2006/06/20 - PL. ÚS 38/04: EXPERT QUALIFICATION

HEADNOTES

The question of whether agricultural production is possible only with subsidies must be left to day-to-day reality, to the results of activities resulting from the free decisions of individuals. It necessarily follows that a decision as to whether entrepreneurs will do business at all with the use of subsidies should, in terms of Art. 26 of the Charter, be left to their choice. If they decide to apply for a subsidy, it is conceivable for the legislature to tie the legally positive decision to provide a subsidy to a clean criminal record in a scope related to the legal use of public funds provided to the applicant in the past.

The legislature defined the possibilities for meeting the condition of expert qualifications very strictly. It set the condition of secondary education which must be supplemented with a mandatory re-qualification course if "applicants for doing business in agriculture" do not have do not have an education narrowly oriented at agriculture (or veterinary medicine). An equivalent of that education is five years of practice in an agriculture business. If practice obtained outside collective agriculture entities were not considered practice under § 2f par. 2 point 2 of the Act on Agriculture, then such practice could not be considered constitutional, because it would not be possible to determine an objective and reasonable criterion establishing the preference for expert efficiency of practice in a collective agriculture business compared to practice in a business operated individually.

The obligation to meet the condition of expert qualifications solely personally appears excessively harsh and disproportionate; it applies to all natural persons, who are thus barred from conducting business. However, such a limitation can not stand when measured by the principle of necessity, all the more so when measured by the criterion of proportionality in the narrower sense.
However, the aim pursued by setting the condition of expert qualifications could have been achieved otherwise, for example, by using the practice of the established institution of a responsible representative.

The overall context of the Act on Agriculture and comparison of it with the Trades Licensing Act indicates that the new conditions must be considered stricter for all natural persons doing business in connection with agriculture under the previous legal framework, because the Act does not permit them to meet the statutory requirements through a responsible representative, which the previous framework permitted.
The Constitutional Court has consistently pointed out the connection between the principle of predictable consequences of a legal regulation with the principles of a law-based state.

The legislature, when changing a legal regulation, must take into account the previous legal status quo, and must make changes sensitively, and only in the extent necessary for achieving the aim of the regulation. Such conduct by the legislature must be insisted on, because it guarantees the stability of the sphere

of freedom of conduct. Statutes define the basic structure within which free activities are realized. If the limits of statutory requirements are uncertain, i.e. if the legitimate expectations based on the law are not respected, then freedom too is uncertain. That is why protection of legitimate expectations is an integral party of the rule of law. The imperative to respect legitimate expectations arising from the existing legal framework of course can not be used to derive a ban on changes to the legal framework. The point is that in choosing how to implement a change the legislature must take these expectations into account, and not ignore the fact that those affected by the norms have for a long time adapted their conduct (and choices between various alternatives) to different requirements.

The requirement to personally meet the conditions of expert qualifications and a clean criminal record, together with a short deadline for the termination of previous authorization, is very harsh. The manner in which the change was implemented was not necessary, or was not required by the aim pursued.

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of Stanislav Balík, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kůrka, Jan Musil, Jiří Nykodým, Pavel Rychetský, Miloslav Výborný, Eliška Wagnerová (Judge-Rapporteur) and Michaela Židlická decided on 20 June 2006 with the participation of the Chamber of Deputies of the Parliament of the CR and the Senate of the Parliament of the CR, as parties to the proceedings, on a petition from a group of deputies and a group of senators of the Parliament of the CR, seeking the annulment of certain provisions of Act no. 252/1997 Coll., on Agriculture, in the wording in effect on 22 July 2004, specifically the annulment of § 2e par. 1 let. c) and d), and the annulment of the sentences “Fulfillment of the conditions in letters a) to f) by a legal entity must be proved by its responsible representative. For purposes of this Act the responsible representative is a natural person appointed by the legal entity who is responsible for the proper operation of the business and who is in an employment relationship person to the agricultural entrepreneur.” in § 2e par. 1, annulment of the entire provisions of § 2e par. 3 and 5, § 2f par. 2 let. b) and par. 3 let. c), annulment of the words “and c)” in § 2f par. 4 let. c), and annulment of the entire § 2f par. 8, as well as on a petition to annul certain provisions of Act no. 85/2004 Coll., in the wording in effect on 22 July 2004, specifically the annulment of the sentence “A certification issued to an independently operating farmer under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and Act no. 455/1991 Coll., is valid for 5 years from the day this Act goes into effect” in Art. II point 1., and the annulment of Article II point 2. of Act no. 85/2004 Coll., as follows:

I. The provisions of § 2e par. 1 let. c), § 2e par. 5 of Act no. 252/1997 Coll., on Agriculture, as amended by later regulations, is annulled as of the day this judgment is promulgated in the Collection of Laws.

II. The provisions of § 2e par. 1 let. d), § 2f par. 2 let. b) a § 2f par. 3 let. c), the words "and c)" in § 2f par. 4 let. c) and § 2f par. 8, of Act no. 252/1997 Coll., on Agriculture, as amended by later regulations, are annulled as of 30 June 2007.

III. Article II point 2. of Act no. 85/2004 Coll., is annulled as of the day this judgment is promulgated in the Collection of Laws.

IV. The petition for the annulment of the sentences "Fulfillment of the conditions in letters a) to f) by a legal entity must be proved by its responsible representative. For purposes of this Act the responsible representative is a natural person appointed by the legal entity who is responsible for the proper operation of the business and who is in an employment relationship person to the agricultural entrepreneur." contained in § 2e par. 1 of Act no. 252/1997 Coll., on Agriculture, as amended by later regulations, as well as the petition to annul § 2e par. 3 of that Act are denied.

V. The petition to annul the sentence "A certification issued to an independently operating farmer under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and Act no. 455/1991 Coll., is valid for 5 years from the day this Act goes into effect" in Article II point 1. of Act no. 85/2004 Coll., is denied.

REASONING

I. Recapitulation of the Petition

1. A group of 55 deputies of the Chamber of Deputies of the Parliament of the CR and 23 senators of the Senate of the Parliament of the CR, in a proper petition (see Art. 87 par. 1 let. a) of the Constitution of the CR and § 64 par. 1 let. b) of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), mailed on 22 July 2004, sought the annulment of the abovementioned parts of Act no. 252/1997 Coll., on Agriculture, in the wording then in effect (the "Act on Agriculture"), as well as the annulment of parts of the transitional provisions of Act no. 85/2004 Coll., which amended the Act on Agriculture (the "Amendment of the Act on Agriculture").

2. The petitioners themselves summarized the essence of their objections by saying that the contested provisions violate both the principle of equality, and, above all, the very essence of the freedom to conduct business (Art. 26 par. 1 and Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms, the "Charter"), as individual newly-introduced limitations (namely, the requirements of a clean criminal record and expert qualification) have no clear grounds in terms of the public interest. From a general point of view they are thus disproportionate limitations (Art. 26 par. 2 of the Charter).

I. A) Lack of Grounds and Disproportionateness of the Condition of a Clean Criminal Record

3. According to the petitioners, § 2e par. 1 let. c) of the Act on Agriculture violates the right to conduct business and engage in other economic activity (Art. 26 of the Charter), because, when setting conditions for the exercise of this right, it is not preserving its essence and significance (Art. 4 par. 4 of the Charter). Here the petitioners pointed to judgments in which the Constitutional Court stated (file no. Pl. US 11/2000 and I. US 504/03) that even the legislature's relative freedom, arising from Art. 41 par. 1 of the Charter, does not allow it to violate the essence and significance of a right guaranteed by Art. 26 par. 1 of the Charter. The state may set conditions for the performance of certain activities only to protect the public interest, but proportionately. Under constitutional case law, the positive aspects of the limitations must outweigh the negative ones (judgment file no. Pl. US 25/97). However, a public interest can not be identified in the relevant background report, and even if it were, according to the petitioners the stricter regulation would not withstand the test of proportionality, because the conditions of a clean criminal record indirectly continues to punish the perpetrator of any intentional crime or the perpetrator of a negligent crime committed in connection with the conduct of business in agriculture. There are no objective grounds for such a ban, and the blanket barrier to conducting business is disproportionate. The commission of a crime in connection with the conduct of business may be reflected in a specific case in a ban (imposed individually) on the conduct of business. The regulation is illogical. A natural person who can not meet the requirement of a clean criminal record will not obtain authorization, but failure to meet the condition of a clean criminal record will not affect a natural person who already has that authorization. The differing regulation of analogous cases is inconsistent with Art. 4 par. 3 of the Charter. The condition of a clean criminal record (§ 2e par. 1 let. c) and the related § 2e par. 5 of the Act on Agriculture) violates Art. 26 par. 1 and Art. 4 par. 3 and 4 of the Charter, and therefore these provisions should be annulled.

I. B) Disproportionateness of the Condition of Expert Qualification

4. According to the petitioners, the condition of expert qualification set by § 2e par. 1, let. d), § 2f par. 2 let. b) of the Act on Agriculture interferes in the very essence of the freedom to conduct business guaranteed by Art. 26 par. 1 of the Charter, because, unlike the condition of a clean criminal record, it does not even have a parallel with the regulations contained in the Trades Licensing Act. A trade license holder can meet the requirement of expert qualification/ability by appointed a responsible representative (§ 11 of the Trades Licensing Act). However, the stricter regulations of the Act on Agriculture gives that possibility only to legal entities. Even compared with the requirements for conduct of unregulated trades the requirement of expert qualification is disproportionate (e.g., unregulated trades include the manufacture of rail driving vehicles or the manufacture of electronic components). Even with the highly qualified regulated trades (e.g. construction), a trade license holder is not required to meet the expert qualification requirement himself. Thus, the disproportionate requirement makes access to conducting business more difficult, and the selective condition also violates Art. 3 of the Charter. The petitioners also sought the annulment of § 2f

par. 3 let. c), § 2f par. 8 and the words “and c)” in § 2f par. 4 let. c) of the Act on Agriculture, because they are connected to § 2f par. 2 let. b) of the Act on Agriculture.

I. C) Unconstitutionality of the Change in the Legal Regulation of the Conduct of Business Exercised in Direct Connection with Agriculture

5. According to the petitioners, the definition of the term “agricultural production” in § 2e par. 3 of the Act on Agriculture markedly changed and tightened the legal regime for businesspeople conducting activity in direct connection with agriculture, because it takes them out of the regime of the Trades Licensing Act, and the transitional provisions of the Amendment of the Act on Agriculture also set a penalty, the expiration of the authorization of businesspeople who do not meet the conditions within one year after the Amendment of the Act on Agriculture goes into effect (see Art. II. point 2. of the Amendment of the Act on Agriculture). However, until the Amendment of the Act on Agriculture was passed, a number of persons doing business in connection with agriculture did so on the basis of a trade license, for various unregulated trades, without being independent farmers under Act no. 105/1990 Coll.

6. The petitioners gave the following examples of fundamental defects in the contested provisions:
a) The address only generally and with unclear criteria which persons doing business on the basis of a trade license will be subject to the regime of the Act on Agriculture. They may be the unregulated trades of services for agriculture, forestry, manufacture of food products, breeding of domestic animals (see directive of the government of the CR no. 140/2000 Coll., which provides the content of individual trades). Dog breeding, unlike horse breeding, is apparently still meant to be an unregulated trade, and not agricultural business.
b) Under the contested provisions, the production and sale of one’s own agricultural products, including the manufacture foods from it, are seen as the activity of an agricultural entrepreneur. However, crafts continue to exist, e.g. that of miller, butcher, or dairy farmer, and the unregulated trade of manufacture of food products (see directive of the Government of the CR 469/2000 Coll., which sets forth a list of fields for unregulated trades). The subject matter of these trades is the manufacture of foods, and it is not clear to what extent, or whether, these existing trade license holders can be included under the newly-defined concept of agricultural entrepreneur. The requirements for expert qualification are stricter for crafts (§§ 20 and 21 of the Trades Licensing Act), than in the Act on Agriculture, but they can be met through a responsible representative.
c) Holders of a trade license for “manufacture of food products” (§ 42 of the Trades Licensing Act) newly included in the regime of the Act on Agriculture will apparently now also need a trade license for retail trade. Their existing authorization will terminate only partially.
d) The new Act (unlike the Trades Licensing Act) does not cover a number of situations which routinely occur in life (loss of qualification, insufficient age) and which can not be overcome by appointing a responsible representative. The Act does not address the fate of entrepreneurs doing business through a responsible representative. Upon the death of an agricultural entrepreneur it is not clear who conducts the agricultural production until the end of probate proceedings, and the

probate trustee also has no obligation to appoint and “expert representative.” The Act on Agriculture does not regulate barriers to the conduct of business, and according to the petitioners filing for bankruptcy or a criminal ban on the conduct of business will not have any effect.

7. According to the petitioners, the manner in which the change was made, or the shift to the new legal framework, is inconsistent with the fundamental requirements of a law-based state Art. 1 of the Constitution of the CR). The change is an expression of arbitrariness, the framework is internally inconsistent, unpredictable, and evokes many problems of interpretation, which can, under the Constitutional Court’s judgments (file no. Pl. US 9/95 a I. US 504/03), make the Act unconstitutional. Such a law is also contrary to the case law of the European Court of Human Rights (the “ECHR,” e.g. in the matter Heinrich v. France). Although the Charter, in Art. 26 par. 2, permits conditions and limitations to be set for the exercise of certain professions or activities, these conditions must be transparent and predictable, and the persons affected must have an opportunity to defend themselves. The Act on Agriculture can not meet these requirements. The petitioners pointed out that according to the Constitutional Court (file no. Pl. US 2/02) legislative interference with manifests strong signs of arbitrariness violates the confidence in the law which is one of the fundamental attributes of a law-based state.

8. The petitioners emphasized that they are not contesting the idea of a joint regime for independent farmers and entrepreneurs doing business in direct connection with agriculture, but the unconstitutional manner in which this change was made. According to the petitioners, the legislature, as a result of an amending proposal (allegedly the draft Act originally did not anticipate changes in the field of trades) removed a certain group out of a stable business environment, which was regulated with a certain degree of flexibility, and shifted them into a regime with an incomplete framework, which does not take into account the various previously existing possibilities for the conduct of business. This is arbitrariness by the legislature, which did not realize what all the consequences of its steps would be. Such a procedure is unacceptable in a law-based state, even if the legislature’s discretion in choice of legal regulations is respected, because the legislature, by an unjustified, unpredictable, disproportionate and internally inconsistent change exceed its constitutional limitations. Therefore, the petition, in addition to seeking the annulment of § 2e par. 3 of the Act on Agriculture, also sought the annulment of Art. II. point 2. of the Amendment of the Act on Agriculture.

I. D) Unjustifiable Inequality in the Termination of Existing Authorizations

9. In connection with the abovementioned arguments, the petitioners also contested the inequality established by the Amendment of the Act on Agriculture in Art. II. point 1 of the transitional provisions, which regulate the regime for persons previously doing business on the basis of the Act on the Private Conduct of Business by Citizens (specifically, the sentence “A certification issued to an independently operating farmer under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and Act no. 455/1991 Coll., is valid for 5 years from the day this Act goes into effect”). The difference in the period for termination of existing authorizations unjustifiably advantages one group

of businesspeople (independent farmers) compared to another group (those doing business on the basis of the Trades Licensing Act), although their positions are analogous, which is inconsistent with Art. 4 par. 3 of the Charter. Here the Act violates equality of rights (Art. 1, Art. 3 and Art. 4 par. 3 of the Charter) and the termination of authorization and obligation for new registration undoubtedly limit the freedom to conduct business, yet the disadvantage is unjustified (see judgment Pl. US 38/01). Setting different regimes for analogous cases can not be tolerated, even taking into account a certain freedom on the part of the legislature when setting new conditions for the practice of certain provisions which had been practiced under existing regulations (see, e.g., judgment file no. Pl. US 4/95). There are no objective reasons for different regimes for the transfer of similar activities (which is why they are governed by the same statute). In addition, trade license holders, unlike farmers, must meet certain newly-specified conditions already, which should lead to making the transitional regime milder (if we take the purpose of the change into account). That is why the legislature's approach is also disproportionate. For these reasons the petitioners requested the deletion of the sentence specified above. The petitioners pointed out that if the change in the regime for conducting business is pronounced unconstitutional (see par. 5 to 8), this part of the petition is groundless.

I. E) Inequality between legal entities and natural persons in meeting the conditions for expert qualification

10. The petitioners also requested the annulment of the clause of the first paragraph of § 2e par. 1 of the Act on Agriculture, which established the inequality, and thereby also violated Art. 1 and Art. 4 par. 3 of the Charter, because legal entities were permitted to meet the conditions in the Act through any person in an employment relationship, whereas natural person do not have this possibility. Natural persons will be forced to establish legal entities for that purpose, but there is no public interest (as with banks of securities traders), which would justify limiting the access of natural persons to doing business. The petitioners stated that they are aware that annulment of this advantage for legal entities will require legislative changes to the Act on Agriculture (a differentiation of the conditions which an agricultural entrepreneur must meet, introduction of a general framework for a responsible representative, or the manner in which a legal entity is to prove that it has met the statutory conditions).

II. Recapitulation of the Statements by the Parties to the Proceedings

II. A) Statement from the Chamber of Deputies of the Parliament of the CR

11. In its statement of 10 September 2004, the Chamber of Deputies of the Parliament of the CR, represented by its Chairman, PhDr. Lubomír Zaorálek, said that the conditions for doing business provided in the Act on Agriculture ensure the appropriate protection of the public interest and do not establish inequality between various subjects in their ability to do business. The petitioners' legal opinion is self-serving and superficial. According to the background report, the aim of the Amendment of the Act on Agriculture was to remove certain shortcomings in the existing framework: to define the terms "agricultural production," agricultural

entrepreneur," and to set conditions and obligations fro person who want to do business in agriculture.

12. The requirement of expert qualification arises from the fact that agricultural products become part of the food chain. The method of land management, production of ecological foods, use of biochemical substances, fertilizers, feedstuffs, herbal medical care and the development of non-productive functions of agriculture "undoubtedly require a certain expert qualification."

13. The requirement of a clean criminal record (not affecting offenses removed from the record and of lesser social danger) is justified by the possibility to receive subsidies from the state budget and from EU funds. The entrepreneur would not be competitive without subsidies. The state is required to ensure responsible and purposeful management of subsidies. And the state also guarantees the safety of foods (§ 1 of the Act on Agriculture).

14. The definition of agricultural production in § 2e par. 3 of the Act on Agriculture, which transfers some activities from the regime of the Trades Licensing Act to the Act on Agriculture, is also not inconsistent with the principles of a law-based state, because it only unifies the legal regime for persons doing business in agriculture and removes the lack of definitions of the terms "agricultural production" and "agricultural entrepreneur."

15. The transitional provisions of the Amendment of the Act on Agriculture also do not violate equality of rights, because the deadline for registration is the same for both groups of persons who wish to (continue to) do business in the field.

II. B) statement from the Senate of the Parliament of the CR

16. in its statement of 9 September 2004, the Senate of the Parliament of the CR, represented by its then-chairman, doc. JUDr. P. P., stated that the committees recommending passing the draft of the Amendment of the Act on Agriculture. However, during debate in the senate, a number of comments of a constitutional nature appeared – e.g., the Act creates an environment which could prevent landowners (if they wanted to) from doing business on their land. Some senators pointed out the constitutional requirement that, in the event of a conflict between the right of an individual and the public interest, it must be reviewed whether the public interest legitimizes limiting the private sphere, and whether the aim really pursues a public interest. Otherwise the limitation is unconstitutional. Therefore, a number of amending proposals were submitted, the aim of which was to delete all provisions concerning the clean criminal record and expert qualification. However, despite the cited concern, the result of the voting was only to shorten the minimum length of a mandatory re-qualification course from 300 to 150 hours (§ 2f par. 2 let. b) point 1 of the Act on Agriculture); the Chamber of Deputies of the Parliament of the CR also subsequently agreed with that, and approved the Act in the wording returned by the Senate.

17. Above and beyond the foregoing, the Senate Chairman stated that a provision which permits legal entities to meet the conditions of § 2e par. 1 of the Act on

Agriculture through a responsible representative is necessary in the framework of this Act, because if it were deleted legal entities would not be able to met the conditions of expert qualification and a clean criminal record. Therefore, removing any doubts about the unequal position of natural persons and legal entities would be a positive legal framework, permitting natural persons to also meet the statutory conditions through a responsible representative.

18. The Constitutional Court asked the parties to the proceedings for consent to omit a hearing (§ 44 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations), because a hearing could not be expected to clarify the matter further. The parties consented. The Court could then proceed to considering the matter on the merits.

III. Formal prerequisites for considering the petition

III. A) The Text of the Contested Provisions of the Act on Agriculture

19. The contested provisions of Act no. 252/1997 Coll. read as follows (the contested parts are highlighted in bold; if the text is not written in italics, that means that it was amended or expanded in the interim between the filing of the petition and the Constitutional Court's decision – see below):
"§ 2e The Conduct of Business in Agriculture
(1) An agricultural entrepreneur under this Act is a natural person or legal entity which intends to conduct agricultural production as a consistent and independent activity under its own name, on its own responsibility, for the purpose of earning profits, under conditions provided by this Act, and who, if a natural person
c) has a clean criminal record,
d) has expert qualifications (§ 2f par. 2),

Fulfillment of the conditions in letters a) to f) by a legal entity must be proved by its responsible representative. For purposes of this Act the responsible representative is a natural person appointed by the legal entity who is responsible for the proper operation of the business and who is in an employment relationship person to the agricultural entrepreneur. No one may be appointed to the position of responsible representative for more than two agricultural entrepreneurs. The responsible representative for a legal entity may not be a member of the supervisory board or other inspection body of that legal entity. If the responsible representative ceases to exercise his position or does not meet the conditions, the agricultural entrepreneur must appoint a new responsible representative no later than within 15 days.

(3) Agricultural production, including economic activity in forests 4i) and on water means
a) plant production, including growing hops, fruit, vineyards, winemaking and cultivating vegetables, mushrooms, decorative plants, healing and aromatic plants, plants for technical and energy use, on land owned, leased, or used on the basis of another legal entitlement, or conducted without land,
b) animal production, including the breeding of economic and other animals or living beings for purposes of obtaining and producing animal products, the breeding of draft animals and breeding sport and racing horses,

c) production of breeding animals and use of the genetic material, in the case of animals listed in letter b),
d) production of seeds and seedlings, nursery plants and plant genetic material,
e) the growing, processing and sale of one's own agricultural production, including foods 4j) made from it,
f) breeding of fish, water animals and the cultivation of plants on water surfaces on land owned, leased, or used on the basis of another legal entitlement.
g) economic activity in forests 4i), on land owned, leased, or used on the basis of another legal entitlement,
h) economic activity with water for agricultural and forestry purposes.
(5) A person with a clean criminal record for purposes of this Act is considered to be one who has not been convicted with legal effect or who is regarded as not having been convicted 4k)
a) of an intentional crime, for a non-suspended prison sentence of at least one year,
b) of an intentional crime, which he committed in connection with doing business and which is not a crime under letter a), or
c) of a negligent crime committed in connection with doing business in agriculture.

§ 2f Register of Agricultural Entrepreneurs
(2) The appropriate municipal office with expanded jurisdiction (the "municipal office" shall register an agricultural entrepreneur if an applicant
b) meets the expert qualification requirement
1. by achieving an education at least at the level of secondary expert education 4l) in an agricultural field, veterinary medicine and veterinary prevention, or at the level of full secondary education focused on agriculture, or by completing an accredited re-qualification course aimed at the performance of general agricultural activities in a scope of at least 150 hours, or
2. by proving that he has at least 5 years of agricultural practice in an agricultural business
The appropriate municipal office for register an applicant for agricultural entrepreneurship is the municipal office with expanded jurisdiction in whose territorial jurisdiction the place of business or address of the agricultural entrepreneur is located. For purposes of this Act the place of business means the place from which the agricultural entrepreneur directs his business activity.

(3) An application for registration as an agricultural entrepreneur filed by a natural person shall state
c) information about his expert qualifications, if he has them,

(4) An application for registration as an agricultural application, if filed by a legal entity shall state
c) the information set forth in paragraph 3 let. a), b) and c) concerning its responsible representative,

(8) When evaluating the expert qualifications of an applicant for registration, the procedures in a special legal regulation shall be followed. 4m) When evaluating expert qualifications, disputed cases shall be decided by the regional office."
4i) Act no. 289/1995 Coll., the Forestry Act, as amended by later regulations.
4j) Act no. 110/1997 Coll., on Foods and Tobacco Products, and Amending and

Supplementing Certain Related Acts, as amended by later regulations.
4k) For example, § 60 , 60a and 70 of the Criminal code.
4l) Act no. 29/1984 Coll., the Schools Act, as amended by later regulations.
4m) Act no. 18/2004 Coll., the Act on Recognition of Expert Qualifications.

20. in the interim since the petition was filed, Act no. 441/2005 Coll. amended some of the contested provisions, but their essence has not been affected in any way from the point of the view of the substantive content of the petitioner's objections, because the only changes were (the end of par. 1 § 2e), that the responsible representative of a legal entity may have a contractual, not employment, relationship, and the same provision formulated barriers to the performance of the position of a responsible representative on grounds of incompatibility (conflict of interest, single representation). Also, items were added concerning the statutory definition of the term "agricultural production"(§ 2e par. 3 let. g) and h)).

III. B) The Text of the Contested Provisions of the Amendment of the Act on Agriculture

21. The contested provisions of Act no. 85/2004 Coll. read as follows:
"Art. II transitional Provisions
1. A person conducting, as of the day this Act goes into effect, agricultural production under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and Act no. 455/1991 Coll., is considered to be an agricultural entrepreneur for conducting agricultural production under this Act, if he registers within 1 year from the day this Act goes into effect at the appropriate municipal office of a municipality with expanded jurisdiction under § 2f of Act no. 252/1997 Coll., on Agriculture, as amended by that Act. A certification issued to an independently operating farmer under Act no. 105/1990 Coll., on the Private Condut of Business by Citizens, as amended by Act no. 219/1991 Coll. and Act no. 455/1991 Coll., is valid for 5 years from the day this Act goes into effect; for purposes of sickness and pension insurance the holder of such a certification is considered an agricultural entrepreneur for conduct of agricultural production under this Act. If an independently operating farmer does not intend to conduct agricultural production under this Act, he shall ask the municipal office of the municipality with expanded jurisdiction to issue a confirmation that he has been removed from the register of persons maintained under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and by Act no. 455/1991 Coll.
2. A person who, as of the day this Act goes into effect, conducts, on the basis of a trade license obtained before this Act went into effect, activities which are agricultural production under this and which were trades until that date under Act no. 455/1991 Coll., on Trades Licensing (the Trades Licensing Act), as amended by later regulations, is considered an agricultural entrepreneur under this Act. A person named in the first sentence is required to register within 1 year from the day this Act goes into effect at the appropriate municipal office of a municipality with expanded jurisdiction under § 2f of Act no. 252/1997 Coll., on Agriculture, as amended by that Act. If that person does not meet the obligation to register by the stated deadline, the authorization to conduct these activities terminates. Until the

time when the obligation to register under § 2f of this Act is met, the trade licensed issued according to the first sentence is a certificate of authorization of the relevant agricultural entrepreneur to conduct agricultural production under this Act."

22. In the interim, point 1. of the transitional provisions of Act no. 85/2004 Coll. was subject to legislative-technical changes passed by Act no. 441/2005 Coll., which, however, left the essence of the contested provisions unchanged. In accordance with the purpose of the Act on Agriculture and the rules of formal logic, the narrowing of the legal presumption, which gave independently operating farmers the status of agricultural entrepreneurs under the Act on Agriculture for 5 years, but only "for purposes of sickness and pension insurance and health insurance," was annulled. The narrowing was annulled, and the terms "agricultural entrepreneur under this Act" and "a person doing business in agriculture" were standardized into "agricultural entrepreneur [authorized] for conducting agricultural production under this Act." At the end of point 1. the following text was added: "If an independently operating farmer does not intend to conduct agricultural production under this Act, he shall ask the municipal office of the municipality with expanded jurisdiction to issue a confirmation that he has been removed from the register of persons maintained under Act no. 105/1990 Coll., on the Private Conduct of Business by Citizens, as amended by Act no. 219/1991 Coll. and by Act no. 455/1991 Coll."

23. Even here, however, the essence of the contested provisions was not changed in terms of the substance of the petitioners' objections. From the point of view of § 66 par. 1 of the Act on the Constitutional Court there were thus no grounds for the impermissibility of the petition, or grounds to suspend the proceeding (see, similarly, par. 3, part VII. c) of the judgment of 31 October 2001, file no. Pl. US 15/01 in Coll. of Decisions, vol. 24, p. 201 or no. 424/2001 Coll.).

III. C) Permissibility of the Petition to Annul the Amendment

24. The petition was also permissible in the part which proposed the annulment of the transitional provisions of the Amendment of the Act on Agriculture, because those provisions are only part of that Amendment. They do not appear in the Act on Agriculture itself, and are not a component of it (see part III. of the judgment of 12 March 2002, file no. Pl. US 33/01, in Coll. of Decisions, vol. 25, p. 215 or no. 145/2002 Coll. of Laws). Thus, this was not a case identical with the matter decided by judgment of 12 February 2002, file no. Pl. US 21/01 (in Coll. of Decisions, vol. 25, p. 97, or no. 95/2002 Coll.), where the Constitutional Court found that a petition could not be addressed in the part which contested an amending provision reflected in an amended text.

III. D) Constitutionality of the Legislative Process

25. Before evaluating the content of the contested provisions in terms of their consistency with constitutional laws, the Constitutional Court had to (under § 68 par. 2 in fine, of the Act on the Constitutional Court) evaluate the fulfillment of

the formal conditions for enactment of the contested Act. The parties to the proceedings did not cast doubt n the legislative process. The relevant documents published in the Digital Library of the Chamber of Deputies of the Parliament of the CR, and on the webpage of the Senate of the Parliament of the CR (www.psp.cz and www.senat.cz) indicate that the draft Act approved on 4 November 2003 By the Chamber of Deputies of the Parliament of the CR (116 votes in favor) was, based on resolution of the Senate of the Parliament of the CR of 10 December 2003, returned to the Chamber (33 votes in favor out of 64 present) with amending proposal which the Chamber accepted, and the draft as amended by the senate was passed on 14 January 2004 (134 votes in favor). the Chamber of Deputies of the Parliament of the CR took the same position on 10 February 2004, when, by 133 votes in favor of the draft Act, it overrode the veto of the president, who had returned the Act (Art. 50 par. 1 of the Constitution of the CR) on 29 January 2004. After that the Act was published on 19 February 2004 as number 85/2004 Coll. in the Collection of Laws. The Constitutional Court states that Act no. 85/2004 Coll., which inserted the contested provisions into Act no. 252/1997 Coll., on Agriculture, was passed in a constitutionally prescribed manner.

IV. The Review

A) Aim Pursued by the Condition of a Clean Criminal Record

26. The petitioners first contested the condition of a clean criminal record for an agricultural entrepreneur (§ 2e par. 1 let. c) and the related § 2e par. 5 of the Act on Agriculture) as a disproportionate condition which unconstitutionally bars access to doing business without that limitation of a fundamental right being necessary and justifiable in terms of the public interest.

27. In such a situation the Constitutional Court normally reviews the constitutionality of limitations on fundamental rights using the test of proportionality. In its judgment of 13 August 2002, file no. Pl. US 3/02, the Constitutional Court, with reference to the preamble and first Article of the Constitution of the CR, stated that in cases of conflicts between a fundamental right or freedom and the public interest, or other fundamental rights or freedoms: "… necessary to evaluate the purpose (aim) of such interference in relation to the means used, and the measure for this evaluation is the principle of proportionality (in the wider sense), which can also be called a ban on excessive interference with rights and freedoms. This general principle contains three principles, or criteria, for evaluating the admissibility of interference. The first of these is the principle of capability of meeting the purpose (or suitability), under which the relevant measure must be capable of achieving the intended aim, which is the protection of another fundamental right or public good. Next is the principle of necessity, under which it is permitted to use, out of several possible ones, only the means which most preserve the affected fundamental rights and freedoms. The third principle is the principle of proportionality (in the narrower sense), under which detriment in a fundamental right may not be disproportionate in relation to the intended aim, i.e. measures restricting fundamental human rights and freedoms may not, in the event of conflict between a fundamental right or freedom with the public interest, by their negative consequences exceed the positive elements represented by the

public interest in these measures" (in Collection of Decisions of the Constitutional Court of the CR, Coll. Dec., 27, p. 177 and 183, or the Collection of Laws, no. 405/2002). The proportionality test is among the standard legal instruments both of European constitutional courts and of international or supranational courts (cf. numerous ECHR decisions; the European Court of Justice ("ECJ") also uses its variation of the proportionality test – see judgment of the Constitutional Court pf 8 March 2006, file no. Pl. US 50/04 published on 26 April 2006 as no. 154/2006 in the Collection of Laws and the ECJ case law cited here).

28. Application of the proportionality test requires seeking and identifying the aim of the provision that limits a fundamental right. it is not prima facie clear what aim the condition of a clean criminal record for an agricultural entrepreneur is mean to pursue, and the background report to the government draft of the Amendment of the Act on Agriculture does not state an aim (cf. Chamber of Deputies publication no. 305/0 distributed to the deputies on 12 June 2003 in the Digital Library of the Chamber of Deputies of the Parliament of the CR at www.psp.cz). In the first debate in the Chamber of Deputies the proponents of the draft did not explain any justification for the condition of a criminal record (id.). On 10 February 2004 (in debate concerning the Act vetoed by the president) the Minister of Agriculture of the CR, Jaroslav Palas, stated in the Chamber of Deputies: "The required clean criminal is applied in the draft Act very narrowly, for natural persons, agricultural entrepreneurs, and responsible representatives of a legal entity, with the aim of preventing these persons, exclusively in doing business in agriculture, from committing repeated criminal activity. We must emphasize, first of all, existing experience with criminal activity which persons doing business in agriculture have committed in connection with improperly obtained or used subsidies, i.e. funds from the state budget. The requirement of a clean criminal record, provided in § 2e) paragraph 5 of the draft, in no way limits person who have an entry in the criminal register but the criminal entry was of a lesser social danger, or is not connected to the conduct of business in agriculture. This does not prevent an owner or user of agricultural land who does not have a clean criminal record under this draft Act from making a living for himself or his family, but outside the regime of entrepreneurial activity." Therefore, the Constitutional Court considers the legislature's aim to be ensuring proper management of agricultural subsidies (cf. also the statement by the Chairman of the Chamber of Deputies).

29. Article 26 par. 2 of the Charter presumes the possibility of limiting the practice of certain professions or activities by law, without specifying the purpose of the limitation. However, legal norms issued based on that Article must meet the proportionality test. First, it is necessary to evaluate the nature of the aims pursued by the limitation. The legislature justified the condition of a clean criminal record by the public interest in proper management of public funds, the intensity and nature of which can (in the legislature's opinion) justify a blanket limitation on entry into the field only for those agricultural entrepreneurs who meet the conditions necessary for drawing subsidies. The aim pursued by this provision appears to be legitimate.

30. However, it is also necessary to review the necessity of the means selected in terms of its preservation of a fundamental right,- i.e. the freedom to do business. It can not be overlooked that the purpose of agriculture is not to draw subsidies,

but plant and animal production. The question of whether agricultural production is possible only with subsidies must be left to day-to-day reality, to the results of activities resulting from the free decisions of individuals. It necessarily follows that a decision as to whether entrepreneurs will do business at all with the use of subsidies should, in terms of Art. 26 of the Charter, be left to their choice. If they decide to apply for a subsidy, it is conceivable for the legislature to tie the legally positive decision to provide a subsidy to a clean criminal record in a scope related to the legal use of public funds provided to the applicant in the past. The foregoing indicates that the chosen solution is not the one which best preserves a conflicting fundamental right. Therefore, it was not necessary to continue evaluation using the proportionality test, because the condition of a clean criminal record did not withstand in terms of the necessity of the means selected, because the desired state of affairs (the aim pursued) can be achieved through other means (e.g. during the process of allocating and inspecting management of subsidies, as stated above).

31. For these reasons the Constitutional Court decided to annul § 2e par. 1 let. c) of the Act on Agriculture, which defines the condition of a clean criminal record. It annulled, as a related provision, § 2e par. 5 of the Act on Agriculture, which defines the term “clean criminal record” for purposes of the Act on Agriculture (regarding this, cf. part VII. d) of the judgment in the matter file no. Pl. US 15/01 published as no. 424/2001 Coll., or in Coll. Dec., vol. 24, p. 201).

B) Necessity and Proportionality of the Condition of Expert Qualifications

32. The aim pursued by the condition of expert qualifications (§ 2e par. 1, let. d) a § 2f par. 2 let. b) of the Act on Agriculture and the related § 2f par. 3 let. c), the words “and c)” in § 2f par. 4 let. c) and § 2f par. 8 of the Act on Agriculture) is obvious and understandable, and also corresponds to the purpose of the Act on Agriculture, which is: “a) to create conditions to ensure the capability of Czech agriculture to ensure the basic nourishment of the population, food safety, and necessary non-food raw materials; b) to create the prerequisites to support non-production functions of agriculture, which contribute to the protection of components of the environment such as the land, water and air, and to the maintenance of the settled and cultural landscape; c) to create conditions for implementing the EU’s joint agricultural policy and rural development policy.” (cf. § 1 of the Act on Agriculture in the version in effect until 9 November 2005; after that date another purpose was added to the Act, which is “d) to create conditions for the development of various economic activities and improving the quality of life in rural areas and for the development of villages.”).

33. In the first reading of the Amendment of the Act on Agriculture in the Chamber of Deputies on 11 June 2003 the Minister of Agriculture stated: “[I] discussed the amendment with a wide range of persons in agriculture in various meetings, including, farmers. They understood that the fundamental thing for everyone working in agriculture is not only to work on the assets entrusted to him, but also to continue to educate himself. They take this as a natural need, because development is moving forward, including in agriculture. There is more and more new information in science and research, so farmers too feel the need to educate

themselves, and new farmers all the more so. I discussed this matter, as I said, with a wide range of people working in agriculture, and they fully respect and understand the minimum requirement of 300 hours. So, I consider these paths and concerns to be more or less unfounded." (cf. transcript to publication 350/0 in the Digital Library of the Chamber of Deputies). On 14 January 2004, in debate concerning the Act returned by the Senate, senator Jan Fencl stated: "only farmers and agriculture entrepreneurs who are highly competent in the field can guarantee the competitiveness and society-wide prestige of the sector, which society-wide public opinion ranks at the bottom today. Unless our agriculture workers undergo professional training, they are not capable – and I agree with this – to draw the necessary subsidy funds from the European Union, which they are waiting for so eagerly. These, and perhaps other arguments apparently prevailed, because amending proposals aimed at deleting the clean criminal record and expert qualifications were not passed" (id., transcript in publication 350/3).

34. The Constitutional Court had to again evaluate the proportionality of limitation imposed on the right to conduct business by the condition of expert qualifications. The petitioners here pointed to the judgment of 25 November 2003, where the Constitutional Court stated that: "to a certain degree it is also the state which positively forms and provides conditions for the practice of a profession and economic activities, and thus creates the prerequisites for the performance of these activities (status positivus). The essence of the right under Art. 26 par. 1 of the Charter must necessarily lead to differentiating economic activities according to the various degree of interference, or participation of the public element, even in the very constituting of that economic activity. The state sets conditions and limitations on the practice of a particular profession and certain economic activities in the public interest, which is primarily the interest in the quality of performance of these activities. One of th prerequisites … is, for example, attaining an adequate degree of education and the appropriate length of practice in a given field. In such cases it is always necessary to consider whether the limitation of a right by such a public interest is still proportional, or whether the limitation interferes with or denies the essence and significance of the fundamental right (the right to free choice of profession)." (Cf. judgment file no. I. US 504/03 in Coll. Dec., vol. 31, p. 227).

35. The condition of expert qualifications for an agricultural entrepreneur, which limits the freedom to do business, must be reviewed in terms of evaluating the legitimacy of the aim it pursues. That aim is, first of all, the quality of agricultural business, which does not function in and of itself, but is supposed to guarantee defect-free products for consumers.

36. In terms of the principle of necessity the situation is not so clear, because the legislature defined the possibilities for meeting the condition of expert qualifications very strictly. For new entrepreneurs it set the condition of secondary education which must be supplemented with a mandatory re-qualification course if "applicants for doing business in agriculture" do not have an education narrowly oriented at agriculture (or veterinary medicine). An equivalent of that education is five years of practice in an agriculture business, where it is not clarified whether the term business also applies to previously independently operating farmers or individual trade license holders. If practice obtained outside collective agriculture

entities were not considered practice under § 2f par. 2 point 2 of the Act on Agriculture, then such practice could not be considered constitutional, because it would not be possible to determine an objective and reasonable criterion establishing the preference for expert efficiency of practice in a collective agriculture business compared to practice in a business operated individually. A constitutional interpretation must, of course, be given precedence.

37. Thus, it remained to evaluate the situation from the point of view of person who do not have the appropriate secondary expert education and do not have five years of practice in agriculture. The Act on Agriculture does not permit such persons to do business. They are forced to either establish a legal entity and find a responsible representative, or to postpone doing business until they meet the condition of practice, or to acquire secondary expert education in agriculture (or a related field) or to complete a re-qualification course (after obtaining any other secondary expert education).

38. The Constitutional Court has stated in the past that: "when interpreting Art. 26 of the Charter … it is necessary to keep in mind that under Art. 41 par. 1 of the Charter one can seek to exercise the rights established in Art. 26 'only within the bounds of the statutes which implement these provisions." Therefore, the legislature has relatively wide discretion to specifically define the content and manner of implementation of this Article, Nonetheless, even in this case it is bound by constitutional maxims, the main one here being Art. 4 par. 4 of the Charter. … In other words, even the cited relative discretion of the legislature, arising from Art. 41 par. 1, can not lead to the legislature, in the form of a statute, violating the essence and significance of Art. 26 of the Charter, which, in par. 1 guarantees everyone the right to a free choice of profession and training for it, as well as the right to do business and engage in other economic activity." (judgment of 12 July 2001, file no. Pl. US 11/2000 published as no. 322/2001 Coll., or in Coll. Dec., vol. 23, p. 105). In the sense of the cited legal opinion the obligation to meet the condition of expert qualifications solely personally appears excessively harsh and disproportionate; in view of the wording of the clause in § 2e par. 1 of the Act on Agriculture it applies to all natural persons, who are thus barred from conducting business. However, such a limitation can not stand when measured by the principle of necessity, all the more so when measured by the criterion of proportionality in the narrower sense (see above). Although agriculture products become part of the food chain, and although agriculture is irrefutably connected with management of land (or the production of ecological foods, use of biochemical preparations, fertilizers, feedstuffs, herbal medical care and the development of non-product functions of agriculture), it is not clear why ensuring the public interest in these field should require that someone who does not have the necessary education or practice not be allowed to do business in the field at all. The Constitutional Court is forced to reject the requirement of expert qualifications for an agriculture entrepreneur at the general level, applying to all forms of agriculture business. However, it is aware that, in view of the very widely framed definition of agricultural production, including management of forests and on water, in the newly inserted § 2e par. 3, after this amendment there may be activities for which the requirement of increased expert qualifications is undoubtedly justified, and proportionate to the nature of these activities (for example, the production and use of genetic material of breeding animals or plants), but the legislature erred

when it did not apply the requirement of increased expert qualifications exclusively to those forms of agriculture activity for which it would be justified, but instead applied it in a blanket fashion to all forms of agricultural production.

39. However, the aim pursued by setting the condition of expert qualifications could have been achieved otherwise, for example, by using the practice of the established institution of a responsible representative. However, this institution can be used only by legal entities (cf. the clause in to § 2e par. 1 of the Act on Agriculture). Therefore, the provisions imposing the obligation to personally meet the condition of expert qualifications will not stand up to the criterion of necessity, because they are not the manner for achieving the aim pursued by the public interest which best preserves other rights or freedoms (Art. 4 par. 4 in light of Art. 26 par. 1 of the Charter).

40. Therefore, the Constitutional Court annulled both § 2e par. 1, let. d) and § 2f par. 2 let. b) of the Act on Agriculture, and the related § 2f par. 3 let. c), the words "and c)" in § 2f par. 4 let. c) and § 2f par. 8 of the Act on Agriculture. The moment for annulment of these provisions was set as 30 June 2007. The legislature is thus given time to state the condition of expert qualifications in a constitutionally conforming manner, taking into account the current customs in the field of public law regulation of the conduct of business. In the interim between the promulgation of the judgment in the Collection of Laws and the annulment of these provisions the Act on Agriculture must be applied in a constitutionally consistent manner.

C) The Manner of Changing Regulation of the Conduct of Business Conducted in Direct Connection with Agriculture

41. The petitioners described the change of legal regulation of entrepreneurs doing business in direct connection with agriculture ("secondary agriculture entrepreneurs") as violation of the freedom to do business(Art. 26 par. 1 of the Charter). The main argument was that removing these persons from the stable legal framework into an uncertain legal framework was unjustified. Therefore, they sought the annulment of § 2e par. 3 of the Act on Agriculture, which defines the term "agricultural production," and the annulment of Art. II. point 2 of the Amendment of the Act on Agriculture, which provides for the termination of an existing trade license. Due to the construction of the Act, these two provisions must be evaluated together.

42. The overall context of the Act on Agriculture and comparison of it with the Trades Licensing Act indicates that the new conditions must be considered stricter for all natural persons doing business in connection with agriculture under the previous legal framework, because the Act does not permit them to meet the statutory requirements through a responsible representative, which the previous framework permitted (the Act on Agriculture does not contain a provision analogous to §§ 11-15 of the Trades Licensing Act or § 7 par. 4 of the repealed Act on the Private Conduct of Business by Citizens, no. 105/1990 Coll.). Natural persons doing business in direct connection with agriculture must meet the requirements of the Act on Agriculture personally, otherwise their authorization to do business will

terminate, under point 2., Art. II. of the Amendment of the Act on Agriculture.

43. The amending proposal to the Amendment of the Act on Agriculture clearly provided for the termination of existing trade license authorizations (Art. II. point 2 of the Amendment of the Act on Agriculture), and stated that doing business in agriculture is possible only upon meeting the conditions in the Act on Agriculture (heading § 2e par. 1 of the Act on Agriculture; cf. resolution of the Agriculture Committee of 1 October 2003 in the Digital Library of the Chamber of Deputies, publication 350/1). The aim of the Chamber of Deputies proposal was to unify the legal regime for all persons doing business in agriculture. This is clear from the debate in the second reading in the Chamber on 22 October 2003, when the deputies in the Agriculture Committee justified the changes proposed saying that the requirement of expert qualifications and the requirements of the EU were obvious. Deputy Jan Grůza said: "The European Union wants three basic things from us. It wants us to have a clear register of animals, a clear land register, and a clear register of entrepreneurs in agricultural production. if we do not have these three things in order, we will not be able to draw, and the entrepreneur also will not be able to draw, European Union funds. For that reason alone we need to maintain a clear register of agriculture entrepreneurs. No one is preventing a private entrepreneur from taking land and stArting to operate a business with it. Friends, he can do it immediately – take some land under the Act on Land, and other land of his own, and stArt a business. But if he wants to have access to European Union money, under this Act he will have to register properly, and under this Act he will be able to apply for European Union money. Only that is the purpose of this Act." Another member of the Agriculture Committee, Deputy Ladislav Skopal, said in the Chamber of Deputies debate: "… five years of practice is in the event that he does not meet the qualification requirements, basically what was said. That means 300 hours to take a certain course. Every trade must have some qualification prerequisites. I think that agriculture is not the kind of trade where we don't have to know anything at all. I regret that Deputy Kučera considers agricultural activity to be on such a low level that anyone who knows nothing can do business." – cf. id., transcripts of the general and detailed debate concerning publication no. 350).

44. The Constitutional Court has consistently pointed out the connection between the principle of predictable consequences of a legal regulation with the principles of a law-based state (e.g. file no. Pl. US 6/2000, published as no. 77/2001 Coll., or in Coll. Dec., vol. 21, p. 195, also file no. Pl. US 40/02, published as no. 199/2003 Coll. or in Coll. Dec., vol. 30, p. 327). The predictability of a legal regulation must also be evaluated from a dynamic point of view. As the petitioners pointed out, the Constitutional Court has previously evaluated the constitutionality of a change in conditions for the practice of a profession in the matter decided by judgment of 7 June 1995, file no. Pl. US 4/95 (in Coll. Dec., vol. 3, p. 209 or no. 168/1995 Coll.), where the matter was weighed in terms of the category of equality. Without diverging from that case law, the Constitutional Court could not overlook the fact that its case law has developed further in the meantime. A change in regulation naturally also has effects in the sphere of legitimate expectations. As was pointed out in the judgment of 13 December 2005: "… the viewpoints of contextual evaluation of the constitutionality of the deadline under the existing case law of the Constitutional Court are … arbitrariness by the legislature in setting the

deadline. The Court acted from that viewpoint for evaluating the constitutionality of a deadline in the matter file no. Pl. US 2/02, in which it pronounced unconstitutional the annulment of a provision … in the Civil Code … whereby the legislature interfered in the legitimate expectations … of subjects a mere day before expiration of the deadline by which ownership rights would have been acquired, as a result of which the subjects who had acted in good faith in the conditions previously set by the state had been confronted, a mere day before the deadline expired, with the arbitrary procedure followed by the state, which the Court found to be inconsistent with Art. 1 of the Supplement to the Convention (with reference to the case law of the European Court of Human Rights in the matters Broniowski v. Poland of 2002, Gratzinger and Gratzingerová v. the Czech Republic of 2002, Zvolský and Zvolská v. the Czech Republic of 2001)." (Cf. judgment file no. Pl. US 6/05 in 531/2005 Coll., or at www.judikatura.cz).

45. These principle indicate that the legislature, when changing a legal regulation, must take into account the previous legal status quo, and must make changes sensitively, and only in the extent necessary for achieving the aim of the regulation. Such conduct by the legislature must be insisted on, because it guarantees the stability of the sphere of freedom of conduct. Statutes define the basic structure within which free activities are realized. If the limits of statutory requirements are uncertain, i.e. if the legitimate expectations based on the law are not respected, then freedom to is uncertain. That is why protection of legitimate expectations is an integral party of the rule of law (cf. as appropriate judgment of 26 April 2005 file no. IV. US 167/05 at www.judikatura.cz). Taking legitimate expectations into account is an indispensable dimension of legality (cf. Rawls, J., Teorie spravedlnosti, [The Theory of Justice] Prague, Victoria Publishing, 1995, p. 145). The imperative to respect legitimate expectations arising from the existing legal framework of course can not be used to derive a ban on changes to the legal framework. The point is that in choosing how to implement a change the legislature must take these expectations into account, and not ignore the fact that those affected by the norms have for a long time adapted their conduct (and choices between various alternatives) to different requirements.

46. The requirement to personally meet the conditions of expert qualifications and a clean criminal record, together with a short deadline for the termination of previous authorization, is very harsh. The manner in which the change was implemented was not necessary, or was not required by the aim pursued. In any case, even if unification of the framework can be recognized as a legitimate legislative aim, because it aims to make the legal order more understandable, there is a question whether the Act on Agriculture should be the statute to whose application the regulation of agricultural business should be subject, because the public law conditions for conducting business are already regulated by the Trades Licensing Act; there are many years of experience in applying it, and therefore the institutions contained in it must be considered to have proved themselves in practice.

47. It is undisputed that the definition of the term "agriculture production" contained in § 2e par. 3 of the Act on Agriculture, changed the regulatory framework for secondary agriculture entrepreneurs (as also confirmed by the Chamber of Deputies), but the reach of this provision exceeds the framework

defined by the present petition. The petition sought annulment of that provision, but insofar as the arguments contested in particular the manner which the legislature chose in the shift to the new framework, then the primary error must be seen in Art. II. point 2 of the Amendment of the Act on Agriculture, which gives secondary entrepreneurs the obligation to register under new conditions and sets the termination of existing authorizations, because it is primarily this provision that is an expression of the unconstitutional change of regulation objected to by the petitioners. Therefore, the Constitutional Court granted the petition to annul Art. II. point 2 of the Amendment of the Act on Agriculture and denied the petition to annul § 2e par. 3 of the Act on Agriculture.

48. The petitioners also sought annulment of the clause in § 2e par. 1 of the Act on Agriculture that permits legal entities to meet the conditions of a clean criminal record and expert qualifications through a responsible representative, but annulling this provision would make it impossible for legal entities to do business in agriculture, which is an interference that can not be justified by the argument that other subjects are also barred from doing business. Such an understanding of the principle of equality lacks the attributes of reasonable interpretation of the law, and therefore this petition was denied. In any case, the petitioners themselves stated (p. 13 of the petition), that if the regime for doing business is found to be defective, this part of the petition is irrelevant. The petitioners also considered the longer deadline for the termination of authorization of independently operating farmers (the abovementioned part of Art. II. point 1. of the Amendment of the Act on Agriculture) to be unconstitutional. here too the Constitutional Court could not grant the petition. The actual situation of these persons (and their consequent arising ability to respond to changes) is very different from that of secondary agriculture entrepreneurs, and one can find prima facie reasonable grounds for a different regime. Therefore, providing an “advantage” could not be considered an expression of constitutionally unacceptable arbitrariness (cf. judgment Pl. US 16/93 in Coll. Dec., vol. 1, p. 189 or no. 131/1994 Coll. and other judgments). Therefore, the Constitutional Court denied these parts of the petition (cf. above, par. 9 and 10).

49. For all the foregoing reasons the Constitutional Court decided as is stated in the verdicts.

Notice: Decisions of the Constitutional Court can not be appealed (§ 54 par. 2 of the Act on the Constitutional Court).

Brno, 20 June 2006