deduction being assessed, even in the case that bankruptcy is declared. In such a case, it is necessary to proceed in accordance with a separate enactment.“) is rejected on the merits. There is no interpretation of Art. 11 of the Charter by which one can deduce an enhanced protection of the rights of the state as an owner (in tax matters represented by a tax administrator), which would lead in specific matters being adjudicated (that is, in cases where bankruptcy is declared) to the state being given preferential treatment and its being de facto accorded a privileged status vis-à-vis other creditors.«.

The Constitutional Court observes that the types of statements of judgment contained in § 70 of Act No. 182/1993 Sb. do not correspond to the mentioned modality of the concrete norm control proceeding. In a number of its judgments, the Constitutional Court has adopted an extension of the typology of statements of judgment under § 70 of Act No. 182/1993 Sb. It did so, for ex., in its judgments No. Pl. ÚS 41/02 of 28 January 2004 (N 10/32 SbNU 61; 98/2004 Sb.), No. Pl. ÚS 34/04 of 14 July 2005 (N 138/38 SbNU 31; 355/2005 Sb.), and No. Pl. ÚS 43/04 (see above), in which it laid out the reasons for its approach.

If a given proceeding results in a finding that the given statutory provision is in conflict with the constitutional order, then the rejection on the merits of the petition proposing the annulment of that provision must be interpreted as being a rejection of a petition proposing its inapplicability (§ 70 para. 2 of Act No. 182/1993 Sb. per analogiam) – if at the decisive time the relevant law had already been repealed by the legislature, the Constitutional Court cannot then annul it as well. If the conclusion is reached that the statutory provision at issue is in conflict with the constitutional order (while meeting the standards which follow for the horizontal effect of fundamental rights and freedoms from judgments No. Pl. ÚS 33/2000, No. Pl. ÚS 42/03 and No. Pl. ÚS 38/06, in other words for the protection of the fundamental rights of third parties), an academic statement of judgment concerning its conflict with the constitutional order is a necessary consequence thereof. The implication of such a statement of judgment is that the statutory provision at issue becomes inapplicable (if it is not merely the statutory provision, that is the legislative measure, but also its objective which is in conflict with the constitutional order); alternatively, the Court might define the conditions under which the objective intended by the legislature can be attained by proceeding in a constitutionally-conforming manner, that is by means of the direct applicability of the constitutional order (§ 70 para. 1 of Act No. 182/1993 Sb., as subsequently amended, per analogiam).

In cases in which, at the decisive time, the relevant statutory provision has already

been repealed by the legislature, the purpose of a concrete norm control proceeding can be attained by a statement of judgment declaring the provision‘s conflict with the constitutional order, and then by the delimitation, in the reasoning of the judgment, of the framework (conditions) for the direct application of the constitutional order (§ 70 para. 1 of Act No. 182/1993 Sb., as subsequently amended, per analogiam). In the matter under adjudication, with regard to Art. 26 paras. 1 and 2, in conjunction with Art. 4 para. 1, of the Charter, the objective pursued by the legislature in § 6 para. 2, lit. a) of Act No. 455/1991 Sb., as amended by Act No. 167/2004 Sb., can be attained, in the proceeding before the ordinary court from which the concrete norm control proceeding arose, by restricting, for the purposes of the Trade Licensing Act, the condition of irreproachability such that it is not met only in the case of those intentional criminal offenses, whether committed separately or concurrently with other criminal offenses, for which was imposed a non-suspended sentence of imprisonment lasting at least one year and whose constituent elements pertain to the object of the entrepreneurial activity, alternatively to entrepreneurial activity in general.